

The criminalization of drug use in France

Assessment of the 1970 French drug law enforcement (1990-2009): a more systematic sentencing including a wider range of penalties.

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In France, nearly 160,000 people were arrested for drug offences in 2009. About 9 in 10 offenders (86%) reported personal drug use, the majority of which reported cannabis use (91% of drug-using arrestees, as compared to 5% of heroin users, 3% of cocaine users and 1% of other narcotics users¹).

According to the 1970 French Drug Law, all drug use offences are punishable by penalties up to a 3,750 euros fine and one year of imprisonment, regardless of the substance, with an option to avoid prosecution by seeking treatment from the healthcare system².

In practice, an arrest for drug use in France can possibly lead to a wide range of sentences: some criminal responses such as alternatives to prosecution³ or settlements – which may comprise a fine (see box 2) – replace prosecution, while others involve criminal prosecution (through rapid or simplified procedures) that can result in fines or other types of legal sentences, up to incarceration.

The range of legal penalties for drug use offences has been enlarged over the past twenty years. New measures and new orders of procedure have been brought in to tackle drug offences, with a general effect of both increasing and simplifying the scope of application of the drug law. Most recently, the “drug awareness courses” (see box 1), which are mandatory and require payment, have been added to the range of possible

Drug awareness courses

The drug awareness course, which has been intended for occasional, non-addicted users, was introduced by the French Delinquency Prevention Law of 5 March 2007 directed at enlarging the judicial capacity to tackle drug offences with simplified procedural tools (and quick case processing). The specific article L 131-35-1 of the Penal Code states that the drug awareness courses is destined to be both a monetary and an educational penalty, so as to «make offenders aware of the harmful consequences to human health and to society of using these substances» (application decree n° 2007-1388 of 26 September 2007).

Box 1

sentences. Drug awareness courses can be mandated at different stages of criminal proceedings: either by the Public Prosecutor’s office as an alternative to prosecution, or within the framework of a conditional settlement without prosecution (composition pénale), or by the magistrates of the jurisdiction as a simplified sentencing (ordonnance pénale), or by way of an additional sentence (the main simplified procedures of criminal matters, such as settlements and simplified sentencing, are presented in Box 2).

However, one cannot discuss the response of the French penal system to drug use without emphasizing the blurred line dividing drug use and trafficking in the actual law enforcement practice [Barré, 2008]. Another specific difficulty lies in the monitoring and tracking of drug use cases through the criminal justice system, due to the diversity of the statistical sources (see Methodology, page 6).

Forty years after the 31 December 1970 law prohibiting drug use, this issue of *Tendances* offers an overview of the trends in the sentencing of drug use in France. For this purpose, we have used the available information system that links different state-level criminal justice statistical providers (law enforcement, prosecution, courts, adult corrections and juvenile corrections), with a focus on the most recent period⁴. On the basis of that material, this contribution aims to describe the sentencing pathways for drug offenders through the criminal process from arrest and prosecution to adjudication and incarceration. The sources supporting this demonstration are the currently available official statistics of the French criminal investigation department (which are centralized by the Home Affairs Department) and the

1. In France, substances classified as narcotics are listed in four appendices of the French Order of 22 February 1990; these appendices were inspired by international conventions (NOR SPSM 9000 498A).

2. The French Drug Law of 31 December 1970 relative to health measures to fight against drug addiction and combat the trafficking and use of harmful substances restricts the use (public and private) and trafficking of any substance classified as a narcotic. At the same time, it provides for treatment alternatives to help offenders avoid prosecution by agreeing to seek free, anonymous treatment.

3. Reference to a health, social or professional body, caution, reminder of the law, treatment order, and so forth.

4. This analysis of the application of the 1970 law does not take into account other dimensions of the penal response to drug use, including driving while under the influence of narcotics (created by the Dell’Agnola law of 3 February 2003). Neither does it examine the changes in the penal responses to drug trafficking.

Box 2

Main procedures for the simplified processing of criminal cases in France

The n° 99-515 law of 23 June 1999 has introduced **criminal mediations** (*composition pénale*) to make the legal system more flexible and effective and reinforce the efficacy of the criminal procedure. The law has been designed to provide a systematic, dissuasive response to minor offences and misdemeanours for which charges were previously dropped for the most part. In settlement procedure the Public Prosecutor's Office may propose to the offender to implement a special procedure for the recognition of responsibility when available evidence shows that the offender has been using drugs. The Public Prosecutor may not initiate proceedings whereby the infringer agrees to pay a fine, perform community service or enter treatment and as long as compliance is ensured. However, the offence is mentioned on the criminal record of the offender (article 41-2 of the French Code of Criminal Procedure) because of the legal procedure involved, where the settlement is handed down by the Public Prosecutor and validated by the judge. Since the enactment of

the French Delinquency Prevention Law of 5 March 2007, settlements have been extended to minors (aged 13 and over) and can involve new measures, such as drug awareness courses (see Box 1). Settlements for drug-related offences are listed on a person's criminal record.

