THE PRELIMINARY INVESTIGATION OF CRIME IN FRANCE

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I. INTRODUCTION

This article covers the proceedings in a criminal investigation to the point where the jurisdiction of a trial court attaches. For a better understanding of these proceedings certain matters of more general application are first presented. They are as follows: 1. Code d'Instruction Criminelle. 2. Classification of offenses. 3. The concept of flagrant délit. 4. Organization and jurisdiction of the criminal courts. 5. The personnel of the courts and the prosecuting department. 6. Ministère public.

I. Code d'Instruction Criminelle

The methods of the preliminary investigation of crime, as well as the procedure of the criminal courts, are prescribed and regulated by the Code d'Instruction Criminelle. This Code had its genesis in a Consular Decree of 7 Germinal IX (March 28, 1801), signed “Bonaparte, First Consul”, which appointed a commission to draft a “criminal code”. The commissioners prepared a draft entitled Code Criminel, Correctionnel et de Police, consisting of 1169 articles. This proposed Code was in two parts, the first relating to substantive law, and the

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1. A more appropriate title would have been Code de Procédure Pénale. 1 GARRAUD, TRAITE D'INSTRUCTION CRIMINELLE ET DE PROCEDURE PENALE (1907) 89 n.

2. For the history of French criminal procedure preceding the Code d'Instruction Criminelle see I FAUSTIN HÉLIE, TRAITE DE L'INSTRUCTION CRIMINELLE (1853) 48 et seq.; 1 GARRAUD, op. cit. supra note 1, at 28 et seq.; ESMEIN, A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE (Simpson's trans. 1913) 39 et seq.; PLOSCOWE, DEVELOPMENT OF INQUISITORIAL AND ACCUSATORIAL ELEMENTS IN FRENCH PROCEDURE (1932) 23 J. CRIM. L. AND CRIMINOL. 372.
second to procedure. The judges of the various courts were consulted regarding the draft of the Code, \(^9\) but there was no official discussion of it until 1804. On May 18 of that year Napoleon proclaimed himself Emperor and, four days later at a session of the Conseil d'État, \(^4\) he directed its section on legislation to present within fifteen days the fundamental questions involved in drafting the Code. \(^5\) The section presented fourteen questions, six of which related to substantive law and eight to procedure, six of the latter being concerned with the jury system. \(^6\) The draft was discussed at twenty-five meetings of the Conseil, the last one being held on 29 Frimaire XIII (Dec. 20, 1804). \(^7\) Napoleon personally presided at thirteen of these sessions. All the chapters of the draft were considered, and many of the articles were approved. \(^8\) Much of the discussion during the meetings related to the question of retaining the jury of accusation and the trial jury. As great differences of opinion developed, the sessions were discontinued without this question being settled. \(^9\)

There appears to have been no further discussion of the proposed criminal code until January 23, 1806. At the session of the Conseil

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\(^3\) I GARRAUD, \textit{op. cit. supra} note 1, at 87.

\(^4\) Under the Consulate the Conseil d'État was an administrative body, one of whose functions was the drafting of laws. BERThÉLEM, \textit{Traité Élémentaire de Droit Administratif} (12th ed. 1930) 152.

\(^5\) 24 Locré, \textit{La Législation Civile, Commerciale et Criminelle de la France} (1831) 8.

\(^6\) Id. at 11. The eight questions relating to procedure were as follows:

1. Shall the institution of the jury be preserved?
2. Shall there be an accusing jury and a trial jury?
3. How many jurors shall be selected? From what class of society shall the jurors be selected? Who shall select them?
4. How shall the right of challenge be exercised?
5. Shall the proceedings of the trial be entirely oral or partly oral and partly written?
6. Shall several questions be presented to the trial jury or shall only one be presented, viz., Is he guilty?
7. Shall the verdict of the jury be unanimous or by a particular number of votes?
8. Ought judges to be permitted to hold assizes in one or several departmental criminal courts?

\(^7\) Id. at 562.

\(^8\) Id. \textit{at} 562.

\(^9\) Although no reason for discontinuing the discussions can be assigned with certainty, and none was given at the time, the great difficulty experienced by the Conseil in deciding the question whether there should be separate courts and judges for civil and criminal cases, and the related question of whether the trial jury should be preserved, appears to have been the reason for bringing the work to a standstill for four years. I GARRAUD, \textit{op. cit. supra} note 1, at 89n; VERNET, \textit{Les Arrestations—Les Perquisitions} (Thesis Paris, 1924) 19. Napoleon has been represented as an unyielding opponent of the trial jury, and it has been asserted that the cessation of discussions resulted solely from his refusal to agree to preservation of the trial jury. ESMÉIN, \textit{op. cit. supra} note 2, at 489, 495, 497; CRUPPI, \textit{La Cour d'Assises} (1898) 9. This view has not been adopted, however, by other writers, who point to his statements in a number of instances in favor of retaining the trial jury if ample safeguards for its proper functioning could be worked out. I GARRAUD, \textit{op. cit. supra} note 1, at 88n; Sabatier, \textit{Napoléon et les Codes Criminels} (1910) 34 \textit{Revue Pénitentiaire et de Droit Pénal} 905, 916 and 917. In one instance Napoleon is quoted as saying that "opinion upon the institution of the jury appears to be too doubtful for that institution to be abolished without exciting regrets". 24 Locré, \textit{op. cit. supra} note 5, at 518.
d'État on this date, Napoleon ordered that a report be given him by the section on legislation concerning the status of work on the projet for the Code d'Instruction Criminelle, and to formulate the fundamental questions whose solution would provide the bases of this Code. Thus, for the first time, that portion of the original draft, which dealt with procedure, was separated from that relating to the substantive law. Although the members of the commission which prepared the original draft had participated in the first series of deliberations of the Conseil d'État, they were not called when the meetings were resumed.

The discussion was renewed at the session of the Conseil d'État on January 30, 1808. The fourteen questions originally presented on June 5, 1804, and decided in most instances in the former sessions after prolonged discussions, were propounded anew. Furthermore, the proceedings were carried on as if no part of the draft had been finally approved, whereas, in fact, as has been pointed out, the Conseil had almost completed that part of the Code forming the present Code d'Instruction Criminelle. In fact, everyone seemed to have retained but a very vague idea of what had gone on four years earlier.

The second series of deliberations, beginning January 30, 1808, and covering thirty-seven sessions, in twelve of which Napoleon took part in the discussion, ended with the completion of the draft of the Code d'Instruction Criminelle. As portions of the draft were completed, they were promulgated as law by Imperial Decrees, the last of these being that of December 26, 1808. The Imperial Decree of February 2, 1809, after reciting that a modification of the judicial organization was necessary before the new Code could become effective, postponed its operation until January 1, 1810. The Decree of December 17, 1809, provided for further postponement until January 1, 1811.

The Code d'Instruction Criminelle embodies in entirety neither the inquisitorial nor the accusatorial system of criminal procedure, but that which the French writers have termed a système mixte resulting from the compromises made by the commission and the Conseil d'État between the adherents of the pre-Revolutionary inquisitorial ideas expressed in the Ordonnance Criminelle of 1670 and the adherents of the system

10. Locre, op. cit. supra note 5, at 577.
11. Locre, op. cit. supra note 5, at 225; Garraud, op. cit. supra note 1, at 89.
12. Locre, op. cit. supra note 5, at 225.
13. Id. at 224, 226.
14. Id. at 220.
15. Id. at 223.
16. Id. at 228; Garraud, op. cit. supra note 1, at 89.
20. Faustin Hélie, op. cit. supra note 2, at 177; Morizot-Thibault, De l'Instruction Préparatoire (1906) 344-347; Garraud, op. cit. supra note 1, at 21 and 90.
21. 18 Recueil Général des Anciennes Lois Françaises (1829) 371.
inaugurated in the several statutes of the Constituent Assembly, which had been very largely borrowed from the English law. In the proceedings prior to trial, the system of the Ordonnance of 1670 was to a large extent preserved, with the secret investigation by the juge d'instruction and with counsel forbidden the suspect. At the trial the accusatorial system prevailed, with public proceedings, oral evidence and the defendant having a right to counsel.

Of the five codes enacted under Napoleon, the two relating to criminal law were the last completed. Only the Code Civil was given the name Code Napoléon, and it has been said the Emperor refused this title to the Code d'Instruction Criminelle, because he realized it was not a perfected work and that shortcomings would not be long in appearing.

The Code d'Instruction Criminelle with such amendments as have been made regulates French criminal procedure today. There are, however, certain points of procedure which the Code covers either briefly or not at all. These gaps have been filled by usage and the decisions of the courts. Of the 129 articles in the Code relating to the preliminary investigation, 42 have been amended. Of the 508 articles which relate to trial and appeal, 128 have been amended.

Much criticism has at various times been directed at the Code, sometimes with a view to specific modification, sometimes demanding a general revision. In 1880 the Minister of Justice submitted to the Senate the draft of a bill designed to reform and liberalize that part of the Code relating to the preliminary investigation. Chiefly because of strong conservative opposition, the bill never became law.

In 1897, as will be seen later on, certain portions of the draft, relating primarily to granting the suspect the right to have counsel when being interrogated, were enacted. Efforts further to protect the rights of citizens

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23. Thonissen, quoted in I Garraud, op. cit. supra note 1, at 91. The body of law in the field of criminal procedure had not been brought by previous legislation and doctrinal development to the same stage of organization and clarity at the time of codification as had the civil law, so that there was less likelihood of constructing at that time a code of maximum perfection. Morizot-Thibault, op. cit. supra note 20, at xviii.


25. I Faustin Hélie, op. cit. supra note 2, at 178; Coulon, De L'inconvénient Devant la Justice Française de Faire Éclater son Innocence (1904) 19; Morizot-Thibault, op. cit. supra note 20, at 347 and 392-399; I Garraud, op. cit. supra note 1, at 60 and 94-99; Denys, Les Garanties de la Liberté Individuelle (1933) 8-10; Lestelle, op. cit. supra note 24, at 29-34.


and suspects, begun in 1907, finally culminated in 1933 in numerous amendments made by the "law for safeguarding individual liberties", which was, however, to a considerable extent repealed in 1935.

By a Decree of December 23, 1930, the government appointed a commission "to prepare a revision of the criminal legislation". Work was begun first on a new Code Pénal, and the projet for a new Code d'Instruction Criminelle was published in 1939.

2. Classification of Offenses

The character of the preliminary proceedings and the functions of the particular officials who conduct them are determined to a considerable extent by the grade of the offense involved. This is based entirely on the character and extent of the punishment in each case, as provided by the Code Pénal.

There are three grades of offenses, viz. crime, délit and contravention. In order to constitute a non-political crime the punishment provided in the Code Pénal must be one of the following: (1) death, (2) imprisonment with hard labor (les travaux forcés) either for life or for a prescribed period, or (3) imprisonment with labor for five to ten years (réclusion). For a political crime, the following punishments are provided: (1) deportation for life to a designated place of confinement outside continental France, (2) detention in a fortress within continental France for five to twenty years, (3) banishment from the country for five to ten years, (4) dégradation civique which

28. Projet introduced in the Senate by M. Clemenceau, then Premier, and M. Guyot-Dessaigne, Minister of Justice. JOURNAL OFFICIEL, SÉNAT, Doc. PARL. (Jan. 18, 1907) annexe no. 10, p. 2.
31. JOURNAL OFFICIEL (Dec. 24, 1930) 14011.
32. The text is given in Avant-Projet de Code Pénal Français (1932) 9 REVUE INTERNATIONALE DE DROIT PÉNAL 281.
34. I GARBAUD, op. cit. supra note 1, at 27.
35. The term "délit" is also employed in a broad sense to describe any offense without regard to its grade. CAPITANT, VOCABULAIRE JURIDIQUE (1930-1936) 183.
36. Code Pénal (hereinafter cited as C. P.) arts. 1 and 7, the latter as amended by the Law of Apr. 28, 1832.
37. C. P. arts. 1 and 7, the latter as amended by the Law of Apr. 28, 1832. This penalty was until 1938 executed in some colony, more recently in Guiana. A Decree of June 17, 1938, provided that convicts sentenced to the "travaux forcés" are to be confined in special prisons in France, designated as "maisons de force". If offenders who are confined in the maisons de force, either during or after their release from confinement, commit certain specified offenses, they are then sent to Guiana. JOURNAL OFFICIEL (June 29, 1938) 7497. This Decree is discussed by Cuche, Chronique Pénale et Pénitentiaire (1939) 79 REVUE CRITIQUE DE LÉGISLATION ET DE JURISPRUDENCE 13.
38. C. P. arts. 1, 7, as amended by the Law of Apr. 26, 1832, and 21.
39. C. P. arts. 1, 7, and 17, the latter two as amended by the Law of Apr. 28, 1832.
40. C. P. arts. 1, 7, and 20, the latter two as amended by the Law of Apr. 28, 1832.
41. C. P. arts. 1, 8, as amended by the Law of Apr. 28, 1832, and 32.
is the permanent deprivation of certain political, civil and personal
rights, including the right to hold office, to vote, to be a guardian, to
bear arms and to be a teacher.42 Degréadation civique is also imposed
as an auxiliary penalty accompanying every other punishment for
crime.43 Other auxiliary penalties attaching to certain of the prescribed
punishments are (1) deprivation of the right to deal with or dispose of
one's property (interdiction légale),44 and (2) prohibition to enter cer-
tain specified localities after the expiration of the sentence (interdiction
de séjour).45

The punishments prescribed for délits are: (1) imprisonment with
labor for not less than six days nor for more than five years,46 (2)
deprivation for a time of certain political, civil and personal rights,47
and (3) a fine of more than fifteen francs.48

The punishments for contraventions are the following: (1) impris-
onment for not more than five days,49 (2) a fine not to exceed fifteen
francs,50 and (3) confiscation of articles employed in committing the
offense or produced by it.51

While crimes correspond to felonies in Anglo-American law in the
sense that they are the serious offenses, there is no exact parallel when
individual offenses are considered. For example, ordinary offenses
concerning property, such as theft and obtaining property by false pre-
tenses, are délits. If there are aggravating circumstances, a theft may
be a crime. Thus a theft committed (1) with force,52 or (2) on a
railroad train,53 or (3) by two or more persons at night,54 or (4) by a
domestic servant 55 constitutes a crime. An offense corresponding to
involuntary manslaughter is a délits;56 all other homicides are crimes.57

