

# SEXUAL ASSAULT

## Punishment and judicial career of offenders

In public debates, the issue of sexual assault is usually broached when acts that incur public indignation, such as the rape and murder of a child, are committed. In France, the law of 1st February 1994, creating what has been called "full-term life imprisonment" was voted after one such crime. This law also modified the conditions of detention of all sexual assaulters, as well as the possibilities of adjusting penalties. It became clear, at that time, that the evolution of punishment of these offences required study. The analysis that follows deals with rapes and indecent exposure<sup>1</sup>.

### 1. Police categories

The data published by the ministry of the Interior for "recorded criminal offences" mostly fall into three categories: "recorded cases", "elucidated cases" and "suspects". Since 1974, data are available for both rapes and indecent exposure, with no distinction as to the age of the victim. In 1994, 6,526 rapes and 12,661 cases of indecent exposure were recorded. The increment over the last two decades has been considerable: the number of recorded rapes has been multiplied by 4.2 since 1974, while the figure is 2.3 for indecent exposure. There has been a definite acceleration in the ~~the~~ ~~since~~ ~~1987~~ ~~course~~ ~~no~~ ~~way~~ ~~of~~ ~~knowing~~ ~~whether~~ ~~this~~ ~~trend~~ ~~reflects~~ ~~an~~ ~~evolution~~ ~~in~~ ~~the~~ ~~number~~ ~~of~~ ~~acts~~ ~~committed~~ ~~with~~ ~~or~~ ~~without~~ ~~the~~ ~~knowledge~~ ~~of~~ ~~the~~ ~~police~~. But certain facts do suggest that a - non measurable - portion of the increase is due to new attitudes towards lodging a complaint, encouraged by:

- the action of citizens' groups and in particular of feminists, in the 1970s, stigmatizing the "banalization" of rape and inciting women to "break the taboo of silence";
- mass information campaigns launched by the government to encourage the denunciation of violence aimed at children;
- the numerous prime-time television programs devoted to these issues and calling on testimony by adults and children;
- the creation, by the 10th July 1989 law on the prevention of child abuse and the protection of juveniles, of a national "hot-line" for child abuse problems (the SNATEM), free of charge;
- improved reception by specially trained civil servants, an evolution aided by the increasing number of policewomen.

The criminal justice system has given many signs that it now views these offences as particularly serious. Lawmakers have reflected this trend by lengthening the sentences set down by the new penal code.

The number of elucidated cases has progressed slightly more rapidly than recorded cases. In 1994, the clearance rate was 85 % for rapes and 78 % for indecent exposure. Twenty years earlier figures for both were 71 %.

Contrary to what is suggested by the evolution of clearance rates, the number of suspects has progressed less rapidly than the number of recorded cases. This is particularly true for indecent exposure: since 1974, the number of suspects was

multiplied by 3.3 for rapes and by 1.5 for indecent exposure. In 1994, there were 4,810 suspects for rape and 6,133 for indecent exposure. The sharp rise in the ratio of "elucidated cases/suspects" sums up the above-mentioned trends, but is not easy to interpret. The cause may be :

- a decline in the relative frequency of serious and moderately serious collective offences (a single act, several suspects)
- an increase in multiple offences attributed to a same individual (one suspect, several acts)
- or again, changes in the reckoning method (an improbable hypothesis given the gradual nature of the trends observed).

### 2. Sentences

Present administration statistics cannot be used to examine all of the steps in the criminal justice process for a given type of offence. Both the "*cadres du parquet*"<sup>2</sup> and the "*répertoire de l'instruction*"<sup>3</sup> simply distinguish between serious and moderately serious offences. It is therefore impossible to determine any definite temporal evolution in the presentencing proceedings (and in particular, the question of a change of indictment).

A diachronical comparison of sentences can hardly be summarized in a few figures. The nature of the trial (defended or by default), nature of the decision, mode of enforcement, length of unsuspended imprisonment and nature of alternative sentences have to be considered. Indicators must be selected, and these are necessarily over-simplifying.

**For rapes**, we have compared sentences pronounced in 1978 and 1992. Their number has been multiplied by 2.6<sup>4</sup>, representing a slightly greater increment than for police suspects (2.3 for the same period). Does this reflect a greater propensity to prosecute and sentence offenders ? Be this as it may, with 892 sentences for rape in 1992, there are far fewer sentences than there are individuals suspected by the police and *gendarmerie*. The gap may be due to the fact that some suspects are cleared of charges during the procedure or the trial, or have their indictment changed from a *crime* to a *délit* (*correctionnalisation*<sup>5</sup>). There is also the question of the unit of reckoning, linked to the concept of the main offence (see below). There is a definite trend towards heavier sentences : between 1978 and 1992, sentences involving personal restraint for "5 years and over" rose from 54 % to... 74 %, sentences to "10 years and over" from 13 % to... 35 % (% of the total number of sentences for rape).

<sup>2</sup> Statistics of the Public prosecutor's office activities.

