12. Alternatives to imprisonment

Policy, organisation, structures

Policy and national strategy

Never since the Liberation have French prisons been so overcrowded, with a record occupation rate of 125% in July 2003 (up to 240% in some remand centres). The public debate which began in 2000 with the publication of the statement by the senior doctor at the Prison de la Santé (Vasseur, 2000) and the reports of parliamentary select committees held as a result of it, describing prison conditions as a real *"humiliation for the Republic"* (Mermaz and Floch, 2000 ; Hyest and Cabanel, 2000), showed that there is consensus on the need to *"send fewer people to prison so that we can provide better prison conditions"* notably by developing alternatives to imprisonment for drug-dependent offenders.

Nevertheless, prison inflation has continued and progressed, in parallel with relative non-enforcement of sentences (the rate of enforcement of custodial sentences in 2003 was estimated to be only 48%[36]). Even more recently, the Warsmann report (2003) established that imprisonment should be reserved for the most serious offences, thus relaunching the debate on the meaning of penalties. So the development of alternatives to imprisonment was recommended again, three years after the recommendations of the reports issued by the Senate and the National Assembly, as one of the "87 concrete proposals" formulated by Warsmann, a member of parliament, to make non custodial sentences more credible so that the courts could more often resort to such sentences.

The expansion of these measures, known as "third way", and particularly those targeting drug-using offenders, has been promoted for around 12 years now[37].. After several parliamentary information reports published in the mid-90s which referred to the inappropriate nature of the prison system for drug addicts, the French governmental three-year action plan on drugs (1999-2001) stated that prosecution and imprisonment should be reserved *"for cases where use is the source of dangers, either for the user himself or herself, or for his or her environment"* (MILDT, 1999, p.58). A circular from the Minister of Justice (17th June 1999) accompanied this public recommendation, inviting public prosecutors dealing with drug users questioned by the police to favour control of local trafficking rather than control of simple use, and alternatives to imprisonment rather than prison sentences, which were felt to be disproportionate for such offences[38]. During the implementation period of the three-year plan, the numbers of prison penalties for drug use actually decreased, from 690 in 1998 to 395 in 2001 (for use on one occasion only) although it continued to be set as a penalty in the courts cases. The alternatives to imprisonment do not seem to have expanded proportionately (see section on implementation of interventions), although it has proved difficult to quantify how often they are used in sentencing and how often they are implemented (see section on follow-up measures). Nevertheless, the development of this type of penalty has been clearly stated as one of the main axes of the national strategy.

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[36] This rate has been issued by the prison services, provided that 89 254 imprisonment penalties were set in 1999 and 60 535 were actually enforced Timbart, O., Lumbroso, S. and Braud, V. (April 2002), Le taux d'exécution des peines d'emprisonnement ferme. Rapport final..

37 The “third way” measures generally refer to the penal measures set as alternatives to prosecution. The alternatives to prosecution do not encompass neither the alternatives to imprisonment nor the non custodial alternative sentences Tournier, P. V. (2002) Alternatives à la détention en Europe, *Questions pénales,* **XV,** (4), 1-4..

38 DACG-DAP-DPJJ circular of 17th June 1999 relating to judicial responses to drug addiction (NOR: JUSA9900148C).

The policy framework for controlling drugs in the coming years has been set in the five-year action plan issued in August 2004: it aims at *"making the justice-health cooperation link more efficient"*, notably by seeking to *"make compulsory treatment more effective"*. The action plan clearly sets a target of "adapting" the existing medical-penal system, notably by redefining the legal framework of the treatment order and the methods for implementing compulsory treatment. It should be noted, however that reflection on future trends has been part of a renewed politico-institutional context, notably because of the law known as "Perben II", which initiated an important reform of the enforcement of sentences[39]. The purpose of this law was to give further means to the Courts to *"effectively control organised crime"* and to *"improve the general functioning of the criminal courts and the prison system"*. Taking these new penal priorities into account, the government undertook a programme to build 13,200 prison places, which seems to contradict the objective of reducing the load of prison establishments[40]. Although the law mentions alternatives to imprisonment, it nevertheless sees them figures them in as part of a more restricted system (in order to improve treatment of prisoners with psychiatric problems or in the form of electronic monitoring), which tends to favour punishment over treatment.

The MILDT is the authority responsible for coordinating and monitoring the statistical follow-up of the penal measures taken in regard to drug addicts so as to refer them to treatment facilities. The aim of its multiannual action plans is to organise the cooperation between the stakeholders involved in the health and prison systems.

Legislation

The French legislative framework is distinguished by the double status it confers on the drug addict: as a user breaking the drugs laws, he or she is considered to be an offender who may be a danger to society, but also as being ill, a danger to himself or herself, and therefore needing treatment. So there is in France a common legislative framework based on the idea of compulsory treatment and which involves both the health system and the courts (article 138 of the Code of Criminal Procedure and article 132 of the Criminal Code). The 31st December 1970 law attempted to resolve this ambiguity by linking the principle of the treatment order to all stages of criminal procedure, from referral to the public prosecutor to the final judgement.

So the drug addict who attends court has the option of escaping from prosecution or imprisonment by undergoing a detoxification programme, which refer to three types of court order:

