

## DISMISSAL BY THE PUBLIC PROSECUTOR

This research on dismissal by the Public Prosecutor's office was commissioned by the Research Council of the Ministry of Justice\*. It was conducted in a court in the Paris area under the scientific direction of the CESDIP, and aimed at obtaining a more accurate picture of the number of dismissals in relation to the nature of the case and the reason for the decision.

### DISMISSAL IS MOST FREQUENT WHEN THE OFFENDER IS UNIDENTIFIED

From the outset, criminal justice statistics illustrate the leading role increasingly taken by the Public Prosecutor's office. The proportion of dismissals rose from 30 % to 50 % of cases seen between 1831 and 1870, then continued to increase more gradually approximately until 1930. In the late 1950's, it became spectacular: criminal justice cases, which numbered hundreds of thousands at that point, are now counted by the million. Over 80 % are dismissed. More than anything else, the overall evolution of criminal justice cases, expressed in absolute figures, reflects the evolution of these dismissals.

As shown by police statistics, this is essentially the result of the soaring number of suits filed against unknown offender for theft. Between 1972 and 1985, the number of unelucidated thefts rose from 0.7 to 1.9 million. During the same period there is also a considerable extension of some types of offenses, the very frequency of which makes increasingly stringent selection necessary: traffic violations, bad cheques, frauding on public transportation, shoplifting and the likes contribute heavily to the high sentencing figures seen until 1986. Their contribution to dismissal figures was not known, on the other hand.

In its attempt to measure the latter, this survey resorted to two sources; data contained in the computerized records of criminal justice affairs, and those collected directly in the dossiers. The former reflect cases dealt with by the Public Prosecutor's office: for dossiers registered between 1-07-86 and 30-06-87, the nature of the cases and the decision as to action were analysed. Table 1 cross-references the nature of the case and the public prosecutor's decision. Cases redirected to a different jurisdiction (10,4 % of

\* - The findings of this research project have been published by the Research Council of the Ministry of Justice in a report: Simmat-Durand L., *L'abandon des poursuites : ces classements dits d'opportunité*, 1989, stencilled, (supervisors, B. Aubusson de Cavarlay and René Lévy).

registered cases) or awaiting action at the time of data collection (4,6 %) were excluded.

### DISMISSALS FOR OTHER REASONS ARE MORE FREQUENT THAN PROSECUTION

In all, 55 % of decisions are dismissals recorded as "offender unidentified" at the registration bureau. Next come dismissals for "other reasons" (28 %), followed by the initiation of proceedings (17 %, only 0,4 % of which are referred for preliminary judicial investigation).

These figures vary considerably with the nature of the case, however (see table 1). A number of patterns may be seen. There may be almost no dismissals for "other reasons" and a great many dismissals for "offender unidentified" (in aggravated robberies or thefts other than shoplifting). Proceedings may be more frequent than dismissals for "other reasons" (public transportation and certain traffic violations such as lack of proper documents). In all other cases, they are less numerous, and even considerably so for shoplifting, cases involving divorce or the situation of juveniles, for unintentional offenses (injury in traffic accidents), breaches of road transportation regulations and last, for bad cheques.

### THE GROUNDS FOR DISMISSAL ARE NOT NECESSARILY SPECIFIED

This study examined a representative sample of dossiers dismissed for "other reasons", in an attempt to clarify these reasons. The grounds mentioned by the registration bureau are usually not reliable.

Certain indications are something of a catch-all, and when several grounds are relevant, there is no clear rule as to which to choose. Conversely, the situation when the case arrived at the Public Prosecutor's office, the action requested and the results obtained provided valuable indications for the distribution of cases in a logical sequence (see table 2).

First the cases resulting from purely routine action (12 % of dismissals, for "other reasons") were separated out: in cases of transmission of a police docket (*main-courante*) or of a procedure for destruction of an impounded vehicle, an offense might be uncovered, but the case is dismissed by the record office. Next come decisions motivated by legal arguments: the magistrate found no offense (16,6 %) or else the offender remains unidentified (4,5 %).

