# Prosecution in France

Jacqueline Hodgson\* & Laurène Soubise\*\*  
School of Law, University of Warwick, UK

Abstract: This essay examines the increasingly ambivalent role and status of the French prosecutor, the *procureur*. As a judicial officer (*magistrat*), she is required to act in and to uphold the public interest, but her hierarchical accountability to the executive and her role in the formation and implementation of local criminal justice policy threaten her independence, notably in the eyes of her fellow *magistrats*. The dominance of the executive, both politically and through the imposition of managerialist imperatives, is felt in the ever-expanding role of the *procureur*, especially in the local sphere. Whilst the limited forms of legal and structural accountability in place leave the prosecutor with broad discretion, this is diminished through the drive to standardization resulting from the delegation of work to fulfill the demands of dealing with greater numbers of cases more quickly, with fewer resources.

Keywords: French prosecutor, prosecution, French criminal justice, comparative criminal justice, prosecutorial independence, prosecutorial discretion, prosecutorial accountability.

I. Introduction

An important characteristic of the office of public prosecutor in France (the *procureur*) is the close connection to the executive branch of government and perhaps for this reason, academic studies on the office of the *procureur* have often focused on the issue of prosecutorial independence from the government, critiquing it from a theoretical and constitutional perspective (Rassat 1967; Delmas-Marty 1994; Favoreu 1994; Pradel and Laborde 1997; Dintilhac 2002; Breen 2003; Renucci 2004; Robert 2011; Pradel 2011; Pradel 2013), with some quantitative studies confined to specific inquiries on prosecutorial decision-making (Aubusson de Cavarlay, Lévy, and Simmat-Durand 1990; Simmat-Durand 1994). Some comparativists, together with scholars from a range of jurisdictions, have produced useful collaborative accounts of the activities of public prosecutors across a number of jurisdictions (Luna and Wade 2012; Tonry 2012), often focusing thematic issues such as their role in managing growing caseloads (Jehle and Wade 2006) or the place of democracy within the prosecution function (Langer and Slansky forthcoming). There has also been recent interest from socio-legal scholars who have published wider empirical studies of the nature and functioning of the prosecution role, grounded in accounts of their daily working practices and the *procureur*’s relationship with other criminal justice actors, including the police, defense lawyers and the wider judiciary (Mouhanna 2001; Mincke 2002; Hodgson 2005, 2010; Aubusson de Cavarlay 2006; Milburn, Kostulski, and Salas 2010; Danet 2013). This essay sits within this more contextual, empirical and socio-legal tradition. Our analysis draws on our own observational and interview data, collected over different time periods over the last two decades,[[1]](#footnote-1) and whilst centering on the French *procureur*, we take a comparative approach, making some reference to public prosecutors in England and Wales and other adversarial systems of procedure in order to illuminate and understand better the characteristics of the office of public prosecutor.

In France, the vast majority of criminal cases are investigated by the police under the supervision of the *parquet*; only in the most serious cases (*crimes*) is the investigation under the authority of the investigating judge (*juge d’instruction*), though the *procureur* may choose to refer other (typically complex) cases also. Suspects have the right to be assisted by a lawyer during police detention and interrogation, known as the *garde à vue*, which may last a maximum of 48 hours in normal cases and up to 96 hours for organized crime and terrorism. Once the investigation is finished, *procureurs* decide whether and with what offense to prosecute the case before the court; which of a range of trial procedures to invoke (guilty plea, rapid trial etc); whether to divert the case to an alternative to prosecution; send it to the investigating judge (*juge d’instruction*) for further investigation; or simply to dismiss it. If they decide to prosecute, the case dossier, which is put together by the police and reviewed by the *procureur*, is passed on to the court composed of (usually three) professional judges, except in serious cases where a lay jury also takes part in the adjudication. The victim can seek compensation before the criminal courts and be represented by a lawyer at trial.[[2]](#footnote-2) In the majority of cases, witnesses are not requested to attend court and judges conduct the interrogation of the accused on the basis of the evidence included in the file. The defense and the prosecution can also ask questions. In her closing speech, the public prosecutor requests the acquittal or conviction of the accused and also recommends a sentence.

Public prosecutors in France thus sit at the center of the criminal justice system, deciding which cases enter the system and influencing the way they are dealt with, from criminal investigations through to sentencing. Although founded on a strong inquisitorial tradition, with the *procureur* or *juge d’instruction* responsible for the investigation of criminal offenses, piecemeal reforms have seen the French criminal justice system adapt aspects of more adversarial traditions, often as a result of adverse rulings from the European Court of Human Rights (ECtHR). This has created tensions around the nature of the prosecution function and the *procureur*’s status as an independent judicial officer.As with many other justice systems, French criminal justice has also developed ways of dealing with cases more rapidly and in greater numbers, often framed by managerialist practices and requirements that shape the prosecutor’s role and structure her decision-making. In this essay, we argue that *procureurs* find themselves in an ambiguous, if powerful, position, their role shifting to accommodate sometimes conflicting demands. They are understood to be independent judicial officers with a strong public interest orientation, yet they are also required to adapt to more accusatorial-type procedures which pitch them in opposition to the defense and to the managerial imperatives of local and national hierarchies. In this essay we explore these tensions in the *procureur*’s role: as members of the judiciary they are seen as key upholders of fair trial due process rights during the pre-trial phase (the defense enjoying a relatively narrow role in comparison), but they do not benefit from the same independence from government as judges, and in practice, they are closely aligned to the crime control objectives of the police (section II); their role and functions are partly judicial and partly executive, which can create tensions in their everyday practice and relationships (section III); although their decisions are framed through well-developed accountability channels (democratic and hierarchical) in theory, this accountability is very limited in practice (section IV). In section V we consider briefly some key reforms under discussion.

II. The Ambivalent Status of the French Prosecutor: Judge or Prosecutor

The French system of criminal justice finds its origins in the inquisitorial tradition in which an official inquiry is conducted by a state official entrusted with collecting both incriminatory and exculpatory evidence. By contrast, in the adversarial model of criminal procedure, the prosecution and the defense are each tasked with collecting evidence to support their own case. The Code of Criminal Procedure (*Code de procédure pénale* – CPP) provides that the investigating judge, the *juge d’instruction*, “undertakes in accordance with the law any investigative step he deems useful for the discovery of the truth. He seeks out evidence of innocence as well as guilt.” (Art 81 CPP). The *juge d’instruction* is therefore often held as the symbol of the state-centered inquiry in the inquisitorial tradition. However, in practice, the vast majority of cases are investigated by the police under the supervision of another judicial officer, the *procureur*. In 2014, a formal *instruction* was open in only 17,000 cases out of 1.3 million new cases, i.e. about 1.3 percent of cases (Ministère de la Justice 2015, p. 14). This represents a weaker legal model: a police investigation supervised by the *procureur*, rather than a judicial enquiry carried out by a judge, parts of which might be delegated to police officers (Hodgson 2004).

In contrast to prosecutors in England and Wales who share the same status and training as lawyers acting for the defense, *procureurs* belong to the career-trained judiciary, the *magistrature*, along with *juges d’instruction* and trial judges. All *magistrats* are recruited following a competitive national examination and follow a common 31-month period of training at the National School for the Judiciary (*École Nationale de la Magistrature* –ENM) in Bordeaux, alternating theoretical classes and work placements. The three judicial functions (prosecution, investigating judge and trial judge) follow a common curriculum, but then specialize in the course of their training. Once in post, they have the possibility to switch between the different functions throughout their career. However, public prosecutors have an ambivalent status in French criminal procedure. As *magistrats* they are understood as neutral judicial officers with a public interest centered ideology, in contrast to the partisan client interest centered role of the defense lawyer. However, they do not enjoy the same status as trial judges and those termed the ‘sitting judiciary’, in particular, in terms of independence from, and accountability to the executive. Furthermore, the trust and authority ascribed to the prosecutor as a result of their judicial status has constrained the growth of the defense role, seen as largely unnecessary given the public interest orientation of the *procureur* as a *magistrat*. Yet, research suggests that her authority over the police is weak, dependent on trust more than law, leaving the accused vulnerable in the absence of either judicial protection or of any effective defense role.

