

FOREIGN DELINQUENT MINORS
JUDICIAL PROCEEDINGS AND REHABILITATION MEASURES

FRANCE

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INTRODUCTION

The question posed is influenced by a multitude of disciplines: law, sociology and social geography, history, but also political science and economics. If one does not want to abandon the idea of an overall evaluation and wishes to include aspects which are very briefly expressed, yet of importance, the only way to proceed is to try and seize impacts by moving back and forth, over and over, from the big picture to the details and vice versa. In unison with the fact that a long period of familiarization - with a view to the methods and results of the disciplines implied - has not been possible, this realisation accounts for why the choice of pluridisciplinarity has provided practitioners with the necessity to not expect much more than a rather general delineation on behalf of questions posed as well as on behalf of the accent on certain aspects of particular pertinence which trouble the legitimate members of institutions. This limitation to the programme points to a common experience among researchers who try to cross the boundaries between different disciplines within a very short period of time, especially in the European framework. If we are to bear in mind one lesson of the total of reports, it must be the one according to which foreigners - and probably their children as well, hence foreign delinquent minors - are faced with an increased rate of difficulties in comparison to the average population and experience greater trouble in sorting out these problems. The latter difficulty arises because these problems do not always occur on behalf of a detrimental legal status, but are moreover caused by a multitude of disparities characteristic of their social situation and that of daily life. This is why an analysis of politics and practices on behalf of the phenomenon of discrimination must consider the contrast between (-on the one hand-) successful implementations and accomplished efforts for a synchronisation of the legal and judicial situation and (-on the other-) failures in providing remedy to differences encountered in this situation¹.

In a very large review to this question, Didier Fassin² shows that this approach has only recently gained recognition in France. Attitudes on this behalf changed when the 1998 report of the High Council on Integration was submitted to the Prime Minister, placing particular emphasis on the functioning of society as a whole and to evaluations on behalf of questions related to “French nationals of colour, particularly from overseas or of foreign, non-European origin³”, the synchronisation of the burden of proof with EU Law provision at the hand of the adoption of a law in April 2001, even if the jurisprudence can hardly keep up with recent developments.⁴ Within this report, the legal context is being evaluated for the first time on behalf of the situation of legal minority and the judicial implications. This report equally provides first-time access to the historical context, entering the debate related to the application of “ethical categories” in statistical evaluations, with these statistics as the subject matter of the following section. Finally, the effects of selection and discrimination on different levels (general / territory / street level / police / justice / educational services) as well as several statistics are presented which highlight these selections and discriminations.

A – LEGAL AND STATUTORY CONTEXT

1. Status and penal law of minors

1.1 Minority/Majority

The minor is defined as the individual of one gender or the other who has not yet accomplished the age of eighteen years. If he is capable of discernment, he may be heard by the judge on his own, with an advocate or a person of his choice.

If, during procedures, his interests conflict with those of his legal representatives, for example his parents, the judge in charge of this case will provide him with an *ad hoc* legal representative⁵. Children are regarded to be “legally incapable“ for the duration of their minority and their legal transactions (contract, buying or selling goods etc.) are invalid – merely a matter of relative nullity in daily life. The only party to demand revocation of the act before the court is the minors' legal representative - or the minor himself, after achieving majority. Certain ordinary transactions may be effected by a minor without being nullified, such as buying clothes,

¹ Cf. Math (A.), 2000.

² Cf. Fassin (D.), 2002.

³ Cf. HCI, 1998.

⁴ Cf. Faure (S.): “[The Tribunal de Paris] refuses to sustain a number of reports of offences, referred to the Parquet of Paris by the High Authority for the Fight against Discrimination and to promote Equality (Halde), against offers of illegal work targeting age or color of skin”, *Libération*, Monday 4 September 2006.

⁵ Cf. Code civil, art. 388 *sq.*

records, etc.⁶ Emancipation may also be attained by marriage, which may be pronounced by the guardian's court provided that the child has completed his 16 year, after his audition and on a claim being made by mother and father or one of the parents. At the age of 16, he is legally competent on behalf of all transactions of daily life, with the exceptions of marriage or in case he wants to be adopted.

1.2 The principles of juvenile law are valid on behalf of foreign minors

1.2.1 General elements

In France, justice of minors relies on a protectionist model, providing children's judges simultaneously with civil authority - with a view to providing protection for children in dangerous situations - as well as penal authority, to be applied from the first interrogation in procedures up to the execution of educational measures as well as on behalf of educational sanctions ordered or the application of the pronounced sentence.

This model of justice is based on the principle according to which, given the fact that the child of legal minority has not yet achieved maturity, the duty of judicial action is attending to the fact that this development should not be obstructed: the right to personal development remains at the heart of interventions of society on behalf of minors.

1.2.2 Educational assistance

The civil competence of the youth judge is provided regardless of the minors' nationality.

Procedures and measures of educational assistance pertaining to civil law are applied in the same way to minors of foreign origin without consideration of their personal status (of the law of their nationality of origin). This general application on behalf of all endangered minors on French territory relies on the principle that educational assistance constitutes a part of public protection. Before intervention on the part of the children's judge, measures of social protection may be installed by the president of the general council, either on demand of the family or with its consent.

The inherent difficulty on the part of foreign minors lies, for a number among them, in the absence of legal representatives who could give their consent to the application of the educational measure proposed.

Hence, judicial competence on behalf of this category of minors is justified.

Within the field of educational assistance, the principle is to prioritise open educational measures and to effect judicial placement only exceptionally. Audition of the minor capable of discernment is obligatory for the children's judge, as well as the audition of his parents.

Before taking a decision which may be subject to scrutiny at any given time, the children's judge may order a measure of investigation. The measures ordered by the children's judge to be exercised under the authority of institutions or associations are limited to a period of up to two years.

1.2.3 Penal justice

Penal law of French minors does not provide an age limit on behalf of penal responsibility. Age limitations are established at the hand of cases where particular penal responses cannot be effected by the children's judge or children's courts.

Before effecting a decision, the ordinance of 2 February 1945 obliges the judge to effect investigations on behalf of the minors personality and the familial situation of the minor.

In the same situation, the judge may as well order an interim educational measure (either preliminary surveillance in open institutions or placement).

A reparative measure can also be ordered before judgement.

Judicial control is possible for correctional measures on behalf of minors from 13 to 16 years of age provided they are sentenced for up to seven years for first-time delinquents and up to five years for repeated offenders⁷. This may be applied with the total of possible obligations to minors of over 16 years. In criminal matters, judicial control and preliminary detention are applied to minors from the age of 13.

The range of different responses includes **educational penal measures** (among these in particular the measures effected in open custody, placements, and reparative measures), **educational sanctions** (execution of school-related work, confiscation of an object, interdiction to meet the co-authors of the offence, etc.) applied to minors of 10 years and over, as well as **the punishments** applied to minors of 13 years and over (incarceration in closed institutions, imprisonment with total or partial probation, administrative fines, citizenship course) and on behalf of isolated minors of more than 16 years of age (work of general interest).

In the application of placement, the different types of accommodation provide the framework for activities engaged in the measures of education (FAE), receiving delinquent minors in mid-term and long-term applications, as well as endangered minors and young adults, to reinsert them into the daily life of the community; centres of immediate placement (CPI) accept urgent cases of minors of elevated criminality for a duration of 3 months, reinforced educational centers (CER), providing for small groups of high-risk offenders (6 to 8) for the sake of a temporary rupture of the minor with his environment as well as his habitual way of life,

⁶ *Idem*, art. 476 sq.

⁷ See law of 2007-297 of 5 March 2007 on prevention of delinquency.

not to exceed 6 months, as well as closed educational centres (CEF) which only accept for multirecidivist minors from 13 to 18 years who have behaved unruly in placement and may hence, on grounds of obligations fixed by decision of the magistrate, have to face up to detention.

The children's judge may decide alone or may pronounce educative measures in the so-called "chambre du conseil". In order for him to pass a sentence, the minor has to be judged before the children's court or the jury trial for minors. The children's court is presided by the children's judge, assisted by the protocol clerk as well as two assessors. The children's judge has jurisdiction on behalf of contraventions of the 5th order (cases of light violence, driving a motorbike without a helmet being the most serious offences in this order) and the offences of minors of under 16 at the time of the infraction. As for crimes committed by minors who have been 16 to 18 years of age at the time of the offence, it is the jury trial for minors to intervene, composed by three magistrates (of which two are obliged to be children's judges) and one public jury (n=9).

All the criminal trials are effected under the provision of limited public access.

The order of 2 February 1945 provides that the access to the courtroom is restricted to close relatives and legal representatives of the minor, to the advocate and educational services, as well as, if need be, to the victim. The obligatory assistance of the advocate to the minor is generally valid, independent of phases of procedure or offences committed. Some jurisdictions adopt the personalized defense which allows for the President of the Chamber of Advocates to always call on the same advocate for a particular minor on behalf of every case to provide for a guaranteed personal involvement with respect to the minors' situation.

Dual jurisdiction of the French children's judge allow him to exceptionally install educational criminal measures in case the educational civil measures have been ordered and executed before on behalf of this individual.

1.2.4 The difficulties attached to the case of foreign delinquent minors are prevalent with respect to investigative measures as well as in relation to the passing of judgment. As for measures of investigation related to their situation, the difficulty remains in its entirety as it is very hard to obtain constant and verifiable data. In the future, the demand for investigation on behalf of traditions and family dynamics will be frequent, in order to develop ways to educational help for minors and to establish how and to which extent the acculturation enters as an attributive factor into the reasons why a minor becomes delinquent. These means of investigation and expertise are ordered by the children's judge on occasion of the first interrogation of the minor. On behalf of procedures, an interpreter will be present, if need be. His presence is equally obligatory to the police investigation if the minor is not francophone.

With respect to the measures of investigation, judgment, educational measures, educational sanctions and sentences applied on behalf of minors, the children's judge, the children's court and the jury trial consider elements which relate to the culture of the family, in case these factors are of importance. If the difficulties to integration might be part of the offender's reasons to become delinquent, these elements will be exposed and analysed.

Educational services should just as well record cultural particularities on behalf of the family, given that they can be of specific relevance to the case. The consideration of these particularities might advance the appropriate application of the range of educative measures and provide for the minors' insertion after passing of the sentence. Specialization of practitioners - in particular on the part of the children's judge - provides that the personal situation of the minor is evaluated; a judicial particularity of France consists in the fact of the continuity of the children's judges' intervention on behalf of all phases of the procedures - the investigation, the proceedings, the interrogation, passing of judgment and in the application of measures or the pronouncing of sentences. In the case of criminal matters, it is obligatory that the examining judge needs to interfere with the case.

1.2.5 Considerations on behalf of foreign delinquent isolated minors

In consideration of the organisation of the children's courts, it has been decided among particular courts of a major order to realise the specialisation of the staff of / the children's judges in order to provide care to those minors who require special attention, with a view to the multitude of identities they adopt, their mistrust at the hand of educational measures and due to the type of offences committed (theft within organised networks). Sometimes, the demand was issued on the part of the prosecutors of the Republic that the police forces be joining in with studies on the subject of criminal networks, to realise the arrest of the adults in charge of the latter. These investigations of the police call for the implementation of decidedly effective applications. Finally, on behalf of foreign delinquent isolated minors, the Public Prosecution favours measures of urgency, in particular the transfer of jurisdiction to the children's judge (appearance in court immediately after the summary arrest at the police station).

