

# WOMEN OFFENDERS AND THE CRIMINAL JUSTICE SYSTEM

*France-Line MARY is a sociologist and demographer. This paper discusses the main findings of the research she conducted within the CESDIP, for her DEA diploma on "Culture and social behavior" at the Paris V - René Descartes University (supervised by Léon Gani (Paris V) and Pierre Tournier (CESDIP)).*

**A**lthough there are more women than men in France - 51 %, according to the 1990 census -, they are chronically, and apparently universally, under-represented in criminal justice statistics. If we take France, and the recent period, they constituted a mere 14 % of police and *gendarmerie* suspects in 1993, 13 % of arraigned individuals whose case investigation was closed in 1992, 11 % of those sentenced the same year, 5 % of those committed to prison in 1994 and 4 % of the prison population as of January 1st 1995.

While this singular situation has occasionally intrigued social scientists, it also accounts for the extreme shortage of quantitative analyses pertaining to contacts between the female population and the main agents of the criminal justice system; in fact, with the exception of two chapters of the 1995 INSEE book<sup>1</sup> entitled "A social portrait of women" devoted to women sentenced and women in prison, the last publication on the subject dates back to 1982<sup>2</sup>.

The present analysis is the fruit of research aimed precisely at filling this gap, including, for one thing, by updating the deciphering of those habitually published or unpublished administrative statistics that inform us of the forms taken by women's participation in the various sequences of this institutional process (police - justice - prison).

Each type of document was examined to determine what it has to teach us, for the phase it concerns, about the forms of control the criminal justice system exerts comparatively on men and women. Does the gradual decline in percentages of women, as enumerated above, mean that the system is more lenient in controlling the female population ?

## 1. Recorded offences : do police procedures favor women ?

In 1993, only 98,763, or 14.3 %, of the 690,455 police and *gendarmerie* suspects were women. Although women are only a tiny minority of suspects, as a rule, the exact percentage varies considerably with the offence considered.

For example, women are more often involved in breaches of domestic duties or in what are known as "astute" property offences, while almost none are involved in violent offences or in those categories of recorded offences with the highest incidences (thefts connected with automobiles). Does this specific pattern of offences for which there are woman suspects say something about the treatment they may receive from the police and judiciary agencies ?

<sup>1</sup> INSEE, Service des Droits des Femmes. *Portrait social : les femmes*, Paris, 1995 (Contours et Caractères) : chapters 9.6 and 9.7, pp. 210-213.

<sup>2</sup> FAUGERON (C), *Femmes victimes, femmes délinquantes : état des données*, Paris, SEPC, Etudes et Données Pénales, n° 41, 1982.

The most recent ministry of Justice publication on the subject of the female prison population is : Direction de l'Administration pénitentiaire, Service des études et de l'organisation *Le point sur les femmes en prison*, Paris, 1983/1 and 1990/2.

**Table 1** : Police and *gendarmerie* suspects in 1993 : classification of offences according to percentage of women

Category of offences (aggregate nomenclature)	% of women among suspects (*)	% of suspects committed (*)	Ratio of police custody/suspects (%) (*)
<b>Offences for which percentages of women are highest</b>			
Breach of domestic and parental duties	39,8	1,2	6,9
Chequing offences	34,9	1,9	9,7
Shoplifting	33,4	3,0	20,0
Frauds, falsifications of cheques and credit cards	27,9	12,0	38,8
Breach of trust, embezzlement	21,2	3,7	47,7
White collar crime, frauding and falsification	18,3	5,1	23,8
Swindling	16,4	4,9	16,1
<b>Offences for which percentages of women are lowest</b>			
Burglary	6,9	21,0	66,1
Car theft	3,7	11,9	64,0
Auto larceny	3,6	10,8	68,0
Rape and indecent exposure	3,1	31,0	74,6
Illegal possession or carrying of firearms	3,1	7,4	50,5
<b>Total</b>	<b>14,3</b>	<b>11,3</b>	<b>45,5</b>

Source : Ministry of the Interior. *Aspects de la criminalité et de la délinquance constatées en France en 1993*

(\*) Ratios based on all suspects, men and women. People in police custody are not a subdivision of the suspect group, but a separate accounting unit : the ratios should therefore not be directly assimilated to "police custody rates".

