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Administration of Criminal Justice in France, The

Morris Ploscowe

THE ADMINISTRATION OF CRIMINAL JUSTICE IN FRANCE

MORRIS PLOSCOWE[1]

The statistics of the administration of criminal justice are indispensable in determining what activities are actually being performed by the various agencies engaged in the enforcement of the criminal law. Students of French criminal procedure are fortunate in having at their disposal a collection of statistics of the administration of criminal justice which have been gathered and published annually for over a century.

The present study was made to determine the relative importance of the various institutions and the procedures indicated in the *Code d'Instruction Criminelle;* to discover how much is being done by the principal agencies provided by the code, and to determine how closely the actual practice in the disposition of cases follows the theory of the code. The study was also made to find out what the tendencies are in French criminal procedure. For this purpose, figures were studied for two nine-year periods, a pre-war period from 1902-1910, inclusive, and a postwar period, from 1920-1928, the last years for which figures were available. Attention was directed principally to the disposition of complaints by the *Procureur de la République,* the relations between the Procureur de la République and the juge d'instruction, the relative importance of the Tribunal Correctionelle, *Cour Correctionnelle* and the *Cour d'Assises,* the two most important trial courts and the results of trials in these courts.

The reception of complaints that offenses have been committed is centralized in France in the *Procureur de la République,* the chief prosecuting officer of the Court of First Instance. By virtue of his office he receives many complaints directly. Secondly, the *Procureur de la République* has at his command an ensemble of officers in all parts of his jurisdiction known as the *police judicaire,* whose duty it is to assist him in the performance of his functions. They are authorized to receive complaints that offenses have been committed and must transmit them without delay to the *Procureur de la République.*

When the Procureur receives these complaints he is not compelled to institute prosecution. The initiation of prosecution in France is

[1]Social Science, Research Council Fellow, 1931-1932.

governed by the so-called *Opportunitätsprinzip*. It is for the Procureur, a magistrate, to make the primary determination as to whether, given the circumstances indicated in the complaint, a prosecution is justified. The Procureur, therefore, is not the passive agent of the complainant.[2]

The statistics show that the *Procureur de la République* exercises a large discretion in instituting prosecution. In the pre-war period, 1902-1910, he received an average of 547,000 complaints annually, that délits or crimes had been committed. In 57% of these cases he did not begin any prosecution. Between 1920 and 1928, the average annual number of complaints was higher, being 565,000 complaints a year. The percentage of cases in which the Procureur refused to prosecute is less, however, being but 52%. In over half of the cases, therefore, the *Procureur de la République* failed to begin prosecution,[3] and it is evident that there is a considerable sifting of complaints by this official.

It is necessary therefore to examine the reasons for the failure of the Procureur to take any action. Between 1902 and 1910 an average of 313,140 complaints were dropped without any action being taken, and between 1920 and 1928, the number was 297,433. In 54% of these cases in the pre-war period and in 41% of the cases in the post-war period, there was no prosecution because the offenses indicated in the complaint was fictitious or because it was not sufficiently serious to set in motion the machinery of prosecution. The large drop in the percentages in the recent years may mean that fewer fictitious complaints were received in the post-war period. On the other hand the diminution may be due to the fact that more care has been exercised in the later period in sifing cases, or that there has been simply a change in statistical technique.[4]

[2]Roux Cours de Droit Criminel Francais, Vol. II, p. 185.

[3]For a long time statistics have indicated that the Procureur de la République refused to prosecute in over one-half of the complaints made to him. The percentages for 1881-1900 are as follows: 1881-1885, 51%; 1886-1890, 52%; 1891-1895, 52%; 1896-1900, 55%. See report of the Minister of Justice in Compte Général l'administration de la Justice Criminelle, for the year 1900.

[4]The Report of the Minister of Justice for the year 1905, commenting on the fact that the number of complaints received by the Procureur has increased from 34 per 10,000 population in 1830 to 133 per 10,000 in 1905, also observes that the same technique has not been followed in keeping the register of complaints in all the offices of the Procureur de la République. Many Procureurs permitted the entry on their register of facts which obviously had no delictual character or which were within the competence of the Police Courts (Contraventions). Instructions were sent out to see that these registers were kept with greater care in the future. In fact in the year 1906 there was a considerable drop in the percentage of complaints in which no prosecution was had because the facts stated therein did not constitute an offense (from 43% in 1905 to 37% in 1906).