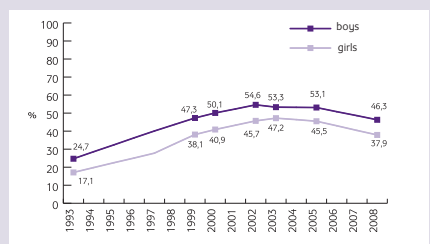
Simplified sentencing (*ordonnance pénale*) is a quick judgement procedure initiated by a criminal jurisdiction. Based on German law, simplified sentencing was introduced in France by Law n° 72-5 of 3 January 1972 to deal with reckless driving through fines. French Law n° 2002-1138 of 9 September 2002 on the orientation and planning of the criminal justice system widened its scope to include other offences. In case of a prosecution, simplified sentencing approach may be handed down without any hearing of the defendant. Either the police or the courts may decide to convict an offender and order him to pay a fine or suspend his driver's licence, without preliminary hearing. In the event of conviction, the offender has 30 days to pay the fine or contest it.

Box 3

Trends and statistics regarding illicit drug use in the French general population

Of all illegal drugs, cannabis is by far the most widely used drug in France. Over 12 million people aged 12 to 75 have tried cannabis at least once during their lifetime, according to the most recent estimations in 2005. Approximately 4 million people have used cannabis in the last year, 550,000 of which used it on a daily basis. After a strong rise during the '90s, the levels of cannabis use among young people have been declining since 2002-2003. Comparatively, lifetime cocaine use was reported by over 1 million people, while use in the last year was stated by 250,000 of them. Cocaine distribution is currently on the rise. After cannabis, ecstasy and cocaine are in second position. Lifetime prevalence of ecstasy was reported by 900,000 people while 200,000 reporting using ecstasy at least on one occasion in the last year. Lifetime prevalence of heroin was stated by 360,000 people.

Cannabis lifetime use at 17 year old, by gender (1993-2008)



Source: INSERM 1993; ESPAD 1999; INSERM-OFDT-MENRT; ESCAPAD-OFDT 2000, 2002, 2003, 2005, 2008.

Ministry of Justice. However, comparing such data can prove challenging, depending on what information was being compiled, who was compiling the information and how this was done (see Methodology, page 6).

The assessment of the national drug law enforcement across the last 20 years shows a twofold trend involving an increase in the numbers of arrests for drug use and the enlargement of the range of penalties for illicit drug use. The analysis also helps refute the common opinion that drug use has been less and less criminalized in France.

Current trends in law enforcement

A continuous rise in arrests for drug use

The number of arrests for drug-related offences has increased 60-fold in the last forty years, from 2,592 when the 1970 Law was passed to

159,412 in 2009 (see figure 1), split up into 137,594 arrests for drug use, 11,986 for use-dealing and 9,832 for local or international drug trafficking. During this period, arrests for drug use increased twice as quickly as arrests for use-dealing or trafficking (the multipliers are 70, 30 and 42 respectively) and the proportion of drug use-related proceedings in all arrests for drug-related offences increased from 75 to 86%.

With the exception of some random falls in arrests for use (see figure 1), due to a decrease in police activity or a change in police procedure⁵, the increase in arrests for drug use has been steady since the '70s [Costes, 2005]. Admittedly arrest statistics are first and foremost related to police and gendarmerie activity and should not be viewed as a reliable gauge of drug use prevalence in France, even if they obviously reflect some trends in drug use (see Box 3). As a matter of fact, the relationship between the number of arrests and levels of use is difficult to interpret: since the '90s, arrests for drug use have risen rather steadily, while the distribution and levels of cannabis use have shifted at the turn of the 21st century.

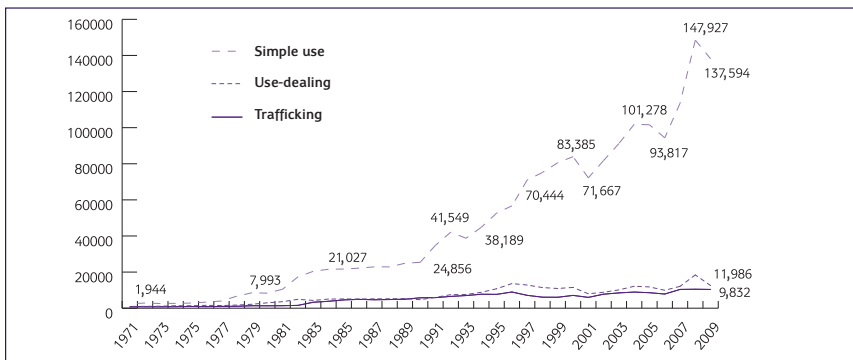
Drug use is a category of offence that is especially reliant on the intensity of police investigation, since it constitutes an infringement that is «revealed» by police activity⁶ [Peretti-Watel, Beck, Legleye, 2004]. Unlike other offences that result from filed complaints, the criminal justice system encounters drug use cases by seeking them: arresting drug users does not require any prior investigation but control of the areas where drug use takes place by the law enforcement services (police and gendarmerie) who may have an interest in targeting such specific offences, cleared up as soon as revealed, which mechanically increases the clearance rate of police units [Bauer, 2009]).