*A. The Prosecutor and the Police: the importance of Trust*

In practice, criminal investigations are conducted by the police, overseen by the *procureur*, and empirical research has shown that this form of judicial supervision is not understood as keeping a close check over police investigations, but is characterized by a relationship of trust with the police (Mouhanna 2001: Hodgson 2005). Hodgson found that supervision did not consist in monitoring checks, which could be resented by police officers, or even presence during the *garde à vue*. Instead, oversight of the police is concerned to demonstrate compliance with the form, rather than the process of the investigation, and is essentially distant and based on a relationship of trust, due to the dependence of *procureurs* on the police for gathering evidence, as well as resource and time constraints. Just as importantly, *procureurs* themselves understood this retrospective, largely file-based oversight to constitute supervision. There was no appetite for a more directive or interventionist approach and sitting in on police interviews of suspects, or attending the police station to check on the *garde à vue* were considered wholly inappropriate and undermining of the necessary trust between police and prosecutor (Hodgson 2005, p. 158).

This relationship of trust has become increasingly important due to the development of *traitement en temps réel* (TTR) in which *procureurs* answer phone calls from police officers who report orally on their investigations. The prosecutor must then decide how to proceed, based on the officer’s account of the case and without sight of the evidence. This requires prosecutors to work closely with the police and to trust in their professionalism. Bastard and Mouhanna (2007) showed that this results in the standardization of the *procureur*’s activity and the orientation of their cases towards the police officers’ documentation, as well as high rates of prosecution, as *procureurs* do not have much time to think and to immerse themselves in the case and so are unlikely to challenge the police account. A recent report on the French criminal justice process recommended that greater distance be placed between the police and *procureur*, as the closeness of their working relationship threatens to undermine the independence of the *procureur* (Beaume 2014, p. 30). *Procureurs* interviewed for Soubise’s doctoral study underlined the importance of trust between *procureur* and police officer, particularly under the TTR, in order to deal with cases in an efficient manner:

A lot of things are actually based on trust. Phone duty has taken such proportions, that it’s obvious that it cannot be managed without trust. If every time we have a case, we ask for the file to be sent to us by post, so that we can check what’s in it, because we don’t trust the officer who is reporting to us, it becomes unmanageable! [Interview respondent FR2]

This undermines the inquisitorial ideal in which judicial supervision is understood to avoid the investigation becoming a partial construction of the case against the accused, which in England and Wales, has been identified as leading to miscarriages of justice (McConville, Sanders, and Leng 1991; Belloni and Hodgson 2000). The investigation is supervised the *procureur*, who, as a neutral judicial officer representing the public interest, should ensure both the effective conduct of the investigation and the respect of defense rights. However, Hodgson has argued that the definition of the *procureur*’s role in terms of “representing the public interest” often shields a predominant crime control orientation in reality which means that the supervision of investigations can consist in “facilitating or encouraging officers in obtaining admissions from the suspect” (Hodgson 2005, p. 172; Hodgson 2002b). By contrast, the role of *procureurs* in the implementation of sentences (described further, below) seems to conform more closely to the neutral “judicial” mindset. “Rather than seeking a punitive response, the *procureur* worked in a spirit of co-operation to see what could be agreed (delaying prison to accommodate a rehabilitation program; substituting prison for electronic tagging or unpaid work; having a day release from prison to sit an exam), whilst ensuring that the sentence is credible (“you cannot come back to the prison in the evening completely drunk”) and the victim’s interests in receiving compensation are respected.” (Hodgson and Soubise 2016).

*B. A Diminished Defense Role*

The broad investigative remit of the French system, in which the pre-trial phase is understood to be conducted or supervised by a neutral judicial officer, has resulted in a relatively diminished role for the defense, when compared with procedures within the adversarial tradition (Hodgson 2002a), in which the prosecution and defense are each tasked with collecting evidence to support their own case. This model of judicially supervised investigations has meant that the role of the defense lawyer has not developed as a key participant in the investigation and trial of criminal offenses in France and in particular, the unity of the professional body of *magistrats* (in which both trial judge and prosecutor share the status of *magistrat*) further undermines the ability of the defense to challenge the results of the judicial inquiry (Hodgson 2002a; Hodgson 2005; Hodgson 2010). In contrast to the high degree of trust that characterizes the police-prosecutor relationship, as an *avocat*,the defense lawyer is something of a “professional outsider” both in function and professional status. Defense lawyers have been described as “accessories that are not needed at all” (Soulez-Larivière 2011).

The participation of defense lawyers in pre-trial judicial investigations has developed slowly. From the nineteenth century, the *instruction* procedure was open to defense lawyers who were permitted to assist suspects interviewed by the *juge d’instruction* and were given access to the investigation dossier. This prompted the rise of preliminary investigations carried out under the supervision of the *procureur*, which took place before, or – more and more frequently – instead of, the *instruction* and in which defense lawyers had no role at all. The *procureur*’s role grew alongside that of the policing function and theoretically, defense rights were guaranteed by *procureurs*, as judicial officers responsible for the investigation and prosecution and then more specifically, through their supervision of the GAV. Suspects held in *garde à vue* were first permitted to see a lawyer in 1993, but this was only for a thirty-minute consultation, twenty hours into detention; in 2000, access was granted from the start of detention. Following miscarriages of justice (e.g. Patrick Dils, see Hodgson 2005) and growing pressure from the European Court of Human Rights (*Salduz v Turkey*, E.H.R.R. 19 (2009); *Brusco v France*, 1466/07 14 October 2010), the right to legal advice at the police station was finally extended to allow suspects to have their lawyer present during police interrogation, though they are limited in the interventions that they can make and the lawyer-client consultation remains limited to thirty minutes.

The role of defense lawyers has thus increased progressively and a more “contradictory” system of procedure was introduced, in particular at trial.[[3]](#footnote-3) However, the structure of French criminal procedure places significant weight on the pre-trial phase and research has demonstrated that, more than any evidence put forward by the defense, trial judges tend to trust the dossier of evidence presented by the *procureur*, which is considered to be the product of an investigation conducted under the supervision of a neutral judicial officer (Hodgson 2005). During the pre-trial, the defense is able to participate by requesting investigative acts during the *instruction*, but in the vast majority of cases where oversight is provided by the *procureur*, the defense role remains limited and passive. Lawyers themselves have described their role during the *garde à vue* as being “just decorative, like a vase on the table” (Blackstock et al. 2014, p. 338). Thus, in the vast majority of criminal cases, there is an absence of the *contradictoire* procedure heralded in the preliminary article to the CPP as crucial in ensuring equality of arms and a fair trial. In this way, the role and effectiveness of the defense is most limited where the judicial nature of the investigation is weakest. This is significant in the lack of protection for defense interests and the questionable degree of judicial supervision exercised by *procureurs* compared with *juges d’instruction*. More broadly, this judicial status is called into question by the nature of prosecutorial accountability and the independence of the prosecution function from the executive.

*C. Prosecutors, Judges and Executive Power*

The *Conseil constitutionnel* (France’s constitutional court) has repeatedly affirmed that *procureurs* are members of the judicial authority, alongside judges. However, whilst the Constitution proclaims the independence of the judicial authority and its role as guardian of individual freedoms, it also distinguishes between two categories of *magistrats*: the *magistrats du siège* (sitting judiciary) – judges – and the *magistrats du parquet* (standing judiciary) – *procureurs*. The sitting judiciary are irremovable (art. 64) and their appointment and career progression are defined by the High Council for the Judiciary (*Conseil Supérieur de la Magistrature* – CSM). Conversely, *procureurs* operate under the authority of the Minister of Justice, a member of the government, who is not bound by the CSM advice for appointments, discipline and career progression decisions. The national public prosecution service, called *ministère public*, is organized in a pyramidal hierarchy with the Minister at the top who gives instructions on public prosecutions through circulars detailing the national prosecution policy. This creates a tension between the independence of the *procureur* as a judicial authority and the political nature of the executive power to which she is accountable.

