CRIMINAL JUSTICE AND THE FIGHT AGAINST RACISM

Mariella SECONDI-NIX, working at the CESDIP and the University of Paris X-Nanterre, is presently writing a doctoral thesis in law, on the action of citizens' groups within the criminal justice process. The present paper discusses the results of a study on the same subject, conducted at the request of the ministry of Justice.

After conducting a variety of research projects on individual victims and their relations with the criminal justice system, the CESDIP has gone on to look into collective victims and the action of those organized groups in charge of representing them. In this framework, a study of complaints lodged by associations combating racism has been undertaken at the demand of the ministry of Justice.

Two aspects were investigated :

- first, the role of these groups in the drafting of the various legislative measures enacted since 1972 and aimed at extending to themselves the legal rights individuals have to initiate a criminal case on civil grounds (*constitution de partie civile*), for the defence of the collective interest they represent. Data relative to this part of the investigation were taken from the archives of the ministry of Justice pertaining to the establishment of the various laws and projects, from law n° 72-546 (July 1st, 1972) on to later laws. The parliamentary debates also yielded source material.
- secondly, the role of anti-racist associations in the implementation of those same measures. The main offences for which associations may initiate a criminal case on civil grounds are enumerated in the law on the press. We therefore consulted the 4th section of the Paris public prosecutor's office, specialized in cases pertaining to the press, for those affairs coming under the antiracism legislation. Our material is composed of 40 cases reported to the public prosecutor's office in 1994 and 1995. It is confined to instances of incitement, libel or racial insults. Cases involving violence for racist motives (in which these associations may also lodge a complaint) are more scattered. However, we were able to locate a number of them through interviews with leaders of these associations and articles in the press. Because of the relatively small number of cases, use of the typical case method was preferred to a statistical analysis to account for the entire range of cases.

Our study showed that the associations combating racism were consistently present and played a major role throughout the criminal justice process, in different manners at the different stages, ranging from the drafting of a bill to litigation.

Legislative debates and the associations

We looked at all of the reforms proposed from 1972, date at which the Pleven bill introduced a proviso on the expression of racism in the legislation on the press, through to the latest bill, dropped in 1993. Participation of the associations in the drafting of these measures was consistent, although more or less visible : at first, and until the mid 1980s, there was the *Ligue des Droits de l'Homme* (the League for Human Rights), the *LICRA* (International League against Racism and Anti-semitism) and the *MRAP* (Movement against Racism and for Friendship among Peoples), joined, at that point, by *SOS-Racisme*.

They served as poles for reflection and attempted to galvanize the administration and to incite it to react. At times, a government initiative, a reform actually taken in response to some current event or political necessity but seemingly a gesture to the citizens' movements, caught them unawares.

The main resource of these movements is composed by those of their members who are lawyers, judges or parliamentary representatives. Members who are in a position to propagate the message are used by the association to do so.

Their specific links with some well-known political personnel enabled them to advance their demands on the parliamentary scene, especially through written questions to the government. Starting in the 1960s, for instance, the *MRAP* instigated a deliberate policy of encouraging repeated interrogation of the government by its members of parliament. The questions all aimed at highlighting the shortcomings of the existing legislation, which at the time was the 1945 Marchandeau ruling.

These groups have also established informal contacts with experts and political personnel within the ministries, to whom they communicate their own proposals for inclusion in bills.

By taking legal action, they have given visibility to some problem situations, and denounced the flaws in existing laws. On two instances, these groups succeeded in instigating public debate through this tactic.

Even before the July 1st, 1972 law, the MRAP attempted to demonstrate prosecutorial inactivity and the inadequacy of the legislation, by pointing up racist acts and the quasi-absence of punishment of them. The MRAP either initiated a number of criminal cases on civil grounds although it was clear that this action was legally unacceptable, or acted as witness for victims, to inform public opinion of the need to improve the law in order to effectively combat racism.

At another point, the LICRA used the same tactic to emphasize the fact that according to the 1972 law, associations were allowed to take action when the racism was purely verbal but were barred from doing so when racism took the form of violent acts, including murder. For several years, it systematically initiated criminal cases on civil grounds whenever the case before a *Cour d'assises* or a *tribunal correctionnel*[1] had racist implications. Although it was clear that this was to no avail,

[1] French law divides offences into three categories, on the basis of increasing seriousness :
- *contraventions* (termed "minor offences" in the text), which are judged by *tribunaux de police;*
- *délits* (termed moderately serious offences), which are judged by *tribunaux correctionnels ;*
- *crimes* (termed major offences), which are judged by *cours d'assises*, in which a jury sits.

these judiciary actions enabled it to express its views at the hearing. The January 3, 1985 law acknowledged these demands, and granted groups the ability to intervene in cases where racism took the form of physical violence, instead of confining them to acts of verbal abuse.

