

FROM ARREST TO SENTENCING AN INVESTIGATION OF PENAL CURSUS

The concrete study of how criminal justice functions is partly based on a statistical approach. As concerns the relations between the police and the justice system, an investigation conducted by the CESDIP now completes the data yielded by that approach. The detailed information found in case records was used to analyse the decision-making process involved in the selection and ventilation of cases, in its circulation between the police services and the prosecutor's office.

Police-Justice, a difficult connection

While the judicial police¹ agencies and the criminal courts are called upon to work in close collaboration for the implementation of criminal justice policy, their activities are described by statistics whose diverging definitions and coverage are not of much use in tying together the figures for the police and gendarmerie, the public prosecutor's office, the investigating judges and the courts. Although this is not the only explanation, differences in administrative organization and in the handling of data are a real obstacle to gaining proper perspective on data.

They also set limits to monographic field work studies, since any attempt to describe penal flows from first contact with a policing agency to sentence-serving demands that a cohort of cases or individuals be followed up through a series of books, files and records managed according to a multitude of systems. This makes it extremely long and costly to single out particulars, and collect information. The move from the judicial police agencies to the public prosecutor's office of a court is one of the most delicate phases in tracking down previously treated cases .

The present investigation of the relations between the judicial police and the criminal justice system reexamined and completed some samples constituted for the investigation on "drug abuse and crime" conducted by M.-D. Barré (in *Penal issues* VIII.3, June 1995). Cases selected at the police service level were followed up until the end of the court procedure, with dismissal or sentencing. The sample also included cases that were not formally reported to the public prosecutor's office by the police. This yields an indication of the extent of "dismissal by the police".

¹ Strictly speaking, the term *police judiciaire* designates the legally defined activity of recording offences, trying to trace the offenders and collecting evidence. This criminal investigation work is not assigned to a special agency. Police work is done by the police, the gendarmerie and other agencies and the French police are only one of several judicial police agencies, even though officers who specialise in judicial police are commonly called *la police judiciaire*, especially in Paris.

Selection of cases and of individual

The extent of the selection operated at the various stages of penal management is well known. It changes when the notion of dismissal by the police is introduced. The exact evaluation depends on how counting is done. The nature of the findings changes completely depending on whether we count cases (or use a ponderating unit, as police statistics do when they count offences), or the individuals involved (see fig. 1 and 2). For cases, suits against unknown offenders for thefts and damage to property represent the majority of dismissals by the public prosecutor in the area of ordinary offences against property, individuals and the public order (highway circulation offences and white collar and statutory offences are excluded here). If the unit used is the individuals involved, police dismissal dominates : whenever individuals are arrested by public safety agencies and their cases turned over to the public prosecutor, prosecution is quite systematic (fig. 2).

A comparison between decisions to prosecute and individuals also points to those individuals who, although designated by the police as suspects in legal proceedings, are not accused or formally charged with an offence. About one third of individuals who are not prosecuted belong in this category : either the charges are insufficient or the public prosecutor does not deem legal action appropriate.

This investigation was conducted in the public policing and judicial police agencies (police station, judicial police agency precinct, narcotics brigade) for one Paris arrondissement. It actually studied 1,204 cases and 1,034 individuals representative of their activity for 1990. The records analysed at the judicial level represent 85% of the original police sample. The others had been referred to another jurisdiction (9%) or could not be found at the court (6%).

Figure 1 : Input to the criminal justice system. A general diagram (unit = cases)