This relationship is embedded within the prosecution function, which developed historically under the authority of the executive. Throughout the nineteenth century, the *procureur*’s hierarchical organization and dependence on the government were progressively reinforced under the Republics (1792-1795, 1848-1851 and 1870-1940) and the Empires (1804-1815 and 1852-1870). Appointed centrally, the *procureurs* were strictly subordinated to the executive and dismissible at any point. This gave the government a particularly docile instrument that the absolute monarchy had never enjoyed (Royer 2000). The nineteenth century was marked by constitutional instability in France, with each regime succeeding the next at a rapid pace. Each such change was accompanied by the removal of the *procureurs* considered too agreeable to the old regime and this practice of political appointment continues today. A constant theme in the debate around the *procureur*’s independent status as a judicial officer, is this continuing historical link with political power, manifested in recent decades by high-profile cases in which political interference in prosecutorial decisions has triggered suspicions of undue protection for friends of the party in power, or of criminal investigations launched for political gains (Hodgson 2010, 2005, pp. 17–19). Critics consider this proximity between public prosecutors and politicians as an unacceptable interference by politicians into judicial decisions. However, it is also described as a necessary accountability channel in a modern democracy: since public prosecutors decide who should be charged and for what offence according to legal rules and in conformity with the public interest, they should be accountable to elected representatives of the people whose democratic mandate provides them with the legitimacy to define what is in the public interest. This is particularly true in France where public prosecutors have an important role in diverting cases away from the criminal justice system through out-of-court disposals and therefore select the cases which are processed by the criminal justice system.

A string of scandals from the end of the twentieth century (Hodgson 2005, pp. 17–19) saw governments giving instructions to prosecutors to drop certain cases, in order to protect political allies suspected of criminal offences. More recently, cases involving former President Nicolas Sarkozy involved his supporters denouncing instructions to public prosecutors issued by the socialist government, for their own political gains. Such political interference in criminal justice matters prompted calls to sever the ‘umbilical cord’ which links the public prosecution service with government. Several official reports have examined the status of the *ministère public*, but they have all concluded that the appointment of a professional public prosecutor at the head of the public prosecution service would lack the necessary legitimacy to define prosecution policy derived from democratic elections (Delmas-Marty 1991; Truche 1997; Nadal 2013).

Several reforms have nonetheless weakened the hold of politicians over decisions to prosecute in individual cases, in order to improve public confidence in the criminal justice system. Since 1993, any instructions concerning a case were required to be in writing and placed on the case file, thus being disclosed to the defense before trial. This was a positive step, but in practice, *procureurs* reported that it proved harder to break the culture of subordination, especially when those issuing the instructions were also responsible for the prosecutor’s career progression (Truche 1997). In 1998, a Bill was presented before Parliament to weaken the hierarchical control exercised by the Minister of Justice over public prosecutors, as well as the role of politicians in their appointment and promotion. However, the change was opposed as giving too much power to prosecutors and leaving them insufficiently accountable to democratically elected politicians (Pradel and Laborde 1997; Hodgson 2002b; Hodgson 2005). Finally, the Act of 25 July 2013 now forbids the Minister of Justice from addressing any instruction in individual cases to public prosecutors. Despite those reforms, public prosecutors are still perceived as the Trojan Horse of the executive in the criminal process.

Some commentators argue that the *ministère public* should not retain its judicial status, but should be separated off from the *magistrature*. For them, the status of judicial officer enjoyed by *procureurs* under French law compromises the independence of judges. The European Court of Human Rights (ECtHR) has in fact denied the quality of judicial officer to *procureurs*. Article 5-3 of the European Convention of Human Rights (ECHR) provides that “Everyone arrested or detained . . . shall be brought promptly before a judge or other officer authorised by law to exercise judicial power” The ECtHR considered that French public prosecutors did not meet the requirements to be this “other officer authorised by law to exercise judicial power” because they do not “offer the requisite guarantees of independence from the executive and the parties, which precludes [their] subsequent intervention in criminal proceedings on behalf of the prosecuting authority” (*Medvedyev v France* E.H.R.R. 39 (2010), para. 124; Hodgson 2010). A recent study found that a majority of judges and defense lawyers are also in favor of a split of the *magistrature* to guarantee the independence of judges (Milburn, Kostulski, and Salas 2010, 147–148). However, the status of *magistrat* performs a crucial legitimizing role for *procureurs* as guarantors of society’s interests. The suggestion of losing this status is opposed by a majority of *procureurs* who fear a broader “Anglo-Saxon” drift, in which prosecutors would be reduced to the role of public accusers (Beaume 2014).

Confirming earlier studies (Milburn, Kostulski, and Salas 2010), in interviews conducted as part of Soubise’s doctoral study, *procureurs* regretted this “Anglo-Saxonisation” as they believed that their status of *magistrat* was essential to defend their position as neutral judicial officers and thus representatives of the public interest:

[O]ur challenge is really independence and remaining part of the body. We really need to make sure we don’t get pushed out. The Anglo-Saxonisation of concepts can well push us out. . . . I mean that, when I speak to people who are either Anglo-Saxon or shaped by Anglo-Saxon judicial culture, they don’t understand our system because it seems completely strange to them. For an Anglo-Saxon, we are a bit like E.T. . . . we need to remain *magistrats*, independent *magistrats*. We need to remain within courts. It’s a challenge, I’m not convinced we’ll manage to do it. [Interview respondent FR1]

They also defended the possibility that exists to switch between different functions (trial judge, investigative judge, public prosecutor) during their career:

[W]e would lose a lot by having *procureurs* only being *procureurs* for their whole career. It’s vital that we don’t stay in the same functions within the sitting judiciary, but I think that it’s also important to go from the sitting judiciary to the *parquet*. I think it’s really good because we precisely keep an independent spirit and a spirit of the guardian of freedom that we maybe would lose sometimes at the *parquet*. [Interview respondent FR9]

This echoed Hodgson’s observations, in which some *procureurs* expressed the importance of this more global perspective:

*Procureurs* are *magistrats* and can become trial judges, or *juges d’instruction*. I think that this position is really a question of culture. That is to say that here, recruitment is by a single competitive examination and in this context, it is believed that all *magistrats* can be called on to carry out all of the three functions. This has the advantage that one can put oneself in the place of the *juge*, certainly to be less partisan and to understand the strict requirements of evidence…many people have been *juges du siège* and in the *parquet*…that has the potential to vary your viewpoint. [Interview respondent D3, Hodgson 2005, p70]

As a judicial officer, whose independence in relation both to the police and the executive is sometimes in doubt, the status of the *procureur* is ambivalent. This ambivalence carries through to the demands of her expanding role. As a judicial officer, she has been given additional powers to manage and dispose of cases, whilst at the same time being required to participate in local policymaking alongside criminal justice actors and politicians. Although it is her quality as a judicial officer that lends legitimacy to this policy role, fellow *magistrats* see this level of collaboration with police and politicians as underlining her place within the executive hierarchy.

## III. An ambivalent role: between the executive and the judiciary

As in many other jurisdictions (Jehle and Wade 2006; Luna and Wade 2012; Tonry 2012) French public prosecutors have seen their role grow exponentially over the past few years. Originally, their function was framed as a simple, binary decision: they received cases from the police and had to decide whether to prosecute or not. Given the growing burden on the criminal justice system, they have been tasked with diverting cases away from the courts and with orientating cases towards speedy procedural pathways. Their status as *magistrats* has also justified *procureurs* taking over some functions which, traditionally, were allocated to judges. In parallel, they have also been encouraged to intervene earlier and more quickly in criminal investigations and to develop strong ties with local criminal justice and political actors through their participation in regular meetings on crime prevention, bringing together several other agencies, such as the police and local authorities. The range and nature of the prosecution function means that, more than ever, *procureurs* are the linchpins of the criminal justice system, but the different and sometimes conflicting aspects of their role also create tensions.