Ministry of the Interior publications do not afford any direct means of evaluating the proportion of women among individuals in police custody or committed after contact with the police, but comparison, offence by offence, of the sex ratios and the ratios for "committed/suspect" and "police custody/suspect" seems to indicate that women questioned by the police or *gendarmerie* run less of a risk than men, on the whole, of being affected by such measures. In both cases, women are mostly involved in offences that do not frequently entail recourse to procedures of those types, as opposed to those offences for which practically all offenders are men (rapes and indecent exposure in particular).

In fact, it may be demonstrated, by calculating "fictitious" populations, that if sex had no influence on the probability of being retained in police custody or committed to prison, and if, conversely, the offence alone accounted for the implementation of one or the other of these two forms of penal treatment, one would observe "rough" indicators pointing in the opposite direction; that is, showing the existence of sexual discrimination in police action, actually penalizing men. Thus, if for each category of offences, we postulate that the percentage of women is the same at each level (suspects, committed, police custody), the overall incidence of women in the police custody and committed groups in each of the two instances would be 11 %, three points lower than their proportion among suspects.

This finding points to the need for caution in interpreting the constant decline in the percentage of women as we proceed along the criminal justice process : aside from the fact that different statistics are established differently, so that no

continuity can be found between them, this decrease in itself does not prove that sex as such is a differential factor in crime control. Other variables must be included in the analysis : for this police phase, the distribution of women suspects within the categories of offences may explain why women are prosecuted less often than men, or at any rate, through more auspicious procedures.

## 2. More lenient judiciary measures and sanctions

Conversely, the detailed examination of judiciary statistics for investigation and sentencing shows a very different picture. At this stage in the criminal justice process, women are effectively treated more favorably, in that they are more rarely subjected to correctional confinement of any sort.

According to the *Répertoire de l'Instruction*, 8,380 of the 68,481 arraigned individuals whose case was closed in 1992 were women (13 % of the entire group, excluding the "sex not recorded" group<sup>3</sup>), three fourths of whom (78 %) had remained free, whereas 45 % of the men had been placed in pretrial detention during the investigation period. While 32 % of the men who remained free, as opposed to 26 % of the women in the same situation, had been placed under pretrial surveillance, it should be said that on the whole, this other security measure (prescribed previously to preventive imprisonment in some cases) affected as many women as men (28 % of defendants).

What distinguishes men and women, then, is definitely the benefit of the right to freedom, to women's advantage. This situation is in no way affected by the sex distribution within the different categories (serious, moderately serious or minor offences<sup>4</sup>) for the main incrimination<sup>5</sup>, although women are slightly less often prosecuted for serious offences than men (6 % versus 9 %). In all cases, the pretrial detention rates are highest for men : 72 % of the men accused of a *crime* versus 57 % of the women, and 43 % of men accused of a *délit* versus 20 % of the women were affected by a measure of that type.

Analysis of the main sentence<sup>6</sup> handed down in the court decision also shows greater lenience in the sentencing of women. 562,374 sentences were recorded by the *Casier*

*Judiciaire* in 1992, 57,699 (10 %) of which affected women. Less than half of these women (48.5 %), as opposed to over 61 % of the men, were sentenced to imprisonment. On the other hand, 40 % of women were sentenced to a fine as opposed to only one-fourth (26 %) of the men. There was no significant sex-linked difference in recourse to alternative or educational measures (with rates close to 6 % and 3 % for both groups), while exemption from sentence-serving was slightly more frequent for women (3 %) than for men (1 %).

Above all, knowledge of how the sentence was served is essential in assessing the extent of disparities between men and women : irrespective of the nature of the sanction, total suspension (simple or on probation) is less frequently granted to men, and this is all the more true for sentences involving personal restraint. Partially unsuspended sentences to "*réclusion*" (imprisonment for serious crime) or ordinary imprisonment were given to 23 % of sentenced men and less than 11 % of women. The extent of this discrepancy authorizes the question of its possible connection with phenomena other than sexual discrimination.

First of all, the influence of the nature of the offence being prosecuted should not be overlooked. Here again, the female population is not randomly distributed within the nomenclature of main offences. The percentage of women among sentenced offenders ranges from 7 % to 13 %, depending on whether they were judged for a *crime* or a *contravention*, with a 10 % figure for *délits*. Similarly, women represent over 20 % of individuals sentenced for breach of domestic or parental duties (non-presentation of a child, desertion of home) and property offences (violation of laws on chequing, frauding involving social welfare dues or benefits, forgery of private documents, embezzlement) and less than 2 % of rapes, indecent exposure, illegal carrying of firearms, and military, hunting and fishing offences.