Regardless of the subsequent legal proceedings, drug use offences are registered in police files and are therefore recorded on a person's criminal record.

A growing proportion of arrests for cannabis use

Arrests make a suitable indicator of the attention paid by the police and gendarmerie services to a particular category of offence as

Figure 1 - Change in arrests for drug-related offences by category (use, use-dealing, trafficking) (1971-2009)



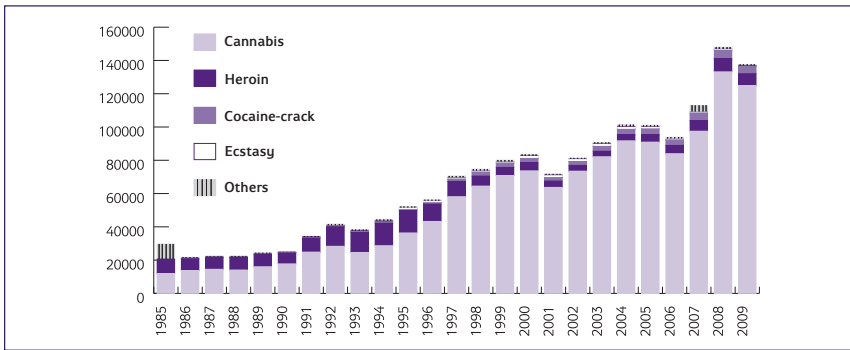
Source: Ministry of the Interior, OCRTIS

NB: Since 1971, arrests are detailed according to 3 categories: use, use-dealing and trafficking.

5. According to the police authorities themselves, the decline observed in 1993 was due to the reform in the French Code of Criminal Procedure (promulgated on 4 January 1993), which introduced changes in police procedure as well as a «reorganization» of police priorities. This reorganization particularly affected the police departments that handled the highest number of users [Simmat-Durand, Martineau, 1999]. The 2001 decrease is widely attributed to an absence of clear ministerial directives and a relative «demobilization» of the law enforcement services [Olin, Plasait, 2003]. Likewise, in 2006, the law enforcement services seem to have directed their efforts towards dismantling drug trafficking networks within the scope of a policy that aimed to decrease overall delinquency, according to the recommendations of the «Perben Circular» (8 April 2005).

6. According to the classification implemented by the Observatoire national de la délinquance [Bauer, 2009].

Figure 2 - Arrests for simple drug use, by substance (1985-2009)



Source: French Home Affairs Department, OCRIS 2009, 1985-2009

N.B.: Before 1985, simple use and use-dealing were merged, which makes it difficult to assess the proportion of simple use by substance at that time.

well as a good measuring tool of the ranking of the different narcotics possibly involved in drug use offences. Indeed, the statistics show that the levels of increase in arrest numbers are not alike for all substances. Over the last 20 years (1990-2009), arrests for use have increased seven-fold for cannabis which has traditionally been the number one substance involved in drug use arrests. In parallel, the arrests for use of cocaine and synthetic drugs have grown nine-fold (ecstasy in particular) even though these drugs have never represented more than 3% of all arrests for drug use. Arrests for heroin use rose steeply until the mid-90s, then sharply dropped, reaching comparable levels, in 2009, as 20 years before (approximately 7,000 arrests per year), back in the period when opioid substitution treatments were not yet implemented (see figure 2). Just like 20 years ago, the numbers of arrests for cocaine or synthetic drug use recorded today (3,768 and 609 procedures, respectively, in 2009) are disproportionate to the number of arrests for cannabis use (124,921). Yet, there is a conspicuous increase in the number of arrests for heroin use, which doubled in the past 5 years (from 3,730 in 2004 to 7,115 in 2009).

In the past 15 years, the percentage of arrests for cannabis use rose from 65% in 1994

to more than 90% in 2009, a historical record (see figure 2). Arrests for cannabis use increased far more rapidly than for cannabis trafficking and use-dealing: while in 1985, cannabis represented about 40% of arrests for drug offences in France (40.2% of arrests for use and 38.9% of arrests for trafficking and use-dealing), today it represents more than 90% of procedures for use and less than 70% of procedures for trafficking or use-dealing.