<sup>3</sup> A statistical account of cases under investigation and of the characteristics of the individuals involved.

<sup>4</sup> There is a slight bias here due to the fact that the 1978 figures only cover metropolitan France.

<sup>5</sup> 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.

*Correctionnalisation* means the changing of the indictment from *crime* to *délit*.

<sup>1</sup> A summary of a report delivered at the 5th Conference of the GAPERP (Groupe autonome pluridisciplinaire d'études et de recherche en psychopathologie), Lille Medical School, October 1995.

Most of the data analysed in this study precedes the enforcement of the new penal code. We have therefore used the former terminology.

For the 1984-1992 period, figures for rapes have been divided into four categories depending on the circumstances and the age of the victim. The evolution in numbers varies with the type of rape : the number of rapes committed by several individuals has declined (corroborating the hypothesis advanced for police statistics), simple rapes are stable, rapes of juveniles under age 15, and to a lesser extent, rapes with aggravating circumstances have risen sharply. These trends partly account for the heavier sentences. Furthermore, longer sentences are now meted out for rapes of juveniles: 79 % of "5 years and over" in 1992 versus 54 % in 1984, and for rape with aggravating circumstances, 88 % of "5 years and over" versus 81 %.

**Sentences for indecent exposure** numbered 3,326 in 1992. The proportion of sentences to imprisonment (not totally suspended) remained relatively stable (51 % in 1992), whereas sentences were longer. There are now 58 % of sentences to one year or over as against 45 % in 1984 (% calculated for unsuspended prison sentences).

**The question of multiple offences** : the findings analysed above are based on the notion of the main offence, meaning the first recorded on the person's criminal record, in the highest category (*crime, délit, 5th class contravention*)<sup>6</sup>. While most courts put the offences on the record with the most serious one first, some tend to follow the chronological order of police recordings, or even, occasionally, a seemingly random order. Since 1989, then, the statistics bureau of the ministry of Justice no longer confines its analyses to the first offence, but counts the first four offences. Looking at "related" offences enables us to count all punished offences, irrespective of whether they ranked highest, and to obtain a more accurate idea of the sentences pronounced, since sentences are generally more severe in case of multiple offences. Thus, the number of punished rapes, in 1992, is not 892 (main offences), as stated above, but 892 + 365 (related offences), or 1,257. The number of sentences for indecent exposure rises from 3,326 to 4,002. Consideration of multiple offences for the statistical treatment of criminal records is too recent to enable us to refine our analysis of the evolution of sentences pronounced, but this new dimension will have to be included in future studies.

**International comparisons** : a group of experts set up under the auspices of the Council of Europe has drafted the *European Sourcebook of Crime and Criminal Justice Statistics* (1995), which yields a number of findings on rape. The first edition of the book covers the year 1990, in the following countries : United Kingdom (England and Wales, Scotland and Northern Ireland), France, Germany, Hungary, Italy, Ireland, the Netherlands, Norway, Sweden and Switzerland (Table 1).

Table 1 : Rape in some European countries

	Recorded offences	Sentences		
	Recorded rapes	% of unsuspended imprisonment	% of imprisonment 5 years and over	% of imprisonment less than 2 years <sup>7</sup>
Germany	8,0	59	12	20
England	6,7	94	48	7
Scotland	6,4	91	73	10
France	8,1	95	81	8
Hungary	4,5	90	21	23
Ireland	2,5	...	56	12
Eire	7,9	92	55	0
Italy	1,2	...	5	59
Norway	9,4	96	15	72
The Netherlands	8,9	82	4	80
Sweden	16,0	95	7	56
Switzerland	6,2	68	15	26

Source : Council of Europe

With a rate of 8 police-recorded rapes per 100,000 inhabitants, France is located slightly above the mean, in a situation similar to that of Germany, the Netherlands and Northern Ireland. The proportion of unsuspended prison sentences meted out for rape in France is one of the highest in Europe (95 % in 1990). For the group of countries studied, only Norway and Sweden resort at least as systematically to imprisonment. Conversely, the proportion of unsuspended prison terms in Germany is only 59 %. The prison sentences pronounced in France are longer, as well as more frequent. Our country holds the record for sentences to 5 years or over (81 %). The proportion is 4 % in the Netherlands, 5 % in Italy, 7 % in Sweden and 12 % in Germany. Conversely, most sentences are to less than 2 years in Italy, the Netherlands, Norway and Sweden. In France, these represent only 8 % of unsuspended sentences.

### 3. Enforcement of sentences to personal restraint

The rising number of cases brought to court, increased recourse to sentences to personal restraint and lengthier sentences, all contribute to increasing the number of sex offenders detained in French correctional facilities (Table 2). The prison administration is therefore faced with some serious problems : ensuring the safety, in its establishments, of these thousands of prisoners who are looked down on and physically threatened by the others, and the need to develop specific care for them.