But though there has been a decrease in the number of cases in which no prosecution was begun on the complaint because no offense was committed or because the act was not sufficiently serious to justify prosecution, there is on the contrary a noticeable increase in the percentage of cases in which no prosecution was begun because the authors of the offenses indicated in the complaint were unknown. In the pre-war period, no prosecution was had for this reason in 32% of all the complaints not followed by prosecution, whereas the percentage after the war is 36%. A similar increase may be noted in the post-war period in the percentage of cases in which the prosecution could not be had because the evidence against the suspect proved to be insufficient. Ten per cent of all the cases in 1902-1910 could not be prosecuted for this reason as compared with 17% in 1920-1928.

It is possible that this increase in unprosecuted criminality is the natural result of the insufficiency of French police organization. French cities, except the few such as Paris, Lyon, Marseilles, Nice, in which the police force are under national control, are notoriously underpoliced. Nor have the police forces which are under municipal control, the general rule in France, any high reputation for efficiency.[5] The country districts are policed by the gendarmerie, an essentially military force whose chief is the Minister of War. This force renders invaluable services in the maintenance of order and the repression of crime. But the gendarmerie must divide its time between crime prevention and repression on the one hand and a large number of military duties that have nothing to do with these matters. The result is that the gendarmerie is not sufficient to defray the important police duties which it is called upon to perform in the country districts.[6] The Brigades Mobiles, a nation-wide detective force, also does excellent work in the repression of crime. But the force is so limited in numbers that it is usually occupied only with the most serious offenses.

Before taking up the disposition of the complaints in which the Procureur has decided to prosecute, it is necessary to indicate certain principles and institutions of French criminal procedure. The *Code d'Instruction Criminelle* makes a basic distinction between the function of prosecution and that of investigating the case, gathering evidence to sustain the prosecution and prepare the case for trial. The reason for the distinction is that a prosecutor as the party opposed

[5]See Henri Chardon, *L'organisation de la Police* (Paris, 1917. Editions, Broussard), E. Guyon states that there is no service of police judiciaire in the small cities: *L'organisation de la Police en France* (Thèse, Univ. de Paris, 1923), p. 228.

[6]Guyon, *op. cit.*, pp. 174-178.

to the accused is tempted to gather only such evidence as sustains the accusation and neglect that in favor of the accused. In order to assure the accused impartiality in gathering and evaluating evidence, this function is turned over to a magistrate, independent of the Procureur, known as the juge d'instruction.[7] He is endowed with wide powers to aid him in getting at the truth. He alone may issue warrants of arrest, warrants of searches and seizures, order the accused to be preventively detained, to be admitted to bail, etc.[8] Although the *juge d'instruction* is a heritage from the inquisitorial procedure of the *ancien regime,* his place in the modern procedure can be justified by the fact that the state has a definite interest in getting at the truth of every offense which is committed.

The preliminary investigation by the *juge d'instruction* does not however precede all cases that reach trial in France. His investigation is legally necessary only in cases of "crimes," the most serious offenses. In the case of "contraventions," or petty offenses, the investigation by the *juge d'instruction* is never had. In the case of *délits,* the offenses of medium gravity, it is within the discretion of the Procureur to prepare a case for trial himself or to turn it over to the *juge d'instruction.*[9] If the Procureur decides to prepare the case himself, he or his agents conduct the necessary investigations, but they can use none of the powers of constraint granted to the *juge d'instruction.* The Procureur brings a case before the Court by issuing an order known as a "citation" which orders the accused to appear on the day named. This procedure is known as the *citation directe.*[10]

French criminal procedure does not give to the *Procureur de la République* a complete monopoly over prosecution. The victim of an offense has the right to bring a case directly before the *Cour Correctionelle* for trial.[11] It results from the fact that the French law permits the injured party to collect damages for the injury suffered from the offense, either in the criminal or the civil court.[12] Usually the victim becomes *partie civile* in a prosecution begun by the Procureur. But if the latter refuses to act, the victim of the offense, by submitting his claim for damages to the criminal court, necessarily starts the machinery of prosecution since the criminal court has no right to

[7]See discussion of this subject in Locré, *La Legislation Civile, Commerciale et Criminelle de la France,* Vol. 25, pp. 127-139, and Mangin, *Traité de l'Action Publique,* Vol. I, pp. 21-22.

[8]See Chapters VI and VII of the Code d'Instruction Criminelle.

[9]R. Garraud: *Traité d'Instruction Criminelle,* Vol. III, p. 2, *et seq.*

[10]See discussion of this procedure in Roux, *op. cit.,* Vol. II, p. 250, *et seq.*

[11]Art. 182, *Code d'Instruction Criminelle.*

[12]Art. 3, *Code d'Instruction Criminelle.*

award damages unless an offense has been committed, and in that case the court must also impose the penalty.