Trends in the level of criminalization of drug use offences

The systematization of alternative penalties focusing on a health care perspective

The growth in the number of arrests for illicit drug use in France was backed by a diversification in the penal system responses to these offences. Over the past ten years, the Public Prosecutor's offices have systematized the use of alternatives to prosecution (also called in France "third way measures"⁷). This movement was encouraged by the repeated re-

commendations of the French Ministry of Justice (see Box 4). As quick and simplified procedures are intended for processing summary offences, alternatives to prosecution likewise help limit the number of cases being settled (*classés sans suite*) for minor offences, which increases the response rate of the courts without increasing the number of prosecutions. In that respect, the more and more systematic implementation of alternatives to prosecution has contributed to the process of « criminalizing » drug use (i.e., systematizing criminalization of drug use through more effective or committed legal enforcement).

To describe how the French criminal justice system processes drug cases after arrest, an offence-by-offence analysis of the cases processed by the Public Prosecutor's offices is needed. Yet, this kind of details is only available for jurisdictions in the *Paris region* thanks to a special computer application (see Methodology). The criminal affairs recorded in the *Paris region*⁸ (which represents 25% of French drug-related offences) demonstrate an increase in the volume of drug use cases processed by Public Prosecutor's offices between 2001 and 2008: this figure increased by a factor of 1.7 (from 10,261 to 17,353) as did the number of cases handled by the police and gendarmerie (from 12,625 to 19,146 police reports).

At the same time, the proportion of cases settled (*classés sans suite*) and considered "non prosecutable" declined from 29.3% to 8.5%, contributing to enhance the response rate by the French penal system⁹, which rose from 70.7% to 91.5% in eight years (see figure 3).

This mobilization of the French criminal justice system in drug use control can be explained by the increasing use of « alternatives to trial ». The proportion of prosecuted cases not going to trial has grown since the '90s: rare until the late '90s, alternatives to trial exceeded a symbolic 50% of the cases brought to the Public Prosecutor's offices in the early '00s, reaching a peak 77% in 2005 (see Fig. 3) and falling to their current level of 70% of referrals.

Although the French prosecution process of drug use was traditionally distinguished by a rapid increase in the number of alternatives to trial, since 2005 we have observed a new rise in prosecution rates of drug-use offences:

Main criminal policy instructions published by the Ministry of Justice since the 31 December 1970 Law

The difficulty in building a consistent penal response to a complex offence behaviour has led the successive French Ministers of Justice to issue numerous criminal policy circulars stipulating the conditions of application for the 1970 law. Subsequently, a large number of circulars has been issued in the past 40 years. They have introduced distinctions based on substance, method of use and use-dealing processing.

The main circulars are mentioned here:

- The « Peyrefitte circular » of 17 May 1978, which recommended a distinction between cannabis and the other drugs;
- The « Badinter circular » of 19 September 1984, which issued more specific directives on the legal steps to take for drug-related offences;
- The « Chalandon circular » of 12 May 1987, which superseded the previous circulars for clarity's sake, discerned different types of users (occasional users and « regular users »);
- The Méhaignerie circular » dated 28 April 1995, which urged the police and gendarmerie to file a report and inform the legal authorities each time a drug user is arrested;
- The « Guigou circular » of 17 June 1999, which recommended systematising alternatives to prosecution in simple drug use cases;
- The « Perben circular » of 8 April 2005, which recommended a stepwise penal response based on user consumption.

These successive circulars all have two common characteristics: they encourage prosecutors, in an increasingly direct fashion, to favour alternatives to prosecution for minor use offences and they emphasize the need for a health-oriented penal response to treat drug use problems.

7. The « third way » designates those criminal measures taken by French Public Prosecutor that are neither case closures nor court proceedings. Under this generic term, we find cautions, cases closed pending certain conditions, penal mediation, compensation measures for minors, or mandatory treatments.

8. The monitoring of individual offences in cases processed by French Public Prosecutors is only possible with the Nouvelle chaîne pénale computer programme of the French Ministry of Justice. This programme is currently in operation in the Paris region.

9. The penal response rate measures the percentage of prosecutable cases that received a penal response. Of the cases processed by a Public Prosecutor's office, prosecutable cases are those whose police report contains sufficient charges and proof to prosecute a clearly defined perpetrator.

in 2008, the levels of drug use prosecution¹⁰ exceeded one fifth of all cases (21%), the highest level since the early '00s.