For over a century there has been a succession of amendments to
the Code Pénal reducing the penalties for offenses originally crimes, as
a result of which they were made délits.58 Thus in 1832, certain thefts

42. C. P. arts. 1, 8, and 34, the latter two as amended by the Law of Apr. 28, 1832.
43. I. Roux, Cours de Droit Criminel (1927) 421.
44. C. P. arts. 29 and 30, both as amended by the Law of Apr. 28, 1832, and art. 31.
46. C. P. arts. 1, 9, and 40.
47. C. P. arts. 1, 9, and 42.
48. C. P. arts. 1 and 9.
49. C. P. arts. 1, 464, and 465.
50. C. P. arts. 1, 464, and 466.
51. C. P. arts. 1, 464, and 470.
52. C. P. art. 382, as amended by the Law of May 13, 1863.
54. C. P. art. 385, as amended by the Law of May 13, 1863.
55. C. P. art. 380, as amended by the Law of Apr. 28, 1832.
56. C. P. art. 379.
57. C. P. arts. 295-316.
58. One of the reasons for this change has been the fact that juries, who sit only
in the trial of crimes, as will be discussed later, have shown a reluctance to convict for
certain types of offenses.
of farm implements and products were reduced to dévîts.\textsuperscript{59} In 1863, a number of miscellaneous crimes were so reduced.\textsuperscript{60} Abortion and bigamy, which had been crimes, were made dévîts, the former in 1923 and the latter in 1933.\textsuperscript{61}

3. The Concept of Flagrant Dévît

An important question during the investigation stage is whether an offense constitutes a flagrant dévît,\textsuperscript{62} since the character of the preliminary procedure and the functions of certain officials are changed if the offense is flagrant. The term “flagrant dévît” has a much wider application than “flagranto delicto” in Anglo-American law. The Code provides: “An offense (a) which is being presently committed or (b) which has just been committed, is a flagrant dévît.\textsuperscript{63} The Code also treats as flagrants dévîts offenses (a) where the suspect is denounced by public clamor,\textsuperscript{64} and (b) where the suspect is found shortly after the offense (temps voisin du dévît) in the possession of effects, weapons or papers which raise the presumption that he was either a principal or an accomplice.\textsuperscript{65}

The situations in the second group are capable of broad interpretation. Thus two leading authorities have warned against confusing “public clamor”, which connotes an immediate reaction, with “public rumor” and “public notoriety”.\textsuperscript{66} The last situation is patently indefinite. When the draft of the Code was being prepared it was proposed first that a limitation of twenty-four hours be prescribed. Later this was extended to forty-eight hours. Both these proposals, however, were rejected and the indefinite time “voisin du dévît” was substituted.\textsuperscript{67}

In addition to the situations mentioned, the Code provides that the procedure for flagrants dévîts shall be used, wherever a crime or dévît,
whether or not flagrant, appears to have been committed inside a dwelling house, and the head of the household requests the investigation.68

4. Organization and Jurisdiction of the Criminal Courts

For purposes of national administration69 France (including the island of Corsica) is geographically divided into 89 départements and one territoire,70 and for local administration into 38,015 communes.71 The chief administrative officer of a département is the préfet,72 and of the commune, the maire.73

The départements and the territoire are grouped into 27 judicial districts (ressorts)74 and on the other hand are divided into 356 judicial areas, called arrondissements.75 These arrondissements are divided for judicial and certain administrative purposes into 3,028 cantons.76 Ordinarily communes are grouped into cantons, but there are some instances

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68. C. I. C. art. 46.
69. Berthélemy, op. cit. supra note 4, at 111 and 160.
70. Before the war of 1870 there were 89 départements. By the treaty following the war, the département of Bas Rhin and most of the territory comprising the département of Haut Rhin constituted the greater portion of the territory ceded to Germany. Convention of Feb. 26, 1871, art. 1, 1871 Bulletin des Lois (XII sér.) pt. 1, vol. 2, 111; Dalloz, Recueil Périodique et Critique de Jurisprudence, de Législation et de Doctrine, 1871 IV, 24 (hereinafter cited as Dalloz, Recueil Périodique); Treaty of May 10, 1871, art. 1, 1871 Bulletin des Lois (XII sér.) pt. 1, vol. 2, 117; Dalloz, Recueil Périodique, 1871 IV, 26; Law of Sept. 7, 1871, 1871 Bulletin des Lois (XII sér.) pt. 1, vol. 3, 126; Dalloz, Recueil Périodique, 1871 IV, 151. The part of Haut Rhin which remained to France consisted of an area of only 233 square miles, in which was the city of Belfort. This area, since called the territoire of Belfort, was not added to any of the adjoining départements, but for administrative purposes was treated as a separate département. 4 Dalloz, Répertoire Pratique de Législation, de Doctrine et de Jurisprudence (1912) 222, § 3 (hereinafter cited as Dalloz, Répertoire Pratique); 52 Annuaire Statistique de la France, 1936 (1937) 3; Decree of Oct. 19, 1911, 1911 Bulletin des Lois (XII sér.) pt. 1, 2132. When the ceded territory was returned to France after the World War, the territoire of Belfort was not reunited with Haut Rhin, but still continues to be regarded administratively as an independent département. 1 Dalloz, Répertoire Pratique (Supplément, 1927) 495, § 3 (a). For judicial purposes Belfort is not regarded as a département. Compte Général de l'Administration de la Justice Criminelle pendant l'Année 1932 (1934) 3.
71. Berthélemy, op. cit. supra note 4, at 214; 1 Annuaire Didot-Bottin (1939), Départements, 8.
73. Id. at 188.
74. 3 Le Petitavin, Dictionnaire-Formulaire des Parquets et de la Police Judiciaire (1928) 961.
75. See Decrees of Mar. 28, 1934, arts. 4 and 8, Journal Officiel (Apr. 5, 1934) 3509, and of May 15, 1934, art. 1, Journal Officiel (May 17, 1934) 4866. Formerly the judicial arrondissement coincided with the administrative arrondissement, the chief official of the latter being a sous-préfet. Berthélemy, op. cit. supra note 4, at 174. Sous-préfectures to the number of 106 were abolished by an economy Decree of 1926 and the cantons composing them were allocated among the neighboring arrondissements not affected. The Decree describes the latter as "administrative arrondissements", indicating that what is under this Decree regarded as an arrondissement administratively does not always coincide with the "judicial arrondissement" referred to in the Decree of 1934. Decrees of Sept. 10, 1926, art. 1, 1926 Bulletin des Lois (XII sér.) pt. 1, 4426, and Mar. 28, 1934, arts. 4 and 5, Journal Officiel (Apr. 5, 1934) 3509.
76. 4 Dalloz, Répertoire Pratique 273, §§ 1028 and 1029; 1 Annuaire Didot-Bottin (1936) Départements, 8.
where a large commune is divided into several cantons, and in some cities, notably Paris and Lyon, into municipal arrondissements which correspond to wards and are to be distinguished from the judicial and administrative arrondissements. In each ressort, judicial arrondissement and canton there is a permanent court.

The lowest trial court is the cantonal court, which has jurisdiction in both civil and criminal cases. The judge of this court is the juge de paix, who, differing from the judges of the higher courts, sits alone. For the trial of civil cases the court is called the Tribunal de Paix, and for criminal, the Tribunal de Simple Police, which has jurisdiction over contraventions only. There is a Tribunal de Simple Police in every canton, except where several cantons are included in one commune, in which situation there will be but one tribunal.

In each judicial arrondissement there is a court known as the Tribunal de Première Instance, with original and appellate jurisdiction in both civil and criminal cases, original jurisdiction in criminal cases being ordinarily limited to délits, and appellate jurisdiction to the

77. 4 Dalloz, Répertoire Pratique 273, § 1026.
78. The cantonal court in civil matters exercises only special jurisdiction, but in criminal cases it is a court of general jurisdiction. 3 Le Poittevin, op. cit. supra note 74, at 939.
80. 3 Garraud, op. cit. supra note 1, at 571.
81. 4 Dalloz, Répertoire Pratique 71, § 677; 3 Le Poittevin, op. cit. supra note 74, at 328.
82. 4 Garraud, op. cit. supra note 1, at 673.
83. C. I. C. art. 138, as amended by the Law of Jan. 27, 1873. This Tribunal has jurisdiction also in the case of a few délits, including those committed in its presence. C. I. C. arts. 504 and 505, 4 Garraud, op. cit. supra note 1, at 684. Also, certain contraventions, as will be seen, are in the jurisdiction of the Tribunaux Correctionnels, and even of the Cour d'Assises.
84. 4 Garraud, op. cit. supra note 1, at 673.
85. C. I. C. art. 142, 4 Garraud, op. cit. supra note 1, at 675.
86. Several legislative measures dating from 1919 have, for reasons of economy, provided for reduction of the number of juges de paix, with the result that in some instances one judge sits in the civil and criminal tribunaux of several adjoining cantons. 3 Le Poittevin, op. cit. supra note 74, at 325, and Supplément at 225. For the same reasons, provision has recently been made that in certain less important cantons containing the principal town of judicial arrondissements, the functions of judge of paix shall be fulfilled by a designated judge of the Tribunal de Première Instance there. Decree of Mar. 28, 1934, art. 8, Journal Officiel (Apr. 5, 1934) 3599.
87. 6 Le Poittevin, op. cit. supra note 74 (Supplément, 1933) 141.
88. 1 Le Poittevin, op. cit. supra note 74, at 1074.
89. C. I. C. art. 179, as amended by the Law of Dec. 31, 1906. Some tribunaux in the less populated arrondissements do not have jurisdiction to try délits in the following situations where trial for purposes of expedition must take place in designated neighboring tribunaux: (1) where at the time for trial one or more of the suspects is in detention, (2) in case of flagrant délit, or (3) where an offense against the dignity of the court or of its officers has been committed in a civil trial. Code de Procédure Civile, art. 91; Decree of Mar. 28, 1934, art. 3, Journal Officiel (Apr. 5, 1934) 3599.
more serious contraventions. For the trial of civil cases the court is designated the Tribunal Civil, and for criminal cases the Tribunal Correctionnel. In the more populous arrondissements the court is divided into chambres, each hearing either civil (chambre civile) or criminal (chambre criminelle) cases. An odd number of judges, not less than three, must sit in each case, it being a fundamental principle of the French judicial system that at least three judges must sit in order to constitute a court. There is an old maxim "juge unique, juge inique". The one exception to the principle is the tribunal of the juge de paix, who sits alone.

There are 356 Tribunaux de Première Instance, not counting the Tribunal of the Seine sitting in Paris. The Tribunal of the Seine, which has jurisdiction over the 20 municipal arrondissements of Paris, and the portion of the département of the Seine outside the city, has 19 chambres with 116 judges.

Some contraventions, for example, certain ones against the forest, mining, or tax laws, are tried in the Tribunal de Première Instance. C. I. C. art. 192, as amended by the Law of Nov. 26, 1936; 4 GARRAUD, op. cit. supra note 1, at 569.

For the trial of offenses committed by minors, aged 17 years or younger, the regular criminal courts do not in general have jurisdiction. Special sessions of the Tribunal de Simple Police, or of the Tribunal de Première Instance, are devoted to such offenses, in the latter case being then known as the Tribunal Civil Statuant en Chambre du Conseil for minors aged under 13, and Tribunal pour Enfants et Adolescents for minors over 13 and under 18 years. Law of July 22, 1912, arts. 1 and 18, 1912 BULLETIN DES LOIS (nouv. sér.) pt. 1, 2097.

89. C. I. C. arts. 172 and 174, both as amended by the Law of Dec. 31, 1906.
90. 4 DALLOZ, Répertoire Pratique, 55, § 215.
91. C. I. C. art. 179, as amended by the Law of Dec. 31, 1906. When the Code was drafted it was determined after considerable discussion that the same courts should have jurisdiction in both civil and criminal cases. 3 LE POITEVIN, op. cit. supra note 74, at 960. Where a court is divided into chambres, a number of the judges are, by a system of rotation, transferred annually from one chambre to another. 4 GARRAUD, op. cit. supra note 1, at 553.
92. 4 GARRAUD, op. cit. supra note 1, at 553.
94. 3 GARRAUD, op. cit. supra note 1, at 458n; I GLASSON AND TISSIER, TRAITÉ DE PROCÉDURE CIVILE (1925) 88.
95. Decree of May 15, 1934, art. 1, JOURNAL OFFICIEL (May 17, 1934) 4866.
96. Decree of June 25, 1934, art. 2 and schedule thereto, JOURNAL OFFICIEL (June 26, 1934) 6315.

In the least populous of the arrondissements recent legislation has, for the purposes of economy, provided that there shall be but one resident judge. It is accordingly necessary, for each sitting of the Tribunal, to add judges from the Tribunal of a specifically designated neighboring arrondissement. For example, judges from the Tribunal at Amiens in the département of the Somme assist the single resident judge at Doullens. In the other arrondissements the judges composing each Tribunal vary from three to twenty-seven. Decree of Mar. 28, 1934, art. 1 and schedule thereto, JOURNAL OFFICIEL (Apr. 5, 1934) 3509. For salary purposes, the Tribunaux de Première Instance, excepting the Tribunal of the Seine, are divided into three classes, as follows: (1) tribunaux situated either in cities of at least 80,000 or in arrondissements of at least 250,000 population are of the first class, (2) those in towns of at least 20,000 or in arrondissements of at least 120,000 population of the second class, and (3) the remaining ones, including those having but a single judge, of the third class. Law of July 16, 1930, art. 3, 1930 BULLETIN DES LOIS (nouv. sér. vol. 22) pt. 1, 1769, as amended by the Decree of Mar. 28, 1934, art. 7, JOURNAL OFFICIEL (Apr. 5, 1934) 3509, and by the Decree of May 15, 1934, art. 1, JOURNAL OFFICIEL (May 17, 1934) 4866; Decree of May 22, 1930, art. 1, 1930 BULLETIN DES LOIS (nouv. sér. vol. 22) pt. 1, 1195.
There is no permanent departmental court, either civil or criminal, but for the trial of crimes a court known as the Cour 97 d'Assises 98 is set up in each départements every three months and oftener if necessary. 99 This court consists of a president and two associate judges known as assesseurs, 100 who sit with a jury of twelve laymen, 101 this being the only court in France, civil or criminal, which has a jury. 102 The president must be a conseiller 103 of the Cour d'Appel, which will be hereafter described, while the assesseurs may be either conseillers of the Cour d'Appel or judges of the Tribunal de Première Instance, sitting in the city where the Cour d'Assises is held. 104

In each ressort there is a Cour d'Appel, 105 which, in 22 out of the

97. The term cour is applied to the higher courts, whether trial or appellate, and tribunal to the lower courts. Soufflier, Vocabulaire de Droit (2d ed. 1926) 298; Capitant, op. cit. supra note 35, at 163. Judgments handed down by the cours are generally termed arrêts and those of the tribunaux, jugements. 3 Garraud, op. cit. supra note 1, at 561.