2. Foreigners / immigrants

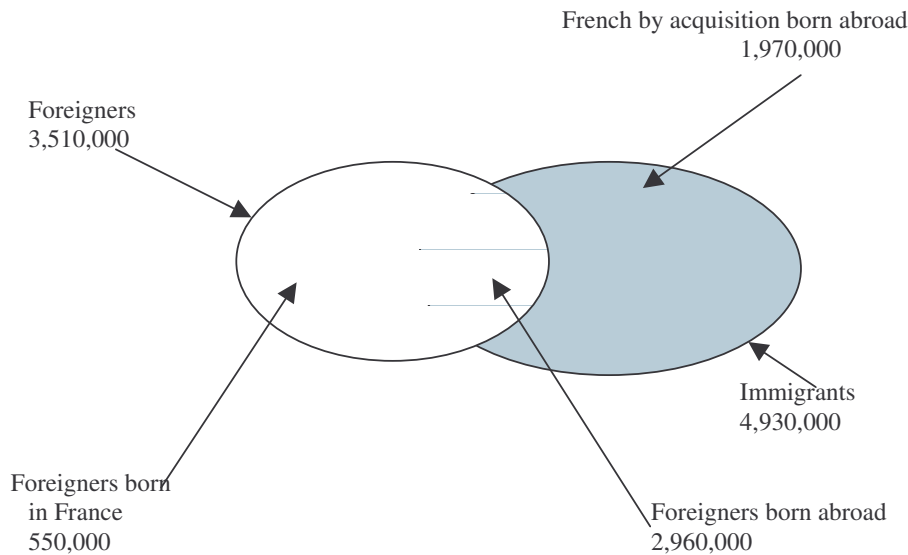
2.1 A definition to Immigration

The High Council for Integration has proposed, with particular reference to the studies of Michèle Tribalat,

demographer at the French National Institute for demographic studies⁸, to qualify those individuals with a foreign place of birth, who have entered the French territory as foreign nationals and have resided in France for no less than a year, as “immigrants”, more concise: residents born as foreigners abroad⁹.

After several years of residence, certain immigrants have been able to acquire French nationality, the other part remains foreign. Nevertheless, born as foreigners in a foreign country, the first group will continue to be a part of the immigrated population even if their nationality has changed. The long-term validity of this qualification constitutes a feature of particular importance to practitioners in statistics. Acquisitions of nationality do no effect the size of immigrant population. By definition, the children born in France of parents originating from immigration are not part of the immigrated population.

Foreigners and immigrants



Source: Insee, studies on census 2004 and 2005 cited in *Insee Première* n°1098 - August 2006.

2.2 Attribution of French nationality

French at birth is every individual born to at least one French parent (by (par filiation), or born in France to at least one parent who is who has been born in France as well (double jus soli). French at birth are not part of the immigrant population, even if they are born abroad. .

2.3 Acquisition of French nationality

The law defines the conditions under which foreign born nationals may obtain French citizenship. Every foreigner born in France of foreign parents may acquire French nationality at the age of majority if he habitually resides in France for a duration of five years and declares, between the age of 16 and 21, his wish to become a French national. This procedure does not apply on behalf of immigrated population because it is reserved for individuals born in France. Every foreign adult may apply for naturalisation or reintegrated into French nationality if he resides in France for at least five years and adheres to certain conditions of assimilation (in particular the application of the French language, as well as good character.) The government disposes of unlimited arbitrary power and directs by decree. Every foreigner who marries a French national may obtain French nationality by simple declaration, after a period of two years of cohabitation to start on the day of marriage. The foreign minor who has been subjected to “adoption simple” under French law by a French national may, until the age of majority, declare, in line with the provisions of Articles 26 pp, his claim to French nationality, on the premise that he has resided in France at the time of his declaration. The obligation on behalf of residence is abolished if the child has been adopted by a French national who does not reside permanently in France.

A minor born in France to foreign parents may also claim French nationality (law of 16 March 1998) as soon as the former reaches the age of 16, provided that he has resided in France for a period of at least 5 years; this period of French residence is to start at the age of 11 (the parents may issue this demand for their child as soon

⁸ Cf. Tribalat (M.) (dir.), 1991.

⁹ Cf. HCI, 1991.

as the child has reached the age of 13.).

In the case of a child who has been staying in France for a duration of at least five years and is educated by a French national or, in the case of French residence, of at least 3 years, is remanded to Childhood Social Care (ASE), citizenship may be obtained under the same provisions; but on behalf of the latter case, it is being stipulated that the minor is to remain under ASE supervision for a duration of 3 years, which rarely applies.

The same holds true for the child who has been in the country and educated in a way to provide him with the opportunity for French professional training of a duration of at least five years, be it on the part of a public institution or on the part of a private organism which provides the necessary conditions determined by a decree of the State.¹⁰

Finally, the children of parent(s) having acquired French nationality may become French nationals if they are nominated in the decree or declaration issued by their parent and residing with him.

2.4 Residency in France of a foreign minor

Residency of a foreign minor in France, whatever the conditions of entry to the territory might be, can never be qualified as an illegal situation (article L511-4 du CESEDA prohibits the enforcement of departure of minors under the age of 18). The foreign delinquent minor can therefore never be subjected to an expulsion from the territory, neither persecution on grounds of his access to the country and his sojourn on French territory). On the other hand, minors do have to be in possession of a residency title to comply with the rule of law.¹¹ In addition, article 20-4 of the order from 3 February 1945 excludes minors from the application of the sentence of prohibition of residency; a delinquent foreign minor may thus not be subjected to this sentence.

2.5 Majority threshold

As soon as he comes of age, the foreigner is submitted to provisions for foreigners on behalf of entering the country and residence, as well as to rules on behalf of attribution and acquisition of French nationality.¹² He may apply for a residency permit as soon as he has stayed in the country for a duration of three months, which, depending on the case, may also be valid as a work permit.¹³ There are two titles of residency and work permit (“carte de séjour” or “carte de résidence”)¹⁴: a short-stay-visa, which will be issued for a specific period of up to one year, and a long-stay-visa, allowing for the application of a residency permit, which is valid for a duration of ten years. A foreign national who demands a title of residence for the first time will be admitted to hold a “carte de séjour”, the short-stay visa, except for the case in which he is ipso jure entitled to hold a permanent residency permit. The residency permit may be granted within a period of three months if he provides proof which justifies the need to permanently reside for a period of no less than three years. This title to residency is renewable. Those individuals obtaining a long-stay-visa are - on the premise that they be fulfilling certain conditions - the following: marital partners of French nationals, foreign children to French nationals of less than 21 years of age or those entitled to maintenance; relatives of a French national and those of his marital partner who are entitled to maintenance; foreign parents to French children; individuals who have entered France under provisions on behalf of familial reunions if the breadwinner is entitled to permanent residency. Families of refugees: In general, the access to French territory may be refused on behalf of every foreigner whose presence would constitute a threat to society. The provisions of common law are not valid on behalf of Members of the EU and as well for countries pertaining to the European Economic Area who are entitled to enter France and move about the territory without obtaining authorization in advance. Foreigners who may be obtaining authorization to enter France or reside on French territory must provide for one of the following characteristics: they must either be individuals who access the country in order to work; or seek immigration for familial motives, or be applicants to asylum or refugees. If the quality of refugee status is known to the applicant, he receives the residency permit. In the opposite case, he will be expelled.

Young foreign isolated adults cannot directly obtain a residency permit for a duration of ten years, but they may solicit a short-term visa with a validity of up to one year. One recent reform of CESEDA (Law n°2006-911 of 24 July 2006 on behalf of immigration and integration, modifying Article L313-11 of CESEDA) has provided them with legitimate access to the short-term visa, bearing mention of “private and family life”; if they have been under the auspices of ASE before attaining the age of 16 and provide an explanation pointing to the serious

¹⁰ Cf. Art.21-12 modified by the law 2003/1119 of 26/11/2003, art. 67.

¹¹ Cf. Art. 6 of the order of 2 November 1945.

¹² The legislation applied to this matter has been subjected to an overall reform in 1993, of which the law of 22 July, reforming the law on citizenship and the law of 24 August modifying the direction of 1945 on conditions for the entry to the country and residency of foreigners which have already been modified in 1984 on behalf of residency permits.

¹³ There are exceptions to the principle of uniformity on behalf of the residency permit in particular with respect to seasonal workers or individuals exercising any profession subject to reservation on the granting of permission (artists, trader dealers, agricultural employers); these are to obtain a distinct residency permit.

¹⁴ Since the law of 17 July 1984.

intent on behalf of the professional training they have taken to. For these youngsters, a remunerated activity or professional training may be implemented starting with the age of minority, by obtaining a residency permit bearing mention of “salaried employee” as well as “temporary worker”. Other young foreigners may always demand the issue of a temporary residency permit, bearing mention of “student”, for them to pursue their studies for the duration of their actual year of study.

B - HISTORICAL CONTEXT

This subject will be accessed on three levels which structure the question related to the “dimension of ethnicity”, discrimination and the debates surrounding the issue: a brief summary to the recent history of successive arrivals of foreign populations, the difficulty to integrate children of immigrants and the discussion on behalf of the application of “ethnic categories” in statistics.

1. Recent history of successive arrivals of populations originating from abroad ¹⁵

France is a country where immigration is ancient, essentially due to a low rate of birth since the middle of the 18th century and the relative scarcity of the work force, which, in the second half of the 19th century, resulted in a noticeable difference in comparison to other European countries, which were experiencing high birth rates and emigration. The strongest migratory flows (1920-1930 and 1956-1973) have related to periods of economic growth and scarcity of the work force. Additionally, France has accommodated a large number of foreigners as a country of asylum. After the war, beginning in the year 1945, the State has officially promoted immigration and has created in 1946 a national Office of Immigration, then, in 1951, the French Office of protection to refugees and stateless persons (OFPRA) which receives the case files of foreigners who have entered France as applicants of asylum are granted the refugee status. The level attained in 1931 has been entering the national census with about 3 million refugees. In 1974, troubled by the slowdown in economic growth, the French government decided to proclaim an official halt to immigration - except for immigration on grounds of the right to asylum, for reasons of familial reunion and other cases of particular exception, but the entry of immigrants into France never ceased - although immigration due to familial reunions has been predominant in statistics ever since. As we have seen, France is a country in which immigration constitutes an ancient tradition, but the inflows of immigration have never been overwhelmingly strong; it contributes only to a mere fifth / fourth of demographic growth. The actual flow of immigration remains considerably below the levels which were characteristic to immigration in the 1960ies or those attained in Germany and Southern Europe today. Nevertheless, the contrastive prejudice establishes the idea that France is engaged in demographic decline and troubled by a massive inflow of immigration. This prejudice is primarily due to the fact that local concentrations of immigration may contribute to increased proportions of immigrants in particular communities.

In 1999, on occasion of the French national census, 380 000 individuals of 18 and over (145 000 men and 235 000 women) have provided information on behalf of their situation as well as the history of their family within a four-page report. Particular attention has been devoted to the country where the parental generation was born. These files, considered in line with information related to country of birth as well as country of birth of their children, have provided material for estimations to the levels of population of foreign origin on behalf of three generations. In 1999, the population of foreign origin has been divided into: 4,3 millions of immigrants, 5,5 millions of children and 3,6 millions of grandchildren. This adds up to 23%, which represents a little more than one resident out of four who would thus be of foreign origin. This part remains relatively stable on behalf of the age group up to 60 years, but diminishes in the group of residents over 60. Populations of Maghreb origin, often called to public attention do not represent more than 22% of the total of population of foreign origin - among which a little more than half of the group pertain to the group of immigrated from or descendants of Algerian origin. Nevertheless, this population is much less advanced in numbers than the population of Italian origin. Immigration of Italian origin has increased by the end of the 19th century, but equals immigration of Spanish origin which also presents a history of immigration. On behalf of the total, taking the individuals of Portuguese origin into consideration, Southern Europe provides for the largest contribution to French immigration. Other impacts on immigration are felt on the parts of Belgian immigration at the end of the 19th century and the inflows of Polish and Russian immigration.

