

WHEN THE POLICE GO TO COURT. A STUDY OF CONTEMPT, OBSTRUCTION AND ASSAULT ON A POLICE OFFICER

Fabien JOBARD, assisted by **Marta ZIMOLAG**, describes a study of court decisions between 1965 and 2003 in cases involving offences against persons holding public authority. He looks at possible interpretations of trends in these offences, then raises some questions as to the discriminations observed, depending on the types of individuals prosecuted.

Offences against individuals who are "depositories of the public authority" are definitely revealing of tensions between police officers and "youths known to the police". On the one hand, they are used by the police forces as indicators measuring urban violence. But also, because they are unique in that the people who record them are also those who claim to be the victims, they are viewed by the accused as embodying the discretionary element of police power. These offences therefore reveal a crucial part of what goes on with police interaction with the population.

Three offences are involved here. "**Contempt** punished by a six-month prison term and a 7,500 € fine consists of any words, gestures or threats... addressed to person discharging a public service mission, acting in the discharge or on the occasion of his office, and liable to undermine his dignity or the respect owed to the office that he holds" (art. 433-5 of the Criminal Code). "**Obstruction** consists of opposing violent resistance to a person holding public authority..." (art. 433-6 of the Criminal Code). **Obstruction** receives the same punishment as contempt. The third offence is **assault** on an officer, which is always a misdemeanour¹. By definition, crimes have been excluded from our material (thus excluding any cases of fatal violence²). Hereafter, offences against persons holding public authority are designated as OAPHPA.

We have collected a sample of over 1,500 cases judged between 1965 and 2003 at a *tribunal de grande instance* (a district court) in an outlying Paris area district³. The data cover 1,228 individuals charged with OAPHPA judged at the *correctionnel* court (including 661 charged with OAPHPA "only" meaning they are not linked to any other misdemeanour), plus 225 judged by a juvenile court and 149 by a juvenile court judge in his chamber. The collected data are relative to three months of full court activity (in March, June and October), on the basis of records of hearings, which yielded the following information:

Dossier N°	Defendant	Offences	Type of trial	Court decision
N° (when relevant: immediate hearing trial)	Last name First name Date and place of birth Free/Free, escorted/ In detention for another reason	O A P H - P A O A P H P A O t h e r connected offence, if any Date of facts	adversarial/Failure to appear or repeated failure / adversarial, notice to be served	- criminal decision (acquittal / unsuspended prison term / suspended prison term / fine / probation - civil decision, if any (civil party, if any; compensation; costs)

¹ The English translation of the article 111-1 of the French Penal Code states that *Criminal offences are categorised as according to their seriousness as felonies, misdemeanours or petty offences*. Felonies stand for the French word *crimes*, which are judged by *cours d'assises*, where a jury sits; misdemeanours stand for *délits* which are judged by *tribunaux correctionnels* and petty offences stand for *contraventions* which are judged by *tribunaux de police*.

² A check on minutes covering a six-month period in 2002 showed that the vast majority of "persons holding public authority" are police officers.

³ We are most grateful to the President of the Court and the Public Prosecutor, who facilitated our research in the court archives. This study was independently funded by the CESDIP.

These documents do not give any information as to where the offences were committed, nor as to whether the suspect had any previous conviction, nor on social, occupational and marital status, although studies have shown these to be decisive factors in determining the sentences handed out⁴. However, we will attempt to remedy the latter absence. For the time being, we will analyze the broad trends, the data on defendants, criminal decisions and last, civil decisions.

1. Broad trends for the offences judged

a) Overall trends

The evolution of OAPHPA OAPHP Adjudged by the TGI between 1965 and 2003 shows a definite rise in the number of defendants: while, between 1975 and 1994, some 4 to 10 cases were brought to court, a very sustained increase started in 1995 (16 to 20 cases a month between 1995 and 1999) and an even more sustained increase from 2000 on (30 to 37 cases between 2000 and 2003). The largest figures for juveniles are found in the late 1990s, after which they shrink in the early 2000s.