98. C. I. C. art. 231, as amended by the Law of July 17, 1856. Certain délits of the press are tried in Cour d'Assises (Law of July 29, 1881, art. 45, 1881 Bulletin des Lois (XII sér.) pt. 2, 1933), as well as délits connected with crimes being tried before the Cour. C. I. C. art. 226.


100. C. I. C. art. 252, as amended by the Law of Feb. 25, 1901, art. 38.

101. If a trial appears likely to be of long duration, the Cour d'Assises may order additional jurors to be drawn, who will attend the proceedings and take the place of any of the original jurors who may later become incapacitated. C. I. C. art. 394, as amended by the Laws of April 28, 1832, and of August 14, 1826.

102. 1 Garraud, op. cit. supra note 1, at 23; 4 Garraud, op. cit. supra note 1, at 28.

103. In the Cour d'Appel and Cour de Cassation each judge other than the president or vice-president is termed a conseiller. Capitant, op. cit. supra note 35, at 149.

104. C. I. C. art. 252, as amended by the Law of Feb. 25, 1901, art. 38.

105. The Cour d'Appel bears the names of the cities in which the Cours sit. The 27 Cours d'Appel, with the number of départements included in the ressort of each Cour, are as follows: Agen (3), Aix (4), Amiens (3), Angers (3), Bastia (1), Besançon (3), Bordeaux (3), Bourges (3), Caen (3), Chambéry (2), Colmar (3), Dijon (3), Douai (2), Grenoble (3), Limoges (3), Lyon (3), Montpellier (4), Nancy (4), Nimes (4), Orleans (3), Paris (7), Pau (3), Poitiers (4), Rennes (5), Riom (4), Rouen (2), Toulouse (4). The names of the 7 départements in the ressort of the Cour d'Appel of Paris are: Aube, Eure-et-Loir, Marne, Seine, Seine-et-Marne, Seine-et-Oise, and Yonne. See Compte Général, Pendant L'Année 1932 (1934) 8 and 9. The city of Paris lies wholly within the département of the Seine and is divided into 20 municipal arrondissements, having a total population of 2,801,020 in 1031. That part of the département of the Seine lying outside Paris contains two arrondissements and has a population of 2,042,835. 52 Annaire Statistique de la France, 1936 (1937) 3 and 4.

Within the city, each municipal arrondissement has a maire (Law of June 16, 1859, arts. 2 and 3, 1859 Bulletin des Lois (IX sér.) pt. 2, 747), appointed by the government. There is no maire of the entire city, but the executive power is divided between two officers appointed by the government, called respectively the préfet of the Seine, whose powers are exclusive of police, and the préfet of police in Paris, who controls the police not only of Paris but of the entire département of the Seine, and in addition several adjoining communes of the département of Seine-et-Oise. Decree of Oct. 10, 1859, 1859 Bulletin des Lois (IX sér.) pt. 2, 721; Berthélemy, op. cit. supra note 4, at 250, 262 and 266.

The organization of the city of Lyon is also of a special kind. The city is divided into seven municipal arrondissements and the control of the police, including that in towns surrounding the city is exercised by the préfet of the département of the Rhône so far as preservation of the public peace is concerned, and by the respective maires in other respects. Berthélemy, op. cit. supra note 4, at 269.
The judicial personnel of a Cour d'Appel consists of a first president, a president of each chambre, and conseillers proportionate to the number of chambres. The jurisdiction of the Cour d'Appel, which includes both civil and criminal cases, is altogether appellate except where a civil action (prise à partie) is brought by a litigant against a court or judge for damage caused him by grave official misconduct, or where a judge or any of certain other high officials is being prosecuted for a délit. The appellate jurisdiction of the Cour d'Appel in criminal matters is limited to appeals from the Tribunal Correctionnel. An appeal may be taken by the defendant, the partie civile, the procureur, or procureur général who will be described later.

An appeal from a judgment of the trial court may be either on a point of law or on the merits. In the former case the Cour limits its review to the point of law involved and either affirms or reverses the judgment of the trial court. When a reversal occurs, the Cour does not, except where there was originally a lack of jurisdiction in the trial court, order a new trial in a trial not, except where there was originally a lack of jurisdiction in the trial court, order a new trial in a trial

106. Law of April 28, 1919, art. 1 and schedule attached, 1919 BULLETIN DES LOIS (nouv. sér. vol. 11) pt. 1, 1263, as amended by Decree of June 25, 1934, art. 1 and schedule attached, JOURNAL OFFICIEL (June 26, 1934) 6315.

107. Where there is but one chambre, the conseillers vary in number from 4 to 5, and where two chambres from 5 to 6. Where three chambres there are 8 conseillers, and where four chambres they vary from 10 to 12, and where five chambres from 12 to 14. The Cour d'Appel of Paris with 14 chambres has 14 vice-presidents and 63 conseillers. Decree of June 25, 1934, art. 1, JOURNAL OFFICIEL (June 26 and 27, 1934) 6315; Decree of Dec. 31, 1936, art. 1, JOURNAL OFFICIEL (Jan. 4 and 5, 1937) 234; Decree of Nov. 12, 1938, art. 3, JOURNAL OFFICIEL (Nov. 14 and 15, 1938) 1296.

108. 3 DALLOZ, RÉPERTOIRE PRATIQUE (1912) 315, §2; 4 id. at 70, §641; 1 LE POITTEVIN, op. cit. supra note 74, at 1070. In Cour having more than one chambre, one of the chambres, termed the chambre des appels correctionnels, is devoted exclusively to appeals from the Tribunaux Correctionnels in the ressort. Law of Apr. 20, 1810, art. 40, 1810 BULLETIN DES LOIS (IV sér.) pt. 1, No. 282, 300; 4 GARRAUD, op. cit. supra note 1, at 562.

109. CODE DE PROCÉDURE CIVILE, art. 599.


111. C. I. C. art. 201, as amended by the Law of June 13, 1856; 1 LE POITTEVIN, op. cit. supra note 74, at 1070.

112. The person injured by a crime or délit may, as partie civile, bring a civil action for damages against the offender, which will be tried along with the criminal prosecution. This practice will be discussed more fully later. When the partie civile appeals, only the judgment in the civil action is considered. C. I. C. art. 202, as amended by the Law of June 13, 1856; 1 LE POITTEVIN, op. cit. supra note 74, at 317.


114. 5 GARRAUD, op. cit. supra note 1, at 196 and 250.

115. 5 GARRAUD, op. cit. supra note 1, at 197.

116. C. I. C. art. 214, as amended by the Law of June 13, 1856; 1 LE POITTEVIN, op. cit. supra note 74, at 330. In the event the offense is a contravention, however, the Cour may retain jurisdiction if the partie civile and ministère public consent. C. I. C. art. 213, as amended by the Law of June 13, 1856.

the case back to the trial court. When the Cour reviews a case on the merits, it considers both the law and the facts and may, if it sees proper, examine any witnesses who testified at the trial and also new witnesses. In such case the Cour renders final judgment.

Under the French "collegiate" system, it is necessary for the validity of a decision that the Cour d'Appel be composed of a president and not less than two conseillers. In certain important cases four conseillers are required.

In each Cour d'Appel, three judges are assigned to a chambre known the the chambre des mises en accusation (chamber of accusations), which decides after the preliminary investigation by the juge d'instruction whether the defendant shall be brought to trial, and if so, in what court. This chambre also hears appeals from decisions of the juges d'instruction of the ressort.

The highest court is the Cour de Cassation, which has appellate jurisdiction in both civil and criminal cases for the entire country and the colonies. The criminal cases include crimes, délits, and contraventions. The court, which sits in Paris, is divided into four chambres, one of which hears petitions for review in civil cases (chambre des requêtes) only, while two exercise jurisdiction in civil and criminal cases respectively. A fourth, created in 1938 and called the chambre sociale, hears cases involving a group of related subjects including the relation of master and servant and that of landlord and tenant. The judicial personnel of the court consists of a first president, a president for each chambre and 55 associate judges (conseillers).
At every session of a chambre at least 11 judges, including the president, must sit.\(^{130}\)

The method of securing the review of a criminal case in the Cour de Cassation is known as pourvoi, of which there are three kinds, (1) pourvoi en cassation, (2) pourvoi "in the interest of the law",\(^{131}\) and (3) pourvoi en revision.\(^{132}\) By far the most common of these is the pourvoi en cassation. This may be brought by either the defendant, the partie civile, or an officer of the prosecuting department (ministère public) attached to the court which rendered the judgment which is the subject of review.\(^{133}\) It is worthy of note that a judgment of acquittal, except when rendered in the Cour d’Assises, may be reviewed and a new trial ordered at the instance of the prosecuting department.

Five classes of cases may be taken to the Cour de Cassation from the criminal courts of general jurisdiction for review by the pourvoi en cassation.\(^{134}\) In three cases the pourvoi is taken directly from a trial court. The most important and the most frequent of these is the pourvoi from a judgment in the Cour d’Assises, there being no other method of review from this court.\(^{135}\) The other two embrace certain exceptional cases where a judgment, non-appealable on the merits, has been rendered in the Tribunal Correctionnel or Tribunal de Simple Police.\(^{136}\) There are two situations where a case is taken on pourvoi from an appellate court to the Cour de Cassation. These are (1) where the Cour d’Appel has decided an appeal from a judgment of the Tribunal Correctionnel,\(^{137}\) and (2) where the Tribunal Correctionnel has decided an appeal from the Tribunal de Simple Police.\(^{138}\)

On a pourvoi en cassation the Cour does not review the case on its merits. It considers simply errors of law, both substantive and procedural, the latter including questions of jurisdiction.\(^{139}\) The scope of the review is somewhat similar to that of a common law court on the hearing of a writ of error. Subject to a few exceptions, for example when the Cour decides that the facts proved constitute no offense, in

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130. FAYE, op. cit. supra note 125, at 22.
131. Pourvoi "dans l’intérêt de la loi". C. I. C. art. 442.
132. The term "demande en revision" is used interchangeably. LABORDE, PRÉCIS DE DROIT PÉNAL FRANÇAIS (3d ed. 1911) 880. See C. I. C. arts. 443 and 444, both as amended by the Law of June 8, 1895.
133. C. I. C. arts. 177, 216, as amended by the Law of June 13, 1856, 297, 298, 408, 413; 5 GARRAUD, op. cit. supra note 1, at 309.
134. The right of pourvoi lies also against judgments of courts having special criminal jurisdiction, such as the admiralty courts and the military courts, but no pourvoi lies from judgments of the Senate sitting as high court of justice. 5 GARRAUD, op. cit. supra note 1, at 289.
135. C. I. C. art. 262.
136. C. I. C. arts. 177 and 407; 5 GARRAUD, op. cit. supra note 1, at 299 and 300.
137. I LE POTTEVIN, op. cit. supra note 74, at 681.
138. C. I. C. art. 177; 5 GARRAUD, op. cit. supra note 1, at 300.
139. 5 GARRAUD, op. cit. supra note 1, at 317.
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which case the judgment is simply reversed, the practice of the Cour, when it finds that substantial error was committed by the court whose judgment is reviewed, is to remand the case to a specifically designated court of the same grade as the one which rendered the judgment. For example, excluding certain exceptions one of which is the finding of an error of jurisdiction, if the pourvoi is from a Cour d'Appel, the case will be sent to the Cour d'Appel of another ressort, and if the pourvoi is from a Cour d'Assises, the case will be sent for a new trial in the Cour d'Assises of another département, none of whose members sat on the court at the previous trial. It is a notable feature of French criminal procedure that a new trial cannot be held in the court which originally tried the case. It is thought that the court hearing the cause anew should be one that is able to reach its conclusion in full independence and without predisposition of any kind. Hence, it is forbidden for any judge who participated in the earlier judgment to sit in the court at the new hearing.