The contributions of immigration flows on behalf of every single generation are not equal. The Maghreb, which does not present more than 22% of the total of immigrant population, is the largest contributing region to the generation of individuals immigrated (30%) and to minors of the first generation born in France (41%). Taking also recent flows from Sub-Saharan Africa and Turkey into consideration, the total adds up to 60% of immigrants of the first generation born in France under 18 years of age. “To put it differently, the children born

¹⁵ Data of the two following paragraphs are taken from Choquet (L.-H.), 2004 and Tribalat (M.), 2005.

in France to parents immigrated, minors, those who attend the schools and colleges, are to a large extent belonging to these nationals, in six cases of every ten, this is the case. On the contrary, from the age of 60 upwards, it is the migrants from Southern Europe who are dominant in the generation of immigrated (43 % of men and 48 % of women). Less present among minors born in France to immigrated parents, Southern Europe furnishes the primary contribution (of adults) to this generation, with a participation of 50% in the age group of over 40 years of age. (...) The older the people get, the more nationals originating from countries of the EU apart from Southern Europe can be counted.”¹⁶

2. Immigrant children's difficulties to integrate ¹⁷

Several studies conducted by national institutes (CEREQ, DARES, INED, INSEE), have provided instruments for the evaluation of the social situation of immigrated children, particularly by research on unemployment levels as well as these children's success in the educational system, with the direct or indirect effect of providing hints for the impact on future generations. They have resulted in similar findings, underlining the particularity of excessive unemployment among descendants of Maghrebin immigration as well as their over-representation in employment of precariousness, even devaluation.

“All of these studies indicate an innate effect for each of the different origins, which becomes obvious as soon as the active variables of professional insertion are under control.”¹⁸ On behalf of unemployed of foreign origin, the DARES (one French Ministry related to governmental bodies on matters of employment, social cohesion and housing) has recently drawn the following conclusion: “To have inherited a non-European origin constitutes a handicap on the job market which cannot be erased by accession to French citizenship.”¹⁹ The study of INED cited beforehand shows that “second generations” always encounter serious difficulties in trying to access the job market: “All other factors left aside, deviations attain an impressive level in relation to immigrants of non-European background, and they remain elevated on behalf of the “second generations” of Maghrebin, Turkish or African origin. In addition to unemployment, an increased situation of precariousness on the job market as well as the necessity to rely on unskilled labour must be assessed. (...) The handicap of “inherited origin” translates into a multitude of limitations, non only to be perceived in the chances of insertion into the job market, but also on behalf of characteristics to the work accessible. Existing discriminations of this nature prove that their amplitude and persistence is firstly owed to the system and only on a secondary plane attributable to the individuals' disposition. These discriminations exercise pressure on the trajectories of Maghrebin immigrants - likewise to trajectories of African and Turkish immigrants – but also on the trajectories of their descendants. Faced with a biased market situation, the public functions may be perceived as a refuge which appeals very much youngsters originating from immigration and, more particular, to those youngsters of Maghrebin origin,²⁰ [but] their integration into the body of administration remains unequal and proceeds on lower ranks.”²¹ More precisely, the penalty experienced in the employment situation on the part of young Maghrebins has remained strong despite eventual improvements of the job market in the second half of the nineties as well as the democratization and the diversification of the French educational system. Young Maghrebins are still dropping out of school or finish school with low qualifications, remaining apart from the movement of the large peer groups towards the accession of different professions and certificates of higher education. “In general, young Maghrebin immigrants are left behind. Their preferences on behalf of general education demonstrate their ambition in school, but at the same time, a clear assessment can be made pointing towards lesser chances to success and stagnant aspiration, in contrast with an overall increase of the formative level attained during the nineties.”²²

This study of CEREQ (French Centre for Research on Education, Training and Employment) has proposed to take “statistical discrimination” - a denomination attached to this phenomenon on the part of economists – into account; that is, a discrimination which is founded on medium qualities within a group of individuals: “Such hypothesis establishes the assumption that even though at the time of recruitment, individuals are identified as pertaining to a specific group at the hand of “visible characteristics” which have been socially constructed in advance. The “statistical discrimination” that victimizes youngsters of Maghrebine origin cannot be delineated according to a discrimination of a strictly racist character. The impetus and persistence of the penalty endured topples the balance; this is ever more so as this penalty also afflicts, though to a lesser extent, youngsters

¹⁶ Cf. Tribalat, *op. cit.*

¹⁷ Data of this paragraph are taken from : Canamero (C.), Canceill (G.), Cloarec (N.), 2000 ; Meurs (D.), Pailhé (A.), Simon (P.), 2005 ; Silberman (R.) et Fournier (I.), 2006.

¹⁸ Cf. Meurs (D.) *et alii, op. cit.*

¹⁹ Cf. Silberman (R.) *et alii, op. cit.*

²⁰ See on this point Calves (G.), 2005 quoted by Meurs (D.) *et alii.*

²¹ Cf. Meurs (D.) *et alii, op. cit.*

²² Cf. Silberman (R.) *et alii, op. cit.*

originating from Sub-Saharan Africa and those of South-East-Asian origin, two groups marked in the same way by “visible characteristics”.²³ Nevertheless, INED underlines the idea according to which the existence, “amplitude and persistence of discriminations occur rather due to systematic preconditions than on behalf of individual dispositions”.²⁴ The latter may still be evaluated at the hand of “tests”, operating ad lib control of discrimination in discotheques, companies, real estate agencies etc. This discrimination has been confirmed by records of potential job candidates of African descent or Maghrebin origin, whose opportunities were lost because of the fact that employers took decisions on grounds of candidates names without even taking outward appearances or dispositions into consideration, as well as on behalf on ongoing discrimination in the fields of job application²⁵ or on the housing market.²⁶ This is why the recent law of 31 March 2006 for equal chances presents the enforcement of the fight against discriminations among its principal objectives, legalizes the practice of “testing”. Finally - among other factors which are presumed to be at the core of discriminations - the location of residence is often mentioned in France, whether due to stigmatization or due to insufficient means to collective transportation which allow for easy access to the locations of employment²⁷. One of the legal criteria of classification to territorial areas defined as “ZUS” (Zone urbaine sensible, city centre zone of precarity) or “ZEP” (zone d’éducation prioritaire, zone of high education priority) consists in the criterion of “foreign percentage to the population”.

3. The application of “ethnic categories” to statistical evaluations²⁸

In the words of Francois Héran, “An evaluation of origins may return to the place of birth of the parents to provide the framework of an evaluation which remains anonymous where this is appropriate and turns into a specialized evaluation if scientifically and socially pertinent. A decision on behalf of such applicability does not only depend solely on sociologists or demographers who set up the structure of the study; it likewise must emanate from institutions such as the CNIS (National Council of statistical information) as well as the CNIL (French Data Protection Authority) both representing the national data of public entities in their respective sphere. “Science and conscience” go hand in glove; on behalf of migrations and integration, public statistics stick to this principle. In the years to come, there is no reason to steer a different course.”²⁹

To gain knowledge of the path towards integration for immigrants and their descendants, to seize phenomena of geographical or educational segregation as well as discriminations, variables relating to origin must necessarily enter the statistical evaluation. The problem must be seized in different terms according to whether the initiative to record and evaluate is based on ascertained knowledge or results from efforts of enterprises or administration. In case of the latter, concerns persist that those evaluations might be violated for discriminatory practices.

In relation to the objective of knowledge, we are presenting debates as well as the main studies effected by public statistics. The discussions on the application of “ethnic categories” in statistical evaluations and on behalf of defining criteria to these categories have a tradition in France as well as Europe and have attained such a level of public interest that the Centre of strategical analysis under the aegis of the Prime Minister³⁰ has issued a note on this behalf in July 2006. These considerations have appeared for the first time in the middle of the 19th century, during the international congress of statistical evaluation with an effort of European practitioners in the field of statistics to create a framework for the national census.

Two perspectives have developed: the Empires (Austria-Hungaria and Russia) and States such as France.

As concerns the Empires, the ethnical identification (or national identification) was of greatest importance; the creation of ethnographical maps has been regarded as a decisive step which was to find general applicability: the question linked to likewise production of maps was that of a conceptual framework to census on behalf of ethnical characteristics to peoples identified within these Empires.

²³ Cf. Silberman (R.) *et alii*, *op. cit.*

²⁴ Cf. Meurs (D.) *et alii*, *op. cit.*

²⁵ Cf. Emergences, 2006. See also on behalf of another domain Maguet (A.), 2006.

²⁶ Cf. The results of a study conducted on behalf of 120 real estate agencies, in line with the method of “testing”, published on 5 July 2006 by the High Authority for the fight against discrimination and to promote equality (HALDE): the candidate “of reference” (of French-sounding denomination) obtained the right to visit an apartment with the aim of obtaining a tenancy agreement in 35 % of cases, compared to 20 % for candidates of Maghrebin origin and 14 % for a candidate of Sub-Saharan origin. Conditions to rent of the real estate were always the same: wages thrice the amount of the rent and contracts without time limitations. Once the visit had been effected, the candidate “of reference” was able to sign the contract in 75 % of cases, with percentages dropping to 26 % for single parents, 22 % for the candidate from Sub-Saharan Africa and 17 % for the candidate from the Maghreb.

²⁷ Cf. Fitoussi (J.-P.), 2004.

²⁸ This paragraph is revised in consideration of information collected in Blum (A.), 2002, pp. 121-147.

²⁹ Cf. Héran (F.), *in* Héran (F.) *et alii*, 2003.

³⁰ Cf. Cusset (P.-Y.), 2006.

On the other hand, the French perspective stipulated that the most important matter was the unity of the French nation and that the differences among the regions did not have to be met with respective census.

The nation approach developed in countries of Central Europe or Russia did not find the approval of French representatives who favoured an approach centred citizenship (“citoyenneté”).

The variable of race has been regarded as pertaining to the biological perspective and, consequently, out of line with a view to census. Populations of migrations were hardly entering the focus of debates. The accent was placed on the analysis were the characterization of national population and the distinction of French citizens and foreigners in France. Principal categories of the analysis: “the invention of the national” which had come up during the 19th century; this consolidation of the definition of the year 1889 to citizenship and nationality, based on the *jus solis* (nationality of the country of birth), has raised questions which remained until the end of the 19th century.

The first census to include questions on nationality has been effected in the year 1851, the questions related to categories were taking shape in 1871 and have been hardly modified at all since then: place of birth of individuals born in France relates to the community and the department of birth, as well the variable of colony up to the year 1946 or the country for those born outside of France. The transition dates from 1891 and has been the result of the law of 1889 to include *jus solis*³¹. In 1891 and 1896, there have been three possible answers to the question of nationality: “French parents”, “naturalised”, or “Foreigner, thus country”.

In 1902, these answers have been changed into “French” (or “French of birth”), “French naturalised” (or French by naturalization, by marriage, since 1946), and “Foreigner, thus country” (since 1946, “thus nationality”).

These questions have remained fundamentally unchanged up to this day, with the exception of the introduction (in the year 1962) of an additional question on behalf of original nationality of naturalized individuals. Thus, the subjects to census are characterized as French or foreign, in the legal perspective, even though those “French by naturalisation” provide a category which is not completely fitting to this concept. The country of origin is indicated, but it does not provide for any “ethnic” dimension. Such a dimension is also not considered in questions relating to migration, which sometimes provide questions on behalf of the date of arrival in France (1968 and 1975). The fundamental change introduced in the census of 1999 is the insertion of a question on behalf of the date of arrival of immigrants. This is why, up to this day, immigration is treated like every other kind of migration evolving within the territory, not as a variable of its own, even though the question related to this issue is sometimes more precise. In spite of this, the changes introduced in 1999 are directed towards a distinction between international and internal migration. In this way, the approach of the 19th century seems to have been solidly implemented. Once the individual resides in France, the immigrated person is not subjected to any kind of differentiation in line with origin. The individual is simply treated as such. Since the beginning of the 20th century and after the Second World War, efforts were made to differentiate immigrated individuals in line with the question to whether they were considered to be capable of assimilation or not, in a concern of formulating specific migration policies; this did nevertheless not influence the categories of the census. This solidly implemented tradition did not continue to exist in the colonial empire, where this question has been linked to other tensions; the census applied in the colonies was the only statistical evaluation to include an ethnic dimension.³² In 1992, INSEE and INED did effect research on behalf of geographical mobility and social insertion (MGIS) which was addressed to the “evaluation of integration” of immigrants and their children according to definitions of Michèle Tribalat who has consequently published two volumes³³ which were opposed in the studies of another demographer, Hervé Le Bras³⁴.