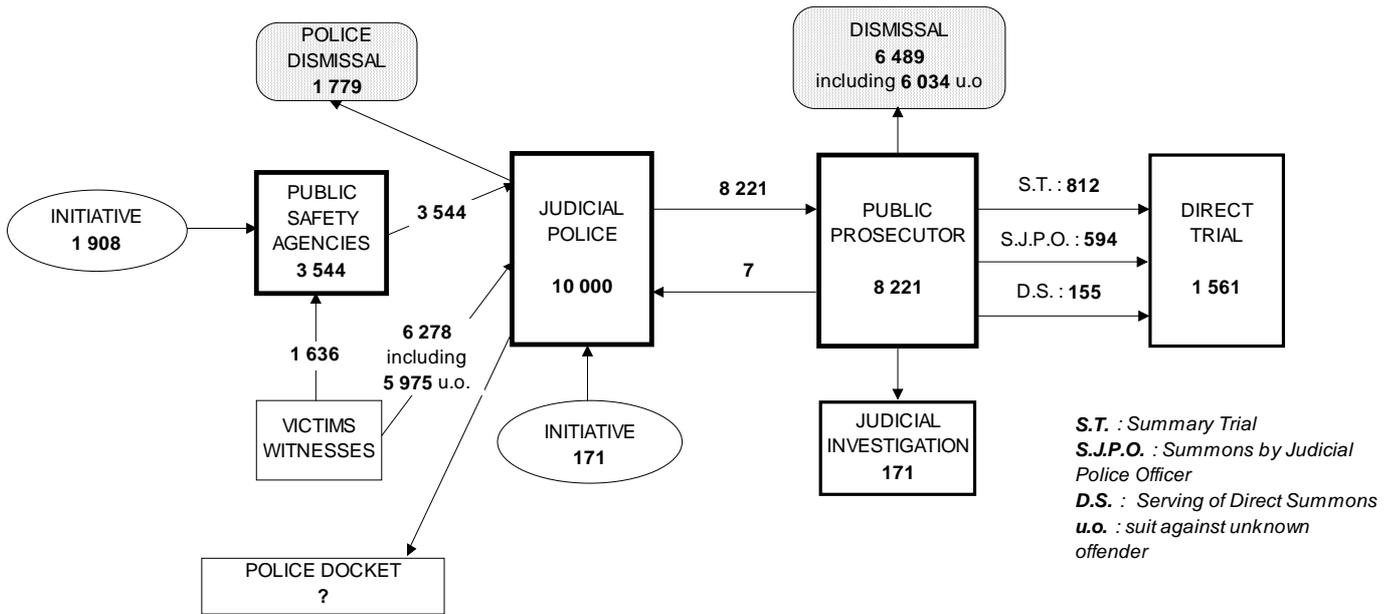
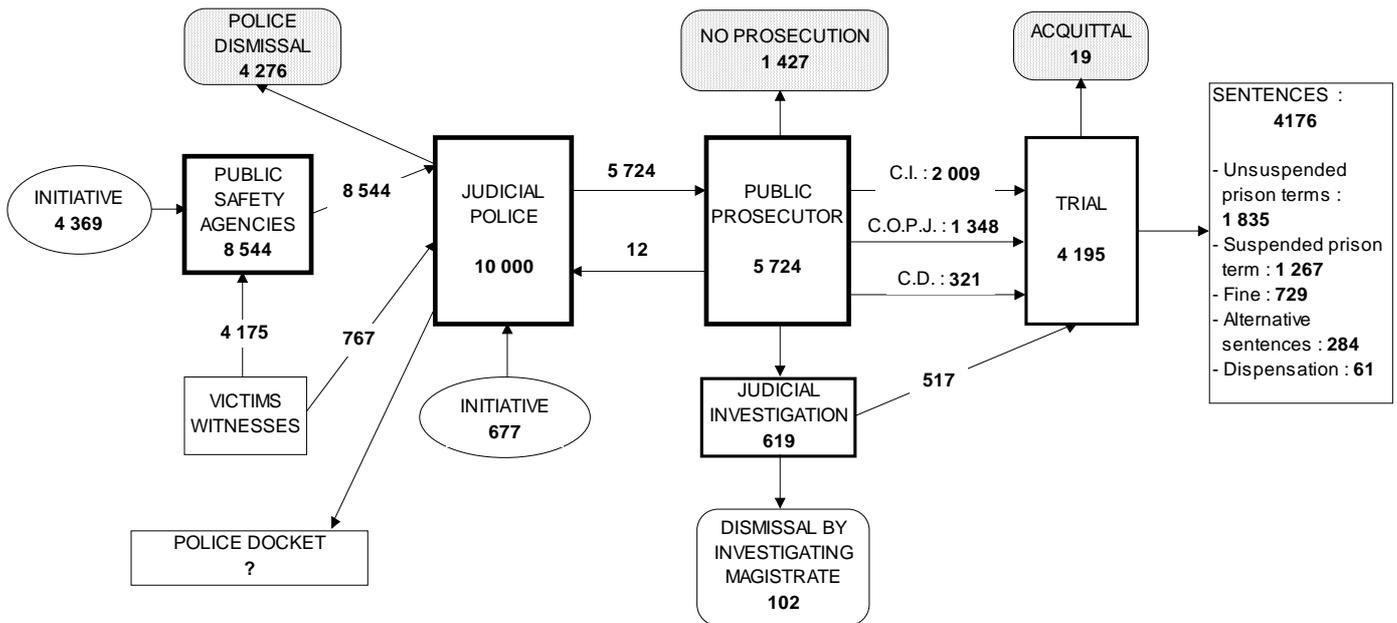


Figure 2 :Input to the criminal justice system. A general diagram (unit = individuals)



Note : These two figures show the outcome, proportionately, of 10,000 cases or 10,000 individuals filed with the judicial police agencies.