In the past decade, the structure of alternatives to prosecution of drug use has changed. The proportion of legal reminders has fallen¹¹, given that they were the most frequent penal response to drug use offences in 2001 (representing more than 80% of alternatives

to prosecution). The number of treatment measures offered as alternative to criminal justice sanctions has increased, such as conditional discharge requiring outpatient treatment or social care (see figure 4). An estimated 10% of the sanctions handed down by the Public Prosecutors for drug use offences are settlement case referrals (classesments avec orientation socio-sanitaire). Other measures¹², espe-

cially criminal mediations (see Box 2), have sharply increased in number: the percentage of settlements out of all alternatives to prosecution increased from 0.1% in 2002 (none in 2001) to 4.4% in 2008. The implementation of drug awareness courses since 2008 could possibly help push this figure further upwards¹³.

The growth in the number of alternative measures with a health component in France since 2004 can be attributed to the opening of counselling cannabis clinics for young users (« consultations jeunes consommateurs ») which have represented a referral solution for Public Prosecutors, as the implementation of the setting has been quick and efficient (at least one structure per French département). An analysis of the population received in these clinics confirmed that it mainly consists of people referred by the legal system (48%), especially young adults (56%) and men (55%), who most often come following a conditional discharge with a social or treatment referral (33%) or a treatment order (17%) [Obradovic, 2009].

A record conviction rate in drug use cases in France

Legal convictions for drug-related offences where drug use was the main offence in 2008, for example, totalled 42,649 nationwide, which is twice as many as in 2002 (21,777). Approximately 7.3% of all convictions handed down are related to drug offences [Timbart, 2009]. This percentage is one of the highest ever reported (the record was 8.7% in 1993).

Drug-related offences are distributed as follows¹⁴: illegal use (19,069, or 45%), possession/acquisition (12,039, or 28%), transpor-

10. Criminal proceedings bring adult offenders before a correctional court or, more rarely, before an examining magistrate, or bring minors before a juvenile magistrate. Criminal proceedings also take place more and more frequently in the form of criminal rulings: with nearly 4,000 in 2008 for illegal drug use offences, criminal rulings represent approximately 15% of all prosecutions for these offences, versus 27% for settlements and 8% for expedited hearings after confession.

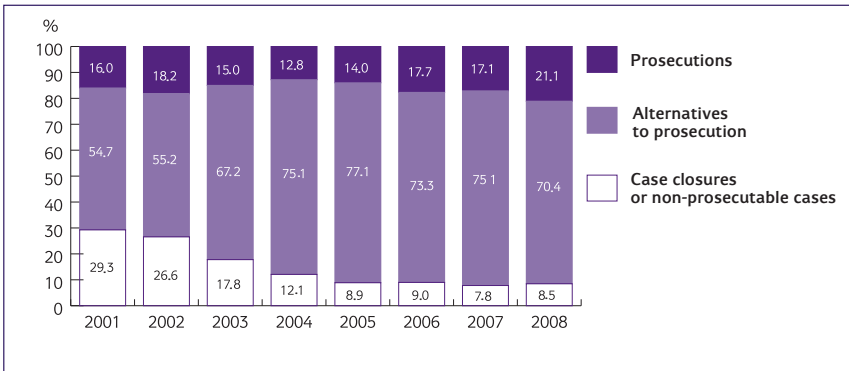
11. Warning or reprimand in the form of a letter or summons to the infringer by the Public Prosecutor or the assistant to the Public Prosecutor. As a reminder, the purpose of the latter is to implement, at the request and under the control of the Public Prosecutor, measures other than prosecution determined by the court.

12. Settlements, non-penal sentences, rectifications of the situation by the infringer to the satisfaction of the law, or paying for the damages that resulted from the offence (especially for minors).

13. The most recently available data from the French Direction des affaires criminelles et des grâces indicate that, two years after the application decree for drug awareness courses, approximately 7,000 training course orders had been handed down, but 30% had not been implemented (often due to the lack of approved associations to provide the service). Moreover, only 30% of jurisdictions responded to this questionnaire survey (source: questionnaire survey performed during the second half of 2009).

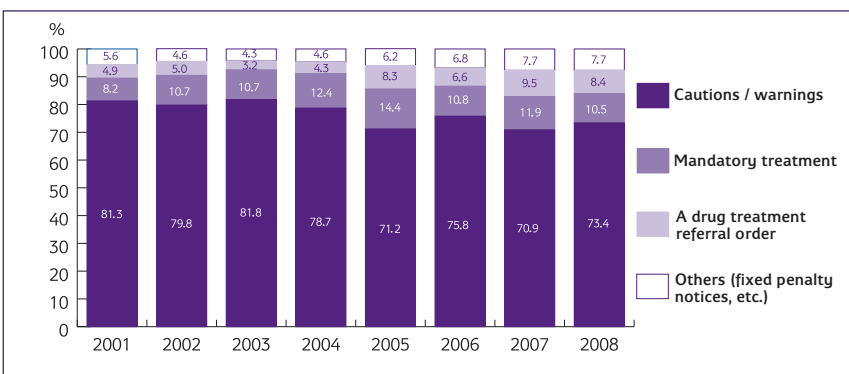
14. These categories correspond to the categories defined by the Ministry of Justice, which publishes the official conviction statistics on an annual basis. The figures presented in this sentence group the convictions for single offences and multiple offences.

