

Rivista di Criminologia, Vittimologia e Sicurezza

Rivista quadrimestrale fondata a Bologna nel 2007

ISSN: 1971-033X

Registrazione n. 7728 del 14/2/2007 presso il Tribunale di Bologna

Redazione e amministrazione: Società Italiana di Vittimologia (S.I.V.) - Via Sant'Isaia 8 - 40123 Bologna - Italia; Tel. e Fax. +39-051-585709; e-mail: augustoballoni@virgilio.it

Rivista peer reviewed (procedura double-blind) e indicizzata su:

Catalogo italiano dei periodici/ACNP, Progetto CNR SOLAR (Scientific Open-access Literature Archive and Repository), directory internazionale delle riviste open access DOAJ (Directory of Open Access Journals), CrossRef, ScienceOpen, Google Scholar, EBSCO Discovery Service, Academic Journal Database

Tutti gli articoli pubblicati su questa Rivista sono distribuiti con licenza Creative Commons

Attribution-NonCommercial-NoDerivatives 4.0 International Public License 

Editore e Direttore:

Augusto BALLONI, presidente S.I.V., già professore ordinario di criminologia, Università di Bologna, Italia (direzione@vittimologia.it)

COMITATO EDITORIALE

Coordinatore:

Raffaella SETTE, dottore di ricerca in criminologia, professore associato, Università di Bologna, Italia (redazione@vittimologia.it)

Elena BIANCHINI (Università di Bologna), Roberta BIOLCATI (Università di Bologna), Fabio BRAVO (Università di Bologna), Lorenzo Maria CORVUCCI (Foro di Bologna), Maria Pia GIUFFRIDA (Dipartimento per l'Amministrazione Penitenziaria, Ministero della Giustizia), Giorgia MACIOTTI (Università Tolosa 1 Capitoile, Francia), Andrea PITASI (Università "G. D'Annunzio, Chieti), Sandra SICURELLA (Università di Bologna)

COMITATO SCIENTIFICO

Coordinatore:

Roberta BISI, vice Presidente S.I.V., professore ordinario di sociologia della devianza, Università di Bologna, Italia (comitatoscientifico@vittimologia.it)

Andrea BIXIO (Università Roma "La Sapienza"), Encarna BODELON (Università Autonoma di Barcellona, Spagna), Stefano CANESTRARI (Università di Bologna), Laura CAVANA (Università di Bologna), Janina CZAPSKA (Università Jagiellonian, Cracovia, Polonia), Lucio D'ALESSANDRO (Università degli Studi Suor Orsola Benincasa, Napoli), François DIEU (Università Tolosa 1 Capitoile, Francia), Maria Rosa DOMINICI (S.I.V.), John DUSSICH (California State University, Fresno), Jacques FARSEDAKIS (Università Europea, Cipro), Ruth FREEMAN (University of Dundee, UK), Paul FRIDAY (University of North Carolina, Charlotte), Jean-Marie LEMAIRE (Institut Liégeois de Thérapie Familiale, Belgio), André LEMAÎTRE (Università di Liegi, Belgio), Silvio LUGNANO (Università degli Studi Suor Orsola Benincasa, Napoli), Mario MAESTRI (Società Psicoanalitica Italiana, Bologna), Luis Rodriguez MANZANERA (Università Nazionale Autonoma del Messico), Gemma MAROTTA (Sapienza Università di Roma), Vincenzo MASTRONARDI (Unitelma-Sapienza, Roma), Maria Rosa MONDINI (Centro Italiano di Mediazione e Formazione alla Mediazione, Bologna), Stephan PARMENTIER (Università Cattolica, Lovanio, Belgio), Tony PETERS (Università Cattolica, Lovanio, Belgio), Monica RAITERI (Università di Macerata), Francesco SIDOTTI (Università de l'Aquila), Philip STENNING (Università di Griffith, Australia), Emilio VIANO (American University, Washington, D.C.), Sachio YAMAGUCHI (Università Nihon Fukushi, Giappone), Simona ZAAMI (Università Roma "La Sapienza"), Christina ZARAFONITOU (Università Panteion, Atene), Vito ZINCANI (Procura della Repubblica, Modena)

Alternatives to Detention in France: much ado about law, little about criminology

Mesures alternatives à l'incarcération en France: beaucoup de bruit sur la loi, pour rien ou presque sur la criminologie

*Martine Herzog-Evans, Delphine Boesel, Stephan Parmentier, Pietro Sullo**

Riassunto

Il presente articolo descrive sinteticamente il contesto politico e sociale nel quale sono maturate le discussioni relative alle alternative alla detenzione in Francia. Successivamente, analizza le alternative previste attualmente evidenziandone la ratio giuridica e criminologica ed esprimendone una succinta valutazione. Infine, vengono riportate ulteriori informazioni circa le alternative alla detenzione previste per specifiche categorie di persone.

Résumé

Cet article décrit tout d'abord le contexte politique et social dans lequel il conviendrait d'échanger sur les alternatives à la détention en France. Il analyse ensuite les alternatives existantes en expliquant leur nature et leurs sources juridiques et criminologiques avant de donner une courte évaluation des solutions alternatives à la détention. L'article se termine par un supplément d'informations sur les alternatives à l'incarcération pour certaines catégories de personnes.

Abstract

This article first sketches the political and social context in which the discussions about alternatives to detention in France are to be situated. It then analyses the existing alternatives by explaining their legal and criminological rationale and sources, and goes on providing a short evaluation of the alternatives to detention. It concludes with more information about alternatives to detention for specific categories of persons.

Keywords: alternatives to detention; France; law; criminology; victims.