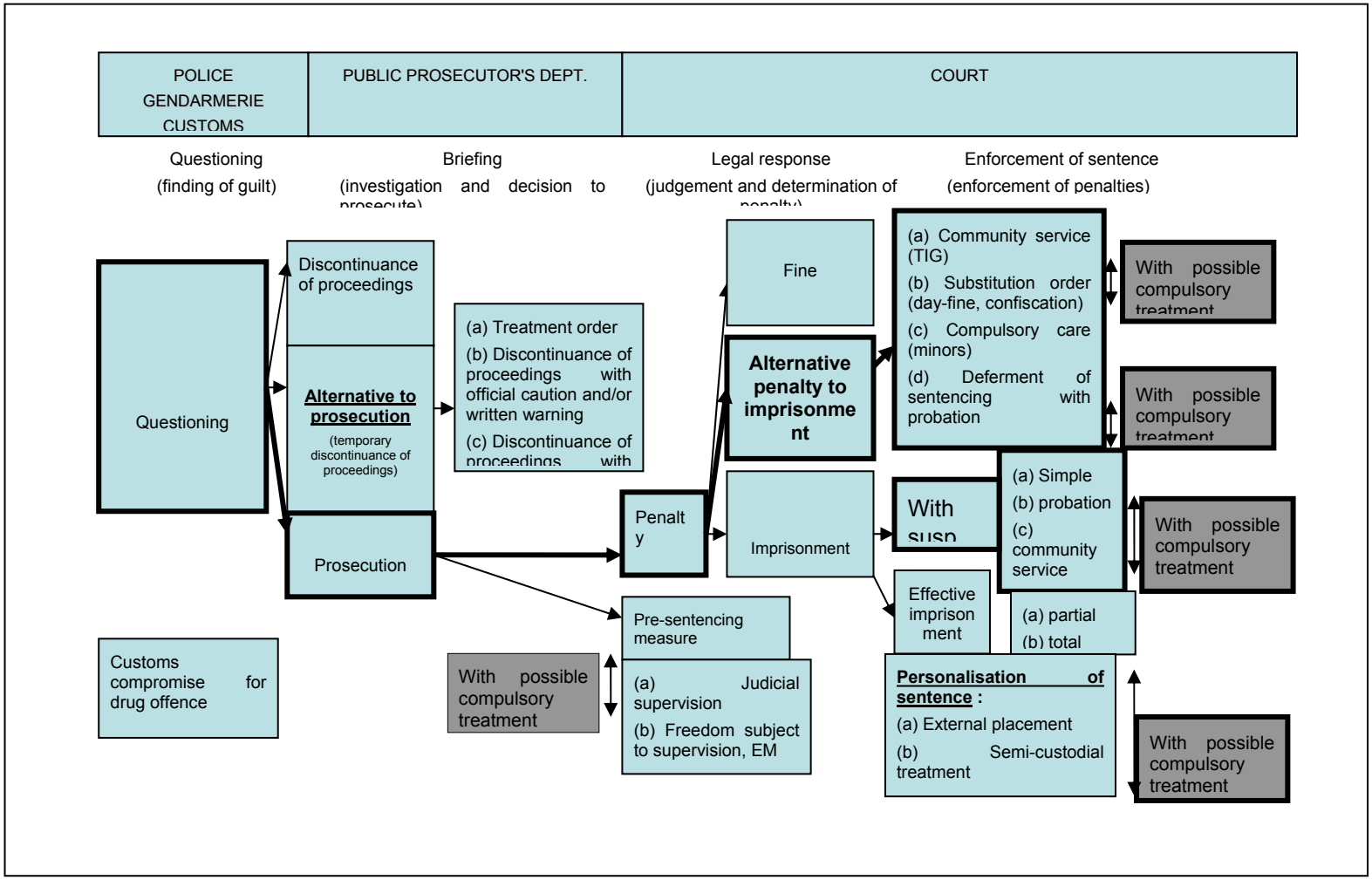
- those made by the Public Prosecutor in which treatment is imposed in exchange for abandonment of prosecution (strictly speaking, *" treatment order"*),
- those made by the investigating courts where it is required as a *temporary protective measure*,
- and those made by trial courts where it is served like a sentence (*compulsory treatment*). It is the latter method which, in the strict sense, falls within "alternatives to imprisonment" with health content.

So in France the "alternatives to imprisonment" describe all measures ordered by the trial court for medical, professional or family reasons. Properly understood, the idea of an alternative to custody therefore excludes such as alternatives to prosecution, required by the prosecuting authorities, upstream in the criminal process, together with measures for personalizing sentences aimed at reducing the duration of a sentence in progress or changing the way in which it is enforced, ordered by the judge responsible for the enforcement of sentences further in the criminal justice process (as indicated in bold type in Figure 2).

[39] Law no. 2004-204 of 9th March 2004 on adaptation of the legal system to evolutions in criminal behaviour, adopted on 11th February 2004 by Parliament (NOR: JUSX0300028L).

[40] This building programme was a result of the general law on the judiciary promulgated on 9th September 2002.

Figure 2: Career of the illicit drug user in the penal system: position of alternatives to custody or imprisonment



Judgements may consist of compulsory treatment in two main, very distinct forms: that of conditional suspension of sentence with probation, or probation (article 132-45-3 of the New Criminal Code) and that of deferment of sentencing with probation (article 132-63 of the New Criminal Code) which may be ordered within the context of personalisation of sentence. It is limited, therefore, to the alternatives to imprisonment with health content.

For instance, when an addiction problem is found in a person who is the subject of a criminal procedure for any offence whatever, compulsory treatment may be ordered by the court in the form of various measures (court supervision, deferment of sentence, probation, community service etc.). The latter measure seems particularly appropriate when the use is linked to the commission of the offence. The compulsory treatment does not then replace the penal measure but constitutes one of its conditions: it is ordered for the benefit of the person and also for reasons of public safety (to prevent a further offence).

Nevertheless, it tends to be difficult to implement this in collaboration with the welfare and health system (see section on implementation of interventions). The development of the "open drug scene" (combining all sentences which replace imprisonment) is therefore part of a will, which has been evident since the end of the 90s, to limit the use of imprisonment for short sentences and to diversify and personalise sentences according to the history, personality and situation of the convicted person.

The law **of 11th July 1975** instituted the first ***alternative sentences*** defined as community sentences that do not involve paying a fine or being locked up - e.g., a curfew order, a drug treatment and testing order, or attendance centre order.

(the day-fine, a little-used sentence which consists of paying a sum to the Treasury, the total amount of which is paid as a contribution over a certain number of days, or confiscation etc.), "substitutes for short terms of imprisonment" which may be "as much of a deterrent as prison sentences, without offering the disadvantages of these"[41]. The community sentence has also been created as a mode of enforcement of suspended sentences with probation.

In **1983**, ***community service*** (TIG) was created: instead of a custodial sentence of three months at the most, the sentenced person may do a number of hours of unpaid work in the community to make up for his or her crime. The order can vary between 40 and 240 hours; it has to be carried out within a year of the sentence. Community Punishment Orders can also be given when a young offender fails to pay a fine.