*A. The Growing Power of the Prosecutor as Judicial Officer*

Many aspects of the *procureur*’s function can be identified as being “judicial”. Thus, as described above, *procureurs* are tasked with overseeing criminal investigations. In particular, they must be informed immediately if a suspect is taken into police custody and they have authority to extend detention beyond 24 hours. Their status as a judicial officer gives them the necessary legitimacy to act as a check on the legality and proportionality of the measure, as they are perceived as guarantors of individual freedom. This image of the *procureur* as *magistrat* and protector of the public interest gives them great prestige. Recently, it has also justified the shift of powers away from the judge to the public prosecutor through reforms designed to ease caseload pressures and reduce cost and delays.

A vast array of alternatives to prosecution has developed from the 1980s and Table 1 illustrates the growing use made of these alternatives over the last decade.

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| **Table 1**  **Alternatives to prosecution, *ordonnances pénales* and CRPC (2004-2012)** | | | | |
|  | **Prosecutions** | | **Alternatives to prosecution** | |
| ***Ordonnances pénales*** | **CRPC** | ***Compositions pénales*** | **Other alternatives** |
| **2004** | 58,822 | 2,187 | 25,777 | 388,944 |
| **2005** | 105,765 | 27,200 | 40,034 | 421,169 |
| **2006** | 129,577 | 50,250 | 51,065 | 468,045 |
| **2007** | 129,914 | 49,712 | 59,770 | 490,434 |
| **2008** | 136,124 | 56,326 | 67,230 | 544,715 |
| **2009** | 144,711 | 77,530 | 73,392 | 558,047 |
| **2010** | 126,997 | 69,232 | 65,460 | 464,268 |
| **2011** | 136,103 | 63,452 | 65,221 | 491,087 |
| **2012** | 140,561 | 63,886 | 73,241 | 510,128 |
| **2013** | 145,066 | 65,100 | 73,732 | 493,089 |
| Source.- Ministère de la Justice, Statistiques: Activité des parquets des TGI, available at: <http://www.justice.gouv.fr/statistiques.html> [accessed 4 June 2016]  Note.- ‘Other alternatives’ include *rappels à la loi* (warnings), regularization/reparation and mediation. | | | | |

*Procureurs* can discontinue cases on the condition that the offender and the victim take part in mediation, that the offender completes a rehabilitation program, or that the offender repairs the damage or pays compensation to the victim. *Procureurs* can also issue warnings (*rappels à la loi*) to offenders and in 1999, *procureurs* were given the power to administer *compositions pénales*: if the suspect admits the offence, the public prosecutor can impose a sanction, including a fine.

If public prosecutors decide to prosecute, they again can choose from a wide range of procedural pathways, which have been introduced to deal with cases more quickly than through the traditional trial. *Ordonnance pénale* is a speedy procedure for minor offenses in which the judge takes her decision solely on the prosecution dossier and without a hearing. The *comparution sur reconnaissance préalable de culpabilité* (CRPC) was introduced in 2004 as the French “guilty plea” procedure in which the prosecution can offer a sentence (of up to a year imprisonment) to the defendant who admits the commission of an offence. This procedure is, however, limited to minor or middle-ranking offenses and cannot be used for serious crimes such as homicide or rape. The *comparution immédiate* allows the public prosecutor to send a case to trial immediately after the period of police detention if the case is ready to be tried, which generally, but not always, means that the accused has made an admission. This procedure usually results in harsher prison sentences than “normal” trials (Mucchielli and Raquet 2014). Finally, if the offence is serious or if the public prosecutor decides that the case is not ready to be tried, she can open a formal investigation under the authority of a *juge d’instruction*. This is a costly and lengthy procedure and the clear trend has been away from *instruction*, charging less serious offences in order to avoid the mandatory *instruction* that is required for *crimes*, or splitting large cases into smaller, more manageable ones. This keeps cases out of the higher *cour d’assises* and in the middle-ranking court, the *tribunal correctionnel*,and so is known as *correctionnalisation*.

Through these various measures, it can be seen that public prosecutors effectively adjudicate on guilt for all out-of-court disposals and *ordonnances pénales* where the judge makes her decision solely on the prosecution papers, without hearing the defense. For *compositions pénales* and CRPC, their role extends to that of sentencer, as they propose a penalty to the accused who has already admitted the offence. Nonetheless, as they have a different status from ‘sitting’ judges, their powers are limited. Thus, a judge is needed to validate the guilt adjudication and the sentence offered to the offender in the *composition pénale* and the CRPC. Similarly, *procureurs* can only extend the police custody period up to 48 hours; a decision by a judge (the *juge des libertés et de la détention*)is necessary to extend it further in organized crime and terrorism cases (up to 96 hours).

*B. The Prosecutor as Policymaker*

Public prosecutors effectively decide which cases should be dealt with by the criminal justice system and how, affording them a considerable degree of discretion. The wide range of alternatives to prosecution and the prosecution pathways that *procureurs* have at their disposal, allow them to modulate the response they bring to criminal offenses, depending on the gravity of the offense, but also the personal circumstances and character of the offender (Hodgson and Soubise 2016). There is a graded scale of responses available to the *procureur*, allowing them to manage the flux of cases, ranging from warnings to the more severe *comparution immédiate*. Prosecution policy is defined at the national level by the Ministry of Justice and adapted to local needs by regional and local prosecutors’ offices (*parquets*) depending on local criminality and resources. Local prosecution policy is developed in close co-operation with law enforcement authorities who provide information about local criminality. The *procureur* sits in an interesting position, implementing both local and national level policy, and resolving potential conflicts between the two.

At the local level, policy is often determined in part by the available resources, as illustrated by this extract from an interview with a *procureur*:

I always take this metaphor of the funnel . . . to describe the *parquet*. In [this court], the *parquet* receives 38,000 files every year at the entrance of the funnel. At the other end, the court will make 6,000 decisions in criminal matters. How do we go from 38,000 to 6,000? You can see that there is a problem of distillation, of sorting, of cleaning, of sieving…Once this cleaning has been done and there remain about 9,000 files in which there is an offence, a suspect, a victim, etc., the *Procureur de la République* looks at the resources he’s got. . . . He needs to play with procedural tools he’s got to deal with the extra 3,000 files that cannot be tried by a judge. So, he will use alternatives to prosecution . . ., but at the end of the year, he needs to find a solution for the 30,000 or 40,000 files that came in, either by a discontinuance, or a trial, or something else, but everything must find an answer. So, inevitably, the prosecution policy is fully dependent on this! [Interview respondent FR1]

This can be frustrating for the *procureur* who may find her sense of justice compromised by the resources available.

We came from a much smaller place and so we didn’t realise how overloaded the court here was. One day, the *premier procureur adjoint* came into the office and said that since we had arrived there had been many more prosecutions and there simply were not the resources to accommodate them. That can be very annoying because, for example, a lot of domestic violence is not prosecuted. [Fieldnote observation of two young *procureurs* in site D, Hodgson 2005, p231]

Recent years have seen the development of a close working relationship between the *procureur* and the *préfet*, the head of the law enforcement authorities and the representative of government at the local level. This has been encouraged by the creation of numerous bodies bringing together criminal justice agencies and local authorities to develop local crime prevention policies, in particular in socially-disadvantaged areas with high criminality rates. *Procureurs* have been an integral part of this crime prevention and repression policy push, due to their supervisory powers over the police during criminal investigations and their role in authorizing certain policing operations, such as identity checks in a given area. This expanded function has once again placed the *procureur* in a close relationship with the executive. However, unlike the top down requirement to implement Ministry of Justice policy guidelines, this role sees the *procureur* working in partnership with the executive’s local representative in the development of policy.