To what can these trends be related? The population of the *département* doubled between 1968 and 1999. The OAPHPA rates were multiplied by two between 1965 and 1975, then leveled off, and doubled again between 1990 and 1999. A major change definitely occurred in the 1990s. No such rise can be found for "offending in general" (drugs, property offences, violent offences): the rate of cases judged between 1990 and 1999 was only multiplied by 1.4. Moreover, the trend in OAPHPA is not the same as for property offences or drug offences. Conversely, there is a very strong correlation with violent offences (Pearson coeff. = 0.92).

Two interpretations may be advanced. According to the first, OAPHPA are the froth, so to speak, of the growing "roughness" of social relations since the mid 80s⁵, and the increase in OAPHPA would not so much indicate specific antagonism to police officers as it would reflect an overall social trend. However, a second interpretation which, in fact, does not preclude the first, should be preferred. Since the late 1980s, a whole series of petty offences, and above all, violence exerted on a spouse or partner, a juvenile or a vulnerable person by a person with authority over... have been turned into misdemeanours. These changes in criminal law which, moreover, attended encouragement to take more police custody measures, put a whole series of acts into the category of misdemeanours requiring that the person be taken in and placed in custody. This entailed in-depth alterations in contacts with the police, in terms of duration and intensity. What the correlation between OAPHPA and violent offences measures, then, is above all the change in the microsociological infra-

⁴ On the "institutional careers of groups", see especially Barré M.D., 2003, "Interpellés hier, aujourd'hui et demain. Analyse des séquences de mises en cause dans les procédures de police judiciaire", *Déviante et Société*, 27, 2, 131-159. On the importance of the social factor for sentences meted out, see Aubusson de Cavarlay B., 1985, "Hommes, peines et infractions. La légalité de l'inégalité", *L'Année Sociologique*, 35, 275-309.

⁵ As Ph. Robert puts it, in *L'Insécurité en France*, Paris, La Découverte, 20-25.

structure of interactions with the police, produced by changes in criminal legal provisions in France.

b) Trends within the OAPHPA

The rise in the number of OAPHPA judged affects all categories, but differently depending on the type of OAPHPA (contempt, obstruction, contempt and obstruction, assault). The proportion of assaults on officers dropped consistently, then rose a bit in the 2000s (one fourth of OAPHPA were assaults from 1965 to 1984 and only one sixth today). Now, between 1960 and 1980 few cases were taken to court, and the fact that assault represented a large portion of these shows that at the time the police only transmitted those cases they felt were particularly serious. Today we have quite the opposite: the police send all cases to the courts. This trend, which shows that the growing judicialisation of social relations does not spare the police, leads us to assume that in the past cases other than "assaults" were handled outside the courts, on the spot, by anything from verbal admonition to a couple of smacks. The judicialisation of these offences is most probably the other side of the gradual reduction of police brutality.

At the same time as the proportion of assault cases declines over these four decades, simple insults drop from over two thirds to half of the cases taken to court. The only items that increase proportionally are rebellious behavior (going from 4 to 8% over the period) and "contempt + obstruction" (from 10 to 25% of OAPHPA). Now, while assault may be ascertained by a medical certificate, and contempt ascertained by the transcription of what was said (or heard...), obstruction, simply described by the phrase "opposed violent resistance" has hardly any objective basis. It is precisely this barely objectively ascertainable offence that has provided the largest portion of the incremental cases. There are two possible explanations here, which are not mutually exclusive. According to the first, in a context of overall increase in OAPHPA cases referred, police officers add the charge of obstruction to their contempt cases to make sure they will be prosecuted; this illustrates their discretionary power. The second explanation supposes that the Public Prosecutor has taken the initiative and asked the police to refer obstruction cases preferentially, since they are deemed more "serious" than mere contempt, although the same sentence is prescribed (see 2c). If this is the case, the increase in "contempt + obstruction" cases referred is the outcome of penal policy which, by encouraging the referral of obstruction cases, simultaneously brings the attendant contempt cases to court.