The law of 11th July 1975 was also aimed at encouraging the use of another type of measure as an alternative to imprisonment: ***personalized sentences***. Unlike the day-fine or community service, the personalised sentence is used as a method of enforcing a prison sentence in which the prisoner sentenced to a term of imprisonment is authorised by the judge to undergo that sentence outside the prison. The following forms of this should be distinguished:

- individualized sentences, according to the characteristics of the offender:

- simple suspended sentence, created in 1891;
- probation, created in 1958: the main "alternative penalty" ordered by the courts, which may take the form of a detoxification programme;
- deferment of sentence with probation, created by the 6th July 1989 law enabling the regional criminal court, after having established the guilt of the accused, to defer the sentencing order subject to the guilty person undergoing, under the supervision of the Judge responsible for the enforcement of sentences, probation (which may also incorporate compulsory treatment) for a maximum period of 12 months, at the end of which the court will decide on the sentence.

- and ***measures to personalise custodial sentences*** ordered by judges responsible for the execution of penalties and subject to a series of constraints which may be health constraints:

[41] Law no. 75-624 of 11th July 1975 amending and supplementing certain provisions of criminal law.

- conditional release under the 14th August 1885 law, which provides a period of supervision after release, appropriate to the profile of drug addicts (including, for example, health monitoring working with the family of the prisoner),

- external placement, which may be subject to health monitoring (this measure is rare for prisoners who are drug addicts),

- semi-custodial sentence which, although it imposes a strict framework, includes assistance to prisoners in social re-integration (this measure is of little benefit to prisoners who are drug addicts).

In the mid-90s, while the increase in the prison population was leading to occupation rates which were much greater than their capacities, the report by Guy-Pierre Cabanel relating to the prevention of reoffending recommended the development of alternatives to imprisonment by improving the existing facilities, notably by introducing house arrest with electronic monitoring (Cabanel, 1996). Following these recommendations, the **19th December 1997 law** provided for the ***electronic monitoring*** of people under court supervision and people sentenced to short prison terms or for whom the remainder of their sentence was not more than one year (which may relate *a priori* to drug addicts sentenced for a simple offence of use, which carries a maximum sentence of one year in prison, but which is in fact more often applied to prisoners considered to be dangerous)[42]. To encourage its wider use, the **9th September 2002 law** made it possible for a person subject to private law to operate the use of electronic monitoring of a person[43].

Even more recently, the **9th March 2004 law** adapting the legal system to evolutions in criminal behaviour , inspired by the Warsmann report (2003), listed alternatives to imprisonment as one of the relevant methods for the prevention of reoffending[44]. However, the guidelines of the law favoured a semi-custodial sentence or electronic monitoring and day-fines, rather than measures with a welfare and health content which had been explicitly indicated in the circular of 17th June 1999 to Public Prosecutors as the specific method of treatment appropriate to drug addiction.

Public debate

Since the middle of the 90s, the question of prison conditions and alternatives to imprisonment has arisen regularly in public debate, often as political changes have occurred. Successive governments have encouraged the production of parliamentary reports and scientific works, which have given rise to new laws. For instance, the first commission relating to controlling criminal reoffending set up by the Ministry of Justice and chaired by Professor Elisabeth Cartier foreshadowed the works of the "RCP" Association (Recherches, Confrontations et Projets sur les mesures et sanctions pénales – Research, comparisons and projects concerning penal measures and sanctions) supported by the office of the Minister of Justice. In 1998, RCP formulated "fifteen proposals for opening up the debate about reform of the methods of implementing custodial measures and penalties", which led to the publication of a special circular on 17th June 1999 promoting alternative measures for penal treatment of drug-dependent offenders.

In the same way, many of the conclusions of the "Farge Commission" on conditional release, set up in 2000, were expressed in the 15th June 2000 law[45]. The reports of the Senate and National Assembly on the prison situation, published on 5th June 2000, dealing in particular

[42] Law no 97-1159 of 19th December 1997 establishing electronic monitoring as a method of enforcement of custodial sentences (NOR: JUSX9601732L).

[43] Law no 2002-1138 of 9th September 2002, the general law on the judiciary (NOR: JUSX0200117L).

[44] Law no 2004-204 of 9th March 2004 adapting the legal system to changes in crime, adopted on 11th February 2004 by Parliament (NOR: JUSX0300028L).

[45] Law no. 2000-516 of 15th June 2000 reinforcing the protection of the presumption of innocence and the rights of victims (NOR: JUSX9800048L).

with the question of alternatives to imprisonment, also contributed to the debate raising the issues of the enforcement and legitimacy of penal sanctions in France. Eventually, most recently, the report of the Parliamentary commission at the Ministry of Justice under Jean-Luc Warsmann, member of parliament for the Ardennes, on "alternative penalties to imprisonment, methods of enforcement of short sentences and preparation of prisoners leaving prison" led to re-examination of the meaning of penalties and formed the basis of some of the guidelines selected for the 9th March 2004 law.

At the same time as Parliament was carrying out these investigations, information given in the media and the actions of activist policy groups and associations contributed to keeping public attention on the meaning of sentencing and renewing arguments in favour of expanding alternatives to imprisonment[46]. So for example, when it appeared at the hearing of the parliamentary commission of enquiry, the International Centre for Prison Studies produced a document bringing together the main points of the facts which it had learned from 1998 to 2000, analysing prison conditions, acts of violence indoors, health, employment, detention on remand, private life and family background, reintegration and alternatives to imprisonment (Observatoire international des prisons (OIP), 2000). This report notes in particular the insufficient use of alternatives to imprisonment: *"although alternative penalties exist in the penal code, they are insufficiently used, or are used for offences which would not always give rise to a term of imprisonment. So instead of ordering a suspended sentence, community service is used".* So the question of the place of alternatives to imprisonment in the prison policy comes up again and again in public debate whenever reports are published or particular events occur which are linked to the difficulties of treating drug addicts in current prison conditions. More specifically, the position in this debate of penal treatment of drug addicts who come before the courts fluctuates according to media attention given to questions linked to the situation of users sent to prison. So for example, when the two parliamentary reports referred to above came out in 2000 this generated questioning about the advisability of imprisoning people suffering from psychiatric problems and/or drug addicts, but, for all that, this did not result in any special parliamentary initiative.