The use of case records to describe the many types of dismissals does not always show when and by whom the decision was made.

Some "police dismissals" are probably ordered by the public prosecutor's office. Conversely, transmission of written proceedings to the public prosecutor may very well mask a police decision not to prompt prosecution. In fact, for identified offenders, there is actually a relative compensatory mechanism between "police dismissals" (no written proceedings) and dismissals by the public prosecutor's office. We have made a detailed analysis of variations in dispatching decisions depending on the "police cursus" taken by the case. The type of initial police involvement (either in reaction to action by a victim or by a security agency, or through "pro-

active" discovery of the offence, usually *in flagrante delicto*) affects subsequent handling. The fact that prosecution was more frequent for offences discovered by security patrols or by police checks was found to be due to greater selection of these at the police level.

For cases reported by victims, the chances of prosecution increase when a specialized judicial police agency is called in, a relatively infrequent occurrence, and one which again depends on a selection mechanism within the police department.

The need for further statistics

Investigations by the CESDIP of how the criminal justice system functions complete the administrative statistics. They are conducted in geographically limited areas and do not yield figures that may be projected on a national level: however, the accuracy of their analyses is enriching for the interpretation of national statistics. This research also points to those fields for which improved coverage by national investigations or ongoing statistical analysis would be worthwhile. Improvement of the permanent production of numerical data would be most useful for :

- the comparison of findings pertaining to the police and judicial agencies (counts of cases and individuals) ;
- an analysis of all unprosecuted cases (police dismissal, no prosecution for specific individuals) based on the type of offence ;
- an adequate view of flows ranging from suspects to the accused, and including decisions pertaining to police custody, handing over to the prosecutor's office (*défèrement*) and pretrial detention.

The type of handling depends on the offence

The type of offence is definitely of paramount importance. Statistical analysis is delicate, however, because the reason for the first police action is not necessarily the same as the reason for prosecution, and also because there are not always sufficient numbers of cases to operate the distinctions suggested by scrutiny of the case records.

Along with the conventional typology distinguishing between personal offences, property offences and breaches of the public order, to which infringements of the laws on narcotics have now been added, we have the factor of the type of police intervention.

One extension of the earlier remarks on dismissal is the fact that the quantitatively observable mechanisms are not the same when the judicial police agency acts by selecting, from among the mass of reports, those cases susceptible of prosecution¹ as when they ensue from prior judicial police work that only leads to procedures in due form when they reach the point where prosecution is considered².

Ventilation by offences allows us to assume that another reason why prosecution is more frequent for cases originating in the judicial police agencies, as opposed both to cases reported by victims and to arrests by public safety agencies, is because the prior work by the judicial police agencies, which does not leave any written traces, is not taken into consideration.

The prosecution procedures vary considerably depending on the type of offence. The ordinary direct summons is hardly used in Paris for the types of cases studied. Summary trial is the most frequent cursus, and is preferred for the types of offences for which the judicial police agencies have the most initiative. Summoning by a judicial police officer ranks second, and is preferred for breaches of the public order and shoplifting. Judicial investigation, rather infrequent on the whole, is a prosecution cursus whose weight is comparable to the others mainly for serious personal offences (and

¹ For example, use of narcotics, breaches of the public order, shoplifting and even housebreaking.

² Pickpocketing, auto larceny judged by summary procedure, dealing in narcotics, under investigation.

especially for sexual assault) and for property offences reported primarily by victims. These are of course simply trends.