2. Defendants

a) Groups of same origin or consonance

We have coded names and birth places, to set up what we will call, for want of a better name, "groups of same origin or consonance". Groups of same origin: defendants born in sub-Saharan Africa and those born in French overseas *départements* and territories form two groups, "African-born" and "DOM-TOM-born". Groups of same consonance: defendants with Arab last names or those born in North Africa form the "North-African" group, although some should be in the "African" group, also based on consonance, as are the "southern European" and "eastern European" groups. The "other" group is residual, contain-

ing all French-sounding names and those not found in the other groups.

For the entire period, 18% of defendants belonged to the "North-African" group, 11% to the "southern Europe" group, 8% to "African + African-born + DOM-TOM" and 54% to the "other" group. But for the last decade, the percentage of "others" dropped to 40%, whereas the "North-African" and "Africa + African-born + DOM-TOM" rose to 25 and 20% respectively. This trend was of course fed by major demographic trends within the *département*. However, a more detailed view of age groups shows a very large proportion of youthful defendants in the "North-African" group.

b) Age groups

The defendants are strikingly young: for the period as a whole, 50% are under 22 and 25% are under 18. If we focus on 2002 and 2003 (data for the juvenile court judge's chambers were missing for 1999, 2000 and 2001), the median age drops to 21. The majority of individuals prosecuted for offences against police officers are young adults and juveniles.

If we look at groups of same origin or consonance for juvenile court defendants, we find that 32% were "other", 38% "North-African" and 28% "African + African-born + DOM-TOM". Over the last decade the proportion of the latter two groups was extremely high among those accused of OAPHPA, then, and especially so for juveniles.

c) Group breakdown for offences

In the table below, we find that the types of offences prosecuted are not the same for the different groups. Special attention should be given to the fact that people in the "North-African" group are less often judged for contempt alone, but more often judged for assaulting a police officer or "contempt and obstruction" than defendants in the "other" category. Now 10% of "contempt" cases are sentenced to unsuspended imprisonment as opposed to 20% of contempt and obstruction and obstruction cases and 40% of assault cases.

	Con- tempt	Obs- truc- tion	Contempt and obs- truction	All as- sault cases	Total	Num- bers
"Other"	64 %	5 %	15 %	15 %	100 %	n=329
"Southern Europe"	69 %	4 %	18 %	10 %	100 %	n=80
"North Europe"	50 %	25 %	8 %	17 %	100 %	n=12
"North- African"	43 %	10 %	23 %	24 %	100 %	n=130
"African"	51 %	19 %	23 %	6 %	100 %	n=47
"African- born"	24 %	16 %	36 %	24 %	100 %	n=25
"DOM- TOM-born"	75 %	0 %	25 %	0 %	100 %	n=12
Total	58 %	8 %	18 %	16 %	100 %	n=635

N.B.: the total represents defendants accused of OAPHPA not linked with any other offence (1965-2003) minus groups of less than ten individuals.

3. Criminal sentencing

The forthcoming analysis concentrates on adults and OAPHPA only, that is, with no other misdemeanours involved in the same procedure.

a) Increased court severity

For the whole period, one half of defendants were sentenced to deprivation of liberty (suspended or unsuspended), two thirds to fines (3 to 4% were acquitted). Un-

⁶ These are our categories (there is no such thing as "contempt-obstruction" in criminal law). "Assault" includes all violent offences (assault, assault-contempt, assault-obstruction, assault-contempt-obstruction).

suspended imprisonment was not unusual, since it represented 16% of all sentences, and 10.4% for the offence of contempt only (40 defendants since 1965).