Figure 3 - Change in the penal response by French Public Prosecutors to narcotics use cases in the Paris region (2001 - 2008)



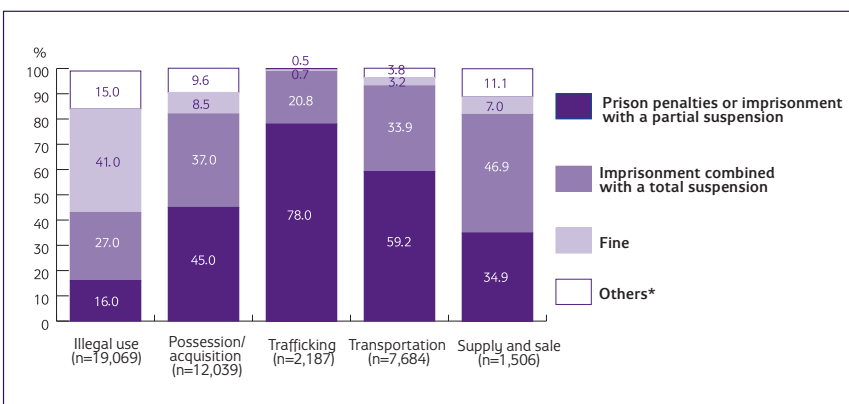
Source : Ministry of Justice, NCP Infocentre for 7 jurisdictions of the Ile-de-France region using the NCP tool (Evry, Bobigny, Créteil, Nanterre, Pontoise, Versailles), representing around 25% of legal proceedings

Figure 4 - Detailed breakdown of alternatives to prosecution handed down for drug use in Paris region (2001 - 2008)



Source : Ministry of Justice, NCP Infocentre for 7 jurisdictions of the Ile-de-France region using the NCP tool (Evry, Bobigny, Créteil, Nanterre, Pontoise, Versailles), representing around 25% of legal proceedings

Figure 5 - Convictions handed down for the main drug-related offences (sole offence or not) in 2008 (Scope: all of France)



* Alternative sentences, educative measures or sanctions, exemption from penalty

Source : National criminal record, Ministry of Justice

Box 5

A homogenization in the profiles of convicted users

Whether arrested or convicted for drug use, the offenders are primarily men (94%). This percentage is similar for drug offences and all offences. In contrast, the population of offenders convicted for drug use is younger than the population of offenders convicted for all offences combined.

Less than 6% of convicted offenders are women: this percentage has declined sharply since 1994. Up to 1994, that figure was over 10% (and had been up to 16% in 1985). Furthermore, in 2008, less than 7% of people convicted for use were juveniles when they committed their offence: 1,309 convictions were handed down against drug users under the age of 18, which represents 6.9% of all drug use convictions for the year. After increasing steadily between 2001 and 2006 (from 6.9% to 11.1% of convicted offenders), this percentage has been declining over the last few years. In contrast, drug-related offences represent more than 12% of convictions for young adults (18-25), who seem to be particularly involved in drug use convictions.

tation (7,684 or 18%), trafficking (import-export, 2,187 or 5.1%), proposal and sale (1,506 or 3.5%), assisting another person in using them (61 or 0.1%) and others (103 or 0.2%).

The part of drug use in all drug-related offences has sharply increased over the last decade, from 27.8% of convictions in 1998 to 44.7% in 2008.

The number of convictions for drug use (as the primary offence) has climbed steeply over the last two decades, even though convictions increased less sharply than arrests: the number of drug use convictions increased four-fold, while the number of drug use arrests increased sevenfold. The number of convictions for use alone, without any related offences, grew twice as quickly in 10 years than convictions for drug use as one of several offences: the number increased from 3,452 to 12,985 for drug use as a sole offence between 1998 and 2008, and from 3,234 to 6,084 for drug use as an associated offence.

A remarkable focus on non-custodial sentencing for drug use offences

The severity of sentences varies depending on the type of drug-related offence (see figure 5). Prison sentences are the most frequent sentence for trafficking (import-export) as well as drug trading-transportation and possession/acquisition. In contrast, the most common sentence for drug use is a fine (handed down in 41% of cases), followed by imprisonment with a total suspension (27%). Next are prison penalties or imprisonment with a partial suspension (16%) and alternative sentences

15. An offender sentenced to pay n day-fines at x euros per fine must pay n times x euros at a determined date. For every x euros that remain unpaid, that person spends one day in prison.