The pourvoi "in the interest of the law" is brought by the procureur général attached to the Cour de Cassation, either on his own motion or upon formal order of the Minister of Justice. The pourvoi by the procureur général on his own motion may be brought on any grounds justifying a pourvoi en cassation provided no such pourvoi has been made by any of the parties to the cause. The pourvoi initiated by the procureur général is solely for the purpose of correcting and making uniform the principles of law enunciated in the cases. The judgment of the Cour on this pourvoi, unlike that in case of a pourvoi en cassation, does not affect in any respect the status of any of the parties. Thus in case of an acquittal, the judgment on a pourvoi "in the interest of the law" has no effect except to secure a correct pronouncement of the law. Similarly, where the Cour decides that a con-

140. C. I. C. art. 429; 1 Le Poittevin, op. cit. supra note 74, at 700.
141. 5 Garraud, op. cit. supra note 1, at 317.
142. C. I. C. art. 427, 428 and 429; 5 Garraud, op. cit. supra note 1, at 492.
143. C. I. C. art. 429.
144. The Cour d'Appel, to which the case is sent, proceeds to a new hearing on the law or facts with the same scope as that of the first Cour d'Appel prior to rendering the judgment invalidated. Witnesses may be called and any other appropriate trial measures taken. 3 Faustin Hélie, op. cit. supra note 2, at 787, § 5397; Degois, Droit Criminel (1922) 744.
145. 5 Garraud, op. cit. supra note 1, at 493; 2 Dalloz, Répertoire Pratique, 255, § 752.
146. 5 Garraud, op. cit. supra note 1, at 493.
147. C. I. C. art. 442.
148. C. I. C. art. 441; 1 Le Poittevin, op. cit. supra note 74, at 702. In the latter case this pourvoi is sometimes termed "demande en annulation", Laborde, op. cit. supra note 132, at 877; or "pourvoi en annulation", 5 Garraud, op. cit. supra note 1, at 526.
149. C. I. C. art. 442. The pourvoi by order of the Minister of Justice may attack not only final judgments such as are susceptible of pourvoi en cassation, but also any judicial decision or order at any stage of the proceedings. C. I. C. art. 441.
150. 5 Garraud, op. cit. supra note 1, at 523.
viction was improper, if the defendant is still serving his sentence, he continues to do so unless there is a pardon. It seems, however, that in the case of a pourvoi initiated by the Minister of Justice, the effect is not exclusively doctrinal, i.e. "in the interest of the law". In fact, this pourvoi is sometimes said to be "in the interest of the law and of the person convicted".\textsuperscript{151} It is clear that the rights of the defendant may not be adversely affected, nor those of the partie civile either adversely or favorably affected,\textsuperscript{152} but it appears settled today that a decision against the validity of a conviction takes effect to the benefit of the person convicted.\textsuperscript{163} The Cour has, however, decided that the Minister of Justice may by express terms restrict the effect of the pourvoi to the clarifying of legal principles.\textsuperscript{164}

A pourvoi en revision\textsuperscript{155} lies only in a case where a defendant has been convicted of a crime or a délit.\textsuperscript{156} This pourvoi may be employed solely by the Minister of Justice, who may act ex officio or upon the request of the defendant or someone acting in his behalf.\textsuperscript{157} The Code specifies four situations in which this pourvoi may be used: (1) when the supposed victim of a homicide is shown to have been alive after the conviction of the defendant, (2) when another person who acted independently of the defendant is subsequently convicted of the same offense of which the defendant was found guilty, (3) when a person who

\begin{itemize}
\item \textsuperscript{151} Degois, op. cit. supra note 144, at 768.
\item \textsuperscript{152} 5 Garraud, op. cit. supra note 1, at 541; Goyet, op. cit. supra note 65, at 390.
\item \textsuperscript{153} 5 Garraud, op. cit. supra note 1, at 542, citing cases; I Le Poittevin, op. cit. supra note 74, at 702; Goyet, op. cit. supra note 65, at 390.
\item \textsuperscript{154} 5 Garraud, op. cit. supra note 1, at 545; I Le Poittevin, op. cit. supra note 74, at 702.
\item \textsuperscript{155} In the case of any pourvoi "in the interest of the law", if the Cour finds an error as to jurisdiction was made below, the case is sent to the proper court for rehearing. I Le Poittevin, op. cit. supra note 74, at 702.
\item \textsuperscript{156} The number of pourvois en cassation filed with the Cour during the year 1932 was 5651, of which 91 were by the ministère public and the remainder by the other parties. There were filed during the same period only 2 pourvois "in the interest of the law". Compte Général Pendant L'Année 1932 (1934) 114.
\item \textsuperscript{157} Revision is to be distinguished from the legal proceeding known as réhabilitation (C. I. C. art. 619, as amended by the Law of Mar. 10, 1895, et seq.), which has the effect after full execution of the sentence, of restoring entirely his civil rights to the person convicted, because of his good behavior for a period of years after completion of the sentence. Réhabilitation is in no respect retroactive, and has no reference to the correctness of the conviction. 5 Garraud, op. cit. supra note 1, at 553 and 651.
\item \textsuperscript{158} C. I. C. art. 443, as amended by the Law of June 8, 1895. The right of pourvoi en revision extends to judgments of special courts, including military courts. 5 Garraud, op. cit. supra note 1, at 569. In the case of Dreyfus, who was convicted on Dec. 22, 1894, by a court martial (at Paris), there was a revision on the application of Mme. Dreyfus. The Cour de Cassation ordered a new trial by court martial at Rennes, in which Dreyfus was again convicted. Later, due to popular demand, he was pardoned. Several years afterwards, as a result of new evidence which was discovered, he sought revision a second time, pardon being no obstacle to revision. 5 Garraud, op. cit. supra note 1, at 567n. The Cour de Cassation annulled the original sentence and under art. 445 completely rehabilitated Dreyfus. See Cass. Ch. Réun. June 3, 1899 (Dailoz, Recueil Périodique, 1900 I, 181) and Cass.-tém. July 12, 1906 (Sirey, Recueil Général des Lois et des Arrêts, 1907 I, 49).
\item \textsuperscript{159} For example, if the defendant is deceased, the spouse, children, relatives or legal representative may make the application for the purpose of clearing his name and securing damages from the state. C. I. C. art. 444, as amended by the Law of June 8, 1895.
testified against the defendant at the trial is convicted of perjury in so testifying, (4) when there is newly discovered evidence tending to establish the innocence of the convicted defendant.\textsuperscript{158}

In the case of a \textit{pourvoi en révision} the \textit{Cour} does not concern itself with errors of law, but considers simply evidence of guilt for the sole purpose of determining whether an innocent person has been convicted.\textsuperscript{159} In addition to considering the record of the trial, the \textit{Cour} may examine witnesses and may also order that investigations be made for the purpose of securing additional evidence.\textsuperscript{160} Ordinarily, if the \textit{Cour} decides to reverse the judgment of conviction, it will order a new trial in another court of the same grade as the one in which the original trial was held. In certain situations, for example where the defendant is dead or insane, or where prosecution is barred by lapse of time, the court will reverse the conviction without a remand.\textsuperscript{161}

In addition to the functions of review just described, the \textit{Cour de Cassation} has jurisdiction to receive applications from the defendant, the \textit{partie civile} or the prosecuting department for change of court because of alleged bias of judges or other sufficient reason;\textsuperscript{162} or from the \textit{ministère public} alone, through intermediation of the Minister of Justice, because of danger of disturbance at the trial.\textsuperscript{163}

Besides the courts of general jurisdiction already described, a court of special criminal jurisdiction must be noted. This is the Senate, specially constituted by decree of the government as the High Court (\textit{Haute Cour de Justice}) for the purpose of trying (1) the President of the Republic for high treason, (2) Ministers for crimes committed in the exercise of their functions, and (3) any person where an offense against the safety of the state is charged.\textsuperscript{164}

The Senate
was so constituted for the trial of Joseph Caillaux (Minister of the Interior during the World War) and others in 1918-1920.165

5. Personnel of the Courts and Prosecuting Department 166

The general term used to describe the members of the judicial profession is magistrature, and each member is known as a magistrat.167 At the head of the judicial system is the Minister of Justice, known also as Garde des Sceaux,168 and it is upon his recommendation that the magistrats are appointed by the President of the Republic.169 In practice this means that the appointments are made by the Minister.170

A characteristic feature of the French system is the fact that members of the prosecuting department are magistrats,171 the reason for this being that the position of the prosecutor is regarded as non-partisan and judicial. The magistrats who act as prosecutors are, by reason of the fact that they stand when addressing the court, described as the standing magistracy (magistrature debout) in contrast to those acting as judges, who constitute the sitting magistracy (magistrature assise).172 Members of the two groups wear the same costume and are inducted into office by similar ceremonies.173 The position of the prosecuting official as a member of the magistrature is further indi-


166. This subject is discussed at length in Ensor, COURTS AND JUDGES IN FRANCE, GERMANY AND ENGLAND (1933); Garner, The French Judiciary (1917) 26 YALE L. J. 349; Perrout, supra note 165; Ploscowe, The Career of Judges and Prosecutors in Continental Countries (1934) 44 YALE L. J. 268.

167. CAPITANT, op. cit. supra note 35, at 320. The juge de paix, however, is not included in the magistrature. BARThÉLÉMY, LE GOUVERNEMENT DE LA FRANCE (1919) 179. Prior to 1905, no special training was required for this office (1 GlaSSON AND TiSSIER, op. cit. supra note 94, at 102), but today the conditions for admission approach those for admission to the magistrature. 3 LÉ PorrTiEViN, op. cit. supra note 74, at 320 and 331. Not belonging to the magistrature, the juge de paix may not be promoted to any post therein.


169. 3 LÉ PorrTiEViN, op. cit. supra note 74, at 981.

170. Detailed regulations for admission to the magistrature are now provided by law. Decree of July 21, 1927, 1927 BULLETIN DES LOIS (NOW. SÉR. VOL. 19) pt. 1, 2401; 3 LÉ PorrTiEViN, op. cit. supra note 74, at 952 et seq.

171. 1 GLASSON AND TiSSIER, op. cit. supra note 94, at 265; 3 LÉ PorrTiEViN, op. cit. supra note 74, at 666. The prosecuting official before the Tribunal de Simple Police is the commissaire de police, who, while sometimes referred to as magistrat (1 LÉ PorrTiEViN, C. I. C. ANNOTÉ (1911-1915) art. 144, §§47 and 52), is in fact not a member of the magistrature.

172. 1 GARRAUD, op. cit. supra note 1, at 173n; 1 GLASSON AND TiSSIER, op. cit. supra note 94, at 266.

173. 1 GARRAUD, op. cit. supra note 1, at 173; 3 LÉ PorrTiEViN, op. cit. supra note 74, at 673.
icated by the fact that during the trial of a case he occupies a seat on the bench near the judges.

All appointments are of indefinite duration, but a Decree promulgated by Louis Napoleon in 1852, and still in force, requires the retirement at the age of 70 of the judges of all the courts except the Cour de Cassation, whose members must retire at 75. One purpose of this Decree was, according to a leading authority, that of removing from the bench the remaining judges appointed during the Revolution and substituting others who would be less independent. Members of the standing magistracy must, if attached to the lower courts, retire at the age of 70, and, if attached to the Cour de Cassation, at the age of 75.

The judicial system is a hierarchy, and all the magistrats are grouped in graded classes with a system of promotion from one class to the next higher one. Standing and sitting magistrats are grouped in the same classes and transfers are not infrequently made from one branch of the profession to the other. Until the year 1906 the promotion of magistrats was entirely in the discretion of the Minister of Justice, and there was much criticism of the system. Since then provision has been made, by a series of decrees, for a system of promotion whereby the Minister must be guided to a considerable extent

174. Decree of Mar. 1, 1852, art. 1, 1852 Bulletin des Lois (X sér.) pt. 1, 443, with letter of recommendation by the Minister of Justice to Napoleon; 3 Le Poittevin, op. cit. supra note 74, at 1012. The Decree is criticized in Favre, De la Réforme Judiciaire (1877) 28 and 56 et seq.; Picot, La Réforme Judiciaire (1881) 127; Malepeyre, La Magistrature (1900) 145.

175. Barrot, De l'Organisation Judiciaire en France (1871) 76.

176. Decree of Dec. 21, 1928, 1928 Bulletin des Lois (nouv. sér. vol. 20) pt. 1, 2909; Le Poittevin, op. cit. supra note 74, Supplément at 268. By the Law of May 31, 1933, art. 122 (Journal Officiel (June 1, 1933) 5712), however, the age limit was extended to 75 years in the case of the first president and the procureur-général of the Cour d'Appel de Paris, and of the president and procureur of the Tribunal de Seine.

Prior to the retirement age, sitting magistrats may not be removed by the executive power, nor may they be transferred or demoted. 1 Massabieau, op. cit. supra note 120, at 45; 1 Glasson and Tissier, op. cit. supra note 64, at 124. They may, however, be removed or otherwise disciplined for conduct unbefitting their office by a judicial body, the Conseil Supérieur de la Magistrature, composed of all the judges of the Cour de Cassation. They may not be impeached by the legislative body as in this country.

Standing magistrats may be removed, demoted or transferred by the Minister of Justice. 1 Massabieau, op. cit. supra note 120, at 48; 1 Glasson and Tissier, op. cit. supra note 64, at 268. A recent measure requires, however, that the Minister, before exercising this power to discipline, shall convene a commission of certain high magistrats who shall give him an advisory ruling, which he may follow or not as he chooses. Decree of June 5, 1934, Journal Officiel (June 6, 1934) 5580.

177. Goyet, op. cit. supra note 65, at 14. An example is the career of M. Pierre Bouchardon, born in 1870, admitted to the bar (Paris) in 1892; named substitute juge at Aubusson, in 1895, a judge of the Tribunal de Première Instance at Baume-les-Dames, then at Guéret in 1900, assistant procureur at Cambrai in 1903, procureur at Yvetot in 1905, assistant procureur at Rouen in 1906, chief of the bureau of Affaires Criminelles at the Ministry of Justice in 1908, juge d'instruction in the Tribunal of the Seine (Paris) in 1912, conseiller of the Cour d'Appel de Paris in 1918, and conseiller of the Cour de Cassation in 1929. Dictionnaire National des Contemporains (1936) 98.

by considerations of merit, based on the recommendations of a group of high ranking magistrats.\footnote{179}

6. Ministère Public

The members of the magistrature who represent in the courts the interests of the government are known as the ministère public.\footnote{180} They function in both civil and criminal cases. The term is applied both to the ensemble of these officials and also to the group attached to a particular court. A member of the ministère public is an essential constituent of every criminal court,\footnote{181} and no judgment is valid which does not expressly recite that he was present at every stage of the proceedings and either expressed his views or was given an opportunity to do so.\footnote{182}

The ministère public is said to possess three attributes, (1) unity, (2) indivisibility, and (3) independence.\footnote{183} By "unity" is meant the fact that just as all the magistrats are parts of a hierarchical system, so the members of the ministère public in turn constitute a hierarchy,\footnote{184} of which the head is likewise the Minister of Justice, who directs and supervises the work of all the prosecuting officials.\footnote{185} For example, he may direct that a prosecution shall be brought or shall not be brought, but after a court has taken jurisdiction of a prosecution, the case is beyond the reach of the Minister.\footnote{186} For the enforcing of his orders he may employ disciplinary measures including dismissal.\footnote{187} There is, however, one interesting particular in which a subordinate is said to be free from the control of the Minister. Although compelled to begin a prosecution or to file papers as commanded, each member of the ministère public at the trial may orally express his own opinion even though it contradicts what he has written at the order of the Minister. This idea is expressed in the old maxim, "la plume est serve, mais la parole est libre".\footnote{188}


\footnote{180} The promotion of magistrats is discussed in 3 Le Poittevin, op. cit. supra note 74, at 970 et seq.; Perroud, supra note 165, at 14; Ensor, op. cit. supra note 166, at 118 et seq.; Piscocwe, supra note 160, at 276 et seq.

\footnote{181} 1 Garraud, op. cit. supra note 1, at 172; Goyet, op. cit. supra note 65, at 7.