Let us take sentencing to unsuspended imprisonment as the criterion for "severity": the proportion of defendants receiving that sentence dropped from 15% of sentences pronounced between 1965 and 1974 to 11% between 1985 and 1994, then rose to slightly under 19% for the 1995-2003 period. What accounts for this increased severity since the early 1990s, given the decline in assaults during the same period (see 1b)? The increase in "contempt-obstruction" cases fed the number of unsuspended prison sentences. At the same time, the penal procedural reforms introduced in the early 1990s, and especially the introduction of various types of "real-time case processing", have contributed to the rise in unsuspended prison sentences. This is true of the summons to appear in court served on the defendant by the police officer at the end of the police custody (known as SACbPO): any defendant who receives this summons and does not appear at the hearing is tried as "adversarial, to be notified" (AtbN) and is exposed to a higher probability of receiving a harsher sentence. Our findings on OAPHPA do not contradict other research showing that judges are more severe for AtbN defendants⁷. It is precisely this type of procedure that proliferates in our sample from 1996 on (67/221 in 2000-2003), representing slightly more than half of all unsuspended prison sentences during the last period.

So the court's increasing severity seems to be due essentially to the introduction of "real-time case processing" and the ensuing considerable influence of pre-trial actors (the Public Prosecutor, the investigating police) on the judges' decisions.

b) Criminal sentencing and discrimination

The following table summarizes sentences, broken down for groups of same origin or consonance. Punishment is not the same for people in the "North-African" group and the "other" group. The former are more frequently given unsuspended imprisonment (one fourth as against one out of ten).

	Un-suspended imprisonment	Suspended imprisonment	Fine	Suspended driver's license	Community service work	Total	Numbers
"Other"	11 %	36 %	49 %	2 %	1 %	100 %	n=318
"Southern Europe"	18 %	30 %	51 %	0 %	1 %	100 %	n=77
"North Europe"	33 %	25 %	42 %	0 %	0 %	100 %	n=12
"North-African"	27 %	30 %	41 %	1 %	2 %	100 %	n=128
"African"	22 %	29 %	44 %	2 %	2 %	100 %	n=45
"African-born"	16 %	40 %	44 %	0 %	0 %	100 %	n=25
"DOM-TOM-born"	8 %	50 %	42 %	0 %	0 %	100 %	n=12
Total	17 %	34 %	47 %	1 %	1 %	100 %	n=617

N.B.: the total represents defendants accused of OAPHPA not linked with any other offence (1965-2003) minus groups of less than ten individuals, acquittals and other sentences.

What accounts for these differences? A first element is the different distribution of types of offence judged in the different groups, with a greater frequency of assault and insult-rebellion in the "North-African" group (see 2c). Secondly, there is the introduction of "real-time case processing": people in the "other" group are proportionally less often judged as AtbN than the "North-African" group (see 3a). However, this explanation only covers a mere sixth of the population considered (106 AtbN /661 OAPHPA only): most OAPHPA only defendants are given an adversarial trial.

If we look at the 422 defendants (from all groups) given a defended trial, we find an over-representation (statistically significant) of people in the "North-African" group sentenced to an unsuspended prison term, and conversely, an under-representation of defendants in the "other" group: 24% of "North-Africans" with defended trials received an unsuspended prison sentence (n = 18) as against 7% of those in the "other" group (n = 15). A look at the characteristics of these 18 "North-Africans" and 15 "others" shows that 12 of the 18 "North-Africans" were given an immediate hearing trial, as against 2 of the 15 "others".

At the time (before the 2002 Act), immediate hearing trial (IHT) was prescribed for misdemeanours incurring sentences of at least two years in prison, or one year in case of recidivism. Given the fact that the prescribed sentence is doubled in case of recidivism, it may safely be said that people who are given IHT for contempt, obstruction or contempt-obstruction (prescribed sentences = 6 months) are judged as "recidivists" by definition. Now, of the 15 "others" sentenced to unsuspended imprisonment, 6 were prosecuted for those offences, but none was given IHT. Conversely, 10 of the 18 "North-Africans" were judged for those offences, including 6 on IHT. Discrimination between the two groups could be explained, then, by a higher proportion of defendants judged as "recidivists" in the "North-African" group. Aside from the small size of the group, there is another reason to handle this explanation with caution: we cannot say anything about those judged as "recidivists" for assault; and there may be another level of discrimination, by which those judged as "recidivists" get a different trial depending on whether they fall into the "North-African" or "Other" category.