Table 2 : Prisoners sentenced for rape or indecent exposure (main offence): numbers as of 1st January (1975-1995) and indices (base 100 on 1.1. 1975)

	Juvenile victim		Adult victim		Total	
	No.	Index	No.	Index	No.	Index
1975	464	100	169	100	633	100
1980	564	122	487	288	1 051	166
1985	772	166	855	506	1 627	257
1990	1 155	249	989	585	2 144	339
1995	2 432	524	1 201	711	3 633	574

Source : SEPT data base, field = metropolitan France

<sup>6</sup> see note 3.

<sup>7</sup> *Idem* note 5.

As we know, prisoners generally do not spend their entire prison sentence in detention. Mitigations of penalties, collective pardons, release on parole all reduce the amount of time spent in prison. Not many statistics are available on this subject, since the nature of the punished offence is only very partially taken into consideration in the surveys conducted. Investigation of this aspect is projected, through exploitation of the national file of prisoners (the FND). The rare findings on rape, taken from two national surveys, are summarized below.

**Sentenced to three years or over, released in 1982** : this group included 231 offenders sentenced for rape. They had spent an average of 68 % of their term in detention. This proportion is close to the figure found for the cohort as a whole (67.5 %). 34 % of offenders sentenced for rape were released on parole. However, the rate is lower here than for other *crimes* (35 % for aggravated theft, 38 % for assault, 49 % for intentional homicide). Of the 32 % of the sentence not spent in detention, 25 % was due to mitigation of the penalty and only 7 % to release on parole. Last, those who were released on parole had served 60 % of their term in prison, so that the weight of mitigations and of release on parole balanced out (19 % and 21 %).

**Sentenced to ten years or over, released in 1989** (Kensey, 1992) : this cohort included 78 individuals sentenced for rape. They served 67 % of their sentence. More accurately, people sentenced to 10 years spent an average of 6.7 years, those sentenced to 12 years spent 8 years, those sentenced to 15 years spent 10.5 years and those sentenced to 20 years spent 12 years.

There is no specific information available on the evolution of sentence-serving among sex offenders, but it is important to keep the general context in mind (Tournier, 1995). There have been two concomitant - and certainly partially related - trends, both tending towards lesser individualization in the adjustment of sentence-serving, with increasingly systematic recourse to indiscriminate reductions of time spent in detention, and a tendency to eliminate release on parole. The widespread granting of mitigations of penalties for good conduct is not a new practice, by any means. When the possibility was created in 1972, these mitigations were granted in 90 % of cases. The rate was 95 % in 1991. In addition, there is the increasingly frequent recourse to collective pardons. All indicators for release on parole - decided by the judge in charge of administering sentences or by the ministry of Justice - are on the decline. We may legitimately speak of the *de facto* abolition of release on parole, then. And yet, this more than century-old practice, demanding individualization of cases, seems to afford a satisfactory framework for dealing with sex offenders. The Cartier Committee, set up in 1993 by Pierre Méhaignerie<sup>8</sup> to study prevention of recidivism, has formulated a number of suggestions that are cogent with the reactivation of this measure. When release on parole is granted, there is necessarily a risk of recidivism. But some perspective on the numbers involved is required here.

#### 4. The judicial career of released prisoners

In France, the quantitative information available showing the judicial career, following release, of prisoners sentenced for rape or indecent exposure, comes from two national surveys : one covers offenders sentenced to three years or over and released in 1973, the other covers the same category, released in 1982. The magnitudes found in the two are coherent.

The sample of prisoners released in 1982 included 96 sentenced for rape and 35 for indecent exposure (Kensey, Tournier, 1995). All new cases leading to a sentence put on the criminal record within four years of release were examined, irrespective of the sentence meted out. Of the 131 cases studied, six incurred another sentence at least as heavy as the first one (3 years), motivated by: 1 murder, 2 rapes, 1 indecent exposure, 2 non-personal offences.

These perfectly rigorous surveys yield findings that are quite different from the usual claims on the subject. A clear understanding of their limits is required, therefore:

- The samples were numerically small; and yet, the results of the two surveys are similar in terms of magnitude.

- In the two above-mentioned studies, there was no information distinguishing rapes committed by pedophiles or by incestuous fathers. According to some field workers, the question of recidivism is apparently radically different for these two categories of individuals (with a very high backsliding rate for the former, and a very low rate, necessarily, for the latter). It would of course be most interesting to determine the breakdown of the sub-cohorts into these three categories (pedophiles, incest, others).

- What is measured here is not the "recidivism" rate, either in the sense of "legal recidivism" or of "backsliding". These released prisoners may have committed sexual assault again without the criminal justice system having any knowledge of the fact, if no complaint was filed, or if the case was not elucidated. However, the police clearance rate is now 90 % for rapes. A four-year lapse of time after release may seem too short. There are therefore plans to re-examine the 1982 cohort of released prisoners, in an exhaustive study this time, so as to considerably amplify both the numbers of individuals and the observation period.

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<sup>8</sup> Minister of Justice at the time.