\footnote{182} Likewise at every sitting of a civil court of general jurisdiction a member of the ministère public must attend and be given an opportunity to present his views on each case. 3 Le Poittevin, op. cit. supra note 74, at 675.

\footnote{183} 3 Le Poittevin, op. cit. supra note 74, at 659.

\footnote{184} See C. I. C. arts. 27 and 274.

\footnote{185} 3 Le Poittevin, op. cit. supra note 1, at 174; 3 Le Poittevin, op. cit. supra note 74, at 660.

\footnote{186} 3 Le Poittevin, op. cit. supra note 74, at 662-664.

\footnote{187} 3 Le Poittevin, op. cit. supra note 1, at 174; Goyet, op. cit. supra note 65, at 11; 3 Le Poittevin, op. cit. supra note 74, at 678.

\footnote{188} Goyet, op. cit. supra note 65, at 12; 3 Le Poittevin, op. cit. supra note 74, at 665.
"Indivisibility" means that each member of the ministère public attached to a given court acts as the representative of, and exercises the powers possessed by, the group regarded as a unit.\textsuperscript{189} It follows from this that a prosecution started by one prosecutor may be continued by another;\textsuperscript{190} also that several may participate in the same trial.\textsuperscript{191} In such case, when one is speaking, his associates also stand. This is to indicate that they are being represented in what is said.\textsuperscript{192}

By "independence" is meant that the members of the ministère public are not subject to control or direction by the court.\textsuperscript{193} They may not be refused the right to speak at a trial nor may they be required to cease speaking.\textsuperscript{194} They may not be censured nor reprimanded by the court for any official conduct.\textsuperscript{195} All that the court can do, if it considers any action improper, is to report the fact to one of the higher officers of the ministère public.\textsuperscript{196}

The members of the ministère public attached to any particular court are known collectively as the parquet.\textsuperscript{197} The chief of the parquet attached to each Cour d'Appel is the procureur général, and proceedings in the Cour d'Appel and Cour d'Assises are conducted in his name,\textsuperscript{198} although he need not appear in person.\textsuperscript{199} The procureur général has a number of assistants, known as avocats généraux and substituts.\textsuperscript{200} The prosecutor in the Cour d'Assises of the département wherein there is located a Cour d'Appel is ordinarily an avocat général appearing as the representative of the procureur général. In the other Cours d'Assises of the ressort, this function is performed generally by the

\begin{itemize}
  \item \textsuperscript{189} GARRAUD, op. cit. supra note 1, at 185; LE POITTEVIN, op. cit. supra note 74, at 660.
  \item \textsuperscript{190} GARRAUD, op. cit. supra note 1, at 186; LE POITTEVIN, op. cit. supra note 74, at 661.
  \item \textsuperscript{191} GOYET, op. cit. supra note 65, at 10.
  \item \textsuperscript{192} GARRAUD, op. cit. supra note 1, at 186n; LE POITTEVIN, op. cit. supra note 74, at 660.
  \item \textsuperscript{193} GARRAUD, op. cit. supra note 1, at 320; GOYET, op. cit. supra note 65, at 12; LE POITTEVIN, op. cit. supra note 74, at 661.
  \item \textsuperscript{194} GOYET, op. cit. supra note 65, at 12; LE POITTEVIN, op. cit. supra note 74, at 661.
  \item \textsuperscript{195} MASSABIAU, op. cit. supra note 120, at 50; GARRAUD, op. cit. supra note 1, at 320; LE POITTEVIN, op. cit. supra note 74, at 661.
  \item \textsuperscript{196} MASSABIAU, op. cit. supra note 120, at 50; GARRAUD, op. cit. supra note 1, at 321 and 322; LE POITTEVIN, op. cit. supra note 74, at 678.
  \item \textsuperscript{197} LE POITTEVIN, op. cit. supra note 74, at 659. This name is derived from the fact that seats occupied by the members were formerly placed below the platform on which the judges sit. GARRAUD, op. cit. supra note 1, at 179; GOYET, op. cit. supra note 65, at 8.
  \item \textsuperscript{198} The title of a criminal case is "Ministère Public contre X". DALLOZ, RECUEIL PÉRIODIQUE, 1933 II, 12.
  \item \textsuperscript{199} GARRAUD, op. cit. supra note 1, at 180; GOYET, op. cit. supra note 65, at 9.
  \item \textsuperscript{200} GOYET, op. cit. supra note 65, at 9; LE POITTEVIN, op. cit. supra note 74, at 684.
\end{itemize}
procureur attached to the tribunal in the city where the Cour sits.\textsuperscript{201} The substituts perform the office work of the parquet.\textsuperscript{202}

In addition to his position in the parquet of the Cour d'Appel, the procureur général is the head of the ministère public for the entire ressort and exercises supervision and control over all the officers of the parquets below him\textsuperscript{203} and may take disciplinary measures against them to the extent of recommending their removal by the Minister of Justice.\textsuperscript{204}

The parquet at a Tribunal de Première Instance at most tribunaux consists of the procureur de la République and one or more substituts.\textsuperscript{205} The procureur prosecutes in the Tribunal Correctionnel in his own right by virtue of article 22 of the Code.\textsuperscript{206} He also acts as prosecutor in the Cour d'Assises when it is not held at the seat of the Cour d'Appel. In such event he acts as the subordinate of the procureur général.\textsuperscript{207} In addition to his duties as official prosecutor, the procureur, as will be presented more fully later, has extensive duties in the preliminary investigation of offenses. He also has many administrative duties.\textsuperscript{208}

At the Tribunal de Simple Police, the function of the ministère public is performed by one or more commissaires de police of the city where the tribunal is located, assigned for one year to this duty by the procureur général of the ressort.\textsuperscript{209}

The ministère public of the Cour de Cassation is entirely independent of the ministère public in the other courts. It consists of a procureur général, a number of avocats généraux and a secretary general.\textsuperscript{210}

\footnotesize
\textsuperscript{201} C. I. C. art. 253, as amended by the Law of Feb. 25, 1901; L. Caulet, \textit{Des Fonctions du Procureur de la République et de ses Auxiliaires} (1909) 2; \textit{1 Le Poittevin, op. cit. supra note 74, at 1049.}

\textsuperscript{202} \textit{1 Garraud, op. cit. supra note 1, at 182.}

\textsuperscript{203} Decree of July 6, 1810, art. 42, 1810 \textit{Bulletin des Lois} (IV sér.) pt. 2, 14; Law of Apr. 20, 1810, arts. 45 and 60, 1810 \textit{Bulletin des Lois} (IV sér.) pt. 1, 301 and 304; \textit{3 Le Poittevin, op. cit. supra note 74, at 685.}

\textsuperscript{204} Further, as will be later set forth, all the officers of the police judiciaire of the ressort are under the control of the procureur général.

\textsuperscript{205} \textit{1 Garraud, op. cit. supra note 1, at 182; Goyet, op. cit. supra note 65, at 9.}

\textsuperscript{206} Following the judicial reforms of recent years, reducing the number of judges in the tribunaux of the least populous judicial arrondissements to one, there is no longer a parquet at the tribunaux of this group. Decree of Mar. 28, 1934, art. 1 and schedule A attached, \textit{Journal Officiel} (Apr. 5, 1934) 3599. Prosecutions in these tribunaux are conducted by the parquets of the tribunaux of neighboring arrondissements. Law of Aug. 21, 1929, arts. 4 and 6, 1929 \textit{Bulletin des Lois} (nov. sér. vol. 21) pt. 1, 2177; Law of July 16, 1930, 1930 \textit{Bulletin des Lois} (nov. sér. vol. 22) pt. 1, 1769.

\textsuperscript{207} \textit{1 Garraud, op. cit. supra note 1, at 183; Goyet, op. cit. supra note 65, at 9.}

\textsuperscript{208} \textit{3 Le Poittevin, op. cit. supra note 74, at 695.}

\textsuperscript{209} \textit{Goyet, op. cit. supra note 65, at 8.}

\textsuperscript{210} \textit{1 Garraud, op. cit. supra note 1, at 184; Goyet, op. cit. supra note 65, at 10; 3 Le Poittevin, op. cit. supra note 74, at 682. The ministère public is discussed in Ensor, op. cit. supra note 166, at 121; Walton, supra note 165; Tyndale, supra note 165; Déak and Rheinstein, supra note 164.}
II. PERSONNEL AND FUNCTIONS OF THE POLICE JUDICIAIRE

The investigation of offenses, preliminary to trial, is performed by a group of officials constituting what is termed the police judiciaire. "Police" in France has a much broader meaning than "police" in this country and includes some officials who would not be so characterized here. Furthermore the functions of most members of the police judiciaire are in no respect judicial, but are entirely for the purpose of preparing the case for the prosecution.211

"Police" includes two distinct functions, which are described as administrative and judiciaire. The Code of 3 Brumaire IV (Oct. 26, 1795) provided the following: "The purpose of the police administrative is to maintain continually the public order in all places under the general government. It is principally concerned with the prevention of offenses. The laws concerning it are part of the Code of Civil Administration. The police judiciaire searches out the offenses, the commission of which the police administrative has not been able to prevent; it collects the evidence and delivers the perpetrators to the tribunals authorized by law to punish them."212 The provision regarding the police judiciaire has been reproduced in article 8 of the present Code.213 The work of the police judiciaire is said to commence at the point where the work of the police administrative ends.214

While the Code enumerates the general functions of the police judiciaire it has not presented any procedure to govern its operation.215 It does, however, specifically designate the officers who are to constitute the police judiciaire, listing them without regard to their relative importance in the following order: (1) rural and forest guards, (2) commissaires de police,216 (3) inspecteurs of the police mobile and of the special police, with at least five years' service, who are designated for this work by the Minister of the Interior and the Minister of Justice, (4) mayors and their deputies, (5) procureurs de la République and

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211. The term "police judiciaire" has been variously translated as follows: (a) "judicial police" in J. STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND (1883) 525, and ESMEE, op. cit. supra note 2, at 43; and (b) "police judiciary" in Coudert, FRENCH CRIMINAL PROCEDURE (1910) 19 YALE L. J. 326, 332. On page 331 the translation "judicial police" appears.

212. IV BULLETIN DES LOIS (II sér.) No. 204, arts. 19 and 20, p. 4.

213. Article 8 reads as follows: "The police judiciaire searches out crimes, délits, and contraventions; it collects the evidence and delivers the perpetrators to the tribunals authorized by law to punish them."

214. 2 GARRAUD, op. cit. supra note 1, at 531. The police administrative is subject to the direction of the Minister of the Interior; the police judiciaire to that of the Minister of Justice. Goyet, op. cit. supra note 65, at 191; Vohl, LA POLICE FRANÇAISE (4th ed. 1931) 32.

215. 1 GARRAUD, op. cit. supra note 1, at 25.

216. Commissaires généraux de police are still listed in articles 9 and 48 of the Code, although this office was abolished by the Decree of March 28, 1815, 1815 BULLETIN DES LOIS (VI sér.) pt. 2, 68; PASCAL, LE RÔLE JUDICIAIRE DU COMMISSAIRE DE POLICE (Thesis Lyon, 1922) 17.
their assistants, (6) justices of the peace (juges de paix), (7) officers of the gendarmerie, and (8) juges d'instruction.\textsuperscript{217}

The most important official of the police judiciaire is the procureur,\textsuperscript{218} who is directed by the Code to inquire into all offenses cognizable by the Cours d'Assises and the Tribunaux Correctionnels.\textsuperscript{219} His functions are performed within the arrondissement where he is located. The procureur in his capacity as magistrat is also the official prosecutor before the juge d'instruction, when sitting as an examining magistrate, and the Tribunal Correctionnel.\textsuperscript{220} In the case of a flagrant délit, the procureur may go beyond his sphere as a member of the police judiciaire and may conduct an investigation partly judicial in character,\textsuperscript{221} such as is normally made by a juge d'instruction. The procureur is the head of the police judiciaire in his arrondissement,\textsuperscript{222} and the Code provides that he shall have as assistants the commissaires de police, the inspecteurs of the police mobile and of the special police, the juges de paix, and the officers of the gendarmerie.\textsuperscript{223}

The juge d'instruction, in addition to being a member of the police judiciaire, performs judicial duties in the conducting of the preliminary examination (instruction préparatoire).\textsuperscript{224} Like the procureur he functions within an arrondissement. According to the Code, as originally promulgated, the attributes of the juge d'instruction were much more than those of an officer of the police judiciaire than those of a judge.\textsuperscript{225} While he collected the evidence, the decision as to whether the suspected person should be brought to trial and, if so, be-

\textsuperscript{217} C. I. C. art. 9, as amended by the Law of July 5, 1929. The following members of the police judiciaire are also members of the police administrative: the rural and forest guards, the commissaires de police, the mayors and their deputies (4 Le Poitevin, op. cit. supra note 74, at 149, 150), and the officers of the gendarmerie. CAPITANT, op. cit. supra note 35, at 267.

The police officers who regulate the traffic and patrol the streets in French cities are designated agents de police. CAPITANT, op. cit. supra note 35, at 43. They are also frequently called sergents de ville or gardiens de la paix and sometimes mistakenly by foreigners, gendarmes. They are not members of the police judiciaire, since not specified in article 4 of the Code, although they prepare reports for the commissaires de police regarding any offenses which come to their attention. CUlHE, PRÉCIS DE DROIT CRIMINEL (1927) 252; P. CAULLET, COURS DE POLICE (1934) 107. The agents de police are sometimes described as adjuncts to the police judiciaire. 2 GARraud, op. cit. supra note 1, at 603.

\textsuperscript{218} The procureur and the juge d'instruction are described as the superior officers of the police judiciaire. 2 GARraud, op. cit. supra note 1, at 536; GOYET, op. cit. supra note 65, at 193.

\textsuperscript{219} C. I. C. art. 22. The Code confers no authority on the procureur to take any action with regard to contraventions, but in practice he frequently orders investigations and prosecutions in such cases. L. CAULLET, op. cit. supra note 201, at 20.

\textsuperscript{220} 2 GARraud, op. cit. supra note 1, at 539; GOYET, op. cit. supra note 65, at 193.

\textsuperscript{221} C. I. C. arts. 32-36, 37, as amended by the Law of Feb. 7, 1933, and 40.