Lastly, we should not overlook factors extraneous to our findings. As we know, unemployment is a major factor determining whether one gets an unsuspended prison term or some other sentence. Now, precisely for the age groups dealt with here, unemployment mostly affects youths of North-African origin⁸: we would not be surprised, then, to discover that given the role played by social discrimination, the judicial system mechanically sanctions social discriminations of other sorts, within its own sphere.

4. Civil decisions

a) Parties to civil action and sense of the offence

Police officers reporting offences have gradually come to add their own complaints as private parties associating to the public prosecution⁹, for which the administration provides counsel. That was the case for 87 out of 100 OAPHPA defendants between 2000 and 2003. This produces a considerable reversal of the meaning of these procedures. In addition to the offence, viewed as a breach of the public authority via the police officer, there is now an offence in which the police officer in person claims to be

⁷ For assault cases only, 42% of AtbN received an unsuspended prison sentence as against 28% of the defended. For a more general discussion, see Aubusson de Cavarlay B., 2002, Le prononcé des peines en France. Entre mesures et sanctions, *Société et Représentations*, 14, 33-54.

⁸ J. L. Richard, 2004, *Partir ou rester? Destinées des jeunes issus de l'immigration*, Paris, Presses Universitaires de France, 163-199.

⁹ Only suits for moral wrong have been included here.

affected. This re-personalization of proceedings tends to turn court hearings into an extension of the arena in which the interaction between police officers and defendants was first played out.

Financial compensation is emblematic of how personalisation takes hold on the original incrimination. Aside from 12% of defendants sentenced to symbolic payment of damage (1€), the average amount of damages per defendant was 307€. Over and beyond the real problem of the solvency of those sentenced defendants, this monetary compensation obviously feeds the suspicion that the civil parties are taking advantage of the offence to make money.

b) *Civil parties and discrimination*

Complaints with a petition to become a civil party depend both on the nature of the offence and on the defendant's group, as defined above. The offence with which they are statistically significantly correlated is contempt-obstruction. Now the latter is the type of offence that is more frequent among the "North-Africans" than in the "Other" group (see 2c). Unsurprisingly, there is an over-representation of the "North-African" group in cases in which a civil party is associated.

Membership in the "North-African" group multiplies the probability of a civil suit by 3 (with reference to the "Other group judged for contempt only"); a suit for "contempt-obstruction" multiplies this probability by 2; immediate hearing trial by 2. But the combination of the first two characteristics (contempt-obstruction + North-African) produces a recessive factor: whereas the belonging to the "North-African" group and the "contempt-obstruction" group multiplies the probability of a civil suit by 2 and 3 respectively, the combination of the two does not raise the multiplier to 6, but to 3.2.

The interpretation of this combination tends to show that civil party complaints are motivated more by the desire to see the defendant sentenced than by the monetary compensation. It is as if when the future defendant falls into the "North-African" category and is tried for "contempt-obstruction", officers do not feel the need to add any charges: since they foresee not only prosecution but also a guilty verdict, they do not associate to the trial as civil party.

Conclusion

One unusual feature of this study is its investigation of the rarely documented question of discrimination based on the origins of defendants. Whereas data on "blacks" (sub-Saharan Africa and DOM-TOM) are too heterogeneous and statistically insufficiently significant, data on "North-Africans" do indicate definite, systematic discrimination: that is, more unsuspended prison sentences, longer prison sentences and more frequent association of civil parties. This discrimination is defined in statistical terms: there is a series of significant differences. Does that mean there is "discrimination" in the ordinary sense? This is a much more complicated question, since the "North-African" population is also tried for particular kinds of offences within the OAPHPA category, is more often tried "as recidivists" and more often tried in the absence of the defendant... Court decisions pitilessly echo and multiply the singularities of a population which differs both in its origins and in its relations with the criminal justice system, in that it is more wont than any other group to be in contact with the judicial system.

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