Another factor that may affect the severity of punishment is the type of trial, with a heavier sentence generally meted out when the offender has the option of contesting it. Thus, whereas 23 % of women judged in their absence were sentenced to personal restraint, this was the case for a mere 8 % of those appearing in a defended trial. The following table is therefore confined to individuals sentenced at a defended trial (66 % of women defendants and 71 % of men)<sup>7</sup>.

<sup>3</sup> In all, 64,937 individuals.

<sup>4</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.

<sup>5</sup> Court decisions may deal simultaneously with several offences : for statistical purposes, a "main offence" is then determined, which is the first offence recorded on the criminal record in the most serious category (a *crime* overrides a *délit*, a *délit* overrides a *contravention*). The data discussed here are therefore based on this definition, although it is now feasible, for statistics on sentencing, to incorporate the analysis of information on the first four offences ("related" offences).

<sup>6</sup> A sentence may involve one or several sanctions combined with one or several measures. While punishment is legally considered as forming a whole that applies to all of the offences prosecuted, taken comprehensively, and although statistics may also provide some information on these multiple decisions, a hierarchy is nonetheless usually established, with a "main sanction or measure", following a check to make sure that the latter is coherent with the nature of the main offence.

<sup>7</sup> Data produced, at our request, by the ministry of Justice bureau of Statistics.

**Table 2** : Sex distribution of main sentence for offenders given a defended trial in 1992, for different categories of main offence

Category of offence (aggregate nomenclature)	Rate of sentencing to a fine (%)		Rate of sentencing to an unsuspended prison sentence (%) (*)		Median amount of unsuspended prison term (months) (*)	
	Men	Wom.	Men	Wom.	Men	Wom.
<b>Crimes</b>	<b>0,0</b>	<b>0,0</b>	<b>95,7</b>	<b>79,9</b>	<b>103,8</b>	<b>79,3</b>
<b>Délits</b>	<b>14,5</b>	<b>25,6</b>	<b>23,2</b>	<b>9,7</b>	<b>4,9</b>	<b>4,5</b>
<b>Contraventions</b>	<b>81,0</b>	<b>84,6</b>	<b>1,9</b>	<b>0,2</b>	<b>0,6</b>	<b>0,5</b>
Intentional homicide	0,0	0,0	98,0	90,8	113,9	92,2
Intentional assault	29,1	42,0	17,9	6,8	4,6	5,5
Other personal or domestic offences	48,3	66,8	5,0	1,0	3,6	6,0
Morals offences, rape	12,4	24,5	43,9	21,7	28,0	28,8
Violation of drug laws	10,5	9,6	49,4	31,8	14,8	10,9
Violation of immigration laws, of laws on nomadism	5,3	22,9	66,7	29,1	3,6	3,1
Other law and order, security and regulations	51,5	65,5	17,2	4,5	3,4	3,4
Violation of chequing laws	14,5	12,3	21,0	6,1	5,3	4,8
Embezzlement, breach of trust	14,4	14,3	25,8	8,2	5,9	7,0
Theft, receiving, vandalism	37,7	22,3	31,4	12,6	5,5	3,7
Other property offences, white collar	54,9	59,2	14,4	4,9	5,5	5,7
Motoring, transportation	19,3	29,2	6,6	1,0	2,0	1,6
Other crimes, délits et contraventions	71,7	75,0	3,2	6,3	-	-
<b>Total</b>	<b>22,9</b>	<b>37,6</b>	<b>20,9</b>	<b>8,1</b>	<b>5,0</b>	<b>4,8</b>

Source : Justice, *Casier Judiciaire*, sentences 1992

(\*) : *réclusion*, unsuspended or partially suspended imprisonment.

The main nuances yielded by this table pertain to the sex ratio of sentences to fines : for a few offences - violation of drug laws (VDL), chequing offences, theft-receiving-vandalism - men were fined more frequently than women. In these three cases, it is a fact that women tended to receive suspended prison sentences.