\textsuperscript{222} 2 MASSABIAU, op. cit. supra note 120, at 74; GOYET, op. cit. supra note 65, at 193.

\textsuperscript{223} C. I. C. arts. 48-54.

\textsuperscript{224} 2 GARraud, op. cit. supra note 1, at 547; GOYET, op. cit. supra note 65, at 194.

\textsuperscript{225} MASSON, LA SÉPARATION DE LA POURSUITE ET DE L'INSTRUCTION (Thesis Paris, 1898) 37.
fore what court, was decided by a council of three or more judges (chambre du conseil), one of whom was the juge d'instruction. By a law enacted in 1856 the chambre du conseil was abolished and all of its powers were conferred on the juge d'instruction, whose position thereby became more that of a judge and correspondingly less that of a police officer. His judicial status was further recognized by a law enacted in 1897 providing that a suspect whom he is interrogating may have counsel. There still remains, however, considerable difference of opinion among writers regarding the line of division between the duties performed by the juge in his judicial capacity and as a member of the police judiciare. Thus the view is expressed that when conducting the preliminary examination, he is acting entirely as a judge. On the contrary, it is said that in such case he is an officer of the police judiciare and that he acts judicially only when issuing official orders (ordonnances). The former is the more general view. The Code provides, however, that with regard to his functions as a member of the police judiciare, the juge d'instruction is subject to the surveillance of the procureur général. This, according to an early contention, meant that in the performance of all his duties the juge was subject to the orders of the procureur général, but today it is recognized that the latter's right of supervision is limited to general directions to promote efficiency, with the accompanying right to admonish for negligent conduct and, if this is repeated, to cite the juge d'instruction before the Cour d'Appel which may enjoin him from continuing such conduct. The procureur général as a disciplinary measure may withdraw a case from a juge d'instruction and even have his appointment as juge d'instruction revoked. In addition to his duties as an examining magistrate and as an officer of the

230. L. Caullet, op. cit. supra note 201, at 229; Cuche, op. cit. supra note 217, at 248.
231. Degois, op. cit. supra note 143, at 437.
232. C. I. C. arts. 57 and 279. The juges d'instruction make regular reports to the procureurs généraux regarding the cases before them. 2 Garraud, op. cit. supra note 1, at 554; 3 Le Potttevin, op. cit. supra note 74, at 234.
233. See Morizot-Thibault, op. cit. supra note 20, at 123; 2 Garraud, op. cit. supra note 1, at 553 n.
234. 2 Massabieau, op. cit. supra note 120, at 143; 2 Garraud, op. cit. supra note 1, at 641; Govet, op. cit. supra note 65, at 277.
235. C. I. C. art. 280.
236. C. I. C. art. 281; Govet, op. cit. supra note 65, at 202-203.
237. 2 Massabieau, op. cit. supra note 120, at 143.
238. 2 Massabieau, op. cit. supra note 120, at 143; Govet, op. cit. supra note 65, at 203.
police judiciaire, the juge d'instruction is a member of the Tribunal de
Première Instance. 239

The commissaire de police, who is the most important police assist-
ant of the procureur, is a superior officer, attached to various police
units, which may be either the municipal police, the police mobile or
the special police. 240 There is a commissaire of the municipal police
in every city having a population of at least 5000; and in a city with
a population of more than 10,000, there is a commissaire for each
10,000 inhabitants. 241 As members of the police administrative, the
commissaires are under the direction of the mayors and the préfets,
but are subject to the order of the procureur when acting as officers
of the police judiciaire. 242 The commissaire is authorized in his own
right to investigate all contraventions, including the receiving of com-
plaints regarding them 243 and, as an official of the ministère public,
to prosecute them before the Tribunal de Simple Police. 244 In the
investigation of délits and crimes the commissaire, 245 as already pointed
out, acts as an assistant of the procureur. He may also be delegated
to perform some of the duties of the juge d'instruction. 246

The mayor is the chief executive official of a commune, 247 as well
as one of the assistants of the procureur in the police judiciaire. In the
latter capacity his power is limited to the commune. 248

The gendarmerie is a unit of the army, 249 which is customarily
employed in performing services in other branches of the government,
viz. Interior, Justice, Navy and Colonies. 250 Its services are rendered
primarily in the rural districts and along the highways. 251 The officers
of the gendarmerie perform the duties of members of the police judi-
ciaire, in the capacity of assistants of the procureur. 252

239. 2 GARRAUD, op. cit. supra note 1, at 540. As a member of the Tribunal de
Première Instance the juge d'instruction is irremovable. Id. at 542.
240. GOYET, op. cit. supra note 65, at 196; I LE POITTEVIN, op. cit. supra note 74,
at 858.
241. Where there are more than one commissaire the work is coordinated by a
commissaire central. 2 GARRAUD, op. cit. supra note 1, at 583n; I LE POITTEVIN, op. cit.
supra note 74, at 859.
242. 2 GARRAUD, op. cit. supra note 1, at 585; I LE POITTEVIN, op. cit. supra note 74,
at 858.
243. C. I. C. art. 11.
244. C. I. C. art. 144, as amended by the Law of December 31, 1906.
245. The commissaire de police is made an officer of the police judiciaire by C. I. C.
art. 9.
246. This delegation will be discussed in detail when the functions of the juge d'in-
struction are presented.
247. BERTHELEMY, op. cit. supra note 4, at 246 et seq.
248. 4 LE POITTEVIN, op. cit. supra note 74, at 153. The mayor has become increas-
ingly less active as an officer of the police judiciaire. 2 GARRAUD, op. cit. supra note 1,
at 587n.
249. Decree of May 20, 1903, art. 2, 1903 BULLETIN DES LOIS (XII sér.) pt. 2, 33.
250. Id. at art. 4.
251. Id. at art. 1; GUYON, ORGANISATION DE LA POLICE EN FRANCE (Thesis Paris,
1923) 170.
252. C. I. C. art. 9, as amended by the Law of July 5, 1929.
The police mobile was organized in 1907 solely for the work of the police judiciaire. It is composed of 15 brigades corresponding to that number of districts into which the country has been divided for this purpose. Each brigade is commanded by a commissaire divisionaire de police mobile and contains a number of commissaires de police mobile and inspecteurs in addition to a chauffeur. In 1929 it was provided that an inspecteur of the police mobile, who had served five years as such, might be named an officer of the police judiciaire by order of the Ministers of Justice and of the Interior. The officers of the police mobile, which must be distinguished from the garde mobile, are not members of the police administrative.

The special police, whose commissaires and inspecteurs of five years' service, when so designated, are officers of the police judiciaire, have the function of surveillance at the frontiers, railroads, etc., including investigation of offenses, such as anarchistic attempts against the safety of the state, as a result of which the name "police politique" is sometimes applied to them.

The juge de paix who, as already seen, is the judge of the Tribunal de Simple Police, is also one of the assistants of the procureur in the police judiciaire.

The rural guards and the forest guards as officers of the police judiciaire investigate délits and contraventions committed within the areas under their surveillance.

The Code provides that, as already seen in the case of the juge d'instruction, all the officers of the police judiciaire shall, in their functions as such, be under the supervision of the procureur général of the ressort who, for failure to perform their duties, may cite them for censure before the Cour d'Appel. Such a proceeding rarely occurs.
however, since the procureur général prefers the more simple and efficacious measure of transfer or dismissal of officers whose services are unsatisfactory because of incompetence or other reason.\textsuperscript{263}

\textbf{III. Initiation of Investigation}

\textbf{i. Through the Procureur}

The usual methods of initiating the investigation of an alleged offense are the following: (1) the complaint (plainte) of the injured person; (2) an accusation (dénonciation) of another person who saw the offense committed or learned of it afterwards,\textsuperscript{264} and (3) the written report (procès verbal) of an officer of the police judiciaire who in the performance of his duties learned of the offense.\textsuperscript{265} The plainte and the dénonciation may be made either (1) to the procureur of the arrondissement where the offense was committed or where the suspect resides or is found,\textsuperscript{266} or (2) to an assistant of the procureur in the police judiciaire,\textsuperscript{267} in which case they must then be transmitted to the procureur.\textsuperscript{268} The plainte may also be made to the juge d'instruction,\textsuperscript{269} who must then transmit it to the procureur.\textsuperscript{270} The procès verbaux of the officers must be sent directly to the procureur.\textsuperscript{271} It is also possible for the procureur, without having received any plainte, dénonciation or procès verbal, to initiate proceedings on his own motion where he has acquired personal knowledge of a supposed offense \textsuperscript{272} or has learned of it by public rumor.\textsuperscript{273}

Both the plainte and the dénonciation may be written or oral. In the latter case the official to whom either a plainte or dénonciation is presented must reduce it to writing.\textsuperscript{274} Not infrequently the dénoncia-

\begin{footnotes}
\begin{enumerate}
\item \textsuperscript{263} 4 Le Poittevin, op. cit. supra note 74, at 154n.
\item \textsuperscript{264} Any public official or government employee (fonctionnaire) who in the performance of his duties learns of a crime or délit must immediately report it to the procureur of the arrondissement in which the alleged offense was committed or in which the suspect is found. C. I. C. art. 29. Any citizen who sees a crime or a délit committed is under a duty to report it to the procureur, as provided in article 29. C. I. C. art. 30. The wording of the section is "toute personne", but the authorities construe this to mean "any citizen", 2 Faustin Hélène, op. cit. supra note 2, at 284, § 2232; 2 Le Poittevin, op. cit. supra note 74, at 35. Although articles 29 and 30 by their terms impose an obligation to make a dénonciation in the cases specified, the law provides no penalty for a violation. 2 Garraud, op. cit. supra note 1, at 618; 2 Le Poittevin, op. cit. supra note 74, at 35. Any person, whether a citizen or a foreigner, who learns of the commission of a crime or délit may make a dénonciation. 2 Le Poittevin, op. cit. supra note 74, at 35.
\item \textsuperscript{265} C. I. C. art. 29; 2 Garraud, op. cit. supra note 1, at 580 and 622.
\item \textsuperscript{266} C. I. C. arts. 23, 29 and 64.
\item \textsuperscript{267} C. I. C. arts. 48, 50, as amended by the Law of July 5, 1929, and 64.
\item \textsuperscript{268} C. I. C. arts. 54 and 64.
\item \textsuperscript{269} C. I. C. art. 63. In receiving the plainte the juge is acting as a member of the police judiciaire. Goyer, op. cit. supra note 65, at 194.
\item \textsuperscript{270} 3 Le Poittevin, op. cit. supra note 74, at 236.
\item \textsuperscript{271} C. I. C. art. 29.
\item \textsuperscript{272} Vidal, Cours de Droit Criminel (1916) 916.
\item \textsuperscript{273} 2 Massabiel, op. cit. supra note 120, at 101.
\item \textsuperscript{274} C. I. C. arts. 31 and 65. 2 Le Poittevin, op. cit. supra note 74, at 36.
\end{enumerate}
\end{footnotes}
tion consists of an anonymous letter. In practice the most usual method of bringing alleged offenses to the official attention of the procureur is by the procès verbaux of the commissaires de police and the officers of the gendarmerie.

There are certain offenses which may be prosecuted only if a plainte is made by the person injured, for example, defamation, adultery, and rape where followed by marriage, in which cases a prosecution would necessarily involve undesirable publicity for the complainant. A plainte is also required for (1) various kinds of trespass committed on private land, such as prohibited hunting and fishing, which do not concern the public, and (2) fraud in the furnishing of military supplies, since inopportune action by the civil authorities might interfere with the supplying of needed materials.

Any person, including a government employee (fonctionnaire), who knowingly makes in writing a false plainte or dénonciation is guilty of a délit. In addition any private person, who by a false plainte or dénonciation made either knowingly or without reasonable cause injures another, is subject to a civil action for damages. A fonctionnaire who has made such an accusation is, however, exempted from this action, but may be subject to the more restricted one of prise à partie.

The Code provides that the procureur shall promptly notify the procureur général of his ressort of each offense coming to his knowledge and shall carry out the latter's orders with regard to any investigation by the police judiciaire. In practice this requirement is not observed because of the difficulties involved. It has, however, been insisted that, in cases which involve political issues or are likely to arouse public opinion, the procureur should consult the procureur général and receive his instructions as well as those of the Minister of

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275. L. CAULLET, op. cit. supra note 201, at 180; Locard, L’ENQUÊTE CRIMINELLE (1920) 7; Degois, op. cit. supra note 144, at 437.
276. 2 MASSABIAU, op. cit. supra note 120, at 108.
277. "If the prosecution will sever sacred bonds, as in case of adultery, disgrace the victim of the assault, as in case of rape, besmirch the reputation of persons, as in case of defamation, it should depend upon the instigation of the persons injured." 1 Faustin Hêle, op. cit. supra note 2, at 417, § 906.
278. Goyet, op. cit. supra note 65, at 221; 1 Le Pottevin, op. cit. supra note 74, at 144.
279. 2 MASSABIAU, op. cit. supra note 120, at 106. Also, where a délit is committed abroad by a French citizen it may be prosecuted in France only upon plainte of the person injured or of the government of the state where committed. C. I. C. art. 5, as amended by the Law of Feb. 26, 1910.
280. This is punishable by imprisonment not exceeding one year, and a fine not exceeding 3000 francs. C. P. art. 373.
281. 2 GARraud, op. cit. supra note 1, at 619; L. CAULLET, op. cit. supra note 201, at 177.
282. L. CAULLET, op. cit. supra note 201, at 178.
283. C. I. C. art. 27.
Justice. Circulaires to that effect have been issued. On the other hand, it has been asserted that the Minister of Justice should not be consulted in such cases, as such action tends to lessen the responsibility of the procureur.

2. By the Partie Civile through the Juge d'Instruction.

The party injured by an offense, whether crime or délit, instead of making a plainte to the procureur or one of his assistants in the police judiciaire, may file a plainte with the juge d'instruction, to which is appended a claim to recover pecuniary damages from the perpetrator of the offense. By such procedure the party injured constitutes himself the partie civile. The interest of the partie civile may be direct, as where he is the victim of an assault or a robbery, or indirect, as where a father loses the services of a son who is killed. The partie civile by filing his plainte with the juge d'instruction sets in motion both a criminal prosecution and a civil action for damages. It is an interesting characteristic of French procedure that criminal and civil actions may be instituted and tried together.