In the latter case, the official grounds may be somewhat different - usually, prosecution unexpedient - which explains the presence of some few such cases in the sample. One third of dismissals for "other reasons" therefore involve cases for which prosecution was not feasible.

TABLE 1: PROCESSING OF CASES BY THE PUBLIC PROSECUTOR'S OFFICE

Nature of the case (2)	Processing of cases by the Public Prosecutor's office (1)			Numbers
	Prosecution	Dismissal/ "other reasons"	Dismissal offender unidentified	
Aggravated robbery	3.2	0.7	96.1	13,268
Other thefts	4.3	2.9	92.8	35,948
Property damage	4.1	9.1	86.8	6,096
Public transportation	80.4	17.7	1.9	7,397
Highway code documents	59.3	40.4	0.3	3,524
Intentional violence	30.6	42.7	26.7	3,534
Frauds	32.4	43.6	24.0	1,728
Highway code, driving	35.9	48.1	16.0	4,628
Miscellaneous cases	8.5	53.4	38.1	2,371
Disturbing the peace	41.4	55.9	2.7	1,180
Drugs	42.5	56.1	1.4	553
Regulations, misc.	31.9	59.9	8.2	2,092
Shoplifting	32.2	66.7	1.1	1,288
Family - juveniles	31.9	67.9	0.2	1,418
Unintentional violence	22.6	74.5	2.9	3,716
Regulations, transportation	11.0	85.6	3.4	620
Cheques	5.5	86.9	7.6	12,682
TOTAL	17.3	27.9	54.8	102,043

(1) data taken from the computerized files of a court district in the Paris area, between 1.07.86 and 30.06.87.

(2) by order of increasing frequency of dismissals for "other reasons".

TABLE 2: GROUNDS FOR DISMISSAL DEPENDING ON THE NATURE OF THE CASE

Nature of the case	Distribution dismissals "others reasons" (1)							Total
	Routine	No offense	Offender un-identified	Regula-rization	Failure of settlement	Expediency		
Aggravated robbery	13.0	8.7	8.7	30.4	4.3	34.9	100	
Other thefts	2.9	11.8	5.9	61.8	0.0	17.6	100	
Property damage	0.0	10.2	2.0	63.4	12.2	12.2	100	
Public transportation	0.0	0.0	18.9	16.2	10.8	54.1	100	
Highway code, documents	0.0	0.0	4.6	60.4	0.0	35.0	100	
Intentional violence	2.5	4.4	2.5	38.7	18.8	33.1	100	
Frauds	0.0	12.7	16.5	50.6	2.5	17.7	100	
Highway code, driving	24.2	0.0	4.0	54.6	0.0	17.2	100	
Miscellaneous cases	86.5	13.5	0.0	0.0	0.0	0.0	100	
Disturbing the peace	0.0	5.7	0.0	45.7	5.7	42.9	100	
Drugs	0.0	0.0	0.0	87.1	0.0	12.9	100	
Regulations, misc.	0.0	8.8	9.4	48.5	5.8	27.5	100	
Shoplifting	2.3	0.0	3.9	60.5	18.6	14.7	100	
Family - juveniles	17.5	34.3	1.5	29.9	8.0	8.8	100	
Unintentional violence	6.8	54.2	0.0	9.7	3.1	26.2	100	
Regulations, transportation	0.0	17.6	0.0	58.9	0.0	23.5	100	
TOTAL	12.0	16.6	4.5	36.4	5.9	24.5	100	

(1) estimations based on a sample of 1936 dossiers representative of dismissals for "other reasons" (bad cheques excluded) listed in the column "dismissals, other reasons"

## OVER HALF OF DISMISSALS OF CASES IN WHICH PROSECUTION IS FEASIBLE ARE THE RESULT OF REGULARIZATION

For cases in which both an offense and an offender did exist, at the least, those dossiers (36,4 % of cases) reflecting an out of-court settlement or a regularization of the situation, either spontaneously or following notice by the Public Prosecutor's office or the police, were identified. The rest included some few cases in which the same attempts did not have the expected outcome (5,9 % of failures), whereas one fourth of the dossiers examined could have been prosecuted but were dropped with no alternative solution (expediency, 24,5 % of cases).