(15%), which are most often 'jours-amendes' penalties (day-fines, literally, corresponding to days in prison paid off by fines)¹⁵ or community service. Drug use is the drug-related offence that gives rise to the widest range of sentences.

The distribution of the sentences handed down for drug use has changed. In the early '80s, they were centred on prison sentences; since then, the response of the legal system to drug use cases has progressively expanded: criminal mediations (see Box 2) experienced a steep increase (from 23 cases in 2004 to 7,039 cases in 2008); the percentage of fines and alternative sentences (day-fines, community service) increased tenfold in the last 20 years. Therefore, fines and alternative sentences represent respectively 41% and 15% of sentences handed down for illegal drug use (see figure 6). The increase in the number of fines has accelerated since 2002, while the average amount of each fine has dropped (see below).

In comparison, the percentage of prison penalties remained relatively stable, at a level of 2,000 to 3,000 convictions per year. In 2008, 1,360 prison penalties were handed out for drug use alone (as the sole offence) and 1,750 for drug use associated with other offences. However, the execution of a prison penalty can be modified (in cooperation with the judge responsible for the execution of sentences): for example, the prison penalty can be commuted to community service or conditional discharge, an outside placement or open prison regime (with, if applicable, a drug treatment order). However, the conviction figures reflect the sentences handed down without indicating whether or not they were effectively enforced: recently conducted studies show that, on the one hand, sentences of over a year are not systematically enforced, even though they have a greater chance of being enforced than sentences of less than three months [Torterat, Timbart, 2005], and on the other hand, it was estimated that one out of every five prison penalties and one out of every ten community service sentences had not been enforced nearly three years after they were handed down [Warsmann, 2003].

A decrease both in the average duration of imprisonment penalties and in the fine amounts

Evidently, the type of offence influences the duration of imprisonment. The average duration of a prison sentence (imprisonment) is 13 months for all drug-related offences, with variations depending on the type of offence: 5.0 months for use and 11.3 months for possession/acquisition (2008). The courts are more severe when an offender is convicted for several offences. Yet, drug-related cases are among those most frequently characterised by multiple, interrelated offences: the increased severity of sentencing in the event of multiple offences is evidenced by longer prison terms, increasing from 1.9 months on average to 7.5 months for use, depending on whether the sentence relates to a single offence or several offences.

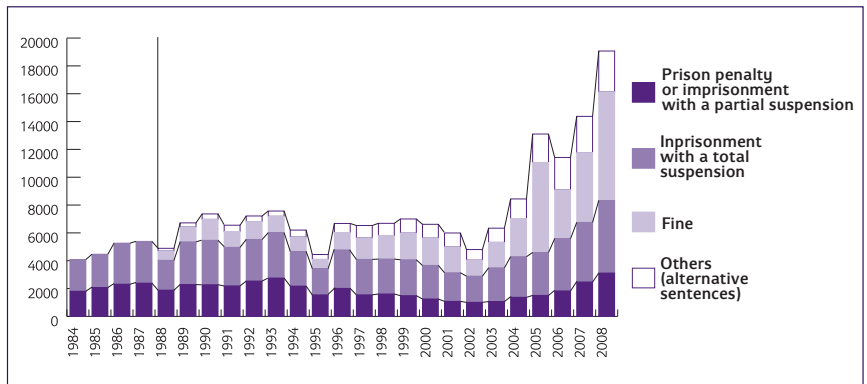
The average duration of prison terms (imprisonment) handed down for drug use has considerably diminished in France since the late '80s (when it reached 12.7 months) and during the last decade. This is true both for cases where use was the only offence (-0.8 months) and for cases where use was one of several offences (-3.1 months).

The average amount for fines handed down for illegal drug use in 2008 was 325 euros. It has decreased since 2002, when the average fine was 402 euros. This amount is half of the average fine amount handed down for offences in general (680 euros). If a fine is handed down in addition to another sentence (imprisonment with or without suspension, for example), the average amount is higher.

Conclusion

Drug use has become a major criminal justice system issue in the past thirty years. The number of convictions has risen in parallel to the number of arrests. The «criminalization» of drug use has reached unequalled levels, as the increase of such indicators as the number of arrests, the penal response rate, the prose-

Figure 6 - Changes in convictions handed down for illegal drug use (sole offence or not): 1984 - 2008 (Scope: all of France)



Source: National Criminal Record, Ministry of Justice

Note of reading: The hollows that can be noticed in 1988, 1995 and 2002 correspond to years of presidential amnesty.

cution rate and the number of convictions for drug use testifies. Currently, convictions for drug use represent nearly half of all convictions for drug-related offences.

The review refutes the common opinion that drug use is never, or hardly ever, punished in accordance to the law requirements currently in force in France.