The debate has carried on, particularly on occasion of a workshop which has evaluated the composition as well as the application of statistical evaluations, organized by the trade union CFDT and CGT of the INSEE.³⁵ The critical questions are essentially linked to evaluations and research by universities on the one hand, and the data production of official institutions for statistics or demographical evaluations on the other; those critical questions are divergent depending on whether they are posed on behalf of qualitative or quantitative evaluations. Of course, there are a number of solutions, without a single model being generally more applicable. On initiation of two researchers, Alain Blum (INED) and Maurizio Gribaudi (EHESS), a public debate has

³¹ The law of 26 June 1889, generally attributed to the defeat of 1871 and to the loss of Alsace-Lorraine and to the consequent concern of the need to raise the numbers of French and soldiers, stipulates that French nationals are as well all young foreigners born in France and who are French residents at the time of their majority if they did not reject French citizenship in the year preceding their majority.

³² “The categories, statistical instruments of administration to [colonial] population have reflected the perceptions of the French administration on behalf of populations (...) In spite of the obvious desire to put the statistics produced on equal footing with those of the mother country, the ethno-religious treatment has been prevalent in comparison to the treatment in line with nationality applied by the mother country of France.” Cf. Blum (A.) *et alii*, 1998.

³³ Cf. Tribalat (M.), 1995 et Tribalat (M.) *et alii*, 1996

³⁴ Cf. Le Bras (H.), 1996, 1998.

³⁵ INSEE, 1999.

evolved between researchers in social sciences on behalf of the conditions to the application of ethnical categories for immigration, integration and, more broadly, on behalf of French society. This debate focuses on the theoretical and methodological instruments which can seize the complexity that rules contemporary societies. Several publications have been rendered accessible³⁶. In parallel, the association Pénombre, created in 1993 for the development of a public space to reflexion and exchange on the application of data has been published in 2002 on its website a special “Research and origin”, evaluating a number of texts written on the part of members to a work group³⁷.

This question will be regarded once more *infra* in paragraph (§2) dedicated to the “possible” within statistical evaluations.

C - STATISTICAL SOURCES

1. Given statistical sources

Today, departing from variables that are virtually to be found in all of the larger studies as well as the census, there are many applicable elements to treat questions of immigration. This means that from a statistical point of view and within all of the existing studies, the variables of foreigners and immigrants find application: nationality of individuals, nationality of birth or by acquisition, place of birth, etc. In this context, one may make use of every one of these studies (national census, research on the workplace, life conditions, research on behalf of family matters etc.) just as well in line with the variable of foreigner as with the variable of immigrant. Moreover, what is also to consider is the study ad hoc family which elaborates on questions of identity or origin. Nevertheless, today, there is not much work effected in this context. What remains to be called to attention is finally the fact that it is habitual in the national institutions of the State or of institutions of social security to turn away possible “abusive” applications of certain sensitive data in an improper way, which even results in stigmatising attributions within the political debate; this improper use is qualified by calling to attention merely one of several interconnected variables - such as denominating the origin of beneficiaries to social assistance, magnifying singular variables by inappropriate combination, as in the case of prison populations; the representation of a certain level of immigrants among prison population, which is of no avail to practitioners in the field of statistical evaluation, apart from structural effects.

Numerous studies have “advance[d] the investigation even further by looking back at the previous generation”, asking for the country of birth of the parents (father or mother) in order to analyse the situation of the children of immigrants and not merely the situations of immigrants themselves. This research has been examined by the National Council of Statistical Information (CNIS) and the French Data Protection Authority (CNIL), who have provided a positive assessment regarding their realisation.

List of studies integrating the parents' country of birth

- 1986, INED, Catherine Bonvalet, *Populations in Paris*, which registers, besides the country of birth and the distinction between French by birth and French by naturalisation, the places of birth of the parents and parents-in-law.
- 1992, INED-INSEE, Michèle Tribalat, *MGIS* (“Geographical mobility and social insertion”), which records in particular the date of entry to the host country, the period and duration of residency, allowing to assess effects within certain periods of time, effects relating to age and effects of generation relating to the economic and social history of immigration.
- 1999, INSEE, Inquiry of work-related matters (prolonged study for a duration of 3 semesters). Every trimester, about 54 000 regular habitations inquiries, adding up to 70 000 individuals of 15 years or more. From one trimester to the next, a sixth of the sample is reassessed, every habitation thus being questioned six times in a row. The questionnaire of the EEC integrates questions on behalf of the nationality of birth of the parents and their place of birth since the 1 January 2005.

- 1999, INED-INSEE as well as researchers and socio-linguists, *Study on behalf of family history* (EHF), making a huge effort due to the question with regards to language : every person is asked to name “in which language or dialect” his father, then his mother speak to him “regularly since childhood, since the age of five”, and, on behalf of the next generation, in which languages he himself has habitually spoken to his own children when these were five years old. It thus became possible to retrace, for the major part of the 20th century, the dynamics to the diffusion of the languages, in particular the rapidity of passage to the French language in the successive inflows of immigration.³⁸

³⁶ Cf. <http://www-census.ined.fr/debat/>.

³⁷ http://www.penombre.org/hors_serie/enq_et_orig.htm.

³⁸ Cf. Vallet (L.-A.), Caille (J.-P.), 1996, who, in a similar fashion, have constructed a category “peer group of pupil”

- 1998, 2001, CEREQ, Within the last two cycles of a series of studies realised by the CEREQ (French Centre for Research on Education, Training and Employment) on the professional insertion of youngsters who have dropped out of the educational system in 1992, 1998 et 2001 (Generation 98, Generation 2001), a question has been posed with respect to the parents' country of birth, when those declared themselves foreigners or having acquired French nationality.
- 2003, INSEE, study on professional formation and education (FQP).
- 2003, CNAV-INSEE, in co-operation with ARRCO, with FAS, the MSA, the “Caisse des Mines”/ “seniors immigrants in France”, aims at the evaluation of the diversity in life situations of aged immigrants.
- 2003, INSEE, “Life story”, realised at the hand of a representative sample of the adult population residing in the French motherland, of about 8 400 individuals; concentrating on the construction of identity, taking numerous aspects of peoples lives into account as well as a biographical system of analysis and a classical questionnaire mixing objective and subjective questions, among these affiliations and their definitions (nationality, languages, genealogy, parents, places of attachment) sphere of ideas (politics, religion, convictions).
- 2006, INED-INSEE, *Trajectories and origin*, concentrating on two big cities (Paris and Strasbourg), aims at the question to what extent origin is in itself a factor to promote inequalities or merely of specificity in the access to different resources of social life (housing, language and education, employment, leisure activities, public and social services, contraception, nationality, networks / relations, etc.).
- 2008, INED-INSEE, *Trajectories and origins*, national scope. 10 000 immigrants aged 18 to 59 years old; 10 000 individuals aged 18 to 49 years old having at least one immigrated parent; 2 000 “natives” from 18 to 59 years old who constitute the sample-witness. Objectives: Describe the trajectories in school, professional life, familial and residential circles. Evaluation of gender relations, discriminations and racism, questions of identification and identity, practices of the community, attitudes and role models. Analysis of the principal dimension of integration, conceived as the total of chances of access to resources of social life (housing, leisure activities, services, health...)

Apart from that, the Ministry of Justice, publications of the Direction of Administration and Equipment, as well as the annual statistics of Justice (editions of French documentation), the studies and statistics of Justice, the statistical report on sentences and the census of the annual judicial activity, are splitting up the total of sentences in line with categories of age and nationality, in a detailed manner, but without crossing the two variables and without providing results in respect to foreign delinquent minors³⁹. Still, special request evaluations on behalf of this context may be effected by the sub-direction of statistics, studies and documentation.

2. The possible

Sociologist and demographer Francois Héran has concluded his contribution at the workshop of the French governments' National Plan (immigration, job market and integration)⁴⁰ in pointing towards the fact that French public statistics have always been constructed with a view to the subjects of professional insertion, integration and discrimination: “No reason to introduce “ethnic categories” to achieve this aim. Data of a fundamental nature for the sake of immigrant identification in line with nationality of origin are at disposal in the census and standard investigations, whereas the information relating to the origin of the parents is accessible in research and case files of specialised studies that have all received the support of CNIS as well as CNIL. If one wants to go further and advance, for example, the questionnaire up to the point of physical characteristics within discrimination, the law of 1978⁴¹ authorises the inclusion of sensitive questionnaires on the double premise that they be in line with the aim of the study and that individuals questioned give their confirmation. The fight against discriminations at work or beyond may be supported by studies on circumstantial matters which access the problem, in its objective as well as in its subjective dimension.” The authors of the given group, devoted to the subject of urban segregation and social integration within the Council of economical analysis are applying these conclusions to the total of evaluations. Nevertheless, there are points of view which are differing substantially, which have been expressed in underlining “the shortcomings of the system of statistical information on behalf of populations linked to immigration”, in thus placing an accent on the insufficiency of

which combines nationality and place of birth of the pupil with the language spoken at home, within their study on pupils “foreign or originating from immigration” realised on the basis of a panel of national education. See also Felouzis (G.), 2003, whose works have reestablished a category of “cultural origin” relying on the parameter of students' first names, disposable in the case files of the Academy of Bordeaux, which demonstrates the existence of a strong concentration of pupils of the same origin within certain establishments and point towards the assumption that the criterion of origin enters to a greater extent than the social criterion.

³⁹ Cf. <http://www.justice.gouv.fr/publicat/esj.htm>

⁴⁰ Cf. Héran (F.) *et alii*, 2004.

⁴¹ Cf. Law n° 78-17 of 6 January 1978 on behalf of computer science, file cases and liberties.

nationality or country of birth (with the additional case of French originating from overseas departments or territories) to provide information on behalf of the situation “of population experiencing discriminatory practices in the case of “youngsters originating from immigration”, born in France to immigrated parents or parents originating from overseas departments”. Nevertheless, the author has conceded that other types of identification might just as well apply (declaration of “ethnic identity” or “ethnic origin”), with “a very limited chance for application in the French case.”⁴² To resume, everybody joins in with the opinion that it is necessary -with a view to fighting inequalities concerning procession of data linked to origin - to estimate their scope and thus define the causes. On the other hand, opinions differ for diagnostics on behalf of the French statistical system in this field; is it sufficient or insufficient? In the same way, these questions are focused on the necessary observations with a view to the possible application of rather neutral variables in an adverse way that results in discrimination. “A minima, public statistics may, in a systematical way, collect information relating to place of parents' birth or their nationality at birth and refine the results by applying work-related data”, proposes a recently published official report.⁴³

A study on the dimension of diversity

Let us take the question to another level. INED has realised an explorative study, entitled “*The dimension of diversity*”⁴⁴ at the hand of 1327 employees and students, aimed at testing different methods of declaring national origins and ethnicities and registers the reactions of the individuals interviewed in line with three approaches to origin and three methods of record tried and tested: information on descent (country of birth and nationality of the individual interviewed, as well as of his parents and grandparents) declaration of origin on a pre-established list (with two variants : one list of cultural settings and one of nationality) and, finally, the declaration of “ethnic/ racial” affiliation on a list inspired by British census and adapted with respect of the French situation (“are you considering yourself to be white, black, Arab or Berber, Asian, originating from the Indian subcontinent?”) provided with the possibility of multiple choice: “person of mixed parentage”).