Since the enactment of the July 13, 1990 law, the National Consultative Committee on Human Rights is charged with writing an annual report on the fight against racism in which, following an assessment of the measures already taken, it has the faculty of formulating proposals for combating racism. The antiracist associations are represented within this committee, and are therefore officially called upon to give their opinion on the legislation. They nonetheless continue to stimulate public awareness through mobilization campaigns.

While the groups seemed to be united, for the 1972, 1985 and 1987 bills, in their demand for the right to bring suit, there was no longer any such unity for the 1990 bill. They were divided, essentially, on two points : whether or not revisionism should be incriminated and whether racist offences should be removed from the category of violations of the press laws and classed as common law offences (*délits*).

Litigations and associations

Associations are legally authorized to trigger public prosecution by initiating a criminal case on civil grounds without the need to prove they have suffered any direct damage. Thus, they are able to bring suit in case of an offence that is prejudicial to the collective interest which they defend.

Where the fight against racism is concerned, a limitative definition of these offences is established. It includes racial insults, provocation and slander, racial discrimination and violent offences when they were «committed to harm a person because of his or her national origin or membership or non-membership, real or presumed, in a specific ethnic group, race or religion». Judicially speaking, this means that the association may intervene once the public prosecutor has brought suit, or may bring suit if the latter does not prosecute. In the former case it joins in the prosecutorial action, in the latter it takes action on its own initiative.

Analysis of the records uncovered the development of informal cooperation between the public prosecutor's office and the associations, and showed the different types of intervention conducted by the latter.

Cooperation with the public prosecutor's office

The legislation pertaining to the fight against racism has constantly tended to reinforce the participation of citizens' movements in criminal justice. And in accordance with this trend, there has been an empirical, informal *rapprochement* between the public prosecutor's office and some human rights associations. The former's awareness that racism could not be effectively combated without close collaboration with these actors led it to engage in concerted action. In its investigational capacity, the public prosecution may take the interests of these associations into consideration, and in turn take advantage of these groups' thorough knowledge of the terrain. The associations retained the possibility of taking initiatives, but accepted this collaboration with the public prosecutor's office, which had become more vigilant. This informal alliance was later encouraged through official instructions and ministerial directives. This increased collaboration is quite peculiar to that particular type of citizens' group.

The different types of intervention

The way in which a criminal suit is initiated on civil grounds varies with the objectives pursued by the group.

1 - Occasionally, the associations choose to restrict their role to producing information. As intermediate structures, acting as interfaces between the citizenry and the State, they occupy a strategic position at the grass roots level which keeps them well informed of those acts susceptible of punishment, but also exposes them to attacks and makes them easy targets. By transmitting all of this information to the public prosecutor's office, the associations are actually making proposals for public prosecution. This strategy enables them to denounce some acts without having to litigate, since they may find the judicial procedure long and expensive.

2 - The associations may also initiate action. They then act by having a summons served, if they possess all of the elements of the case, or by lodging a complaint with the public prosecutor. This type of intervention is preferred when they are in disagreement with the public prosecutor's office or if a symbolically important element is at stake in the affair. In the latter case, the association manifests its determination to appear alone on the judicial scene, owing to the importance of the case.

3 - The associations may also intervene in a case when a complaint has been lodged by the victim or the public prosecutor's office. They then take advantage of an individual initiative or public prosecution to join in the case on civil grounds, either before the investigating judge or at the hearing. This enables the associations to support the complaint of a victim who has requested their help. At the same time, their awareness of the existence of numerous similar cases incites them to intervene to obtain an exemplary judgement.

Emergence of a new acceptation of the notion of the fight against racism

The July 1st 1972 law did not specify the exact scope of the notion of racism. The lawmaker's intention, in 1972, was to put an end to a series of violent actions aimed at French people coming from the overseas *départements* as well as at immigrant workers such as Algerians or Portuguese. Fifteen years after that bill had been voted, the intervention of one association in litigation led to the development of a new acceptation of the notion of the fight against racism. A complaint was lodged by an atypical antiracist group, the General Alliance against Racism and for the Respect of the French Identity, which expressed its intention, as prescribed in its statutes, to combat racism "within the framework of the defence of the threatened values of our civilization, and against anti-French and anti-Christian racism". Following contestation of the legitimacy of the use of the antiracist legislation by this association, the Supreme Court finally defined a new scope for the fight against racism. The Court declared the action of this

association admissible, and concluded : "the racism defined by article 48-1 of the July 1st 1972 law, completed by the July 13, 1990 law, applicable in the courts at present, applies to any discrimination based on the origins or membership in a race, ethnic group or religion, with no limitation or exclusion".

This is what may be called a counter-intuitive effect of the law. This new conception of the fight against racism had not been visualized by those who promoted the law, and is in fact opposed to their original intent. While the lawmakers do not seem to have envisioned this effect, some judges do seem to have accepted it.

A look at the role of associations in the establishment and implementation of antiracism legislation may well shed light on some themes presently under discussion in the debate on the new legislation, over whether racism should be made a common law offence and the definition of racist offences extended.

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