Implementation structure

The law of 1970 and the Public Health Code provide for a large curative and medical section within the penal system. The convicted drug user is considered within this system to be an offender but also to be ill: he or she undergoes treatment under supervision of the health authorities (Bisiou and Caballero, 2000).

The option offered to drug addicts to avoid prosecution or imprisonment by undergoing a detoxification programme is implemented under two types of referral via the penal system. In the first case (alternative to prosecution, upstream of the trial), by order of the Public Prosecutor, the drug user questioned by the police and passed on to the Public Prosecutor's department may benefit from referral to the welfare and health authorities rather than prosecution; the medical option thus offered has the advantage of facilitating voluntary treatment. In the second case (compulsory treatment ordered by the trial court), the health referral is ordered by the judge: it is compulsory for the convicted person, who runs the risk of imprisonment if he or she does not comply with the penalty. In this system, a relapse by the offender is considered to be not only a "breach of contract" leading to the lifting of the conditions precedent which justify non-imprisonment, but also as an indication of relapse and therefore of probable further offence. The examining judge, the judge in a youth court and the trial court, have the power to order any person brought before the court for unlawful use of drugs to undergo a detoxification programme.

[46] We quote examples from the League of Human Rights and the Federation of Associations for Prison Actions and Justice (FARAPEJ).

Article L.3424-1 of the Public Health Code (formerly art. L.628-2) states that those questioned by the police for unlawful use of drugs, if it is established that they are undergoing medical treatment, may be ordered by the examining judge to follow a detoxification programme. The examining judge must hold an inquiry to seek proof of the offence and also the reasons for prescribing a cure, if necessary. The cure must be undertaken either in a specialised establishment, or under medical supervision, but under the supervision of the court, which is kept informed of its progress and results. This supervision is quite strict, since it applies to the drug addicts assumed to be the most dependent. In practice, a fraction of the drug addicts questioned by police who happen to have refused or abandoned a cure (treatment order) and who have been referred several times to the health authorities are placed under investigation.

In the special case of treatment orders, the examining judge may extend the cure by a period of medical and welfare surveillance, together with rehabilitation measures. On the other hand, if the drug addict complies with the treatment penalty ordered, the court dealing with the case may not pass a sentence for unlawful use.

The trial court (police court or regional criminal court in cases of offences against the drugs laws) also has the power to order various measures for treatment of drug addicts referred to them (usually in these cases this will be compulsory treatment). Article 3424-2 of the Public Health Code (formerly art. L.628-3) states that it may order persons placed under investigation for unlawful use of drugs to attend a detoxification programme, by confirming the order of the examining judge or extending its effects. This measure may be declared to be immediately effective as a protective measure. The treatment regime and methods are similar to those previously described. In particular, the trial court may order the cure as the principal measure by deciding that there are no grounds for passing the sentences provided for in article L. 3421-2 (formerly art. L.628). It may also order this cure as an alternative to imprisonment in addition to a fine or a suspended sentence. The courts may use deferment of sentencing or stay of proceedings, a period then being set for the user to undergo detoxification.

In the case of ***users who are aged under 18***, the treatment may be prescribed by the judge in the youth court in the preparatory stages of the case, or by the youth court at the time of judgement. However, in practice the courts use this only to a limited extent, favouring minors being taken into custody earlier, at the initiative of the Public Prosecutor's department. Paradoxically, the concern for medical and psychological treatment for minors has the consequence of increasing the rigour of procedures. In order to attempt to control the increase in the use of drugs (particularly cannabis) among adolescents, there are various provisions which reinforce the coercive measures (following the example of the immediate placement centres dedicated to accepting offending minors without delay in order to carry out an assessment so that they can be referred: a psychological, school, professional, family and health assessment within a period of three to four months)[47].

But health intervention for drug addicts within a judicial context has proved to be complex. The double problem of drug addiction and delinquency inherent in the subject involve a multitude of stakeholders (health, welfare and criminal workers) who have distinctly different methods of operation and who may sometimes be set in contradictory professional cultures. One of the conditions for the success of alternatives to imprisonment with a health content is therefore good collaboration, at departmental level, between court and health authorities. The particular mission of the court/health interface is to assess the situation of the person concerned, prepare the bridge to the sector which will take responsibility and to ensure periodical monitoring, in close cooperation with the social workers appointed by the court.

[47] Guideline circular relating to judicial protection of young people of 24th February 1999 (NOR: JUS F 99 500 35 C).

Since it has been acknowledged that many of the factors identified as leading to lack of success of alternatives to punishment are linked with the lack of coordination across the different sectors involved – namely justice, health and social welfare –, an institutional coordination framework was created to try and improve welfare and health referral for substance users brought before the court. That is the reason why the sub-regional conventions between health and justice services on addictive substances were promoted in 1993 to enable improvements to be made to treatment of drug users and to promote measures for prevention of use as judicial measures[48]. This was extended to all sub-regional areas (French 'départements') in 1999[49] in the form of service agreements signed between departmental authorities and treatment establishments responsible for providing treatment to those referred to them by the courts.

Interventions

Types of intervention

The variety of structures and methods used demonstrates that treatment is essentially a medical act which falls outside the authority of judges. From outpatient treatment (which does not involve hospitalisation and allows the subject to move freely in society) to treatment with methadone, through therapeutic communities and visits to a psychiatrist, the range of treatment on offer has diversified as the "risk reduction" policy has developed. Detoxification treatment remains the reference standard but "maintenance" or "low threshold" treatments exist which are not aimed at medium term withdrawal but which attempt to resocialise users and assist in their medical supervision.