The results, presented by Patrick Simon et Martin Clément in July 2006, are showing that the people interrogated are demonstrating a willingness to reply frankly on behalf of a “statistical evaluation of origin” and do at the same time remain reasonably careful. They are clearly distinguishing the part that belongs to ascertained facts (research and census) and that part pertaining to the administration or enterprises. Many are afraid that the denomination of individual origins will be applied for discriminatory purposes when recorded in the files of administration.⁴⁵ Within this publication, François Héran recalls the principle which is largely respected and applied: questionnaires may explore the origins (country of parents' birth, for example), even be collecting sensitive data (such as religious affiliations or physical appearance), as long as the principle of pertinence is respected (“as long as the questions asked are pertinent in line with the declared objective of the evaluation”) and, likewise, as long the principle on behalf of transparency (“interviewed individuals are expressing their consent”); advice on the part of the Control Commission of statistical evaluation (CNIL) provide that under the given premises, statistical practitioners and researchers may evaluate very broadly; “exactly the contrary applies for the case files of administration, which concern individual fate and operate on a permanent basis, exhaustive and nominal at the same time (files of personnel, of pupils, tenants...)”.⁴⁶

On the other hand, there are actors in the debate who seek to slow down the prevalence of this method, such as the jurist Gwenaëlle Calvez⁴⁷, who has elaborated on a result of considerable difference⁴⁸ to show that “the construction of ethnical categories conflicts with sociological obstacles of a primary dimension. If one part of statistical practitioners and social scientists as well as politicians deplore “the invisibility“ of French nationals originating from immigration, it seems as if the individuals concerned get along very well with this situation of “invisibility“. The failure experienced - on the political level and in reference to French associations - at the

⁴² Cf. Simon (P.), 2002.

⁴³ Cf. Fauroux (R.), 2005.

⁴⁴ This study results from a proposal to the signatory enterprises of the “Charte de la diversité” (aimed at the promotion of measures for enterprises in their fight against discriminations), distributed by an official organism, Fasild (“Fond d’Action et de Soutien pour l’Intégration et la Lutte contre les Discriminations”).

⁴⁵ Cf. Simon (P.) *et alii*, 2006

⁴⁶ Cf. Héran (F.) *in* Simon (P.) *et alii*, 2006*ibid*. One may add the pertinence of a multi-criterial analysis given the means to consider the effects of origin “all other criteria left aside“, by integrating other criteria into the explicatory model, thereby abstaining from the temptation to attribute qualities to the national origin of parents which are originally owed to other socio-demographical factors (Cf. Lutte contre les discriminations : les recommandations de la CNIL pour mesurer la diversité des origines, 09/07/2005).

⁴⁷ Direction générale de l’administration et de la Fonction publique (DGAFP).

⁴⁸ “It will be sufficient to merely quote the level of no answer to the administered questionnaire (nominative envelope and all the guarantees of confidentiality required) within the framework of a study directed by the HCI in 2001 [HCI, 2001] : 65 % of interrogated individuals (staff of the public sector and the private sector) have refused to respond to the question: “Are you French by acquisition, child of foreigners, grand-child of foreigners ? “. Cf. Calvez, 2005, p.34.

hand of efforts to “ethnic” mobilisations is thus very revealing. Numerous are the signs pointing towards a French reluctance to appear in the public eye under ethno-racial premises, (...) thus enhancing a profound resistance to which social scientists as well as politicians should try to relate.”⁴⁹

Synthesis

To conclude, the debate has been concentrated on the way society perceives itself: what has for a long time been the “creational utopia of citizenship”, to use the expression of Dominique Schnapper, has resulted in the refusal to take the differences of this order into account - but, in doing so, has led to the under-estimation of phenomena of this order and in a slow-down in public action destined to compensate these effects. Today, the demand points towards more equality, but not only in a formal manner; at the same time, a multiplication of particular politics of intervention is requested. Contrary to this demand, the concern is expressed that categories may be applied which could contribute to increased conflict due to ethnic tensions between different social sub-groups. Apart from that, demographers and social scientists - such as Alain Blum - have underlined the idea according to which “the desire to measure the complexity of social reality in applying the notion of ethnicity is illusionary”, ever the more so as ethnical characteristics are innate to the individual and also depend on a particular kind of acknowledgment via *alter ego* and in consideration of a pluralistic character to perception: the denomination of ethnic group (“ethnie”) does not relate to a definite identity of origin. “Origin is a matter of reference, but only in association with other characteristics, thus in a complex manner (...) In addition, ethnicity such as it may be constructed departing from the question of origin of every single individual cannot relate to the criteria of discrimination – which is relying on a notion of accent, on a surname or last name, on a colour, on a way of being.”⁵⁰

In the light of these evaluations, three perspectives evolve progressively on behalf of the question:

- the first consists in asking the question to whether the construction of ethnical categories is obstructed -via obligation of the principle of equality - by historical, political or constitutional obstacles ;
- a second perspective accepts that the Republican principle is suspended in case of a necessary fight against discrimination, in order to shed light on these phenomena which would otherwise remain in the dark, but nevertheless in careful consideration of the methods and the scope which is given to the means in this fight;
- the third favours to overcome ancient fears and thus the application of ethnic categories, interpreted as a change of paradigm which opens new pathways to new evaluations in the framework of a society with a multitude of ethnical origins, nevertheless bearing in mind to apply the methods carefully for the sake of scientific as well as political repercussions.

On the one hand, the frontier between the two last points is about to be effaced. On the other hand, within this delineation of three points, one may find more or less the four points of the principal model of “integration”, drawn up in specialised literature : “the assimilation-related” model which favours individual as well as egalitarian assimilation in the French Republic; the “integrational” model with a view to the conflict between the integration of the individual in the framework of a community on the one hand and equalisation of civil rights on the other, between nationals and foreigners; close to the previous, the model of “multiculturalism” - to do away with “abstract universalism” by taking the individual within a multicultural society into account; finally, “differentialism”, claiming the abolition of the exercise of domination on behalf of minority communities.

In a chronic publicized in a national newspaper in mid-September 2006⁵¹, the director of the National Institute for Demographic Studies has underlined once more that “statistical practitioners as well as demographers are today confronted with a double injunction, one of a perfectly contradictory nature. If they are not interested in questions of origin on behalf of immigrants, they are called ignorant or merely not qualified. On the other hand, if they are interested in the matter, they threaten the French Republic. It is always too much or too little, and the two verdicts are sometimes even rendered one after the other by the judges, who rest assured of always being right.” He called to mind that the authorities of control are indeed authorizing the enquiries by sample, of statistical and social pertinence, while remaining inflexible on behalf of the case files of administration which public statistics are related to data with validity for one generation as well as posing questions on behalf of national origin and countries of birth of the parents in numerous evaluations (as cited before, § 1), that “statistical practitioners have no need whatsoever to challenge so-called taboos to evaluate the sensitivity of national origins within processes of integration or discrimination”, on behalf of which “they do have no interest to call them “ethnic” if they do not provide a connection to ethnicity, but moreover to countries of birth as well as nationalities of origin.” that questions classified as “sensitive” questions, such as ethnic-racial affiliation or,

⁴⁹ *Ibid.*

⁵⁰ Cf. Blum (A.), “Les limites de la statistique”, *Le Monde*, 1^{er} août 2006.

⁵¹ Héran (F.), “ Statistiques ethniques, c'est possible”, *Le Monde*, 14 septembre 2006

by example, the colour of skin may be effected on the double premise that they be pertinent and the interviewed are giving their written permission.

3. The limits to the possible

The Law n° 51-711 of 7 June 1951 on obligation, coordination and the secret in statistics - regulated by more than 20 laws, orders et decrees, abridged by article 5 in 1962 and attributed with an article 7 a in 1986, and of two articles 6 a et 7 b in 2004 and of which, according to the statistical practitioner Gérard Lang, no other original article has been excepted from modifications - is the fundamental law to regulate French public statistics.⁵²

The second provision decisive to statistics is Law n° 78-17 of 6 January 1978, relating to computer science, case files and the liberties according to which “the development of computer science should be of service to every citizen and should do no harm, neither to human identity nor to human rights, nor to private life, neither to individual liberties nor public liberties“, modified by Law n° 2004-801 of 6 August 2004, relative to the protection of natural persons on behalf of processing of data of a personal nature.

These laws are completed by the following principal texts in chronological order, of European and national origin which find application in France:

- Convention n° 108 of the European Council of 28 January 1981 for the protection of individuals on behalf of automatic processing of data of a personal nature;
- Directive n° 95/46/EC of the European Parliament and the Council on 24 October 1995 relative to protection of natural persons on behalf of the processing of personal data and on behalf of free circulation of the like;
- Directive 2002/58/EC of the European Parliament and the Council of 12 July 2002 on behalf of the processing of personal data and protection of private life in the field of electronical communication (directive private life and electronical communications)
- Decree n° 2005-1309 of 20 October 2005 for the application of Law n° 78-17 of 6 January 1978 relating to computer science, to case files and to liberties, modified by law n° 2004-801 of 6 August 2004.

On such footing, the CNIL considers that these variables indicating nationality and place of birth of individuals may figure in all sorts of enquiries, as long as the premises of proper aim and proportionality are given. In other terms, there is no established norm with strict regulations, but a doctrine is constructed on the foundation of cumulative jurisprudence. Characterisations of ethnical and racial origin, apart from others pertaining to the civil state (nationality, place of birth), are submitted to article 31 of the law of 1978 : their acceptance into the country is not prohibited, but does have to be subjected to a special demand to the CNIL. In 2005 and 2006, the CNIL has adopted recommendations to shed light on the conditions of application on behalf of diversity of origin⁵³. To align these two examples with a view to effecting decisions, this kind of activity is illustrating the foundation of deliberations for the construction of a sample on behalf of a selection of a given number of interviewed with reference to their names, which could prove that the institutional characteristic is a decisive element: public (INED) *versus* private (Representative Council of Jewish Institutions in France)⁵⁴.

⁵² Cf. Gérard Lang, who describes these conditions of elaboration and in particular the emergence of three principles within French law, as described in “L’élaboration de la loi de 1951 sur la statistique publique“, Journées d’histoire de la statistique, INSEE, 15 and 16 February 2006.

⁵³ Fight against discrimination: the recommendations of CNIL to measure the diversity of origin, 09/07/2005 ; Mesure de la diversité des origines, 19/07/06.

⁵⁴ Refusal of authorization - on the part of the representative Council of Jewish Institutions of France - to the realisation of an automated processing system with reference to personal data destined at the construction of a sample of names taken from the *Guide des patronymes juifs*, ed. Actes Sud, as well as on behalf of the most frequent names among the donors of the „Appel Unifié Juif de France“ (Deliberation n° 2006-078 of 2 February and of 21 March 2006) : “the method of selection is not admissible, the link between name and affiliation to the Jewish community thus being possibly proven“ ; Authorisation of a study by INED on integration of Turkish and Moroccan people founded on a sample selected on consonance of last and first name taken from special sample of telephone data by a German specialist organisation for onomastical research (research based on names), on behalf of public interest attached to a study of integration of descendants of immigrated Turks and Moroccans (session of 24 July 2006) : “[La CNIL] has considered that the research planned by INED was in line with public interest inasmuch as it permitted for an assessment of integration of second generations of Turkish and Moroccan origin and, in this sense, provided an effort to fill the statistical gap which had to be dealt with for the sake of institutions of the public sphere to apply politics of integration, as well on behalf of these populations as on behalf of the European level.. “

D - THE EFFECTS OF SELECTION OR OF DISCRIMINATION

The effects of selection and discriminations

The big historical picture of the last two centuries as well as aspects concerning the difficulties of discriminations have thus been approached within the last paragraphs.⁵⁵ In line with the direction pursued by the programme AGIS, the given paragraph will re-assess some points to underline aspects on behalf of the most explicit discriminations in an evaluation of recent enquiries; subsequently, illustrations will be given, obtained from statistical evaluations.

One recent aspect: historiographies of colonization

Among these recent evaluations, one may find the historiographies of French colonization⁵⁶. The latter shows a couple of exclusions. For example, the universal right to vote in Algeria under French domination which has since been regarded as a matrix to French reglementation on nationality as well as in the “new colonies”, the tests developed there were later on exported towards the other territories of the French Empire. The “indigenous” Algerians, as Laure Blévis has described it, were inserted into the community of French nationals according to one law (the sénatus-consulte of 14 July 1865), and then had to witness being denied the qualities of citizens and access to the universal vote due to the maintenance of their particular civil status founded on Muslim law. The author evolves his argument from the vantage point of the discovery of a file pertaining to the archives of the Algerian government, more precisely, the Direction of Indigenous Affairs, which relates to the inscription of Algerian immigrants into the electoral record during the 30ies, anomaly which was met with a response of legal as well as political impact on the part of the government services⁵⁷.