A corporation, whether or not for profit, may, under the same conditions as an individual, institute criminal and civil proceedings as partie civile. Where an offense is committed against the property of a non-profit corporation, such as the embezzlement of university funds, the right of the corporation to become partie civile is the same as that of a corporation for profit. However, where the non-profit corporation, such as a medical society, is not complaining of injury to its property, but to its professional interests, as in a prosecution against a person for practicing medicine without a license, the difficulty of demonstrating

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285. Circulaires are instructions in writing, which prescribe or recommend a general course of action by a group of subordinate officials. They do not have the force of law. Capitant, op. cit. supra note 35, at 114.

286. See L. Caillet, op. cit. supra note 201, at 128.

287. I Garraud, op. cit. supra note 1, at 333.

288. The plainte may be made to the juge d'instruction of the place of the offense or the residence of the suspect or the place where he is found. C. I. C. art. 63.

289. C. I. C. art. 63. The injured party may state his intention of becoming partie civile in a plainte made to the procureur (2 Garraud, op. cit. supra note 1, at 621; 4 Le Pottévin, op. cit. supra note 74, at 12), but his status as partie civile is established only when this plainte is then transmitted to the juge d'instruction. C. I. C. art. 63.

290. I Garraud, op. cit. supra note 1, at 257; Pons, De l'Action Directe de la Partie Lésée Devant le Juge d'Instruction et de ses Abus (1927) 36.

291. I Garraud, op. cit. supra note 1, at 342; Goyet, op. cit. supra note 65, at 216; Le Griel, Traité Pratique de l'Exercice de l'Action Civile et de l'Intervention des Tiers Devant les Juridictions Répressives (1933) 135. If a prosecution has been barred because of previous conviction or acquittal, prescription, death, or other reason, the complainant may not institute proceedings as partie civile, although his right of action in the civil courts may be unimpaired. 1 Le Pottévin, op. cit. supra note 74, at 152; Le Griel, op. cit. supra note 201, at 67.

292. Any person suffering a tortious injury is given the right to bring a civil action for damages by art. 1382 of the Code Civil. Dégois, op. cit. supra note 143, at 442.

293. I Garraud, op. cit. supra note 1, at 258; 4 Le Pottévin, op. cit. supra note 74, at 9.
a pecuniary damage to the complainant is presented and it has been decided that the corporation may not become a *partie civile*. Consequently, in the case of specific classes of associations whose value to society is recognized, statutes have granted the right to instigate prosecution as *parties civiles* without requiring the showing of pecuniary damage. Thus in 1920 it was enacted that "syndicats (such as professional or business associations and labor unions) may, before any court, exercise all the rights reserved to the *partie civile*, so far as relates to acts causing a direct or indirect injury to the collective interests of the profession, trade or business, which they represent". Under this law, for example, associations of wine growers may cause prosecutions to suppress fraudulent practices, such as watering of wine, to be instituted. Likewise, associations of wineshop proprietors and temperance societies may proceed against persons illegally operating such shops. Strong efforts have been made to secure the right for certain other associations formed to promote the public good in specific directions, such as societies for moral improvement, to become *parties civiles* against violators of laws which they especially desire observed. The courts, however, have been hesitant in allowing these actions.

The only formality necessary for the injured party to constitute himself *partie civile* at the start of the proceedings is a simple statement to that effect in the *plainte*. He must, however, at the same time deposit with the clerk (greffier) of the *juge d'instruction* a sum sufficient, in the opinion of the *juge*, to cover all probable costs of the prosecution, and may later be required to make an additional deposit if the original amount proves insufficient to cover the costs. One of the

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294. LE GRIEL, op. cit. supra note 291, at 35.  
296. DONNEDIEU DE VABRES, LA JUSTICE PÉNALE D'AUJOURD'HUI (1929) 110.  
298. MORIZOT-THIBAULT, op. cit. supra note 20, at 141 et seq.; DONNEDIEU DE VABRES, op. cit. supra note 296, at 110.  
299. In 1913 the *Tribunal* of Bordeaux declined to receive on action by the "Comité Bordelais de Vigilance Contre le Licence des Rues" as *partie civile* which charged the proprietor of an alleged "Musée Physiologique" with giving obscene exhibitions, the *Tribunal* stating the following reason: "It is somewhat difficult to conceive that a moral entity, which is only an abstraction, has a modesty susceptible of suffering from exhibitions or spectacles which it is unable to perceive." DONNEDIEU DE VABRES, op. cit. supra note 296, at 111. The decision was affirmed by the *Cour d'Appel* and by the *Cour de Cassation*. Cass. Oct. 18, 1913 (SIREY, RECUEIL GÉNÉRAL, 1920 I, 321), cited by DONNEDIEU DE VABRES, supra. For a discussion of abuses of the action by associations see FONS, op. cit. supra note 290, at 139 et seq.  
300. C. I. C. art. 66. Any *partie civile* who resides outside the *arrondissement* where the proceeding was started must designate an address within the *arrondissement* for receiving any necessary notification during the course of the proceedings. C. I. C. art. 68.  
reasons for requiring the *partie civile* to make a deposit to cover the costs is to discourage the making of doubtful claims.\textsuperscript{302} If a conviction results, the amount of the deposit made by the *partie civile* is returned to him.\textsuperscript{303}

A *partie civile* may withdraw his claim for damages at any time before judgment,\textsuperscript{304} but this does not stop the criminal prosecution which was set in motion when he constituted himself *partie civile*,\textsuperscript{305} except in the case of certain offenses where the injury involved is chiefly of a personal nature such as adultery and defamation.\textsuperscript{308} If the withdrawal occurs within twenty-four hours, the *partie civile* is not liable for any costs of the prosecution incurred thereafter.\textsuperscript{307}

The *juge d'instruction*, upon receiving a *plainte* from the *partie civile*, must refer it to the *procureur* for the latter's opinion,\textsuperscript{308} but, whatever the latter's recommendation, the *juge* is obliged, following a decision of the *Cour de Cassation* in 1906,\textsuperscript{309} to proceed with his formal investigation and thereafter to make an order either charging or exculpating\textsuperscript{310} the person alleged by the *plainte* to be the perpetrator. If there is a *plainte* against a person unknown, he must also make an investigation and order.\textsuperscript{311}

In the years following 1906 a marked increase in the number of *plaintes* as *partie civile* filed with the *juges d'instruction* occurred.\textsuperscript{312}


\textsuperscript{3} 302. Morizot-Thibault, op. cit. supra note 20, at 55; Savidan, De la Mise en Mouvement de l'Action Publique par les Particuliers et de ses Abus (1934) 34.


\textsuperscript{5} 304. 1 Garraud, op. cit. supra note 1, at 442; Le GrieI, op. cit. supra note 291, at 72. His withdrawal may be the result of a settlement with the defendant. 1 Garraud, op. cit. supra note 1, at 253.

\textsuperscript{6} 305. C. I. C. art. 4; Le GrieI, op. cit. supra note 291, at 72.

\textsuperscript{7} 306. Le GrieI, op. cit. supra note 291, at 74. When withdrawal by the *partie civile* occurs before a *délit* has come to trial, the *procureur* often ceases the prosecution, although given no right to do so in such case. Ibid.

\textsuperscript{8} 307. C. I. C. art. 66.

\textsuperscript{9} 308. C. I. C. art. 70, as amended by the Law of July 2, 1931.

\textsuperscript{10} 309. Cass. Dec. 8, 1906, Dalloz, Recueil Périodique, 1907 I, 207. Up to that date legal opinion had been sharply divided, as to whether under the terms of the Code the *procureur* in this case could exercise his power of barring a prosecution because he deemed it unfounded or for any other reason. 1 Garraud, op. cit. supra note 1, at 342, with authorities and cases there cited; Morizot-Thibault, op. cit. supra note 74, at 60; Pons, op. cit. supra note 290, at 49 et seq.

\textsuperscript{11} 310. If, at the end of his investigation, the *juge d'instruction* renders an order discharging the person named in the *plainte* as perpetrator, the *partie civile* may appeal to the *chambre des mises en accusation* (supra p. 397) for reversal of the order. C. I. C. art. 135; 3 Le Pointevin, op. cit. supra note 74, at 943. He appeals at his peril, however, since if he loses the appeal, the *chambre* must award pecuniary damages for malicious prosecution to the person wrongfully suspected. C. I. C. art. 136, as amended by the Law of Feb. 7, 1933; 3 Le Pointevin, op. cit. supra note 74, at 947; Le GrieI, op. cit. supra note 291, at 160.

\textsuperscript{12} 311. 3 Le Pointevin, op. cit. supra note 74, at 236; Le GrieI, op. cit. supra note 291, at 135.

\textsuperscript{13} 312. Savidan, op. cit. supra note 302, at 68; Pons, op. cit. supra note 290, at 114-116. Statistics available from the *tribunal* of the Seine (Paris) alone showed an in-
resulting in considerable measure from the decision referred to, aided by the Law of 1921 granting to the \textit{partie civile} the right to examine the record to date before the \textit{juge d' instruction} might question him, and the right to have counsel at the hearing before the \textit{juge}. With this increase in number of unwarranted \textit{plaintes}, other abuses became markedly evident. Thus the machinery of the criminal law in some cases was set in motion solely for the purpose of obtaining evidence to support civil claims. More serious than this was the practice of becoming \textit{partie civile} for the purpose of revenge or blackmail, the \textit{partie civile} agreeing to withdraw his claim if paid a demanded sum.

If the criminal prosecution instituted by the \textit{partie civile} is not successfully maintained, and it appears that he made the \textit{plainte} without reasonable cause, or knowing it to be false, he, like any other complainant in a similar situation, may be held liable in damages to the defendant by an action of \textit{dénonciation calomnieuse}, and may be subjected to a criminal prosecution if a malicious intention to injure can be made out. These legal remedies, however, did not greatly lessen the number of unwarranted and improper actions instituted by complainants as \textit{parties civiles}. The innocent defendant refrained from his civil action increase from an average of 647 \textit{plaintes} as \textit{partie civile} filed yearly from 1909 to 1913, to an average of 2183 annually from 1918 to 1928. 

315. \textit{Journal Officiel, Chambre, Doc. Parl.} (July 2, 1929) \textit{annexe} no. 1931, p. 999; Pons, \textit{op. cit. supra} note 290, at 115. In the majority of cases the injury complained of existed, but was merely a civil, not a criminal, wrong. "The subtleties of the \textit{Code Pénal} escape the ordinary citizen." \textit{Id.} at 116.
316. \textit{Id.} at 117.
317. \textit{Projet} for the Law of July 2, 1931, amending art. 70 of the C. I. C., in \textit{Journal Officiel, Chambre, Doc. Parl.} (Feb. 8, 1929) \textit{annexe} no. 1239, p. 186. "\textit{Plaintes} are sometimes the work of unbalanced persons, or of ignorant ones whose imagination has quickly transformed a mere indelicacy into a criminal offense. More often, they are the acts of evasive debtors who seek to gain time by turning to their advantage a favorable interpretation of the maxim, 'the criminal proceeding suspends the civil,' or the act of the litigants who wish to profit from the facilities furnished by the criminal investigation for discovering evidence with a view to a civil proceeding, or even more obviously of expert blackmailers who later agree to withdraw upon payment of a sum demanded. The risks run by the complainant are not great. The victim will generally refrain from claiming damages from him, either because he is insolvent, or because the procedure is discouraging, by its length and the costs involved, and may often end only in a small pecuniary judgment, since it is generally the reparation of but a moral injury." Frejaville, \textit{La Réaction Contre Les Abus des Constitutions de Partie Civile} (1931) \textit{Dalloz, Recueil Hebdomadaire, Chronique} 61. See also Savidan, \textit{op. cit. supra} note 302, at 71 and 133; Pons, \textit{op. cit. supra} note 290, at 117-122.
318. C. I. C. art. 70, as amended by the Law of July 2, 1931; arts. 136, 191, 358, 359; Garaud, \textit{op. cit. supra} note 1, at 433; Pons, \textit{op. cit. supra} note 290, at 122; Le Griel, \textit{op. cit. supra} note 291, at 125.
319. C. P. art. 373.
against the *partie civile* because he wished no additional publicity of the unfounded charges, and feared in addition to find the latter insolvent. He seldom instituted a criminal prosecution because of the difficulty of proving malice.\(^3\)\(^2\)\(^0\) To cope more effectively with the abuses, the *Code d'Instruction Criminelle* was amended in 1931\(^3\)\(^2\)\(^1\) to provide (1) that where a *plainte* by a *partie civile* is filed with a *juge d'instruction*, the *procureur*, upon its being referred to him, may, if he finds no serious suspicion pointing to the person named, order the *juge* to conduct a general investigation of the offense in question without reference to any particular person, thus saving the reputation of the person named in the *plainte*; (2) a simpler, speedier and less public method for a person unjustly proceeded against by a *partie civile* to recover pecuniary damages from the latter, by enabling him, in case of discharge by the *juge*, to present his claim immediately before the *Tribunal Correctionnel* in closed session; (3) that the court may, in case it finds for the person unjustly suspected, order its judgment published in one or more newspapers at the cost of the *partie civile*. The Law of 1931 in addition prohibited under criminal penalty the publication, during the course of the investigation by the *juge d'instruction*, of any information regarding prosecutions instituted by *parties civile*.\(^3\)\(^2\)\(^2\) The reason for this enactment was to discourage blackmail.\(^3\)\(^2\)\(^3\) Notwithstanding the penalties provided by the Law of 1931, a writer in 1934 speaks of the abuses as still prevailing.\(^3\)\(^2\)\(^4\)

It is to be noted further that even in cases where the *juge d'instruction* has commenced an investigation at the sole instance of the *procureur*, a person injured by the offense may file with the *juge* a claim for damages, thereby becoming *partie civile* for the remainder of the proceedings in the case.\(^3\)\(^2\)\(^5\) No deposit need be made for costs in this situation,\(^3\)\(^2\)\(^6\) although, if the judgment is for the defendant, all costs will be charged to the *partie civile*.\(^3\)\(^2\)\(^7\)

The following results of joining the civil and criminal proceedings may be noted. Where a person has suffered pecuniary loss from the commission of a criminal offense, proof of the offense will generally

\(^{320}\) Pons, *op. cit. supra* note 290, at 122-128.