Four phases of the basic treatment principles have been defined:

- ***reception and pre-treatment***, first contact of the drug addict with treatment: within the narrow framework of alternatives to imprisonment, this phase is disappearing in favour of the court order;
- ***withdrawal and treatment,*** generally carried out in hospital, involving a withdrawal phase of several days thanks to "detoxification beds", immediately or after "maintenance" with methadone, then a treatment phase after withdrawal to consolidate the detoxification;
- ***convalescence***, in an accommodation centre, with a host family, in a therapeutic apartment or a production workshop is the longest phase; the presence of a specialist doctor in drug addiction in an approved centre, capable of settling a system for assessment of the treatment, is recommended in the circular from the Ministry of Health, which organises the convalescence phase[50]. The decree of 26th February 2003 set the minimum conditions for organisation and operation of the specialised centres for drug addicts (CSST) which are responsible for ensuring medical and psychological monitoring of the drug addict and preparing him or her for reintegration[51];

[48] Interministry letter of 14th January 1993 relating to [implementation] of agreements on objectives for the control of drug addiction.

[49] Guideline for the implementation of departmental agreements on objectives for control of drug addiction, MILDT, 12th February 1999.

[50] Circular of 3rd July 1979 from the Ministry of Health, BO Min.santé (Min. of Health Official Bulletin), No.80-3 text 17892.

[51] The activities and method of operation of the CSST were originally defined by Decree no. 92-590 of 29th June 1992. This Decree was rescinded and replaced by Decree no. 2003-160 of 26th February 2003 setting the

- ***Assistance with reintegration*** completes the procedure, enabling the patient to organise his or her life away from drug addiction, particularly from a social and professional point of view.

The solutions offered by the CSST's "in the community" are developed either as "outpatient", that is, in non-residential treatment centres (201 centres of this type deal with withdrawal and psychological monitoring), or in centres with accommodation (which provide treatment after withdrawal as half-way houses, in several ways: in one of the 46 group accommodation centres, mainly in rural locations, therapeutic apartments, host families). In addition, there are 16 treatment centres within prisons in France (drug addiction units) which provide psychological support and preparation for release at remand centres.

The treatment programmes developed as alternatives to imprisonment may therefore include daily attendance as an outpatient at a hospital without appointment, hospitalisation to initiate or continue a treatment procedure, or monitoring in general practice with supply of sterilised equipment and treatment of specific pathologies (HIV, hepatitis). The CSST's may therefore treat drug addicts who have been brought before the courts at different stages of their treatment career, which allows real monitoring and the possibility of moving on from one stage to another.

In addition, other treatment methods are emerging: for example, the drug addiction operational unit at the Marmottan hospital was one of the first structures to offer selective withdrawal to polydrug addicts. So for instance, heroin addicts who are users of other products (alcohol, medicines, cocaine, crack etc.) are hospitalised and treated using a substitution treatment which will not be covered here, which is followed at the same time as withdrawal from all other products.

There is less residential treatment available overall today (fewer than 600 places), although the needs and types of populations concerned are increasing. Bearing this in mind, the five-year action plan (published August 2004) has raised the idea of diversifying and breaking new ground in the treatment offered by developing programmes without substitution, notably the therapeutic communities which will be developed over the next few years for "users with a relatively short history with the products or, on the other hand, for people with repeated treatment failure who need a longer-term and more structured treatment than outpatient monitoring". The system is not well-developed in France (50 places) because of changes of stance by the authorities in the mid-80s[52], but this treatment method advocating rehabilitation through employment and "return to nature" may be promoted as part of an experiment piloted by the MILDT and the Ministry of Health providing an average capacity of 30 places. An ethical code and a professional charter will be drawn up on the basis of French and foreign experiences to look ahead at the benefits and limits of this model (indications and contra-indications, proportion and type of supervision, occupational and therapeutic activities to be promoted, criteria for monitoring and assessment, co-ordination with care services, place of medical and psychiatric treatments etc.).

The system needs to be reinforced by opening up post-withdrawal places, as part of a new therapeutic framework, particularly through self-help groups for ex-users (for example on the Narcotics Anonymous model). Moreover, on the basis of an analysis of European practices,

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minimum conditions for organisation and operation of specialised centres for drug addicts (Official Journal no. 50 of 28th Feburary 2003)

[52] Some official reports appeared which emphasised questionable practices in this field; several of them even classified one of the associations running the therapeutic communities, "le Patriarche", as a sect (Report of the Auditor-General's Department on the system for control of drug addiction, 1998; Guyard Report on sects on behalf of the National Assembly Select Committee on the financial, property and fiscal position of sects and their economic and financial activities, report no.1687, June 1999).

the plan recently issued provides for promotion of experimentation with medical prescription and controlled delivery of opiates by injection (heroin under medical supervision), particularly for drug addicts whose treatment fails repeatedly. Two medically-supervised programmes will probably be set up, on the basis of a specification and research protocol making use of the knowledge from research carried out in other European countries (Germany, Spain and Switzerland).

Implementation

The first statement is that of the weakness of the prosecutions following an arrest. The rate of drug use offences brought to justice remains rather low. The data produced by the Public prosecutor's departments on a national basis do not allow to draw any further conclusions. Nevertheless, there are available data in the computerized courts based in the Ile-de-France region. Those make it possible to make out the detail and proportion of alternatives to custody. In these courts, the so called "third way" measures would be the most current penal response given to drug use arrestees (Infostat Justice, juillet 2004).

The second statement stresses that the treating referrals can be made by justice services even if the offender is not suspected of any drug use offence.

One can notice however that the structure of the sentences passed against simple drug users shows a relatively high rate of imprisonment in view of the measures provided for by the Criminal Code and the recommendations made to prosecutors to limit its use (almost 15% in 2001, compared to 45% for fines and 40% for alternative sentences, compulsory care measures or discharges). In addition, the actual efficiency of alternatives to imprisonment, an essential condition of their effectiveness, is not always guaranteed. Moreover, it is difficult to quantify these measures in view not only of the difficulty of isolating from the statistics all the measures relating to alternatives to imprisonment for a specific category of offence (drug use), but also the difficulties of cross-checking between the mass of statistics issued by the Ministry of Justice and those from the Ministry of Health.

Nationally, taking all offences together, alternatives to imprisonment have been gradually eroded over the last few years: in 2001, for example, the courts delivered 18,000 community service orders (TIG), which implies a drop of 25% over five years. For offences against the drug law, the drop was approximately proportional; for convictions for use, it dropped a little less markedly. In the same way, probation, which exempts the accused from prison on condition that he or she complies with certain obligations (particularly compulsory treatment if the accused is a drug addict) has also been neglected, notably because, according to the Warsmann report (2003), of "too great a delay in enforcement" and "scarcely discernible control of obligations". So there is an increasingly smaller proportion of community service orders or probation orders involving compulsory treatment given against offenders against the drugs laws.