The constitutional challenge of such a field of study is of actual relevance in the pursuit of short-term as well as mid-term effects – aligned with the example of American studies – to colonization, in “pick[ing] up the pieces to a shattered history between colonized and colonizers - as well as between territories and the motherland”⁵⁸.

One second aspect concerns the territory

This second aspect concerns the territory as well as schooling. The terms of “social fracture”, “France on the low”, “districts of precariousness”, applied time and time again, are covering up a reality much more subtle. “The French problem of urban segregation is not limited to several hundred quarters devastated by failure and poverty. This is merely the tip of the iceberg of separatist tensions traversing all of the society (...). The phenomenon is ever the more worrying as by closing in on the present, territorial fractures are also preventing future solutions for individuals and seal their fate within social contexts without any possibility to interfere on their part.” Such are the estimations of a study taken from the statistical file cases of the evaluation work sphere by INSEE⁵⁹.

The authors are jointly of the opinion that one of the most remarkable phenomena of recent years is the fact that urban centers are becoming more and more representative of the upper classes while at the same time “attributing certain characteristics to the “France of the periphery” [which] unites social categories opposed at another time: workers in rural surroundings, peasants, the attendant to a run-down apartment complex, the unemployed from the suburbs, are all suffering the same sentiment of being banned....”⁶⁰.

Social mutations (with the social model of integration, inherited from the “Trente Glorieuses”, slowly fading, the accentuation of inequalities, etc.) are accompanied by a spatial process of separation which is qualified as “something never seen before“, with the simultaneous development of periphery territories giving rise to substantially different “counter-forms of life“ which are frequently translated into the “pressure“ mentioned

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⁵⁶ This branch of history stands in one line with the already ancient discipline of *Post-colonial studies* as well as *Subaltern studies* at American and Australian universities, which cropped up in the departments of literature and the *Cultural Studies* of American universities, with a view to literary production in the colonies, the construction of culture respective of indigenous difference, also on behalf of a critic of traditional colonial historiographies.

⁵⁷ Cf. Blévis (L.), 2004.

⁵⁸ Cf. Merle (I.) et Sibeud (E.), 2003. This question has been advanced in a legislative debate on behalf of the second paragraph of one law of 23 February 2005 stipulating that *school programmes are acknowledging in particular the positive role of the French presence overseas, especially in Northern Africa, and are according to the history and sacrifices of the French Army's soldiers who originate from these territories the eminent place to which they are rightfully entitled.* “The appeal of the Prime Minister by the President of the Republic has resulted in the constitutional Council's pronouncement on behalf of the “reglementary nature of the paragraph“ and in the fact that the Council of the State” by way of a project to a decree will abridge the same. This has been effected one year later. Cf. Décret n° 2006-160 du 15 février 2006.

⁵⁹ Cf. Maurin (E.), 2005.

⁶⁰ Cf. Guilly (C.) *et alii*, 2004.

beforehand.

Geographers of the post-industrial society who are interested in social dynamics, economics, politics, among whom the spatial lecture is an estimated source of information, are shedding light on a partition between centers represented by the most dynamic agglomerations as well as the peripheries. Today, it is in the big, well-equipped cities that the most favored social spheres can be found, the most qualified jobs, the best schools, with a neighborhood that is sometimes very poor and housing consists of slums, so that unemployed, workers in poverty as well as the poorest households live on the periphery (*gentrification*), or in the rural and former industrial zones which have not yet been taken to. This is where extreme votes and abstentions from the vote are peaking.

The neighborhood of the minor

Data taken from the national study "Occupation 2002 of the INSEE"⁶¹ approach characteristics of the neighbourhood ("voisinage") of children: Parents are "Diplômés supérieur à bac+2" (higher education, university degree) or "Sans diplôme" (without university degree, having effected studies); factors of "remuneration" ("High / weak remuneration; 1st decile / last decile") are looked at; how many are "foreigners"; "monoparental" families indicating the percentage (%) in relation to the overall population; the % of neighbourhoods in the population translates to the % of neighbourhoods where specific characteristics are absent; furthermore, the % of neighbourhoods in the population as regards a specific characteristic when the mixture is total, that is when the characteristic is distributed at random on the territory.

For example, foreigners constitute 5.6% within the population, in almost half of the cases (45.6%), the proportion in the neighbourhood is zero so that this would be the case in only 1 time in 10 (9.9%) if they were distributed at random. For example, the "Diplômés du Supérieur à bac+2" are at 8.9% in the population, in 1 of 4 cases (25%) the proportion in the neighbourhood equals to zero so that this would be the case in 1 on 25 (4.2%) if the distribution of "formative capital" would be distributed in a random manner on the territory. The essential consequence of this structuralization is that the children experiencing difficulties at school (disciplinary problems, not attending class, setbacks, years missing in the school record, etc.) are more often originating from poor families and are exposed to problems of integration. They thus find themselves relating to a neighbourhood of friends where failure in school is frequent, with family arrangements of a more varied nature, thus more tolerance towards children's shortcomings in school; this situation contrasts with that of families with a diploma on the parents' side, where failure in school does hardly occur at all; in the same way, this hence holds true for the entire neighbourhood, resulting in the fact that the task of being an "achiever" is rather implicit. The adolescents of families where at least one of the parents has obtained a diploma are living in neighbourhoods where the level of less advanced pupils at the age of 15 is at about 13 %. Contrarily, families where at least one of the parents is without a diploma are living in neighbourhoods with levels of less advanced pupils at the age of 15 attaining 56 %, being more than the fourfold⁶². Is it necessary to speak of ethnical segregation at the hand of pedagogical structures within the French schools ("collèges")? "As far as school matters are concerned, the concept of segregation can be applied to a configuration which divides the pupils' population into segments, so as to set aside one category of children and placing them into classes where they are prepared to continue their education on a lower level. (...) Without exception, this population is not set apart on the foundation of an ethnic decision (most of the time, the majority of pupils originating from immigration are to be found in the "regular" classes), but the boys originating from migration are often to be found in this section."⁶³

Discriminations in the work sphere

It is obviously more difficult to adopt a positive attitude towards society in a context where the youths, parents or grandparents suffer due to numerous situations of handicap in accessing employment and in questions of promotion within enterprises.

Extract of the report on the subject of fighting ethnic discrimination in the work sphere of Roger Fauroux: "Situations of handicap in accessing employment or on behalf of promotion within enterprises are firstly related to a social situation of precariousness which lessens, from a very young age, chances and perspectives in school. It is effecting primarily the sons and daughters of immigrants belonging to large families; these youngsters have been raised by parents who have rarely obtained diploma and have settled on the periphery of the big cities, holding jobs of low qualification. They might also have been the first victims of the wave of massive unemployment, which has hit French society since the mid-seventies. Disposing of no personal resources appropriate to facilitate their introduction in the world, they are alone in their search and do not always know how or where to find the advice they need to be able to position themselves on one level with their competitors

⁶¹ Cf. Maurin, *op. cit*

⁶² Ibid.

⁶³ Cf. Lorcerie (F.), 2004.

at work. There is another factor of handicap that French society has refused to consider for a long time, even though it has made for a large scandal; this is constituted by racial discrimination, in the work sphere, which affects individuals of foreign origin and, more generally, all those, French or foreigners alike, who can be distinguished by the colour of their skin – in the eyes of the majority – from the “French of reference”.⁶⁴ Some eloquent examples shall be introduced, taken from the report that was cited in advance: a man of “standard appearance”, of Maghrebin name and surname, residing in Paris, does have five times less the chance than a man of “standard appearance”, but “white of skin”, of French name and surname, to obtain a convocation for a job interview after sending in his respective CV.

A candidate of Maghrebin origin, who nevertheless disposes of a superior CV (excellent grades, some work and leadership experience...) will receive three times less convocations for an employment than the candidates of French “reference”, “white-skinned”, of the same age. Racial discrimination is frequently doubled with discrimination linked to a place of residence which will in part bear the same traits.⁶⁵

Evaluation of the sociological perspective to police and judicial activities

The third aspect is related to the development of a sociological perspective. This will be effected relying on data which originate from police records, referring to differentiated or even discriminatory aspects in the police activities: “*In its ethnic composition, the population deferred is not identical to the population questioned by the police; and in the same way, the population questioned bears no resemblance to the general population from which it is extracted. The reason to these differences lies in the selective methods applied by the police, during the protocol as well as in latter stages of proceedings*”, writes René Lévy⁶⁶ in one of the few studies dedicated to the question of police evaluations. The analysis of René Lévy is founded on 538 case files of publicly arrested individuals relying on the following criteria, assessed by the police agents: “European type”, “Northern-African type”, “African type”. It showed the given relation between the decision to defer and the affiliation to the group “Northern-African”, compared with the group “European”. The variable “North-African group” has been advancing all other groups, including those relating to representation (nationality and familial situation). In the same year, within an evaluation of the judicial dimension, Bruno Aubusson de Cavarlay saw age and nationality as constituting “a reinforcement of the social class”⁶⁷.

Rather recently effected evaluations, those of Fabien Jobard, are linked to the concern of nuance. The first idea in this context presents the overwhelming over-representation of people of color and Asian populations controlled by the police, which stands in contrast to the general population effectively seized in the course of their service⁶⁸. They are furthermore treated differently if controlled or arrested⁶⁹. The author adds that it is thus only fair “to ask for the quality of police interactions and to establish whether these interrogated individuals are treated in the same way by the police agents”.⁷⁰

The second idea consists in that police agents are distinguishing three types of public. In the United States, three categories find application, as proceeds in these statements: “*suspicious persons*” (defined as “good clients who have committed real crimes and can tell a lot in interrogations”), the “*know nothings*” (who are of no use to the police), and the “*assholes*” (those who do not bow to the assessment of the police as regards the situation - for example, they do not approach the police agents in a respectful manner, which is also expected on the agents' part). These slang-denominations have been assessed after 250 hours of observation of police work, effected in the period mid-March to mid-July 2004: “clients”, “prouts-prouts”, “crapauds” (toads)⁷¹.

The question posed is whether the categories are fixed a priori and are attributed on behalf of the physical “ethnic” appearance or other physical characteristics or if, as the American social scientist John Van Maanen has proposed, they are deduced from direct interaction and can also be delineated from the framework which naturally provides for exchange among protagonists. Therefore, the call for an evaluation of the question whether there are different expectations on behalf of transfer when it comes to the groups evaluated.⁷²

⁶⁴ Cf. Fauroux (R.), 2005.

⁶⁵ See Moullet (S.) et Dupray (A.), the insertion of youths originating from the Maghreb in France -More obvious differences in the way employment is accessed than in matters of remuneration : Testing realised by the organisation of observation on behalf of discriminations in France in April and May 2004 and 2005, directed by Amadiou (JF.), Paris I, with the support of Adia.

⁶⁶ Cf. Lévy (R), *Du suspect au coupable. Le travail de police judiciaire*, Paris/Genève, Klincksieck/Médecine et hygiène, 1985, p. 145.

⁶⁷ Condemnations of adult men, Cf. Aubusson de Cavarlay (B), “Hommes, peines et infractions : la légalité de l'inégalité”, *l'Année Sociologique*, vol. 35, 1985.

⁶⁸ He takes the example of British research taking to police observations patrolling streets. Cf. Michael Rowe, 2004, p. 78-98.

⁶⁹ Cf. Peter Waddington, 1999, p. 287-309.

⁷⁰ Cf. Jobard (F), CNRS.

⁷¹ “Always ready to contradict the police agents with a “quoâ ?, quoâ ? “, *ibid.* .

⁷² Cf. Van Maanen (J), 1978, p. 221-238.

The third idea is the estimation of territorial discrimination being one of major impact, nevertheless to be regarded bearing in mind that it pertains to the individual concerned, and in particular to the penal reality of that person: for the police agents, the territory cannot be divided from the penal quality of those prevalent in this place, thereby turning it into “police territory“ in their perspective, where the interrogation of the latter takes an ad hoc turn. In addition, the racial affiliation has not added as much to the possibility of observing discriminatory practices as, moreover, the superposition of the penal profile and that related to territory which allowed for precise evaluations.