Certain public departments have also been given a limited right to begin prosecutions where offenses are committed against interests confided to their care. They may act independently of the Procureur or in collaboration with him.[13]

About 9% of the total number of complaints received by the Procureur between 1902 and 1910, and about 12% of those received in the period 1920-1928 were turned over to the *juge d'instruction* for a preliminary investigation. There has thus been an increase in the post-war period in the number of complaints which are disposed of through the preliminary investigation by the *juge d'instruction.* This increase may perhaps be explained by the complicated nature of cases arising under the social, industrial and financial legislation of the post-war period. In the pre-war period the *Procureur de la République* brought directly before the *Cour Correctionnelle* 24% of all complaints received, and 26% of those received during the post-war period under consideration. It is therefore evident that the Procureur has himself made the summary investigation and prepared the case for trial in many more cases than the *juge d'instruction.*

This disparity between the percentage of cases handled by the *juge d'instruction* and those in which preparation for trial was made by the Procureur, the accusing party, is even more striking in the analysis of the cases tried by the *Cour Correctionnelle.* In 16% of the cases brought before this court in the period 1902-1910, and in 22% of those in the period 1920-1928, trial was preceded by the preliminary investigation of the *juge d'instruction.* The increase in the number of cases handled by the *juge d'instruction* in the post-war period as already noted, is also in evidence here. But in both periods the *Procureur de la République* prosecuted directly without any intervention of the *juge d'instruction* 74% of the cases.

This large difference in the number of cases prepared for trial by the Procureur as compared to the number of those handled by the *juge d'instruction* is of great significance. The French *Code d'Instruction Criminelle* apparently makes the investigation of the *juge d'instruction* the normal preliminary procedure in cases of *délits* and crimes. A large number of the provisions of the Code regulate the powers of the *juge d'instruction* and the Procureur in this procedure. The procedure by which the Procureur prepares a case for trial in the *citation directe* is not mentioned in the Code. Some writers have

[13]F. Goyet, *Le Ministère Publique,* pp. 213-215.

therefore drawn the conclusion that the latter procedure, known as the *enquête officieuse* is illegal; in every case in which an investigation is necessary to prepare a case for trial, the *juge d'instruction* should be called upon to act.[14] This opinion is contradicted by other writers. Garraud, for example, says that it is not illegal, it is extra-legal, since the Code does not expressly forbid this procedure there is no reason why it cannot be used.[15] But despite this theoretical dispute, it is evident from the statistics, what a large factor the Procureur's investigation is in the disposition of cases.

It has already been indicated that in the *Cour Correctionnelle,* the Procureur does not appear as the only prosecuting party. The percentages of cases brought by the *partie civile,* and the public department, however, are small. In the pre-war period studied, 2.5% of all cases appearing before this court were brought by the *partie civile,* and in the post-war period only 1.8%. The percentage of cases prosecuted directly by public departments is also of negligible importance and has fallen considerably in the post-war period. While the departments brought 6.8% of all cases tried before the Correctional Court in the period 1902-1910, in the period 1920-1928 the proportion dropped to 2%.

The small percentage of cases in which the *partie civile* found it necessary to bring a case directly before the Court in order to obtain redress is certainly some evidence that the *Ministère Public* in France is not lax in initiating prosecutions. If the Procureur were arbitrary or inefficient in instituting prosecution on complaints received, it would be expected that there would be many more cases in which the victim of an offense would institute prosecution directly. However, the small percentages of cases brought by the *partie civile* may be in part due to a tendency in France to discourage this type of action. In general the Court shows much less deference to the demands of the injured party than to those of the *Procureur de la République.* This type of action has been abused. The criminal process has been used in attempts to get around inconvenient rules of the civil law, to assist in the collection of debts and to thwart too insistent creditors.[16]

As the *juge d'instruction* is called upon to act in the most serious

[14]Faustin-Hélie: *Traité de l'Instruction Criminelle,* Vol. III, p. 62, *et seq.;* Morizot-Thibault: *De l'Instruction Préparatoire,* p. 85, *et seq.*

[15]Garraud, *op. cit.,* Vol. II, p. 625, Le Poittevin, *Dictionnaire Formulaire des Parquets et des Tribunaux,* Vol. II, p. 202, *"Enquête Officieuse."*

[16]See L. Hugueney: *Des Moyens de parer à l'abus des Constitutions de partie civile.* Revue Critique de Législation et de Jurisprudence, 1927, pp. 341-345.

offenses, an analysis of the result of his investigations is of great importance. In about one-third of the cases in each of the two periods studied, the *juge d'instruction* issued a *non-lieu,* that is, he decided that a prosecution should not be had. Since the *juge d'instruction* is put in motion by the Procureur, it is evident that the investigating magistrate does not simply ratify the Procureur's decision that a prosecution should be had, but exercises an independent control of his own.