\(^{321}\) C. I. C. art. 70, as amended by the Law of July 2, 1931.

\(^{322}\) Law of July 2, 1931, art. 2, *Journal Officiel* (July 7, 1931) 7338.

\(^{323}\) This article "is aimed at the blackmail which is accomplished by means of the publicity, mainly in newspapers, whenever a person is the object of judicial investigation after filing of a plainte by the *partie civile* before the *juge d'instruction*". Report of the *Commission de la Législation Civile et Criminelle* of the *Chambre des Députés* on the projet for the law, in *Journal Officiel, Chambre, Doc. Parl.* (July 2, 1929) annexe no. 1931, p. 1002.

\(^{324}\) Lepaulle, *La Justice* (1934) 65.

\(^{325}\) C. I. C. arts. 66 and 67; Garraud, *op. cit. supra* note 1, at 299 and 426; Le Poitrevin, *op. cit. supra* note 74, at 14.

\(^{326}\) 2 Le Poitrevin, *op. cit. supra* note 74, at 861.

\(^{327}\) Le Griel, *op. cit. supra* note 291, at 95 and 99.
establish the right to recover damages. When both issues are settled in the same proceeding, costs are reduced, and the possibility of variations in the testimony of witnesses, which may occur when there are two actions, is avoided. Furthermore, where both actions are joined, the efforts of the public prosecutor and counsel for the partie civile are united, and thus both a conviction and an award of damages are more likely to result. One who has caused injury to another will frequently make reparation in order to avoid a criminal prosecution at the instance of a partie civile.

IV. INVESTIGATION BY THE PROCUREUR

I. Powers of the Procureur

After the procureur has received information of an alleged offense by any of the methods already described, he may take action in one of the following ways:

1. If he is of the opinion that the facts brought to his attention do not constitute an offense or he considers it inadvisable to proceed with a prosecution for the reason that the offense is trivial or for any other reason, he may make an order closing the investigation. This is known as classement sans suite and will be discussed in detail later.

2. If the offense is a crime, not flagrant, the Code requires that the procureur shall direct the juge d'instruction to proceed to an investigation to determine whether the case should be referred to the chamber of accusations, which may order a trial in the Cour d'Assises.

3. If the offense is a flagrant crime the procureur is authorized by the Code to proceed to a judicial investigation such as is normally conducted by the juge d'instruction. The powers of the procureur in this situation will be discussed after the functions of the juge d'instruction have been presented.

4. If the offense is a délit, the Code also expressly states that the procureur must order an investigation by the juge d'instruction but at the same time provides in another section that he may bring the case immediately to trial (citation directe) in the Tribunal Correctionnel, except where the délit may be punished by imprisonment and the suspect is between 13 and 18 years of age, in which situation the case must be

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328. I Garraud, op. cit. supra note 1, at 378.
330. I Garraud, op. cit. supra note 1, at 234.
331. Personal knowledge, plante, dénonciation, or procès-verbal.
332. C. I. C. art. 47.
335. C. I. C. art. 47.
336. C. I. C. art. 182.
referred to the *juge d'instruction*.\textsuperscript{337} If a *délit* is in fact *flagrant* the *procureur* is required to proceed by *citation directe*.\textsuperscript{338} In the case of other *délits* he generally adopts this procedure (a) if the *délit* is punishable merely by a fine;\textsuperscript{339} (b) if the case is not considered very important;\textsuperscript{340} (c) if it is definitely established that a *délit* has been committed;\textsuperscript{341} (d) if the perpetrator of the *délit* is ascertained;\textsuperscript{342} and (e) if there appears to be no danger that the perpetrator will escape.\textsuperscript{343} In practice today, *délits* are much more frequently brought to trial in the *Tribunal Correctionnel* than referred to the *juge d'instruction*.\textsuperscript{344} In some instances where it appears to the *procureur* that a *crime* has been committed which, under the *Code*, must be referred to the *juge d'instruction* for investigation with a view to trial in the *Cour d'Assises*, he will reduce the charge to a *délit* and bring it to trial in the *Tribunal Correctionnel*. This practice, which is known as *correctionalisation*, will be discussed later.

5. If the offense is a *contravention*, the *procureur* refers it to the member of the *ministère public* attached to the *Tribunal de Simple Police*.\textsuperscript{345}

As the *procureur* has in practice a wide discretion in determining what procedure to adopt when the suspected commission of a *crime* or *délit* is brought to his attention, he frequently directs his assistants in the *police judiciaire* to conduct an investigation, known as the *enquête officieuse*, in order to determine what action to take. There is some difference of opinion among the writers as to whether the *enquête officieuse* is authorized by the *Code*. Some contend that it comes within the general provision of article 22, which states that the *procureur* is charged with the "*recherche*" of all offenses of the grade of *crime* or *délit*.\textsuperscript{346} Others take the view that the *enquête* is not authorized by the *Code*, but that its practical advantages justify its use.\textsuperscript{347} Quite irrespective of the question whether the *enquête officieuse* is legal or extra-legal, the *procureurs* have with increasing frequency adopted the practice until today it is the ordinary procedure. As the *enquête officieuse*...
resembles to a considerable degree the investigation which the Code authorizes the juge d'instruction to conduct, it will be discussed in detail after the powers and duties of this official have been presented.

2. Classement Sans Suite

After being informed, whether by plainte, dénonciation, or procès-verbal, of the alleged commission of an offense, the procureur has the right to decide that he will not initiate a prosecution, without regard to the degree or character of the offense. This right is sometimes referred to as the “système d'opportunité”, according to which the procureur decides whether in his opinion prosecution in the particular case is "opportune" or "inopportune", in contradistinction to a “système de légalité” which would require him to prosecute. However, for over a century, apparently without dissent, the right has been recognized by officials and commentators. When the procureur decides not to prosecute, he makes a notation to this effect in the registre d'ordre, in which is recorded the history of each case, and a classement sans suite is said to have taken place.

Ordinarily the procureur exercises the right not to prosecute only in the following cases: (1) where the facts do not constitute an offense, (2) where the offense is of slight public interest, such as defamation of a private citizen or prohibited hunting on private land, (3) where the offense is not regarded as serious, (4) where perpetrators of the offense cannot be discovered, and (5) where the prosecution would create a public scandal. The procureur may decide not to prosecute even when a plainte has been filed in a case where the making of a plainte is a pre-requisite to any prosecution.
While this arbitrary power in the procureur may lead to serious abuses, it is considered desirable that he should possess it in order to preclude inadvisable prosecutions, particularly in cases where the chief interest to be served is the personal animus of the complainant. The procureur, however, is not bound by his decision not to prosecute, and he is free at any time to proceed with the prosecution. If he declines to prosecute in a case where a plainte was made, the complainant may present a petition to the procureur général or to the Minister of Justice, either of whom may require the procureur to proceed with the prosecution. Where the injury to the complainant is of such a nature that he may become partie civile, he may set the criminal proceeding in motion, notwithstanding the action of the procureur, by constituting himself partie civile before the juge d'instruction or before the Tribunal Correctionnel by citation directe. The complainant also may bring a civil action for damages against the procureur if his refusal to prosecute may be characterized as grossly improper. If the failure of the procureur to act is due to negligence or connivance he may be disciplined by the officials above him.

3. Correctionnalisation

When the investigation by the procureur of an alleged offense indicates that it is a crime, which the Code directs him to refer to the juge d'instruction for further investigation with a view to its trial in the Cour d'Assises, it is not uncommon practice for the procureur to reduce the charge to a délit, thereby enabling him to send the case for trial before the Tribunal Correctionnel without a jury. This practice is known as the "correctionnalisation" of a crime and may be readily employed where the crime in question consists of a délit with the addition of an aggravating circumstance. Thus, while ordinary theft is a délit, theft by a domestic servant or at night in a dwelling

355. MORIZOT-THIBAULT, op. cit. supra note 20, at 52.
356. Circulaire of March 8, 1817, quoted in J. FAUSTIN HÉLIE, op. cit. supra note 2, at 300, § 793. Also Circulaires of November 20, 1829, and August 16, 1842, cited in 3 Le Poitvain, op. cit. supra note 74, at 694.
357. 2 MASSABIAU, op. cit. supra note 120, at 111; GOYET, op. cit. supra note 65, at 242; 1 LE POITTEVIN, op. cit. supra note 74, at 847.
358. GOYET, op. cit. supra note 65, at 217; 3 LE POITTEVIN, op. cit. supra note 74, at 604.
359. C. I. C. art. 63.
360. C. I. C. arts. 64 and 182. Criticism has been directed at the fact that many plaintes receive no attention from the parquets because of serious shortages of personnel, which makes it necessary for the injured party, if he desires a prosecution, to constitute himself partie civile and deposit a considerable sum to cover the costs. LEPAILLE, op. cit. supra note 324, at 68.
361. L. CAULLET, op. cit. supra note 201, at 180.
362. 2 MASSABIAU, op. cit. supra note 120, at 8.
363. C. I. C. art. 47.
364. C. I. C. art. 231.
365. 2 GARRAUD, op. cit. supra note 1, at 321; GOYET, op. cit. supra note 65, at 247.
366. C. F. art. 401.
house is a *crime*.\textsuperscript{367} Assault is a *délit*,\textsuperscript{368} but an assault producing an incapacity to work is a *crime*.\textsuperscript{369} Another type of *correctionnalisation* is exemplified by the reduction of a charge of infanticide to failure to report the birth or abandonment of the infant.\textsuperscript{370}

There is no express or even inferential justification in the *Code* for *correctionnalisation*, which was first employed about the middle of the nineteenth century, and the practice has been described both as "irregular"\textsuperscript{371} and "illegal"\textsuperscript{372} In the past it has been both recommended and forbidden by Ministers of Justice in their *circulaires*.\textsuperscript{373} Today it is well established and frequently employed.\textsuperscript{374}

The reasons usually assigned for *correctionnalisation* are: (1) the *procureur* considers the penalty for the *crime* too severe;\textsuperscript{375} (2) the fear that because of the severe penalties for *crimes* a jury may acquit;\textsuperscript{376} (3) a trial in the *Tribunal Correctionnel* is more expeditious and much less expensive than in the *Cour d'Assises*;\textsuperscript{377} (4) the procedure is simpler.\textsuperscript{378} So far as the second reason is concerned, it should be noted that in fact *correctionnalisation* is most common in the case of offenses against property, where jurors are always ready to convict.\textsuperscript{379} Although it is regarded as unfortunate that *correctionnalisation* involves a disregard of the provisions of the *Code*,\textsuperscript{380} the authorities generally believe that the practical considerations, already enumerated, outweigh this objection.\textsuperscript{381}

Where the facts clearly show that the offense is a *crime*, the *Tribunal Correctionnel* to which the case has been sent by the *procureur*

\textsuperscript{367} C. P. art. 386.
\textsuperscript{368} C. P. art. 311.
\textsuperscript{369} C. P. art. 312.
\textsuperscript{370} VERDUN, Des Pratiques Judiciaires de Correctionnalisation (Thesis Aix-Marseille, 1922) 29.
\textsuperscript{371} GOYET, op. cit. supra note 65, at 247.
\textsuperscript{372} VIDAL, op. cit. supra note 272, at 94; SOULAS, Le Recrutement du Jury (Thesis Montpellier, 1933) 14; Perreau, A Propos d'Une Pratique Judiciaire Illegale (1930) 50 Rev. Crit. de Legis. et de Juris. 441.
\textsuperscript{373} 2 MASSABIAU, op. cit. supra note 120, at 272, citing circulaires.
\textsuperscript{374} 2 GARRAUD, op. cit. supra note 1, at 321; CUCHE, op. cit. supra note 217, at 312. The number of offenses tried in the *Cour d'Assises* has gradually diminished from an average annual figure of 5,350 for the years from 1826 to 1850, to an average of 2,654 annually from 1891 to 1900, and 1,248 for the year 1932; whereas on the contrary, the average annual number of cases tried in the *Tribunaux Correctionnels* for the same periods has risen from 143,014 (1826 to 1850) and 190,603 (1891-1900) to 211,322 in 1932. VERDUN, op. cit. supra note 370, at 33; COMPTE GENERALE, PENDANT L'ANNEE 1932 (1934) 63.
\textsuperscript{375} 2 GARRAUD, op. cit. supra note 1, at 321; 2 MASSABIAU, op. cit. supra note 120, at 273.
\textsuperscript{376} "The *Tribunal Correctionnel* may impose only a moderate penalty, but the imposition of such penalty is certain." CUCHE, op. cit. supra note 229, at 312.
\textsuperscript{377} VERDUN, op. cit. supra note 370, at 34.
\textsuperscript{378} 2 GARRAUD, op. cit. supra note 1, at 321; VIDAL, op. cit. supra note 272, at 94.
\textsuperscript{379} 4 GARRAUD, op. cit. supra note 1, at 462.
\textsuperscript{380} VERDUN, op. cit. supra note 370, at 69.
\textsuperscript{381} 2 MASSABIAU, op. cit. supra note 120, at 272; MORIZOT-THIBAULT, op. cit. supra note 74, at 526; TOULEMON, LA QUESTION DU JURY (1930) 84; VERDUN, op. cit. supra note 370, at 83. To the contrary is Perreau, supra note 371.
should, under the Code,\textsuperscript{382} declare that it does not have jurisdiction and send the case to the juge d'instruction, but, convinced of the desirability of the practice of correctionnalisation, generally does not do so.\textsuperscript{383} The defendant also may object to the jurisdiction of the Tribunal,\textsuperscript{384} but usually accepts it because of the briefer period of detention before trial, the shorter trial and the lesser penalty.\textsuperscript{385}

[To be continued.\textsuperscript{386}]

\textsuperscript{382} C. I. C. art. 193.
\textsuperscript{383} VIDAL, \textit{op. cit. supra} note 272, at 95; VERDUN, \textit{op. cit. supra} note 370, at 35.
\textsuperscript{384} 2 GIRRAUD, \textit{op. cit. supra} note 1, at 323; VERDUN, \textit{op. cit. supra} note 370, at 39; GOYET, \textit{op. cit. supra} note 65, at 247.
\textsuperscript{385} 2 MASSABIAU, \textit{op. cit. supra} note 120, at 273; VIDAL, \textit{op. cit. supra} note 272, at 95.
\textsuperscript{386} The second installment of this article will appear in either the March or April number of the \textit{Review}. 