Created by the law in June 2000, the National Commission for a Security Code of Conduct, an independent authority of the administration, is charged to protect the respect for professional ethics for persons exercising activities of security⁷³. She reminds in her annual report 2004, issued to the President of the Republic on 18 April 2005, that the question of racial discriminations in attacks on professional ethics is nothing new: „This analytical work, relying on four years of application of the CNDS, has showed the weight attached to repetitions of particularly serious cases (...) The victims of foreign nationality (36%) are Algerian, Moroccan, Turks, Cameroun or Romanian. The majority of plaintiffs of French nationality (64%) are characterised by a name or physical appearance which point towards Maghreb or middle-east origin. The second category of French plaintiffs is of African or Antillean origin. It seems that discriminations are connected to physical appearances of the plaintiffs. (...) A part of the French population with immigrant background or foreigners can indeed have the feeling that not all the citizens are treated in the same manner. (...) For the security services, awareness as regards discriminations, education regarding characteristics of different groups of populations, training on how to intervene appropriately, support by experienced civil servants and, most importantly, interest for this crucial question will help to avoid that new borders within French society are created.”⁷⁴

The fourth aspect relates to the perspective on discriminatory practices in judicial or carceral proceedings. In his report of 1998 on *The Fight against discrimination*⁷⁵, the High Council for Integration (HCI) affirmed that the rules of penal law “organize a different treatment of foreigners“. Besides the application of specific legislation, the report explained the fact that the “weakness of guarantees of representations (social-economic situation, age, family situation...) is deterrent in every procedural phase for the future of those persons who are subjected to a penal treatment.” Foreigners are more often subjected to detention in the application of immediate sentencing than the French. A study realised in 2002 by the Cimade⁷⁶ at the Tribunal de Grande Instance at Montpellier lead to similar conclusions.⁷⁷

Several examinations of the question

When the 15th Congress of the International Association of Research on Juvenile Criminology was held at the University of Fribourg from 11-13 September 2003, a point was made on behalf of the justice of minors, departing from the European recommendation on social reactions to delinquencies of youth originated of migrant families⁷⁸. Giller has demonstrated that, for example, the levels of youth custody / prison sentences among young black men of 17 to 19 years have been 5,5 to 6,5 times as high as those for young white men. The conference did reveal an over-representation of youngsters of foreign origin among the youth arrested by the penal courts in Great Britain, Germany, Italy and Belgium, „all claim[ing], nevertheless, vigorously that *the variable* „ethnicity“ *is not pertinent* and even constitutes an additional risk of stigmatization (...) On the contrary, *the following variables are of a decisive nature*: economic as well as social factors...”⁷⁹

Recently, the President of the Economic and Social Committee, Anne-Marie Sigmund, declared the necessity “to dispose of quantitative data which should be of actual value and to be compared with a view to the state of affairs on behalf of juvenile delinquency in the twenty-five states of the EU, in order to seize in a trustworthy manner the challenges facing practitioners, the real dimensions of the problem and different ways of approaching them.”⁸⁰ The necessity to effect studies on a European level on behalf of these questions have recently been gradually accessed by the Direction de la protection judiciaire de la jeunesse (DPJJ), and have provided for differentiated results :

D.1) The first extraction of data has been equipped by the sub-direction of statistics to the Ministry of

⁷³Police, gendarmerie, borders, security service SNCF, penitentiary administration.

⁷⁴ Cf. *Rapport*, CNDS, 2004, http://www.cnds.fr/ra_pdf/ra_2004/CNDS_rapport_2004.pdf

⁷⁵ HDI, 1998.

⁷⁶ Historically aligned to movements of protestant youths, the „Cimade“ works today in collaboration with other catholic organisms as well as orthodox and laicist organs to help refugees, foreigners in France, and to promote solidary development of the countries of the East and South.

⁷⁷ Cimade, 2004

⁷⁸ Cf. Giller (H.), “Challenges of ethnicity for the juvenile system in England“, pp. 387 *sq.*, in Queloz (N.) *et alii*, 2005.

⁷⁹ Cf. Queloz (N.) *et alii*, 2005, p. 777.

⁸⁰ Cf. Advice of the economic and social committee on the prevention of juvenile delinquency and the role to the justice of minors within the European Union“ (2006/C 110/13), Official Journal of the EU C 110/75 du 9.5.2006.

Justice of the central case file, in which basically all of the penal sentences pronounced by judicial authorities for the year 2004 can be found. Variables applied are: nature of offence, nature of sentence, gender, in distinguishing nationality according to three criteria: French, EU and out of EU.

D.2) The second extraction of data has been equipped by the central service of studies on delinquency (SCED) with the Direction of judicial police, originating from the national operative base of STIC (Processing System of recorded Offences). Not of an exhaustive nature, they merely concern the services of the national police (apart of Gendarmerie Nationale) et remain subjected to manual evaluation and processing apart from being accessible in the criminal records files on behalf of minors interrogated. Variables are: nature of offence, age, nationality (France, EU, out of EU).

D.3) The third examination conducted by the CESDIP (Centre de recherches sociologiques sur le droit et les institutions pénales, at the same time laboratory to the CNRS and research services attached to the Ministry of Justice), has concentrated on minors trialed for offences committed against agents of the public forces in a tribunal pertinent to the Cour d'appel in Paris, in the course of the last 18 years.

Contrastive results, related to the nature of offence (D.1&D.2)

Table n°1 of the following page corresponds to sexual offences, theft and offences against agents of the public forces as to be found in the national criminal record, for the year 2004 and (4 et 5) of interventions originating from the STIC mentioned beforehand on sexual offences as well as matters of theft, pertaining for the same year.

As taken from the criminal record, sexual offences are divided into three groups :

- Rape comprises : 11301 : Rape committed by several individuals ; 11302 : Rape with aggravating circumstances ; 11303 : Rape of minors under 15 years of age ; 11304 : Rape by relative or person of authority; 11309 : Simple rape and others.

Sexual aggressions with aggravating circumstances comprise: 24505 : Sexual aggression with aggravating circumstances; 24509 : Sexual aggression by relative or person of authority ; 24507 : Sexual assault on minor with aggravating circumstances.

Sexual aggressions without aggravating circumstances comprise : 24504 : Sexual aggression; 24506 : Sexual assault on minor without aggravating circumstance.

- Infractions in matters of theft comprise : 12101 : Theft carrying arm ; 12102 : other thefts qualified ; 21101 : simple theft ; 21102 : housebreaking and theft ; 21103 : theft with violence ; 21104 : Theft with destruction or degradation ; 21105 : Theft with aggravating circumstances ; 21106 : Theft with two or three aggravating circumstances.
- The offences committed against representatives of the public forces comprise : 28101 : Insulting an agent of the public forces ; 28102 : acts of rebellion ; 28103 : violence against an agent of authority.

STIC evaluations comprise:⁸¹

- sexual offences : sexual aggression ; sexual aggression under threat of weapon; against minors, against minors of less than 15 years, against minor by relative, by person of authority; against vulnerable person; rape with torture and acts of cruelty; collective rape of minor ; under threat of a thrusting/knife (“arme blanche”), etc.
- in matters of theft : on discovery ; indirectly ; at the door ; in a caravan, by tearing away, by deceit, shoplifting, armed theft, with fake weapons, with aggravating circumstances, etc.

Certainly, in the observation of these tables of the following page and in attaining to the type of infractions, in matters of theft and sexual assaults, the observation ensues that the severity of sentences varies considerably in line with the affiliations to nationality between French and foreigners outside the EU ⁸² : foreigners are being subjected to heavier sentences and more frequently face up to imprisonment in closed or partial conditions, while the application of educational measures is effected to a lesser extent; from this results that the interrogation has been concentrating on the question whether this effect was not due to different distributions of age: an increase in age could lead to the assessment that heavier sentences are more accessible and thus a crime record of longer prevalence/ duration is more probable, this holds true for cases of sexual assault, but on

⁸¹ The notion of „interrogation“ is a notion that is pertinent to the police and not judicial; in this case, it is related to the procedures applied to crimes and offences as well as certain contraventions of the 5th order (light violence, insults, non-public provocation of discrimination, of hate or racial violence, wearing Nazi uniforms and intrusion into schools)

⁸² Comparing the distributions of French and foreigners from outside of the EU, in the know that the total of offences apart from minors of unknown or stateless nationality = 41057, French counting for 37949, foreigners out of EU for 2976 and foreigners EU for 132. UE 25 (25 countries of the EU, 1May 2004) : Germany Austria Belgium Denmark Spain Finland France, Greece, Ireland, Italy Luxembourg, The Netherlands, Portugal, Sweden, Great Britain, Cyprus, Czech Republic, Estonia, Hungaria, Lettonia, Lituania, Malta, Poland, Slovaquia and Slovenia.

accounting the matters related to theft, it is quite the contrary ⁸³.

In addition and in consideration of offences to practitioners of the services of public authority, distributions are very close to those of 2004 and the phenomenon is confirmed in the way put down in the study on this type of infractions for the last 18 years in a tribunal of the Paris region (cf. *infra*).

Table 1: French criminal records office 2004 (source which is almost exhaustive, even if particular sentences are erased even before their inscription, nevertheless regarded as representative)

Field of application: all jurisdictions of minors – apart from minors of unknown nationality or stateless persons

Line for line: principal infractions corresponding to condemnations for crimes, offences, infractions and contraventions of the 5th order on sexual matters, theft, of IPDAP

In the column: Sentences as follows:

20, 30, 31 : 20 : Detention and reclusion; 30 : Closed detention; 31 : partial imprisonment of which 310 : Imprisonment with simple partial probation (“partiel simple”) and 311 : Imprisonment with partial probation (“sursis partiel probatoire”)

32 : Imprisonment probation total : 320 : Imprisonment probation total / simple ; 321 : Imprisonment probation total on trial ; 322 : Imprisonment probation total , TIG (work of public interest)

4 : Fine

5 : Substitutional sentence

600 : Educational measures of which : 611 : Admonition; 612 : Transfer to parents/ tutor/ guard/trusted person; 613 : Placement in a public or private institution of educational surveillance ; 616 : Placement under judicial protection ; 617 : Placement of open surveillance; 618 : Transfer to children's social aid

700 : Dispensation of the punishment / sentence

Sentence		20, 30, 31 : Detention and reclusion,	32 : Imprison- ment with probation	4 : Fine	5 : Sentence of substitution	600 : Educationa l measure	700 : Dispense of sentence
Principal offence	All sentences	or partial					
French							
Theft : All offences	16758	1995	5061	459	667	8261	315
%		11,9%	30,2%	2,7%	4,0%	49,3%	1,9%
Rape-sex.ag. : All offences	1865	376	965	0	10	498	16
%		20,2%	51,7%	0,0%	0,5%	26,7%	0,9%
IPDAP : All offences	1273	98	281	120	72	675	27
%		7,7%	22,1%	9,4%	5,7%	53,0%	2,1%
Outside EU							
Theft : All offences	1920	587	457	34	22	802	18
%		30,6%	23,8%	1,8%	1,1%	41,8%	0,9%
Rape -sex. ag. All offences	77	27	27	0	0	21	2
%		35,1%	35,1%			27,3%	2,6%
IPDAP : All offences	65	6	15	8	2	32	2
%		9,2%	23,1%	12,3%	3,1%	49,2%	3,1%

Source : national judicial case files - year 2004

⁸³ In consideration that the data are in line with provisions, as the individuals interrogated in 2004 have not generally been sentenced in 2004 (Data of the national case file).

Table 2 has originated from the national operational base of the STIC. The data are non-exhaustive and only concern the service of the National Police (not Gendarmerie nationale).