Of the cases in which the *juge d'instruction* decides that there is sufficient basis for prosecution, about 61% in each of the two periods studied, were passed on to the Correctional Court for judgment. Only 4.6% of the cases during the period 1902-1910 and 2.5% between 1920-1928 were passed on to the *Chambre de Mises en Accusation,* the section of the *Cour d'Appel* which must decide in each case of crime whether the evidence gathered by the *juge d'instruction* justifies sending the case before the *Cour d'Assises* for trial. The small percentage of cases passed on to the *Chambre de Mises en Accusation* is due in part to the fact that the *juge d'instruction* is called upon to investigate many more cases of *délits* than of crimes. But in part these statistics show the effect of the practice of "correctionalization." Trial in the *Cour d'Assises* is by three judges and a jury of twelve men. The procedure is more formal, slower and more costly. The jury is notoriously indulgent in respect to certain crimes. In order to avoid the inconveniences of jury trials, Procureurs and *juges d'instruction* resort to the practice of leaving out the aggravating circumstances of an offense and thereby turning a crime into a simple *délit.*[17] For example, omitting the elements of breaking and entering in a burglary, and charging the accused with a simple theft, brings the offense within the competence of the *Cour Correctionnelle,* a court composed of three judges sitting without a jury. It is also to be noted that there has been a reduction in the percentage of cases passed on to the *Chambre de Mises en Accusation* in the post-war period as compared to that of the pre-war period. This may be due to the fact that the number of crimes during the later period was less than in the earlier period. On the other hand, the reduction may mean simply that many more crimes were correctionalized.

Largely as a result of the practice of "correctionalization," the *Cour Correctionnelle* has become the one general criminal court in France. The *Cour d'Assises* is reserved for the spectacular crimes

[17]On the practice of "Correctionalization," see Garraud, *op. cit.,* Vol. II, p. 321, *et seq.,* J. Cruppi, *La Cour d'Assises,* p. 3, *et seq.*

and for cases that cannot be correctionalized, such as homicides. In fact, in the nine years, 1902-1910, the *Cour Correctionnelle* tried an average of 176,000 cases a year whereas the *Cour d'Assises* tried only 2,182 cases a year. During the nine years, 1920-1928, the *Cour Correctionnelle* tried 198,000 cases a year as against 1,806 tried before the *Cour d'Assises.*

It is evident from these figures that the French have cut down the coöperation of the jury in the administration of justice to a very low point. The average number of cases which the *Cour d'Assises* tried between 1920-1928 is also considerably less than that tried between 1902 and 1910. This reduction in the number of cases tried by jury has been manifest for a long time. The report on criminal statistics for the year 1900 indicates that between 1876 and 1880, the average number of cases tried by jury was 3346; between 1881 and 1885, the average number of cases tried by jury was 3342; between 1886 and 1890, the average number of cases tried by jury was 3095; between 1891 and 1895, the average number of cases tried by jury was 2860; between 1896 and 1900, the average number of cases tried by jury was 2448.

Since the average number of cases between 1920 and 1928 was but 1806, France is another country where one can speak of the "vanishing jury trial."

It is also to be noted that there has been a substantial increase, an average of 22,000 cases a year, in the number of cases tried in the Correctional Court in the period 1920-1928 over the period 1902-1910. How much of this represents a real increase in criminality in France and how much is due to infractions of new post-war laws, has not been determined.

Except for the very small percentage of cases brought by the *partie civile* and the public departments, the *Procureur de la République* represents the prosecution in all cases tried in the *Cour Correctionnelle.* The statistics show that he obtained convictions against 92.5% of an annual average of 194,265 defendants tried in the period 1902-1910. Between 1920 and 1928 the percentage of convictions was 90.8% against an annual average of 225,954 defendants.

The high percentage of convictions is certainly evidence of the strength of French prosecution. But these figures must be used with some degree of caution. A *délit* may be anything punishable by penalty of from six days to five years imprisonment.[18] Many petty offenses which are disposed of summarily are therefore included in

[18]Art. I, p. 40, Code Pénal.

these figures. In addition, the Correctional Courts of the large cities are compelled to work fast. The conviction of the accused and the imposition of a light penalty is frequently a method of effectuating a rapid disposition of the case.[19]

The public departments also obtain a very high percentage of convictions in the cases prosecuted by them. This percentage was 95% of all cases prosecuted between 1902 and 1910, 93.8% of those between 1920 and 1928. A large part of the offenses which are prosecuted are punishable by fines and are not therefore very serious. The public departments are also aided in obtaining such a high percentage of convictions by the fact that the writings of the agents (*procès-verbaux*) which indicate that an offense has been committed, have frequently a presumptive force in a court of law.[20]

The *partie civile* is less successful in obtaining convictions. In the small number of cases prosecuted directly by him, he was able to obtain convictions against 70% of the defendants whom he brought before the Court in the period 1902-1910, and in 82% in the period 1920-1928. The difference in the percentage of convictions obtained by the *partie civile* and that obtained by the *Procureur de la République* is due no doubt to the fact that the latter's cases are better founded. But there may also be operative the lack of sympathy for this type of case to which attention has already been given.

