

THE ENFORCEMENT OF PRISON SENTENCES

Little information has been available up to now on the transition from sentencing to enforcement. The French Code of Criminal Proceedings briefly states (art. 707, par. 1) : "The public ministry and the concerned parties each pursue the enforcement of the sentence, in its own right". This phase of the penal process may have been thought of as a simple formality. However, recent research has shown this to be far from true : two out of three individuals sentenced to prison following conviction by the Paris "tribunal de grande instance" (1) are not committed.

Paris was selected as the locus of the present investigation because a large proportion of prison sentences are passed there. For the sample studied, sentencing occurred in 1977. At the time of data collection, in 1985, this relatively remote year was the first possible one, given the necessary lapse of at least 8 years (cumulative period for extinction of both the offense and the sentence) to be sure that not relevant new entry could be made on the specific record. In addition, the year 1977 has been chosen for its distance from years of presidential elections, to avoid, inasmuch as possible, the effects of amnesty laws on the enforcement of sentences. The statistical unit used is the prison sentence, each of which corresponds to one sentenced person.

Conditions of sample collection were such that the findings may be considered significant, and the observation of records of sentence enforcement for one tenth of all sentences to imprisonment pronounced in Paris in 1977 -that is, of 2,345 sentences- may be viewed as most probably representing a constant, and a current reality.

SOME NECESSARY DISTINCTIONS

The total percentage of prison sentences served in ratio to those pronounced is not in fact the most interesting piece of information. If the "punishment leakage" phenomenon uncovered by this research project is to be accurately situated, and its cause and significance evaluated, those cases in which enforcement is predetermined, so to speak, must be eliminated from the overall statistics :

1. - For individuals who are left of placed under a committal order immediately following sentencing, confinement is 100 % effective, since all such people go or return to prison at the end of the hearing which circumstance applies to

approximately 24 % of convicted individual in our sample. The question of the (subsequent) enforcement of the sentence is more explicitly raised for the others, the remaining 76 % who leave the box free.

In fact, investigation shows that in this latter group only one out of ten sentences is actually served. In other words, nine out of ten persons sentenced to imprisonment who left their trial unfettered did not serve their prison term... Another distinction must be made here ; it pertains to a second cause that plays a mechanical role in enforcement.

2. - When sentencing does not lead to commitment -for people who successfully use the recourse procedures granted by law- appeal of sentence or of a default judgement, pardon-enforcement cannot take place. This proviso applied to approximately 64 % of our cohort. For these people, it is as if there had never been any sentence, and this group is as irrelevant as the previous one with respect to enforcement. In both cases, an automatic stipulation -leading to enforcement or non-enforcement- makes it impossible to determine what transpires when the situation is truly in the hands of the Public Prosecutor.

Only the remaining group, then, may furnish information in this respect : some 36 % of those sentenced to prison and never placed in custody although the judgement was final. For this limited but significant category -about one fourth of all offenders sentenced to imprisonment by a court (without jury) for moderately serious offense- there is theoretically no way of escaping detention. The diagram below shows how this group was isolated within the sample of 2,345 sentenced offenders.

The 5,619 recorded sentences included 2,239 prison sentences, to which must be added the 106 subsequently revoked suspensions of sentences, for a total of 2,345 prison sentences.

Following exclusion of those numbering 574, who were placed in custody upon leaving the hearing, the number of offenders sentenced to prison and released is 1,771. Substraction of the 1,135 cases in which recourse was effective leaves a residue of 636 prison terms which should necessarily have been put into effect, since they had become definitive.

DEFINITIVE SENTENCES : THE SLIGHT CHANCE OF THEIR BEING ENFORCED

For these 636 sentences, the research postulate was that the percentage of committal would be extremely high. This postulate was not borne out,

(1) - Court judging without a jury.

however : in this specific group, only about one out of four sentenced individuals (27 %) was eventually incarcerated. Despite the fact that these are all people for whom there was no longer any objective reason for non-enforcement of the prison sentence, nearly three fourths of them were not incarcerated. This massive non-enforcement of definitive prison sentences affecting persons hitherto left free required further investigation, to determine the reasons for this phenomenon. The results of this analysis are also presented in the diagram below. Some preliminary remarks are not doubt required for the full comprehension of these findings.

1. - For the Public Prosecutor's office, "pursuance of the enforcement of sentences", as stipulated by the Code of Criminal Proceedings, does not necessarily mean placing the offender behind bars.