In regard to drug users in particular, fines continue to represent more than a third of convictions: the proportion of them has even increased over the last few years. It should be pointed out that the use of "day-fines", payments of money replacing days of detention, has increased notably in the last few years, also following the philosophy of using financial penalties to the detriment of alternatives with a health content. It has increased particularly in convictions for use, among the alternative sentences passed for one instance of unlawful drug use as a single offence (Table 30).

Table 30: Drug use, changes in police questioning and judicial convictions (standard and alternative sentences) from 1998 to 2002

Year	Users questioned	Treatment orders	Total number of convictions	Number of convict-ions	Convictions with imprison-ment	%	Convictions with imprison-ment with probation (compulsory treatment)	Convict-ions with fines	Convictions with discharge	Convictions with alternative sentences (community service order, day-fine)	Convict-ions with compul-sory care measures (minors)
			drug use	***single offence of use***							
1998	74,663	4254*	6622	3452	690	20.0	632	1204	79	287	185
1999	80,037	4183*	7000	3287	577	17.6	463	1306	93	294	163
2000	83,385	3606*	6762	3397	486	14.3	453	1387	56	304	215
2001	71,667	4038*	5689	2933	395	13.5	346	1317	79	290	139
2002	81,254	4068	4803	not available							

N.B.: since 1998, court statistics have only included treatment orders actually implemented by the DDASS's (Departmental Directorates of Health and Social Affairs), i.e. when the user has made contact with the health authority (they no longer show the number of those ordered by the Public Prosecutor's Department).

Source: OCRTIS (Home Office) statistics and statistics on convictions (Ministry of Justice)

Using the limited statistical information available on the only alternatives to imprisonment ordered for offending users, we may estimate that the number of prison sentences is almost as high as that for alternatives to detention with a treatment component. This statement should be seen in the light of more reliable figures and tempered by analysis of the way in which sentences are enforced: in effect, during their "criminal career", some users who have come before the courts are given an external placement order which involves compulsory treatment, or have their sentence interrupted before it officially ends by a release on parole of a therapeutic nature etc. Moreover, among people who have committed an offence of drug use (a single offence or one combined with others) and are given a prison sentence, some do not serve it: they may in fact be convictions in absentia, and therefore not enforceable and liable to being opposed, or even convictions with imprisonment which may be converted into community service orders.

What should be emphasised, however, is that the chances of the offender's benefiting from an alternative to prison vary depending on the seriousness of the "other offences". Indeed the dispute about unlawful drug use is distinguished by a high prevalence of "multi-offences": in 2001, for example, one in five offences of use punished with a conviction comprised a single use (2,933 cases out of 13,615 convictions). Now faced with multiple convictions (4 out of 5 convictions linked to use), judges tend to have a more repressive attitude: their severity is conditioned by the nature of the other offences of which the drug user is guilty. The user who is a drug dealer (use and trafficking, carrying and/or supply) is likely to be much more severely punished than the user liable for possession and/or acquisition.

Although the method of statistical registering of these special measures of the courts has not been improved, and the treatment of users brought before the courts under this system has been the subject of a special procedure. After the court authorities have passed the sentence, actual enforcement of the measure theoretically depends on the health authorities: now the statistics from the treatment centres seem to show, if we look at the entrants or in the active patients file, that insufficient numbers of users were sent to the CSST treatment centres by the court. The departmental agreements on objectives (CDO) were designed to bring these two links in the penal chain closer together. These agreements are signed by the Prefect and the Prosecutor and are intended to apply locally, ensuring that convictions accompanied by compulsory treatment, community service orders suitable for drug addicts and measures for personalizing sentences in prison in particular, will be effective. The CDO system has granted additional financing to potential operators of the treatment system (specialised drug addiction centres, accommodation centres, legal network centres etc.) which has actually enabled a growing number of users brought before the courts to access drug treatment services for the first time, at different stages of the criminal procedure, from the pre-sentencing phase to the assistance on release from prison (6,500 in 1998, 37,500 in 2001). Nevertheless, this process to motivate the health-justice collaboration has been of little benefit to alternatives to imprisonment, since in 2001, only 11% of people treated under the system were given a community service order or a suspended sentence and deferment of sentencing with probation (which even so represents around 3,500 users)[53]. The alternatives to imprisonment have therefore been the poor relation in a system which has, overall, functioned well.

Financing

Theoretically, the general treatment of drug addicts, whether or not ordered by the court authorities, is the responsibility of the CSSTs, (specialised centres for drug addicts) and the centres for risk reduction funded by the Ministry of Health. In 2001, the number of centres attached to the health services was 263, two thirds of which were managed by [welfare] associations. They are established in 90 French departments. The amount of the annual budget allocated to them has diminished since 1999 (118 M€ in 2002 compared to 130 M€ in 1999).

[53] Source: annual MILDT statements for the years 1998, 1999, 2000 and 2001.

However, service agreements with treatment centres, entered into as part of the departmental agreements on objectives (CDO), have provided a specific addition to this ordinary financing. Financing of the CDO comes from decentralised credits provided for the centres by the Interministerial Mission for the Fight against Drugs and Drug Addiction (MILDT), at a level which increased up to 2001, from 2.5 M€ in 1998 to 4.9 M€ in 1999, 7.1 M€ in 2000 and 9.9 M€ in 2001 (incorporating the European Social Fund for these last two years). This expansion of means has resulted in a growth in the number of centres financed: 203 in 1999, 286 in 2000 and 333 in 2001.

All centres for the treatment of drug addiction, together with the CDO system itself, have been funded by the Caisse nationale d'assurance-maladie (National Health Insurance Fund) (CNAM) since 2003, as are the outpatient alcoholism treatment centres (CCAA).

Available estimates show that under the CDO, more than a third of alternatives to imprisonment with a health component are provided for by the specialised alcohol network, one third by the CSST, ahead of the accommodation and social rehabilitation centres (16%), the specialised justice network (13%) or other types of structure (Gorgeon *et al.*, 2003).