This clearly shows that the lesser punishment of women by unsuspended imprisonment can only be accounted for by differential mechanisms based on the offender's sex : although the offences most often punished by an unsuspended sentence to personal restraint are more or less the same for men and women (intentional homicide, VDL, violations of the immigration laws, rapes and morals offences), the frequency with which these sentences are meted out is much lower for women than for men. Consequently, if the pattern of women's participation in the different offences was the same as that of men, the overall percentage of their unsuspended sentences to imprisonment or *réclusion* would be equivalent (8 %) to the actual rates.

Furthermore, women are generally sentenced to shorter prison terms than men : half of the latter are sentenced to more than 5 months, whereas the median amount for women does not exceed 4.8 months. The difference between the sexes is considerably attenuated here, however, and tends to be reversed for some items (intentional assault and battery, breaches of domestic duties, morals offences, embezzlement and breach of trust).

The reason behind this may be that since women are very rarely given a prison sentence, such sentences are only handed down for the most "serious" *délits* and *crimes*; that is, those for which the heaviest punishment is demanded (such

as cases involving a number of facts). In point of fact, if these women had been sentenced for the same offences as the men, the median amount of time they would have to spend in prison would be even lower than what is actually observed (4 months) : this definitely precludes the notion that judges cease to be more lenient when women are declared guilty.

### 3. Shorter periods of imprisonment, but for how long ?

As for the female prison population, it differs from the male population in one essential way, its composition with respect to the penal category : according to the quarterly statistics for prison populations in metropolitan France (*Statistique trimestrielle de la population carcérale métropolitaine*), there were 51,623 prisoners as of January 1st 1995, of whom only 4 % (2,134) were women, 53 % of whom (as opposed to 42 % of men) were in pretrial detention. The two groups, women and men, have risen sharply over the last two decades (respectively + 203 % and + 95 % between January 1st 1975 and 1995), but not precisely under the same circumstances. Since 1980, the increase in stocks of men no longer coincides with the rise in incarcerations (with a record figure of 92,224 admissions as against 81,186 in 1994), whereas this is only the case for women since 1987 (with a record of 5,456 incarcerations as against 4,575 in 1994). Despite this lag, the main factor affecting growth of the prison population as of January 1st remains the same for both sexes : it results from the lengthened average duration of detention, some indicators of which may be deduced from the "stock/flow" ratio<sup>8</sup>.

According to the latter, the average duration of detention is shorter for women than for men (estimated at 5.6 and 7.2 months respectively for 1994). Data from the *Fichier National des Détenus* tend to corroborate this finding<sup>9</sup>. Interestingly, however, over the last fifteen years, for those years when the indicators were calculated for the female population (3 months in 1980; 4.4 in 1987), the figures increased more rapidly than the estimated figures for men (4.7 and 6.5 months for the same years).

Above all, indicators of the average duration of pretrial detention, no longer separate since 1990, oscillate between 3.5 and 4 months depending on the year. Furthermore, this trend is attended by an increase in the median lengths of the sentences being served by sentenced offenders in detention as of January 1st (which rose from 2 to 2.9 months between 1980 and 1995 for men, and from 1.8 to 3 months for women), apparently representing a tendency for courts to hand down longer sentences.

The fact remains that administrative statistics do not provide the means to infer any continuity between the various sequences in the criminal justice process, whence the need to undertake empirical micro- or macro-sociological studies aimed at determining the respective paths, in terms of flows,

<sup>8</sup> The calculation of these indicators, inaugurated by Pierre Tournier in 1981, is predicated on a property inherent to stationary populations, in which life expectancy is equal to the converse of the gross rate of admissions. Thus, the indicator of the average duration of detention (expressed in months) = [Average annual prison population/admissions for the year] x 12.

<sup>9</sup> Half of the women released in 1993 had served less than 3.0 months (median duration) as against 3.6 months for men : this difference is not linked to the pattern of offences.

Source : KENSEY (A.), TIMBART (O.), FND 1993, statistical compilation of incarcerations, releases and durations of detention, ministry of Justice, DAP and DAGE, *Travaux et Documents* n° 49, 244 pp.

followed by the male and female populations as they move through this circuit, and to achieve comprehension of the motivations and social representations behind the decisions of actors when men or women are involved.

**France-Line MARY**

For further information, the reader is referred to :

MARY France-Line, *Femmes, délinquances et contrôle pénal, analyse socio-démographique des statistiques administratives*, Guyancourt, CESDIP, Etudes et Données Pénales, n° 75, 1996, 267 p.