The divide between judicial and quasi-executive functions of public prosecutors creates some tension. In particular, the growing participation of public prosecutors in defining local criminal justice policy, in close partnership with the *préfet*, has caused some unease amongst the prosecutor’s judicial colleagues. On the one hand, rubbing shoulders as equals with *préfets* who are major representatives of the state at the local level, can be seen as a positive recognition of the *procureur*’s role and could allow them to promote judicial values in crime prevention and prosecutions. On the other hand, the ‘*prefectoralisation*’ of the *parquet* also entails the risk of distancing *procureurs* from the judicial branch and has been perceived as a compromise of principles with the executive branch by some judges (Milburn, Kostulski, and Salas 2010, pp. 135–137). Beaume (2014, pp. 27–30) also cautions that *procureurs* are being pulled into police-dominated procedures. Judges fear that this new function could undermine the *procureur*’s judicial role as they are increasingly seen to act more as an administrator or civil servant, i.e. obedient to the government.

One *procureur* interviewed by Soubise for her doctoral study regretted this suspicious attitude, arguing that their new role allowed them to represent the judicial branch in these meetings with law enforcement agencies and local authorities:

[Judges] don’t understand that we are their protective screens, as long as we behave like *magistrats* and not as super-*préfets* or judicial *préfets* and that we keep our distance from the police. For example, in the monthly meetings with the police and *préfecture*, sometimes court decisions are commented upon. When this happens, the *Procureur de la République* must be strong enough and ‘judicial’ enough to remind people of some principles, in particular that court decisions shouldn’t be commented upon but conformed with. . . . As long as we keep this stand, we are protective screens for our sitting judiciary colleagues. [Interview respondent FR1]

*Procureurs* combine attributions associated with both the judicial and the executive branches of government. On one hand, they are expected to exercise judicial supervision over police investigations and to represent the public interest in the prosecution and sentencing process. On the other hand, they are tasked with implementing the government’s crime policy in deciding how criminal cases should be disposed of (out-of-court disposals, speedy procedures, etc.) and they are required to define local criminal justice policy in close cooperation with the *préfet* and local authorities. Given the central role played by *procureurs* in the French criminal justice system, strong accountability procedures need to be in place in order to ensure that they are held to account for their decisions. Although democratic and hierarchical accountability channels exist in theory, *procureurs* have a wide degree of discretion and seldom have to justify any of their decisions in practice.

## IV. Prosecution discretion and accountability

The topic of prosecutorial accountability has been particularly studied in US literature in recent years. Many commentators have lamented the lack of accountability of US public prosecutors, especially given the high level of discretion entrusted to these public officials and the impact that their decisions have on the destiny of cases in the criminal justice system (Bibas 2009; Wright and Miller 2010; Barkow 2010). In France, the question of prosecutorial accountability traditionally leads to the issue of prosecutorial independence: to whom should public prosecutors be accountable? *Procureurs* indeed play a central role in the criminal justice system as they decide which cases should be dealt with in the system and which others can be dealt with outside of court. Furthermore, as already noted, once the decision to prosecute has been made, *procureurs* also decide which procedural pathway is the most appropriate for each case: *ordonnance pénale*, CRPC, traditional trial, etc. All these decisions not only involve following legal rules, but also policy regulations based on public interest criteria.

*A. Hierarchical Accountability*

The French national prosecution service is organized in a hierarchical pyramid, with the Minister of Justice at the top. It has been characterized as a technical, hierarchical and bureaucratic system in which the potential for official discretion is strictly limited (Damaška 1986). Two channels of accountability exist: hierarchical and democratic. Each local court center (164 in total in France) has its own public prosecutor’s office (*parquet*), which is headed by a *Procureur de la République*. She is responsible for the work of her subordinates who act in her name. At the regional level, each court of appeal (36 in total) has a *parquet général* who oversees appeal cases and is headed by a *Procureur général*. As well as being responsible for the *procureurs* working on appeal cases in her own office, the *Procureur général* is also responsible for the work of local *parquets* in her jurisdiction. Finally, each *Procureur général* is answerable to the Minister of Justice. This hierarchical accountability is supposed to promote coherence and consistency across the territory. The Minister of Justice is in turn accountable before Parliament, which provides for democratic accountability.

The Ministry of Justice issues guidelines through circulars detailing the government’s criminal policy. In practice, however, democratic and hierarchical oversight is weak for the vast majority of cases, with only high-profile affairs attracting special attention. National policies remain broad and do not really constrain *procureurs* in their decision-making. Public prosecutors lament the accumulation of national priorities, with a *procureur* interviewed by Soubise for her doctoral study citing violence against women, protection of wetlands, road traffic accidents, transport of hazardous materials, bullying at school and drugs as examples of national priorities, before concluding: “In the end, we end up with something quite balanced with all the priorities.” Instead of listing priorities, she suggested it would be more effective for the Ministry to define what did not need to be prosecuted:

It would be better to do it the other way round . . . and to decide what we’re going to put at the bottom of the pile. . . . I think it would be best to ask the question like this. Shouldn't we drop cases of €10-internet frauds? Are we going to open long investigations on all these cases which will lead us towards the Ivory Coast or should we just drop them? Are we going to investigate mobile phone thefts or not? [Interview respondent FR3]

*Procureurs* resented the government’s interference in their handling of cases, commenting that the circulars were often only stating what was already apparent:

It feels a bit like stating the obvious: violence against women is bad, it's very serious, ok, but we don't feel like we've ignored the issue for years! . . . There is no need to tell us all that! There is no need to tell us we need to fight against pedophilia! That's what I mean when I say it's stating the obvious! [Interview respondent FR3]

Ministerial circulars can sometimes be perceived as little more than communication tools for politicians who wish to appear to be acting against a particular aspect of criminality, rather than real instructions that must be conformed with, as explained by the same *procureur*:

[E]verybody drafts a report, we include other competent ministers (health, transport, etc.) and we all say how important it is, etc., etc. . . . It looks a lot, from our point of view, like a publicity display! The national criminal policy is something very media/politically driven. [Interview respondent FR3]

Few targets are imposed from the center. Thus, recent policies have recommended that delays in the treatment of cases be reduced, whilst discouraging pure and simple discontinuance for cases of minor offences. There are no specific instructions, however, in terms of the means to reach those objectives. The main published indicator measuring the performance of the public prosecution service is the rate of ‘criminal response’, i.e. the rate of prosecutable cases, which are either prosecuted or dealt with through an alternative to prosecution. The rate has been in constant increase since its creation at the end of the 1990s and is put forward by the Ministry of Justice to evidence the prosecution service’s efficiency.

The broad character of national policies can be explained by two seemingly contrasting characteristics of French legal culture: the denial of discretion in the application of the law and the importance of adapting decisions to individual cases.

*B. Discretion and the Adaptation of the Prosecution Response*

By contrast with common law, the codification of French law means that it is presented as a highly logical and systematic body of rules (see Bell 2001). To the Anglo-Saxon lawyer, French court decisions are remarkable for their brevity and the absence of any explanation as to how the court came to its decision. Legal reasoning is characterized by syllogism: the major premise is the applicable law, the minor premise is the facts of the individual case and the conclusion is deducted logically from the application of the law to the facts, without the application of any individual discretion by the decision-maker (see Mincke 1999; Mincke 2002; Hodgson 2005).

On the face of it, it appears that French public prosecutors have a high degree of discretion in practice as they not only determine whether a case should be prosecuted, but also the level of charge, as well as the case pathway in the criminal justice system; neither are they overly constrained by government policy. Similarly to public prosecutors in England and Wales, they are subject to the principle of opportunity of prosecution – rather than the principle of legality – and thus act within a broad legal framework, but have wide discretionary powers in individual cases. Yet, a form of denial of discretion is apparent in the regulation of prosecutorial decision-making. Since applying the law to a set of facts does not imply the exercise of individual discretion under legal syllogism, there is no perceived need to define prosecutorial decision-making. Few policies issued by the Ministry of Justice thus give detailed instructions to public prosecutors on the application of the criminal law itself. For instance, in contrast to the guidelines issued to prosecutors in England and Wales by the Director of Public Prosecutions, there is no definition of the evidential threshold necessary to justify a prosecution. Instead, circulars tend to concentrate on the public interest aspect of the prosecutorial decision where discretion is more openly acknowledged and where the political hue of the government can be expressed. For example, rightwing governments tend to favor stricter procedural pathways such as *comparution immediate*, which leads to harsher sentences, and to recommend appealing against any decision to depart from minimum sentences (recently repealed by the current leftwing government).