Intrication of legal and individual traits

The prosecution procedure selected affects the sentence meted out. When the public prosecutor's office requests that the police hand over (*défèrement*) a suspect in the framework of a summary procedure, the outcome is an unsuspended prison sentence in six out of ten cases, according to our figures. The proportion is only slightly lower when *défèrement* is followed by investigation, and more than four out of five unsuspended prison sentences are pronounced during a summary procedure or following investigation. The remainder actually involves individuals judged *in absentia* (judgement by default and above all, what is deemed as full trial with non-appearance of the accused following summoning by the judicial police officer).

Défèrement as opposed to release without or following police custody is therefore a good indication of the penal cursus on which the police and prosecutor's office intend to set an individual. As shown in table 1 (last column), *défèrement* is more frequent for suspects with no steady job, the unemployed and people with no mentioned occupational status. However, the above remarks also imply that the *défèrement* rate depends on the prosecuted offence. Crossing of the two criteria shows that the type of offence is more influential (the unemployed are more frequently involved in offences for which there is a high *défèrement* rate), whereas the fact that a suspect has no occupational status tends to foster *défèrement* for offences for which the rate is normally lower (the first three columns of table 1).

Table 1 : Percentage of *défèrement* depending on the type of case and the occupational status of suspects

Nature of the case Occupational status	Nature of the case					Total
	public order use of drugs	shoplifting	personal violence	property offences	drug dealing	
College or high school student	0	0	[11]	66	[47]	10
Occupational status mentioned	8	21	18	42	82	23
Does odd jobs	21	29	36	47	100	43
Unemployed	28	43	23	65	98	49
No mentioned occupation	7	10	33	67	92	35
No reply	[2]	0	[0]	4	[100]	2
Total suspects	9	11	20	55	89	26

Note : The figures in brackets represent small samples and are only indicative.

Other factors may be at work, however. For instance, we have attempted to measure any variations in the *défèrement* rate according to citizenship (comparing French nationals and aliens). The operation is a complex one, since the effects of both the type of offence and the occupational status must be controlled for simultaneously. Aside for cases involving violation of the immigration laws, which were not sufficiently well covered by this study, the suspect's nationality does not seem to be a decisive factor in itself, in determining

défèrement : the combination of the type of offence and of their occupational status already makes this a predominant *cursus* for aliens, especially in cases for which the initiative comes from a judicial police agency.

The "regular customer" effect

Other similar studies have already pointed out that a past history of problems with the law greatly increases a suspect's chances of again following the *cursus* leading to prison. In a sense, this is the most relevant feature structuring decisions relative to both the procedure and the sanction. The data used here remains frail, since it is when prosecution does take place that the record contains the most information in this area. One noteworthy fact is that when previous contacts with the justice system are mentioned in the proceedings, they make a difference in those situations where police selection is clearly decisive (as in shoplifting or personal assault).

The respective influence of all of these factors (type of offence, social status, citizenship, past history of problems with the law), as well as of some others for which our investigation did not find any clearcut additional indications (such as presence or lack of fixed address) should be studied : this would require larger samples. Subject to corroboration by more complete data, it may be said that a first stay in prison is a contributive factor, at all levels, to returning to a *cursus* leading to further imprisonment, while that first prison stay depends on social integration and on the offence involved.

Under these conditions, the gradual replacement of direct summonses by summonses by judicial police officer has a definite "cursus-setting" effect. Accused individuals who do not appear run the risk of having the judge set an unsuspended prison sentence, as was previously the case for those judged *in absentia*. But the sentence will be enforceable as soon as the individual is taken in by the police : this means that the various identity checks and numerous questionings by the police for minor offences (carrying a knife, consumption of haschish, shoplifting), usually treated without recourse to imprisonment, contribute to the enforcement of other prison sentences, and thus maintain a sort of vicious circle. In an almost mechanical way similar to that seen for pretrial detention not followed by a prison sentence, imprisonment will represent a measure punishing an offender's refusal to cooperate, rather than a sentence corresponding to the offence itself. This is particularly clear for the use of drugs.

Bruno AUBUSSON de CAVARLAY
Marie-Sylvie HURÉ

For further information, the reader is referred to :

AUBUSSON de CAVARLAY (B.), HURÉ (M.-S.), collab. BARRÉ (M.-D.), AILLET (V.), *Arrestations, classements, défèvements, jugements. Suivi d'une cohorte d'affaires pénales de la police à la justice*, Guyancourt, CESDIP, 1995, *Etudes et données pénales*, n° 72. This research was done under contract with the ministry of Justice, as an outcome of a tender made jointly with IHESI.