In comparison with the overall number of cases examined (to the exclusion of bad cheques), such cases in which prosecution was feasible are slightly fewer than those actually prosecuted. Dismissals for pure expediency only represent 4,5 % of decisions, even if failures of attempts at out-of-court settlement are included (since, logically, the outcome should then have been prosecution).

## DISMISSAL FOR PURE EXPEDIENCY IS RARE FOR PROPERTY OFFENSES

Table 2 shows those areas in which each type of dismissal is most frequent. Practically each category of cases shows a different pattern. A comparison of the two sides of the table shows that the kinds of cases in which dismissals for "other reasons" are frequent, are not the same as those mainly dismissed for reasons of pure expediency : in the former, proceedings tend to be dropped because there is no offense (unintentional violence, for instance), or because the affair was regularized (drug-related offenses, shoplifting, transportation violations).

Regularization also ranks high for types of cases in which prosecution is much more frequent (traffic violations - non - observance of the highway code, non-possession of proper documents or driving offenses - ), or else in those for which the main grounds for dismissal is the absence of an identified offender (other thefts and property damage).

In the last analysis, aside from the heading "aggravated robbery", in which there are practically no dissimials for "other reasons", very few property offenses are dismissed for reasons of pure expediency. In addition to offenses involving public transportation, for which the rate of prosecution is high, this decision by the Public Prosecutor's office is mostly handed down for disturbing the peace and intentional personal violence. It is also encountered in traffic violations

(non-possession of proper documents), as a complement to regularization.

## FEW DISMISSALS ARE DECIDED BY MAGISTRATES...

According to computer data for the court district studied, nearly two dismissals out of three are operated without the case being examined by a magistrate. Most of these are cases in which the offender is unidentified.

For dismissals for "other reasons", figure 1 shows the sequences of action of the investigating and Public Prosecutor's services, as determined by the sample survey. On the left, the different patterns are grouped into 6 modes of processing depending on the origin of the case (*police* and *gendarmerie*) - or else private citizens and public agencies), police action (yes or no) and action by the Public Prosecutor's office. Acts other than the simple registration of a complaint or report of an offense were counted as police action. Action by the Public Prosecutor's office included both further investigation and attempts at out-of-court settlement.

The right side of the figure shows the classification of each case by type of dismissal. For simplification, cases labelled "routine", "no offense" and "offender unidentified" have been grouped under the heading "prosecution not feasible" while "failure of settlement" and "expediency" were grouped under the heading "expediency". The figures, shown as a proportion of 1,000 cases dismissed for "other reasons", are indicative, first, of the overall proportion of each type of processing and secondly, of its influence on the type of dismissal.

## ....AND THIS IS USUALLY DETERMINED FROM THE OUTSET

377 out of 1,000 dossiers are given minimal processing (modes 1 and 2). Mode 2 mostly contains cases in which prosecution was *not* feasible (55 %). Expediency definitely prevails for dismissals by mode 1 (56 %). The fate of direct pursuit by private individuals and public agencies is very much the same, in cases on which the Public Prosecutor's office does act (mode 4, 44 %).

The Public Prosecutor's office succeeds in increasing the proportion of dismissals linked to regularization through its intervention in a small fraction of dossiers coming from the police or the *gendarmerie* (258 out of 802, or 32 %), with a comparable outcome irrespective of the existence or absence of police action (modes 5 and 6). A large portion of regularizations (159 out of 364 or 44 % distributed over modes 1, 2 and 3), have in fact been settled before the dossier reaches the Public Prosecutor's office.