First, and above all, it means that a document known as a "committal order" is transmitted to the "arresting" services. At a certain point, following an often protracted bureaucratic process conducted in collaboration with other, external agencies, the Paris Public Prosecutor's Office finally obtains this legal document. It then dispatches the order to the SATI (archiving and data-processing service) for recording on the list of wanted persons.

For the Public Prosecutor's office, transmission of the committal order to the police is tantamount, so to speak, to enforcement of the sentence. Strikingly, the expression "to commit", when employed by the Paris Public Prosecutor, generally designates the order rather than the offender in person.

2. - The actual, effective enforcement of the sentence by the Public Prosecutor's office is officially a two-phase process :

- circulation of a committal order ;
- in a subsequent phase, generally occurring many months later, interrogation of the sentenced person, arrested by the police for the purpose of committal, this time.

3. - Between the date at which the committal order is transmitted to the police and the arresting of the sentenced offender, what might be called the actual enforcement of the sentence (the transition from work on a written document to the physical capturing of the sentenced individual) is in the hands of the police, in Paris.

And in some cases, the time elapsed during this phase of the criminal justice process is so long that there may be extinction of the sentence (this occurs at the end of five years in this category of offenses) before the person is

summoned to serve his or her term. If an amnesty law is passed in the meanwhile, the fate of "amnestiable" sentences is the same as that of extinct but non amnestiable sentences : the period during which they may be enforced has been exceeded without any interruption by a deliberate act, by sheer inertia of the system.

If we return to the diagram, the sample of 636 sentences for which enforcement seemed inevitable may be seen to have experienced the following fate :

- for 14 of them, there is no record of a committal order : either this paper never reached the Public Prosecutor's office (the "correctionnel" record office had neglected to transmit it) or it was not circulated by the Public Prosecutor following receipt. This omission was simply noted, without explanation.

- for 424 of these sentences, the sentenced person was not found in time for incarceration while it was legally possible. It should be noted that 45 of these sentences were not amnestiable : they involved prison terms of more than 6 months (actually, terms of 8 to 36 months). The other 379 were either formally amnestied (in 184 cases) or recorded with no indication of outcome (1985 cases) ; a posteriori, then, these may all be considered to have been affected by the 4th August 1981 amnesty law (enacted approximately 4 years after the date of sentencing, in these cases).

- 28 sentences were not enforced although the convicted offenders had been found. The records show the following entries for these people : 20 deaths, 3 technical irregularities -which, logically were in the offender's favor- and 5 "Prosecutor's adjournements". The latter expression refers to sentenced individuals for whom enforcement was adjourned by the Public Prosecutor following the pre- incarceration interrogation -for a reason which is never placed on record. Since these people did not appear on the date set for confinement, adjournement turned into *de facto* non- enforcement for them.

HOW CAN PUNISHMENT LEAKAGE BE EXPLAINED ?

In the last analysis, 466 sentenced individuals (73 %) did not serve their term. Those who were found in time and placed in detention numbered 170 (27 %).

The figures mentioned at the beginning of this paper are shown on the diagram : 744 sentences served (32 %), for a total of 2,345 sentences passed. However, the nearly 3 out of 4 proportion of non-enforced sentences, found in

the group of sentences which theoretically could not be circumvented, poses a particularly important question. Investigation uncovered complementary findings relative to the unserved sentences in this group, and more specially with respect to the many sentences which were not put into effect because of the far-reaching effects of an amnesty law, or of the five-year limitation period.

The cause of this situation may be surmised : once the committal order was handed over to the police, it was probably not followed by any routine procedure for summoning the sentenced person. A study of this point did in fact show that 80 % of all such offenders had not been bothered by the police ; no active search had been conducted, nor had they even been simply summoned to serve their term. The percentage was similar for all categories of cases, regardless of the type of offense penalized, the length of the sentence or the nature of the judgment (following trial or executory by default). At the same time, the part of the survey conducted at what is known as the "presentations" service of the Public Prosecutor's office (pre-incarceration interrogation of arrested individuals) provides an explanation of how the police uncovers the individuals it brings before this service.

As a rule, most sentenced persons who are recorded as wanted are discovered accidentally, usually because of some conspicuous public behavior (they are caught doing something illegal, behaving strangely, discovered during an identity check, noticed when filing some administrative papers or found in prison for another reason) ; a few people -among those who had given their real address and had not moved since the verdict- had responded to a summons.

In other words, people who, in Paris, are sentenced to prison and who are not placed in restraint have every chance of never being incarcerated provided they make use of all the types of legal recourse available and are able to keep out of sight in the meantime. Could there possibly be some relation between this situation and the very extensive use made of pretrial detention by the french system ?

Jacqueline BERNAT DE CELIS