*Procureurs* are allowed to keep a broad discretion and thus a certain independence from the national directives from the Ministry of Justice through their application of the law and both local and national policies to individual cases. Thus, national policies are expected to be adapted by *procureurs* to their regional and local criminal contexts (Art 30, 35 and 39-1 CPP). This has led to localized arrangements for prosecutions defined through inter-agency cooperation which, when successful, have been taken up by the Ministry and extended across the whole territory, offering greater flexibility than a centralized, top-down approach. The importance of adaptation was confirmed by *procureurs* interviewed for Hodgson’s 2005 empirical study and Soubise’s doctoral study:

If you arrest someone with 10g of hashish here [a major city], we will not prosecute. It is of no interest, it is not a threat to public order. But in a town of 15,000 inhabitants, where everybody knows one another, where nothing ever happens, you find 10g of hashish and in fact, you need a different kind of judicial response because everybody is going to panic, because everybody is going to say, ‘There are drugs, we have never had this before, this is a major event.’… depending on the scale of the problem, attitudes will be different … you can say that one court was less severe and another court was more severe. This is because there is a context, and one can say that actually, justice, from one angle, will not be the same for everyone, but it will be designed to have the same degree of effectiveness. So effectiveness is not necessarily achieved by treating all things in the same way. [Interview respondent E5, (Hodgson 2005, p. 230)]

[The *procureur*] will also adapt: is it an area where people drink a lot of alcohol or not? Is it an area where there is a lot of road traffic criminality or not? Is it an urban or rural area? So, inevitably, there is a very strong adaptation, so that priorities decided at the national level don’t always all have an impact at the local level. It’s both a liberty and a necessity to adapt to the local facts. It’s important. [Interview respondent FR1, Soubise’s doctoral study]

Although certainty and consistency of decisions across the territory are perceived as an important guarantee in terms of equality of all citizens before the law, the principle of individualization has a more decisive influence in French legal culture. According to this principle, decisions in the criminal justice system should be adapted to the individual case. This stems from the desire for sentences to be adapted to the gravity of the offence and the personality of the offender, but this concern extends to prosecutorial decisions.

*C. Independence and Accountability to the Law*

Although *procureurs* do not have the same status as judges, their belonging to the same professional body gives them a strong ethos of independence. They perceive themselves as accountable to the law first and foremost, rather than to their hierarchical superiors. This accountability to the law is dominant in the professional discourse of *magistrats*. The compendium of ethical obligations of *magistrats* issued by the CSM in 2010 provides in its preamble that: “As members of the judicial authority, *magistrats* draw their legitimacy from the law, which requires them to be independent and impartial, principles also imposed on the other powers. Disregarding these imperatives would compromise public confidence.” The tension between this accountability to the law and hierarchical subordination was expressed clearly by one *procureur* interviewed for Soubise’s doctoral study:

*Procureur* (referring to the hierarchical structure of the *parquet*): well, the hierarchical functioning is clear in a *parquet*, there is a head, the Code says it, but at the same time, we are not in an administrative system of transfer of powers or signatures. ***Magistrats* don’t get their power from the head of the *parquet* but from the law.** (Emphasis added) [Interview respondent FR1]

*Procureurs* interviewed for Soubise’s study were almost unanimous in assuring her that they would refuse to carry out an act demanded by their superior if they disagreed with it, even giving examples of occasions when they had actually decided not to follow an order.

***Procureur***: Personally, I believe that my status as *magistrat* means that if I really disagree and I have a moral dilemma on what I’m asked to do, I must tell my superior and my superior can always deal with the case himself. I have a duty to be loyal which means that when I am going to make a decision which I know goes against what my manager would have decided, I have a duty to inform him and if he disagrees with me, he can always take the file back.

[He went on to describe an occasion in his former post where he had a disagreement with his superior and refused to carry out a direct order.]

We receive instructions telling us to do this rather than that, I follow them, and it doesn’t bother me. But, where we do have the status of *magistrat* is when I think – and I hope to be able to carry on exercising my role like this – is to be able to say: “Here I can’t [do as his superior has asked]. I morally cannot do it. And I won’t do it”. Then, the *Procureur* [*de la République*] does what he feels like, maybe I’ll be disciplined for not respecting the instructions! Personally I think... when it’s explained properly... I did discuss it afterwards with my previous *Procureur* [*de la République*] and she understood: she asked me once, then twice, she saw I wasn’t going to do it, she understood the moral dilemma I had. [Interview respondent FR7]

*Procureurs* interviewed by Mouhanna expressed similar views (Mouhanna 2004, p. 513) and those interviewed by Hodgson considered their accountability to the courts more important than their accountability to their hierarchy (Hodgson 2002b, pp. 238–239).

This ability to disobey orders from their hierarchy is officially recognized in article 5 of the Ordonnance of 22 December 1958 regulating the status of the *magistrature* which sets out the subordination principle, but immediately adds: “in court, their speech is free.” This means that *procureurs* must follow their hierarchy’s instructions in written decisions, but are free to “make such oral submissions as [they] believe to be in the interest of justice.” (Art 33 CPP). Freedom of speech only applies at court and the vast majority of prosecutorial decisions are in fact taken before the trial. Since they are in writing, they must conform to hierarchical decisions. Nevertheless, the mere existence of this possibility reflects the central belief that individual *procureurs* are legitimate in applying the law and making decisions in the public interest, even when it goes against direct hierarchical orders (potentially from elected politicians). As a result, hierarchical accountability is primarily based on trust and loyalty. Managers rely on their subordinates passing on information to them about individual cases, whilst senior managers at the Ministry of Justice rely on annual reports drafted by the head of each local and regional *parquet* to evaluate the overall performance of the service.

*C. Standardization as Efficiency*

Limited prosecutorial accountability means that individual *procureurs* enjoy a broad degree of discretion. However, resources and caseload pressures lead to the standardization of the response they bring to minor cases in practice, driven by local as well as national impertaives. A recent empirical study concluded that *procureurs* are more likely to choose the most efficient and effective response within resource constraints, than to seek a highly personalized option adapted to the personality of the suspect and their capacity to understand the gravity and impact of their actions and the final outcome of the criminal justice process (Danet 2013, pp. 109–110). This has implications for the professional role of the public prosecutor, as it reduces *procureurs* to a more administrative, rather than judicial, role and it creates some disquiet among them, as evidenced by this comment from a *procureur* interviewed for Soubise’s doctoral study:

I don’t mind having to deal with files quickly but I don’t want to botch up. No, that’s not what we signed up for! We didn’t sign up for doing a rush job. It’s not just cases, there are people involved. [Interview respondent FR5]

This concern for efficiency and effectiveness is particularly apparent through the practice of “*directives permanentes*” which standardize the response to certain mass offences. Usually, police officers must ring the prosecutor’s office to report on every case they investigate, so that the *procureur* can decide whether to prosecute or not and which procedural pathway is most appropriate to the case. Permanent instructions allow public prosecutors to delegate part of their casework to police officers by providing them with set tables for mass offences, such as drink driving, shoplifting and cannabis possession, which allow them to determine the appropriate prosecution pathway following grading scales, depending on blood alcohol level, quantity of drugs, or value of stolen goods for example. This system allows police officers to issue the paperwork and send case files directly to the *Maison de la Justice et du Droit* (MJD – House of Justice) which deals with out-of-court disposals on behalf of the public prosecutors’ office. Although the suspect’s previous encounters with the system are taken into account, this system leads to a routinization of the criminal justice process.