Monitoring the measures

Within the criminal system, the enforcement of custodial sentences is under the responsibility of the Public Prosecutor's Department; probation and community service orders are the responsibility of the Judge responsible for the execution of sentences (JAP), and fines are the responsibility of the tax authorities. Currently, each stage of the criminal procedure is monitored by an independent management system which does not communicate with the others.

The two possible stages of health and welfare guidance within the criminal process are on the one hand, treatment orders; on the other hand probation and community service orders. In both cases, the "bridge" towards the treatment system is supposedly guaranteed by the court departments responsible for implementation and control of compulsory treatment. However, one can observe a relative "wastage", estimated at 30%, with treatment orders (Setbon and De Calan, 2000) of users throughout all the stages which are supposed to lead them from guidance by the Public Prosecutor's Department to the DDASS services then into the designated specialised centre for drug addicts which will provide treatment for a user brought before the courts. In the case of compulsory treatment ordered after a judgement, the assistance is provided by a ***referral judge***, who follows up the case throughout its course (judge responsible for execution of sentences, youth judge, investigating judge or remand judge) and who ensures, if necessary, that the social workers appointed by the court (prison integration and probation service, judicial youth protection facility, associations for judicial review) are actually involved. Because it is supervised throughout the process, compulsory treatment does not exhibit the same weaknesses as the treatment order: it is assumed to be more efficient, although there is no accounting system which can currently assess it thoroughly.

In the absence of an integrated information system, it is not possible continuously to monitor a case from the announcement of conviction to enforcement of the sentence. In order to remedy this situation, either court investigations have to be carried out, or good use must be made of the existing statistical data, allowing for biased information which is often difficult to interpret

Specific target groups

At the time when the CDO system was relaunched in 1999, assistance to young users was established as a core target. Nevertheless, there are no treatment programmes as alternatives to imprisonment which specifically target certain categories of the population.

Specific projects

We may consider that electronic monitoring falls under the pilot projects launched in relation to alternatives to imprisonment but this system does not come under health authorities and is not intended particularly for drug addicts. It is difficult today to evaluate the implementation and effectiveness of electronic monitoring: this device was introduced in 1997 and was first tried out in October 2000 in four sites, where 20 bracelets were tested. Since the electronic monitoring experiment began, 1,384 prisoners have been fitted with the device (to 15th December 2003). On 15th December 2003, 312 were simultaneously fitted with the device. Between the 1st and 15th December 2003, 63 new electronic monitoring orders were granted. The general law on the judiciary (LOPJ[54]) expects 3,000 people to be electronically monitored by 2007.

Concerning alternatives to imprisonment with a health dimension, there are no specific projects currently in progress.

Quality assurance

Guideline document

In regard to alternatives to imprisonment targeted at offending users, no specific guideline document has been issued, apart from the circular of 17th June 1999 which fell into disuse following the change in government majority in April 2002.

Evaluation and research

In the field of alternatives to custody, there has not been any overall evaluation but a number of specific evaluation results. The most relevant study in this field is that of M.Setbon and J. de Calan dealing with drug treatment and testing order (Setbon *et al.*, 2003). This research work has proved that few drug users actually access treatment even when referred to by justice and when they do, a small amount of them benefit from an appropriate healthcare treatment.

The evaluation carried out by CESDIP in 1999 on the "compulsory treatment of drug addicts on probation" sought to explore the significance of compulsory treatment within different contexts (ILS (drug offences) or thefts, province or Paris region), from the study of three cohorts of people subject to this obligation (Simmat-Durand and Toutain, 1999). The report reached conclusions on three points: the first objective of compulsory treatment, which encourages offenders to take up treatment through a compulsory contact with the treatment system, is "a delusion" since it refers to populations who have been drug addicts for a long time and whose degraded state of health has occasioned many contacts with those involved in health care. The second objective, from the point of view of the Ministry of Justice, the prevention of reoffending, is the most difficult to evaluate, although it seems clear that the objective of avoiding imprisonment has not been achieved since half the population studied had had repeated terms in prison. Finally, the third objective, defined *a posteriori,* of controlling social exclusion, seems to be contradicted by the significant proportion within the population studied of people in a situation of prolonged exclusion from the employment market (almost 60%). In all the evaluations carried out, analyses were done without reference to well-identified indicators of success.

Apart from the specific studies relating to compulsory treatment prescribed by the court system, various works or evaluations on connected subjects in turn raise the question of their legitimacy, efficiency or effectiveness, without however developing operational indicators of

[54] Law of 9th September 2002.

success, or definitive conclusions on the chances of reoffending of a user treated within the prison system.

The effectiveness of quasi-obligatory approaches to treatment is a recurrent question, since it has not been scientifically proved. The majority of specialist psychiatrists and psychologists consider that coercion is not very favourable to success of the treatment. Moreover, the mechanisms provided for the law of 1970 are often criticised: they show that the law of 1970 is a law of justice, not of therapy, since the judge is at the centre of the system, deciding to apply the repressive measure, the therapeutic measure, or both. Many doctors stress the difficulty of creating a relationship of trust with the patient in a court-ordered context, where the patient is there because of a criminal sentence and the doctor is placed in the position of an auxiliary of the court. Some works consider that the difficulties arising from the contradiction between medical and judicial imperatives may be resolved by better cooperation between the two institutions in the field. Bearing this in mind, the CDO system was created, then evaluated and presented as an essential tool for development of the justice/health collaboration.

The evaluation of the CDO system carried out in 2002 showed that the system met the objectives assigned to it by allowing better health identification of people who come to the notice of the courts, a greater range on offer of welfare and health treatment for these people and entry to a network reinforced by court and health authorities. These improvements have particularly affected the pre-sentencing phase, although alternatives to prison have only developed slightly in favour of this system.