Despite the limitations mainly due to the absence of a single source of consistent quantitative data tracking drug offenders through the criminal justice process (see Methodology), it can be estimated that approximately 14% of arrested users are subject to a criminal conviction strictly speaking, but a higher percentage receive a criminal sentence in the form of conditional settlements without prosecution and non-custodial penalties that do not appear on a person's criminal record (with the exception of criminal mediations). The conviction rate for drug use has increased over the last decade, rising up from a standpoint of 9% in 1998. Today, the majority of drug-related convictions are handed down either for illegal drug use or for possession/acquisition of drugs.

Custodial sentences for illicit drug use have become less frequent, even if 16% of convic-

tions for drug use related to cases where use is considered as the main offence are still sanctioned by prison sentencing (imprisonment or deferred imprisonment).

However, not every arrest for drug use leads to prosecution as such. Arrests can certainly lead to a conviction, but more often, they are followed by sentences other than criminal prosecution. Curbing drug use has therefore become more systematic in general: although sentences have been lessened for users who avoid aggravating circumstances, they have in contrast become tougher for people who cumulate use with other offences. In other words, the range of penal responses to the drug use offence has expanded: today, it comprises a large number of sentences handed down by Public Prosecutors upstream from the courts. This type of criminal response, which has generalized, can take the form of a simple warning, a caution, or even therapy-based alternatives to legal proceedings that may lead to quashing the public prosecution. Therefore, the sentencing of drug use has diversified: sentences have become less severe in general, but more systematic, in compliance with the criminal policy instructions issued since 1999.

The sources used here are administrative statistics from the French Ministries of Foreign Affairs, Defence, Justice and the Interior.

The Ministry of the Interior provides the statistics for every offence reported by the police and gendarmerie, and these statistics are referred to as « Etat 4001 ». The statistics on arrests for drug-related offences are prepared by the Central Office for the Repression of Narcotics Trafficking (OCRTIS) and the Direction Centrale de la Police Judiciaire. Since 1953, the DCPJ has included a central office specialised in following drug-related cases, responsible for centralizing the statistics on the annual activities of the French police, the gendarmerie and customs departments using the former National Drug-Related Offence's Record (FNAILS). Since 2006, FNAILS has been administered through an IT application called OSIRIS (Statistical information and research tool for drug-related offences) which automatically incorporates information from the customs and gendarmerie.

The Ministry of Justice publishes statistics provided by the various stakeholders of the French criminal justice system: data from the « cadres du parquet » (Annual reports on criminal statistics) collected from jurisdictions by the statistical services of the Sous-Direction de la Statistique et des Etudes (SDSE - Sub-directorate for statistics and studies) and data from the National Crime Register containing information from the National Prisoners' Register (the Prison service), which shows annual entries of prisoners into the French prison system. The National Crime Register is the only statistical source that describes offences sanctioned by jurisdictions (including, for the last few years, settlements), judgement procedures, the nature and extent of the sentences, and the demographic profile of the convicted offenders, over a long period (since 1984, when the National Crime Register was computerised). Criminal referrals were described using statistics from the Infocentre of the Nouvelle Chaîne Pénale (NCP), which is up and running in the seven largest jurisdictions of the Paris and Versailles courts of appeal. It is difficult to compare arrests, convictions and incarcerations among the data sources due to the varying classifications. The Etat 4001 classification refers to the French police force's classification system and records offences according to four categories (trafficking-dealing without use, use-dealing, use, other drug-related offences), while the classification of the former FNAILS (now OSIRIS) is based on four other classes (use, use-dealing, local trafficking, international trafficking). The Department of Justice uses another classification, which is more detailed, called « NATINF » and groups offence descriptions used during the criminal procedure into seven categories (use, aiding and abetting use, possession/acquisition, proposal and sale, trafficking, others). Finally, the National Prisoners' Register distinguishes between new detainees held for illegal use, drug trafficking or proposal of drug, when the offence is the sole or main offence (ranked first on the certificate of incarceration). Comparing all these data from different sources is challenging for five reasons:

- The units of measurement are different, since the drug user is not defined in the same way before and after entering the criminal justice system, and the categories for registering offences are different as well (circumstances, person, case);
- The offence can be reclassified at each phase of the criminal procedure: this happens through the decision of the court that sets the definitive description of the offence up to that point in the legal process;
- Conviction statistics do not specify the narcotics implied (since the French Penal Code does not distinguish between substances), contrary to arrest statistics;
- The annual data only allow us to observe flow data, and not monitor user cohorts throughout the penal process. This is because an arrest made in 2008 can have consequences beyond the moment when the arrest took place;
- The criminal justice system response to use is difficult to observe in and of itself since it is often associated with other offences. Of all sanctioned use offences, 44% are level 2, 3 or 4 offences (2008). Yet, one single conviction is handed down for several offences together (with perpetrated multiple offences evidently making the sentence handed down more severe).

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