V. Concluding Remarks

Nobody knows what the future will hold, but current trends suggest that the role of the *procureur* will remain central within all aspects of the criminal process, not only prosecution.The inherent ambivalence within her status both as a prosecutor accountable to the executive, and as a judge, can be exploited by government, enabling it to influence the exercise of power within the criminal process, whilst simultaneously claiming judicial oversight of those powers. The 2016 reforms placing the temporary and exceptional measures enacted after the terrorist attack in Paris in 2015 on a statutory footing do just this. The reform invokes the judicial powers of the prosecutor to justify the further diminishing of the powers of the sitting judiciary (the Bill extends to *procureurs* powers which are currently held only by investigative judges, to authorize wire-tapping and electronic data capture in organized crime and terrorism cases), whilst also allowing for police operations to be authorized swiftly and in some instances, even without full judicial control. There is also interest in shoring up the judicial character of the prosecutor, but corresponding attempts to strengthen the independence of the *procureur* by removing the power of the executive to determine her appointment and career, so aligning the *procureur* more closely with the sitting judiciary, look almost certain to fail as they have in the past: a similar project failed to be voted in 1998, as the reform requires a three-fifth majority in the Congress, the reunion of the two parliamentary chambers. It is therefore likely that the status of public prosecutors will remain unchanged.

The profession itself has been pushing against the increasingly managerialist forms of control exercised by the government. *Procureurs* have protested against their expanding role and the increasing number of functions allocated to them without any corresponding increase in resources. Constant reforms demand their intervention at more and more stages of the process and require their participation in numerous inter-agency meetings. In January 2016, in an unprecedented ‘revolt’ against Ministry of Justice orders, 86 percent of the heads of local *parquets* refused to provide all the usual information in their annual report to the Ministry in protest over the demands made upon them to account for their activities and produce information for which there is no adequate resource (Jacquin 2016). Although government claims that reforms requiring prosecutors to engage in a variety of additional functions, notably in the management and disposition of cases, are driven by the need to control caseloads, the figures suggest another story. Table 2 demonstrates that recorded crime is falling, not increasing. The demand is rather, that the prosecutor provides some form of response in cases that would otherwise be dismissed. The number of cases dismissed has halved in the last decade and court cases have decreased, but the number dealt with by the prosecutor have increased significantly. 28 per cent of prosecutable cases were settled in 2004, rising to 43% in 2014. The increased actions and workload of the *procureur* appear, therefore, to have a net widening effect rather than being aimed at decreasing the court’s docket.

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| --- | --- | --- | --- | --- | --- |
| **Table 2**  **Case Disposal by Public Prosecutors – 2004-2013** | | | | | |
|  | **Recorded Crime** | **Prosecutable** | **Dismissed** | **Settled by Prosecution** | **Tried by Criminal Court** |
| **2004** | 5,399,181 | 1,455,657 | 366,414 | 414,721 | 674,522 |
| **2005** | 5,143,257 | 1,461,904 | 323,594 | 461,203 | 677,107 |
| **2006** | 5,311,024 | 1,526,396 | 299,459 | 519,110 | 707,827 |
| **2007** | 5,273,909 | 1,476,535 | 241,597 | 550,204 | 684,734 |
| **2008** | 5,101,119 | 1,500,411 | 219,520 | 611,945 | 668,946 |
| **2009** | 5,030,578 | 1,487,675 | 182,552 | 631,439 | 673,684 |
| **2010** | 4,966,994 | 1,260,428 | 139,856 | 529,728 | 590,814 |
| **2011** | 5,771,017 | 1,250,966 | 136,971 | 556,308 | 557,687 |
| **2012** | 4,982,173 | 1,293,189 | 141,252 | 583,369 | 568,568 |
| **2013** | 4,899,894 | 1,306,758 | 137,317 | 566,821 | 602,620 |
| **2014** | 4,621,486 | 1,327,980 | 152,770 | 578,016 | 597,194 |
| Source.- Ministère de la Justice, Statistiques: Activité des parquets des TGI, available at: <http://www.justice.gouv.fr/statistiques.html> [accessed 4 June 2015] and Chiffres Clés de la Justice 2015, available at: <http://www.justice.gouv.fr/publication/chiffres_cles_20151005.pdf> [accessed 7 June 2016].  Note.- The following terms are translated from the original source. Recorded Crime: *Plaintes et PV reçus*. Prosecutable: *Affaires poursuivables*. Dismissed: *Procédures classées sans suite*. Settled by Prosecution: *Procédures alternatives réussies and Compositions pénales réussies*. Tried by Criminal Court: *Poursuites*. | | | | | |

The association of heads of local *parquets* (*Conférence nationale des procureurs de la République*) has called to refocus public prosecutors’ role on the core of the profession: prosecutions and the direction of police investigations. A recent report on the French criminal justice process also recommended a clarification of the *procureur*’s role in criminal investigations (Beaume 2014), warning against the closeness of the working relationship between the police and *procureur* which could undermine the independence of the *procureur* who could become a ‘super-police officer’.

Proposed legislation follows this recommendation and proposes the introduction of a new article 39-3 CPP providing that the public prosecutor ‘checks the legality of the means implemented by [police officers], the proportionality of investigative acts with regards to the nature and gravity of the offence, the opportunity to carry out the investigation in this or that direction, as well as the quality of its content. He ensures that investigations are aimed towards the determination of the truth and that both inculpatory and exculpatory evidence are collected, in the respect of the rights of the victim and of those of the suspect.’ (article 22 of the Bill). This new article defines the role of the *procureur* during the investigation in similar terms to that of the investigative judge. However, as already noted, the two types of investigations are fundamentally different in nature: whilst the *juge d’instruction* can request the assistance of the police in carrying out her investigation, the *procureur* supervises the investigation conducted by the police themselves (Hodgson 2005). Although this clarification of the role of the prosecutor should be welcomed, it remains symbolic; it is unlikely to affect the behavior of public prosecutors, who already understand their role as ensuring that the police collect both incriminatory and exculpatory evidence, despite their inability to exert any control over the investigation in most cases. In the most serious affairs, prosecutors will work more closely with officers, but in the vast majority, they have neither the time, the desire, nor the resources to do anything more than ensure that the dossier is in good order. Perhaps more importantly, this clarification is also accompanied by an extension of police powers to act outside any judicial control. Thus, the Bill introduces the possibility for the police to detain people for whom ‘there are serious reasons to think they represent a threat for the security of the state or that they are in direct and not coincidental relation with such people’ (article 18 of the Bill), for up to four hours, without informing the public prosecutor. In this way, the rhetoric of the prosecutor as judicial supervisor is strengthened at the same time as the control she is able to exercise over the police is weakened through the provisions of the law.

List of references

Aubusson de Cavarlay, Bruno. 2006. “The Prosecution Service Function within the French Criminal Justice System.” In *Coping with Overloaded Criminal Justice Systems The Rise of Prosecutorial Power Across Europe*, edited by Jörg-Martin Jehle and Marianne Wade. Berlin, Heidelberg: Springer.

Aubusson de Cavarlay, Bruno, René Lévy, and Laurence Simmat-Durand. 1990. “L’abandon Des Poursuites Par Le Parquet.” *Questions Pénales* III (2).

Barkow, Rachel E. 2010. “Organizational Guidelines for the Prosecutor’s Office.” *Cardozo Law Review* 31 (6): 2089–2118.

Bastard, Benoit, and Christian Mouhanna. 2007. *Une justice dans l’urgence : le traitement en temps réel des affaires pénales*. Droit et Justice. Paris: PUF.

Beaume, Jacques. 2014. “Rapport Sur La Procédure Pénale.” Ministère de la Justice.

Bell, John. 2001. *French Legal Cultures*. London: Butterworths.

Belloni, Frank, and Jacqueline Hodgson. 2000. *Criminal Injustice an Evaluation of the Criminal Justice Process in Britain*. Basingstoke : Palgrave,.