Table 2 : Sexual offences and offences of theft, brought before the commission in line with age (2004)

Offence	France		Foreigners outside EU	
	13 -15 years	16 - 17 years	13 -15 years	16 -17 years
Sexual offence				
Total boys	1104	611	90	77
	65%	35%	54%	47%
Total girls*	31 *	18 *	2 *	6 *
	63%	36%	25%	75%
Offences of theft				
Total Boys	12301	18614	1642	2599
	39%	60%	38%	62%
Total Girls	3154	3411	727	580
	49%	52%	56%	45%

(*) □ Attention : certain cases correspond to percentages associated to very small unities. Source : STIC – year 2004

Bruno Aubusson de Cavarlay underlines the caution that needs to be taken on behalf of these two sources, with particular regard to the fact that minors who have been foreigners in advance can have acquired French nationality due to their birth in France. There is a double problem, he writes, “of too little definition, as police agents may, for example, take note of the nationality of minors at the time of the sentence and not for the time of the offence, of missing exactness, on the other part, because foreign minor of less than 16 years may have become French to a significant extent as soon as they are over 16 years of age.”⁸⁴

Minors sentenced for offences against members of the public forces of the last 18 years / tribunal in the Paris region (D.3)⁸⁵

The object of the study conducted by the DPJJ has been to identify the determining factors of sentences pronounced in a tribunal belonging to the Appeal Court (“Cour d’appel”) in Paris, considering 519 defendants, among them 26 girls (5%), deferred in the course of 18 years ½ (1989-1st sem. 2006) before the children’s court (63%) or to the Chamber of the children’s judge (37%), for the sake of IPDAP (“offences against members of the public forces“, to “agents of the police la force publique“ before 1993). These offences are regrouping three incriminations: insult against official, rebellion, acts of aggression. A limitation to recorded facts (the file) assessed by the enquiring group was that, for reasons of the tribunals’ practice, it could not be ascertained whether the population collected was recovering entirely the field of the population sentenced. In spite of this reservation, the longitudinal analysis is showing strong annual variations, and a continued increase on the part of the number of individuals interrogated between 1990 and up to 2000 (except for years 1995 and 1996), stabilized ever since (an increase of about 4 interrogated per month), showing that about 30% of interrogated are young adults (18 to 20 years), that the most frequently recorded ages are 17 and 18 years (a quarter of the population for each year respectively). These interrogated have been regrouped into “groups of ascendance and consonance“, which means according to place of birth and family name. This redistribution has been effected in line with the modalities employed by the police in their identification procedures, as commonly applied in protocols or case files, distinguishing persons interrogated in line with the types “European“, “Northern African“, “African“. These modalities of classification are not resulting from an evaluation of plausibility by nationality or civil status: the individuals interrogated born in the Antilles pertain to the “African type“, the interrogated persons born in North America pertain to the type “European“, etc. The second limitation to the file consists in the fact that the European group is enlarged in proportions that may not be evaluated, in comparison to the group of Africans as a number of suspects enter into this category due to the fact that those in the category of “African“ may, for example, be born in the Antilles, but bearing a French name, and along with the fact that no indication of place of birth is attached to his identification, he enters the other category.“ In order to react to the difficulty originating from multirecidivists and to be working on sanctions in response to common and comparable cases, the study has concentrated on the IPDAP bearing mention of one offence only, as it is, 52% de la population (n=268) which comprises offences of insult, rebellion, insult and rebellion and joined

⁸⁴ Cf. Note of lecture of the intermediate version to the report.

⁸⁵ This paragraph has been taken from Jobard (F.), Lotodé (H.) (coll.), 2006.

infractions, IPDAP with violence (mere violence, insult and violence, insult, violence and rebellion etc.). It is worthwhile mentioning that the cases of violence considered here (20%) are low-level (they constitute an interruption of the police / other official agents' work for a short amount of time). Distribution of sentences is at (n=127, being 47%) in the children's court and of (n=141, being 63%) in the Cabinet of the children's judge. Merely 7 accused (2,6%), are under 15 years of age and almost all of them are boys : 95%. 47% of accused are sentenced for simple insult, 9% for simple rebellion, 25% for insult and rebellion and finally 19% for violence against an agent of the public forces. The "North-African" group is the one most represented (45%), while the European group is represented at 39% and the "African" group is represented with a level of 12%. The majority of accused are present at the hearing (201 accused, makes for 75% of accused), but 30 accused are not appearing (being 11% of the population), be it that they have not been summoned in time; in other words, it is established that the accused did not have knowledge of his duty to appear, (18 judgements in absence), be it that they wilfully did resign to be summoned without explanation (12 contradictory judgments to be signalled). It is on this foundation that possible discriminations have been evaluated in the pronouncement of the sentence, proceeding from the distance between "the most severe sentences" (prison sentences) and the "less severe sentences" (measures of reparation/mere admonition), as well as on behalf of duration of the prison sentence (closed detention). In 55% (n=147) of principal decisions, no sentence has been pronounced at all, but measures for n= 141, socio-educational measures, those of compensation for damages or of admonition:

Table 3

Principal measure	N=	%
Admonition (file of TPE)	100	37.3
CAE (Centre d' Action Educative)	20	7.5
Referral to parents	15	5.6
LS et LSM – liberty under surveillance and up to majority	3	1.2
other	3	1.2
2 nd and 3 rd measure		
LS (liberty surveyed), referral to parents and others	10	3.8

In 45% (n=121) of principal decisions, a sentence is pronounced⁸⁶ of which :
 12% : sentence of detention in prison⁸⁷
 52% : sentence incarceration with probation
 19% : monetary fine
 7% : works of general interest

15 of accused are sentenced to detention in prison, among them 6 "Europeans", 6 "North-Africans", 3 "Africans". With the exception of "Africans", the amounts observed are in line with the amounts expected; but with a view to the total effected (15), no definite conclusion may be drawn from these distributions. If one is to develop the criteria of severity of the tribunal at the hand of the option absence of sentence, it can be seen that the accused without final sentence are to 45% "Europeans", 48% among them are "Northern Africans", 12% among them are "Africans", being a distribution comparable to the distribution from the start of proceedings. The differences observed are nevertheless not statistically relevant⁸⁸. If we now turn to the most clement measure, which is admonition, we can see that the accused being sentenced with such a measure are at 41% "Europeans", 40% among these are "North-Africans", 15% among these "Africans", being comparable to the distribution prevalent from the start. The observed differences are yet not statistically significant.

To sum up, this collection of data suggests an absence of discrimination according to the three groups evaluated. If now one turns to the dichotomy "European / others", a certain over-representation of accused Europeans can be established who are subjected to non-penal measures, but this over-representation is negligibly small, thus not representative.

The remaining question is linked to the consideration of age / crime record (of individual criminal history) in the analysis; and to the jurisdictional as well as procedural factor (hearing in the Cabinet of the children's judge *versus* hearing at the children's tribunal), in effect, the distribution measure/sentence does only make sense in

⁸⁶Sentences are: imprisonment fixed or with probation, monetary fine, work of general interest, dispense of sentence, measures, victims' compensation, diverse obligations (of care, work, etc.), confiscation..

⁸⁷The duration of imprisonment is 3 months (20%), 2 months (20%), 1 months (20%), 15 days (40%).

⁸⁸If the significance of differences or margins is mentioned, this is a reference to the significance in line with khi2 (of less than 10%).

application to the children's tribunal, as the judge does only apply measures.

Another consideration consists in the effort to evaluate variables which have for a long time, in French and international research, been dealt with as predictives to the sentence [gravity of offence, type of judgment (appeared *versus* absent at the hearing), recidivist case]. The accused "Europeans" are more frequently summoned for less serious offences (mere insult, for example), which result in less severe sentences. It can thus be stated that they cannot be distinguished in terms of sentences received. The different groups are thus unevenly distributed according to the predictable variables, nevertheless, this unequal distribution does not ensue any visible difference on the sentences pronounced... "as if the judicial decisions finally turned around the effects induced by the various predictive factors", as the authors conclude.

Taking stock (D.1, D.2 and D.3)

This first examination has led us to believe that the question would be very differently illustrated according to different offences. This assumption has incited additional investigations which may cross-evaluate these statistical results with investigations at the magistrate. These would permit to evaluate the margin of variety which characterises the dimension offence-sentence, in other words, the relative variation depending on the interaction between the depending factor (sentence or measure) in relation to the determining or explanatory variable (the offence).

The factors which account for this relative variation are originating from several orders and the difference in the distribution of sentences may be due to a unity of characteristics, among these:

- gravity of infraction or gravity of facts for one and the same infraction
- age of accused
- recidivist case or criminal case
- the type of judgement (contradictory, contradictory to signal, in absence ("défaut")); the accused who are absent at the hearing are frequently charged more heavily,
- the social conditions of the youths' life situation which may incite to pass a heavier sentence if this is the only conceivable solution, beholding the possible necessity for re-assessment or characteristics to insertion. Let us remember the thesis of social scientists (among them Loic Wacquant), for whom the regulation of the people at the hand of education, health, social protection are completed by a "regulation on the part of police forces, justice and prison, more and more active and intruding into the inferior zones of public space."⁸⁹

Consequently, the unity of these factors should have been taken into consideration for a comment to results observed. In this sense, it convenes to call the readers' attention to the fact that these factors have not been assessed in the tables studied beforehand and which might enter in a sense of aggravation on behalf of one or the other category of sentenced individuals. Frequently, recidivism is put before the actual act.

The question refers to the modulation of the law and the application of the rule of law (in its general scope : articles, general principles, jurisprudence etc.), by the judge : "this faculty disposes that its decisions may be submitted to moderation of the rule of law, as well to aggravation of legal provisions (the term "aggravation" is not the best of choices, but the most revealing on behalf of possible repercussions to the judges' powers)."⁹⁰

E - THE QUESTION TO FOREIGN DELINQUENT MINORS WITHIN THE FRAMEWORK OF EDUCATIONAL SERVICES

Never have delinquent minors been differentiated in line with their birth, their social origin or their nationality. The principle of equality remains in the centre of justice and the application of educative measures. The most habitual attitude today is to progress as clearly and decidedly as possible, when fears persisted in other times to be embarrassed or embarrassing someone in "dealing with a touchy issue". Practically, what remains is that the principle of equality does not hinder the origins, among these national origins, to have effects on personal trajectories. Justice can only be evaluated in line with the way in which it proceeds. To realise "The school of chances" calls for a re-evaluation of our concept of equality. How to treat people better who have less? How can a common culture be established, how can the closing off of personal trajectories via the variable of diploma be avoided? How to respect the person if one sentences the pupil? So many questions which call for a little bit of courage and boldness: the future of school cannot be found in its past.

Nevertheless, practitioners of judicial protection of the youth (PJJ) who do not challenge the principle of equality, are in part proposing to behold different ways to seize problematic matters; since 1995, part of their difficulties consists in taking care of particular youths who originate from foreign families and who do not profit from educational intervention. Difficulties of communication, linked to linguistical difficulties, related in turn to obstacles of differences in culture (modes of reference, way of life, etc.), as well as to difficulties of comprehension on behalf of institutional roles on the part of these minors and their families. Ethno-psychiatric

⁸⁹ Cf. Wacquant (L.), 1999.

⁹⁰ Cf. Lafay (F.), 2006.

consultations have for example been effected in the Paris region and employed in phases of the judicial procedure and next to educational services. In countries of immigration, the massive inflow of immigrants has frequently provoked questions arising from both anthropology and psychopathology. Another dimension encountered: that of foreign isolated minors. (See Table 4: The example of educational services at the tribunal in Paris in 2003)

Table 4

Minors hosted			
2400			
Referrals		Presented by the “brigade des mineurs“ or spontaneous presentation	
2039		339	
Isolated foreign minors			
1089			
Romanian			
768			
Penal procedures		Civil procedures (educative assistance)	
662		106	
Theft	Against people	Against goods and people	Young girls prostituted
625	7	7	85

Among the almost 9 out of 10 Romanians referred in a penal procedure, 41 (6%) have been incarcerated. If a measure of education has been effected during their detention within the frame of educational visits of SEAT, this could not be prolonged in 99% of cases as these youths disappeared before they were to leave prison. Moreover, 28 have been subjected to a decision of placement but these have hardly ever been effected.

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