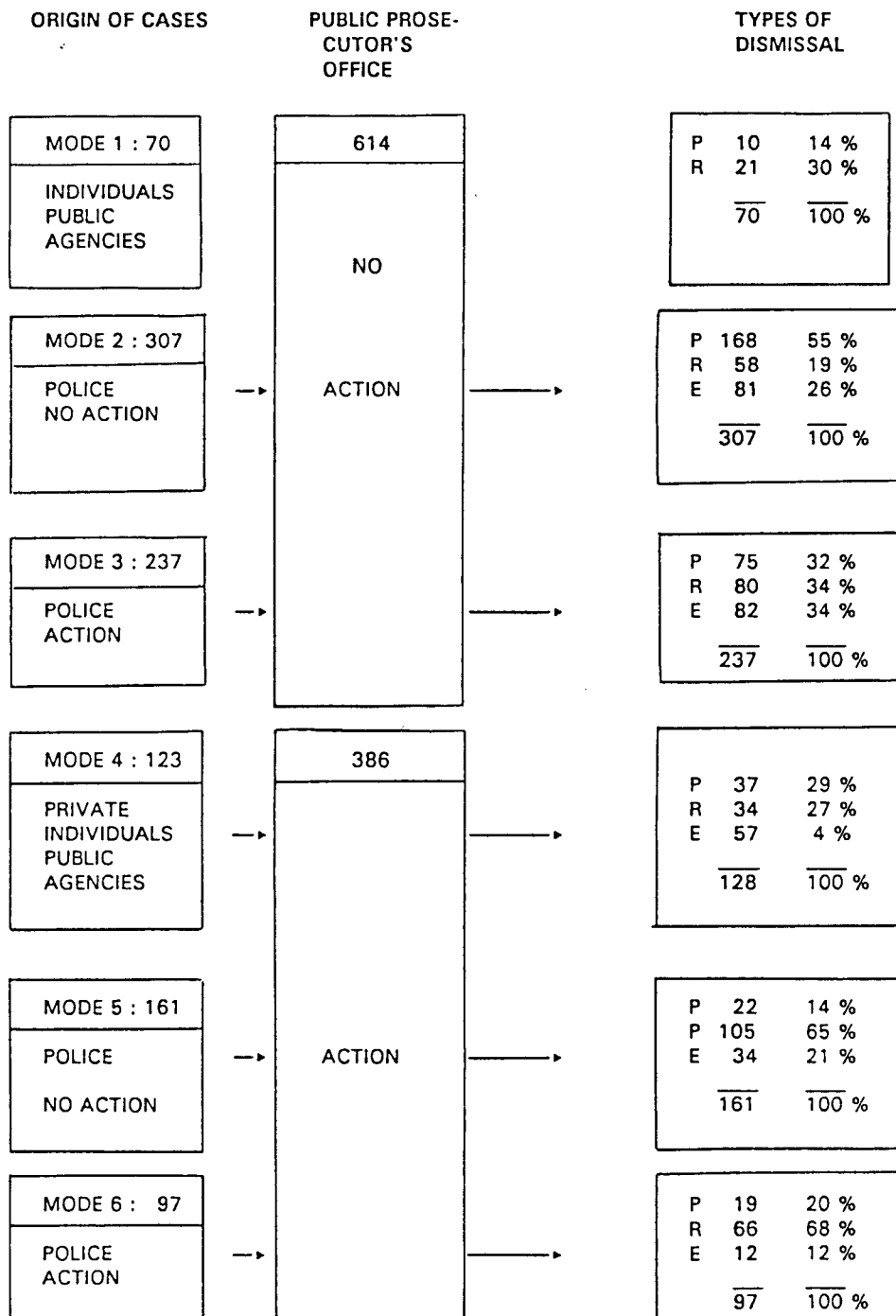
All of these processes are of course partially dependent on the nature of the case involved.

This type of analysis requires further corroboration based on larger data samples. The present investigation shows that dismissals for reasons of pure expediency tend to be infrequent, except in cases referred directly to the Public Prosecutor's office. To some limited extent, dismissal covers the positive solution of cases. The Public Prosecutor is then greatly dependent on the

work done previously by the police agencies. This is even more true for the great mass of cases in which prosecution is not feasible : only in scarcely more than 2 % of dossiers dismissed for "offender unidentified" had the Public Prosecutor's office requested further investigation.

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Figure 1 : MODES OF PROCESSING AND TYPES OF DISMISSAL  
Representative sample of dismissals for "other reasons"



FOR 1.000 CASES DISMISSED FOR "OTHER REASONS"  
 - 331 because prosecution was not feasible = P  
 - 364 because of regularization = R  
 - 305 for reasons of pure expediency = E