More generally, some researchers wonder about the actual usefulness of alternatives to imprisonment in terms of opportunity, or even reintegration[55]. Moreover, the question of the effectiveness of alternatives to imprisonment with a health dimension comes up against the obstacle of the actual question of the quality of treatment for heroin users. If the positive impact of new methods of intervention aimed at reducing all health risks in drug use may be grasped through favourable activity and epidemiological indicators (number of syringe exchange programmes and low threshold services, proportion of doctors prescribing substitution drugs, sales of syringes, volume of medicines prescribed, drop in mortality by overdose, reduction in the prevalence of HIV, retention of patients on substitution drugs in treatments, compliance by HIV-positive users with treatments for HIV infection, etc.), evaluation of the system highlights the persistent problems: a continuing high incidence of contamination by hepatitis C (HCV), still too frequent injection of Subutex® (buprenorphine), diversion of some of this to be sold on the street, unequal distribution of methadone and buprenorphine, need to improve welfare and psychiatric treatment, discontinuity of treatment when entering or leaving prison, insufficiency of solutions in the event of failure of treatment or of severe polydrug addiction. The difficulty of defining effective interventions with compulsive crack or cocaine users probably does not favour their use in a problem context which is worsened even further by legal constraint. And lastly, the report of the member of parliament Warsmann (2003) emphasised that the loss of "credibility and efficiency" of alternatives to imprisonment has led magistrates to neglect it and to use prison even more.

[55] For example, Pierre-Victor Tournier, Director of Research at the CNRS and President of the French Criminology Association, reflected in a preliminary study about "promising examples in regard to crime": "Would a person sentenced to community work (TIG) have been sentenced to imprisonment if the community work had not existed in the legislation? Would he not, in fact, have received a simple suspended sentence, or even a fine?" In the same way, for alternative measures, we may imagine, writes Tournier, "that the investigating judge would not use detention on remand if the judicial review had not existed in law." "If this is the case," he concludes, "this judicial review is not playing its role as an alternative to custody," but "is enabling the net of social control to be widened" (quoted in the review "Combat face au Sida" (The fight against AIDS), No. 35 - March 2004).

Finally, although it does not relate to research or even to evaluation strictly speaking, the recommendations in the parliamentary reports regularly called for on the question of prison conditions, enforcement of sentences etc. are a crucial source of debate and reforms. The Warsmann report referred to above, for instance, notably proposed, in order to relaunch alternatives to imprisonment, the development of a "relaunch plan" and diversification of measures for community service (TIG). It suggested calling the accused, at the time of the hearing, to the department responsible for setting up the community service (TIG) or the probation, who would immediately specify to them the obligations to which they were subject. In the case of community service orders, it pleaded for a "national relaunch programme" so that they would no longer be confined to the highways and parks sector but would be opened up to the tertiary sector and hospitals. The report also recommended ensuring an increase in probation, enforcing short sentences outside prison, in a day prison or by electronic monitoring, and controlling reoffending by reducing sudden release from prison by re-evaluating the system for personalising sentences for prisoners (declining): in 2002 in fact, only 5,056 releases on parole were granted (which is a drop of 14% in one year), which represents a historic minimum since their creation in 1885. In regard to this, the Council of Europe named France in September 2003 as one the countries with the lowest rate of use of release on parole in Europe (9% of those leaving prison). In order to avoid sudden release which is prejudicial to reintegration of prisoners, the member of parliament wanted the law to adopt "the principle of progressive enforcement of the sentence": it should be possible to serve the last three months of a sentence of from 6 months to 2 years in prison, or the last 6 months of a sentence of from 2 to 5 years, either in a day prison, on an external site or under electric monitoring.

So studies are in progress, in a fragmentary way, but they take little note, and even less in a specific way, of the health dimension of the sentence relating to offending users.

Training

The ability of the public authorities to make collaboration between health and court authorities succeed is expressed partly in the effort put into training for members of the judiciary on the one hand, and health professionals on the other hand. This point was one of the priorities proposed from 1998 to 2001 by the MILDT and may be followed up in the next five-year plan. In May 2004, a seminar organised by the Ministry of Justice (National Training School for the Judiciary, National Training School for Prison Administration, Centre of Sociological Research on law and penal institutions) entitled "Prosecute and punish without imprisonment. Alternatives to imprisonment" put the question again in terms of opportunity and applicability, but the specific problem of drug addicts in the prison environment was not mentioned.

At the same time, those involved in health were pursuing their efforts to raise awareness about the need to develop the interface with the judicial authorities. For several years, a regular training course run by the National Association of Drug Addiction Workers (ANIT) has dealt with relations between the CSST and the judicial and prison services. The various problems brought up relate to organisation of the partnership or to partnership difficulties between the different services in relation to standard criminal procedures (judicial review, probation, personalisation of sentences etc.) Actual cases, directed towards the treatment system, are presented.

The results of this training have, to date, not been evaluated.

So, although the public debate on the advisability of using alternatives to imprisonment for punishing drug users has steadily widened, although less since 2002, these recommendations seem to have had relatively little influence at this stage of observation of trends in crime. One of the issues at stake in this coupling of repression and treatment is the

public effort made in encouraging and supporting collaboration of the judicial and health authorities which began with the departmental agreements on objectives. According to the evaluation report for the three-year plan currently in effect, one of the axes of progress identified was certainly personalisation of the shorter sentences, where these relate to drug addicts, incorporating compulsory treatment, particularly for release on parole and semi-custodial sentences (Setbon *et al.*, 2003).

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Glossary

Convicted person: person detained in a prison following a definitive conviction.

Remand centre: accepts accused persons and convicted persons who have less than one year of their sentence left to serve

Community: all activities of the prison integration and probation service (SPIP) and associations for judicial review which contribute to implementing the decisions of the court which must be enforced totally or partially outside prisons. The purpose of these measures is to enable better integration of people into society. They may be taken before judgement (judicial supervision), at the time of judgement (probation) or be a method of enforcing the prison sentence (semi-custodial sentence)

Accused: person held in a prison who has not yet been judged or whose conviction is not yet definitive

Semi-custodial sentence: method of enforcing a sentence which allows a convicted person to carry on a professional activity outside prison, to follow an education or training course, or even to benefit from medical treatment. The convicted person must return to the day prison at the end of these activities

Community service (TIG): This sentence, an alternative to imprisonment, was adopted in 1983 and requires the will of the convicted person if it is to be enforced. It relates to unpaid work of a duration of 40 to 240 hours maximum for a local authority or organisation.