Bibas, Stephanos. 2009. “Prosecutorial Regulation versus Prosecutorial Accountability.” *University of Pennsylvania Law Review* 157 (4): 959–1016. doi:Article.

Blackstock, Jodie, Taru Spronken, Anna Ogorodova, Ed Cape, and Jacqueline Hodgson. 2014. *Inside Police Custody: An Empirical Account of Suspects’ Rights in Four Jurisdictions*. Ius Commune Europaeum 113. Cambridge: Intersentia.

Breen, Emmanuel. 2003. *Gouverner et Punir : Le Rôle de L’exécutif Dans Les Procédures Répressives*. 1re éd. Paris: PUF.

Damaška, Mirjan. 1986. *The Faces of Justice and State Authority - A Comparative Approach to the Legal Process*. New Haven; London: Yale University Press.

Danet, Jean, ed. 2013. *La réponse pénale dix ans de traitement des délits*. Rennes: Presses universitaires de Rennes.

Delmas-Marty, Mireille. 1991. *La Mise En état Des Affaires Pénales: Rapport de La Commission Justice Pénale et Droits de L’homme*. Paris: La Documentation française.

———. 1994. “La Politique Pénale Est-Elle Une Politique Publique Comme Les Autres ?” *Revue de Science Criminelle*, no. 1: 150.

Dintilhac, Jean-Pierre. 2002. “Rôle et Attributions Du Procureur de La République.” *Revue de Science Criminelle*, March, 35.

Favoreu, Louis. 1994. “Brèves Observations Sur La Situation Du Parquet Au Regard de La Constitution.” *Revue de Science Criminelle*, no. 4 (December): 675.

Hodgson, Jacqueline. 2002a. “Constructing the Pre-Trial Role of the Defence in French Criminal Procedure: An Adversarial Outsider in an Inquisitorial Process?” *The International Journal of Evidence & Proof* 6 (1): 1–16. doi:10.1177/136571270200600101.

———. 2002b. “Hierarchy, Bureaucracy, and Ideology in French Criminal Justice: Some Empirical Observations.” *Journal of Law and Society* 29 (2): 227–57. doi:10.1111/1467-6478.00217

———. 2004. “The detention and interrogation of suspects detained in police custody in France: a comparative account.” *European Journal of Criminology* 1 (2): 163-199.

———. 2005. *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France*. Oxford ; Portland, Or.: Hart Publishing.

———. 2010. “The French Prosecutor in Question.” *Washington and Lee Law Review* 67: 1361–1411.

Hodgson, Jacqueline, and Laurène Soubise. 2016. “Understanding the Sentencing Process in France.” *Crime and Justice* 45

Jacquin, Jean-Baptiste. 2016. “La Colère Gronde Chez Les Procureurs Sous Pression.” *Le Monde*, January 27.

Jehle, Jorg-Martin and Wade, Marianne (eds.). 2006 *Coping with overloaded criminal justice systems. The rise of prosecutorial power across Europe*. Berlin: Springer

Langer, Maximo and Slansky, David (eds.). 2017 *Prosecutors and Democracy* Cambridge: Cambridge University Press

Luna, Erik and Wade, Marianne (eds.). 2012 *The Prosecutor in Transnational Perspective*. Oxford ; New York: Oxford University Press

McConville, Mike, Andrew Sanders, and Roger Leng. 1991. *The Case for the Prosecution*. London; New York: Routledge.

Milburn, Philip, Katia Kostulski, and Denis Salas. 2010. *Les Procureurs, Entre Vocation Judiciaire et Fonctions Politiques*. Droit et Justice. Paris: PUF.

Mincke, Christophe. 1999. “Les Magistrats et L’autorité.” *Droit et Société*, no. 42/43: 343–62.

———. 2002. *Efficacité, Efficience et Légitimité Démocratique Du Ministère Public: Quand L’arbre Cache La Fôret*. Samenleving, Criminaliteit & Strafrechtspleging 21D. Leuven: Leuven University Press.

Ministère de la Justice. 2015. “Les Chiffres-Clés de La Justice 2015.” Paris: Ministère de la Justice.

Mouhanna, Christian. 2001. *Polices judiciaires et magistrats : une affaire de confiance*. Perspectives sur la justice. Paris: La Documentation française.

———. 2004. “Les Relations Police-Parquet En France : Un Partenariat Mis En Cause?” *Droit et Société* 58: 505–22.

Mucchielli, Laurent, and Emilie Raquet. 2014. “Les Comparutions Immédiates Au TGI de Nice, Ou La Prison Comme Unique Réponse à Une Délinquance de Misère.” *Revue de Science Criminelle*, no. 1: 207.

Nadal, Jean-Louis. 2013. *Refonder Le Ministère Public - Commission de Modernisation de L’action Publique*. Paris: Ministère de la justice.

Pradel, Jean. 2011. “Quel(s) Magistrat(s) Pour Contrôler et Prolonger La Garde à Vue ? Vers Une Convergence Entre La Cour de Strasbourg et La Chambre Criminelle de La Cour de Cassation.” *Recueil Dalloz*, March, 338.

———. 2013. “Faut-Il Supprimer Les Instructions Pénales Individuelles Du Garde Des Sceaux Au Parquet ?” *Recueil Dalloz*, no. 20 (June): 1361–63.

Pradel, Jean, and Jean-Paul Laborde. 1997. “Du Ministère Public En Matière Pénale. A L’heure D’une éventuelle Autonomie ?” *Recueil Dalloz*, August, 141.

Rassat, Michèle-Laure. 1967. *Le Ministère Public Entre Son Passé et Son Avenir*. Paris: LGDJ.

Renucci, Jean-François. 2004. “Le Procureur de La République Est-Il Un ‘Magistrat’ Au Sens Européen Du Terme?” In *Libertés, Justice, Tolérance : Mélanges En Hommage Au Doyen Gérard Cohen-Jonathan Vol. II.*, 1345. Brussels: Bruylant.

Robert, Marc. 2011. “L’avenir Du Ministère Public Français.” *AJ Pénal*, no. 3 (March): 115–18.

Royer, Jean-Pierre. 2000. “Le ministère public, enjeu politique au XIXe siècle.” In *Histoire du parquet*, edited by Jean-Marie Carbasse, 257–96. Paris: PUF.

Simmat-Durand, Laurence. 1994. “Le Parquet et L’opportunité Des Poursuites.” *Questions Pénales* VII (4).

Soulez-Larivière, Daniel. 2011. “Le Problème Du Ministère Public Français.” *AJ Pénal*, no. 3 (March): 112.

Tonry, Michael (ed.). 2012. Prosecutors and Politics 41 *Crime and Justice*. Chicago Press

Truche, Pierre. 1997. *Rapport de la Commission de réflexion sur la justice*. Paris: La Documentation française.

Wright, Ronald F, and Marc L Miller. 2010. “The Worldwide Accountability Deficit for Prosecutors.” *Washington and Lee Law Review* 67 (4): 1587–1620.

\* Jacqueline Hodgson is Professor of Law and Director of the Criminal Justice Centre in the School of Law at the University of Warwick, UK.

\*\* Laurène Soubise is a doctoral candidate in the School of Law at the University of Warwick, UK.

1. Hodgson carried out a total of 18 months observational fieldwork in the offices of investigators, *procureurs* and judges, completed by interviews and questionnaires, for her 2005 study (see Hodgson 2005, p 10-14 for a detailed account of her chosen methodology). Soubise observed the work of *procureurs* at a medium court centre for two months in 2013 and carried out semi-structured interviews with nine prosecutors for her 2016 doctoral study. [↑](#footnote-ref-1)
2. In cases investigated by the *juge d’instruction*, the victim can be legally represented and can participate in the enquiry during the pre-trial phase. [↑](#footnote-ref-2)
3. The principle of *contradictoire* as this is called, is enshrined in a preliminary article to the French *code de procédure pénale*. [↑](#footnote-ref-3)