In all cases tried in the *Cour d'Assises,* the Procureur is the the only prosecuting party. The percentage of convictions obtained in this court which tried only the most serious cases is much less than in the *Cour Correctionnelle.* All cases tried in the *Cour d'Assises* are preceded by a thorough investigation by the *juge d'instruction.* The *Chambre de Mises en Accusation* has also decided in every case that the results of the investigation of the *juge d'instruction* justify bringing the case to trial. At the trial the accused is submitted to rigorous interrogation by the President of the Court and a majority of seven was sufficient for conviction. Nevertheless, there were acquittals in the *Cour d'Assises* in 30% of the cases of crimes against property in each of the periods, and in 36.5% of the cases of crimes against the person.

This large percentage of acquittals is in part accounted for by

[19]Cruppi, *op. cit.,* p. 6.

[20]Generally the procès-verbaux or writing into which a competent agent puts the facts that he has observed in the course of the execution of his function has no probative force, but is merely information at the disposal of the court. Exceptionally, however, with respect to a limited number of offenses, these procès-verbaux are proof until the contrary is shown. In an even more limited number of cases they are legal proof and bind the judges.

the leniency of the French jury with respect to certain types of offenses. This leniency is greater in crimes against the person than in crimes against property. The French jury does not apply in many cases a juridic notion of guilt and innocence. Even where there is no contradiction as to the facts, a French jury may acquit if the accused arouses its sympathy.

In passing, attention may be given to two details in the handling of a case by a *juge d'instruction.* In the preliminary procedure, preventive detention usually results from the issuance of a warrant by the *juge d'instruction.* The charge has often been made that this magistrate resorts to preventive detention much too frequently. Statistics for the year 1902 give some support to this contention. In that year, 50% of all defendants accused of crime or *délit* were submitted to a preventive detention for a greater or lesser period. But the number detained before judgment has steadily fallen since 1902. In 1928, it was but 30.5% of all those accused of crime or *délit.* The percentages for both nine year periods also show a large decrease. Between 1902 and 1910 41.4% of those accused of crime or *délit* were held in preventive detention, whereas the percentage for the period 1920-1928 was only 33%. The statistics therefore lend much less support now than formerly to the contention that there is an abuse of preventive detection in France.

Another power in the hands of the *juge d'instruction* is that of permitting release on bail. This procedure is very little used in France. The privilege of *mise en liberté provisoire* was accorded in each of the periods studied to 1.3% of the defendants charged with *délits.* But even in this limited number of cases, bail was not exacted from every defendant as a condition of his provisional liberty. The small extent to which the French use bail is therefore clearly apparent.

These statistics on the prosecution of crime suggest a number of conclusions. In the first place they point to the dominant role of the prosecuting authorities in French criminal procedure. In over half the complaints received the prosecutor does not institute prosecution. In most of the cases in which he decides that a prosecution should be had, he and his agents, through the *enquête officieuse* prepare the case for trial. In the *Cour Correctionnelle,* which, as has been indicated is in practice the one court of general jurisdiction, the Procureur succeeds in obtaining convictions against nine out of every ten defendants whom he prosecutes.

But this dominance of the Procureur is in contradiction with the

underlying conception of the *Code d'Instruction Criminelle.* The framers of the Code wished to turn functions of investigation of offenses over to an impartial judge. But this conception is only realized in the small number of cases in which the *juge d'instruction* acts. Whatever the theoreticians may think of the legality of the *enquête officieuse* it is in daily use on the grounds of necessity.

The fact that so few cases are tried in the *Cour d'Assises* at the present time and that the number is decreasing, seems to indicate that the French are using an original method of solving the problems raised by the *Cour d'Assises.* Instead of frankly legislating the jury out of existence, the practice of "correctionalization" seems to be slowly but surely eliminating the jury, while leaving existing legislative provisions unaltered. The critics and the partisans of the jury in France may soon be in presence of a *fait accompli,* the practical abolition of the jury as one of the factors in the trial of criminal cases.