1. Introduction.

In recent years France has increasingly developed a number of methods to reduce prison incarceration. The system has adopted a threefold articulation, relying on measures (a) adopted before the trial ('doorstep approach'), (b) at the end of the trial ('front door approach'), or (c) after the sentencing phase ('back door approach'). In the first case, pre-sentencing procedures which are alternative to prosecution or to judgement are installed. In the second case, alternative sentences are available for the felony courts when they are seized in the absence of a pre-trial procedure. In the third case,

back door options allow opportunities for the reduction of prison sentences which have already been imposed, either before or after their execution. This article first sketches the political and social context in which the discussions about alternatives to detention in France are to be situated. It then analyses the existing alternatives by explaining their legal and criminological rationale and sources, and goes on providing a short evaluation of the alternatives to detention. It concludes with more information about alternatives to detention for specific categories of persons.

* Martine Herzog-Evans teaches law and criminology at Reims University (France); Delphine Boesel is an attorney at law, Paris Bar exam. She is also the President of the French prison watch (NGO), Observatoire international des prisons. She teaches at the University of Lyon (France); Stephan Parmentier currently teaches sociology of crime, law, and human rights at the Faculty of Law of the University of Leuven (Belgium); Pietro Sullo is Research Associate at the Leuven Institute of Criminology, University of Leuven (Belgium).

2. Political and Social Context of Alternatives to Detention in France.

In order to situate the legal provisions relating to alternatives to detention in their proper context, we first deal with four aspects of a politico-social nature.

2.1 Political arguments to implement and design alternatives to imprisonment.

In France, criminal justice issues are systematically politically polarised. However, in recent years the traditional punitive versus lenient opposition between both sides of the political spectrum has become more blurry. For instance, whilst former president Nicolas Sarkozy has built much of his political career on ‘tough on crime’ discourses and policies, he nonetheless had a ‘Prison Act’ passed in 2009 that attempted to fast release as many prisoners as possible – a law that failed as it did not address the root causes of overcrowding, nor dealt with France’s lack of re-entry programmes and practices. Likewise, a 2014 Act by the current ‘left’ government is an odd mix of punitive and lenient discourses which both tries and create yet another fast release system that is equally failing (ongoing research by this report’s leading author) for identical reasons and attempts to sound punitive. In the latter vein, the 2014 act has created a new – and additional – probation sentence presented as tougher than previous ones (‘penal constraint’, a telling terminology). In other words, the narrative of recent reforms has become rather similar for both sides of the political spectrum. This narrative goes as follows: the government wants to appear sufficiently punitive whilst developing alternative sentences and speedy unconditional release measures with two identical goals: first, in financially dire times, to cut expenses; second, to at

least present the appearance of protecting human rights by addressing overcrowding (1).

2.2. A cost-benefit analysis of prison detention and its alternatives

To date no cost-benefit analysis has ever been produced in France which is to be correlated with a general reluctance to evaluate practices and legislations. However, the Accountancy Court (*Cour des Comptes*) has controlled prison finances three times (2006, 2010, 2014); in relation to overcrowding it has advocated the development of alternative sentences and measures. The *Cour des Comptes* has fustigated the terrible mismanagement of finances and the inability to correctly execute the prisons’ core missions i.e. ‘guarding inmates and preparing their reinsertion’ (2006). Each time, it has also commented on the lack of methodologically convincing evaluations of prison management, prison outcomes, along with the lack of comparison between the private and the public sector. It has also focused on overcrowding in particular (2010). In 2014, it has focused on prisoners’ health, and even though it has praised the fact that since 1994, health agencies had been put in charge, it has concluded that health needs were far from being met. The *Cour des Comptes* has recently investigated how sentences are implemented and, in the course of an Emergency Report, has regretted the lack of evidence-based practices in probation (2).

2.3 The socio-demographic profile of prisoners.

It is worth noting that France does not produce detailed statistics pertaining to the socio-demographics of its inmates or probationers. Each year, its prison services issue a ten-page general report that only provides one socio-demographic element pertaining to prisoners’ age. Thus on January 1st, 2013: 0,1% inmates were under the age

of 16 (N 95); 0,8% 16-18 (N634); 7% 18-21; 17,9% 21-25; 20,4% 30-40; 16,3% 40-50; 7,7% 50-60; 3,5% over 60 (3). For more information one can only rely on *ad hoc* reports and occasional studies. Such was the case of a 2008 small report published by two prison services' researchers who focused on socio-demographic characteristics of offenders serving their prison sentence under electronic monitoring (EM). This five-page report showed that women accounted for only 5% of offenders under EM; 7,5% were foreigners; 42,6% were married or lived with a partner; 46,4% had at least one child (4). It showed that their mean age was 34 and that nearly two thirds were employed. Another, albeit older, study by the National Agency for Statistics showed that more than half of male inmates were less than 30 and that in many jurisdictions, the peak of the incarceration rate was between 21 and 25 years of age (5). However, it also reported that over the previous twenty years, prisoners had become older. Unsurprisingly, it revealed that the vast majority belonged to the lower classes of society with the lowest educational levels. One out of seven had never been employed and one out of two was or had been a labourer. More than half of them had at least four brothers or sisters and one out of twenty belonged to a family with more than ten children. The study showed that there were twice as many foreign prisoners than foreigners in the general population.

2.4 A focus on victims.

There is an extreme paucity of French research on victims and sentences and on their implementation. However, as in many Western jurisdictions, victims' associations and networks have campaigned and obtained a few rights at the sentencing and sentences' implementation phase. At the sentencing phase, France mainly allows victims to present their

claim for damages and to swiftly describe how the offence has been committed (6). The law does not organise a victim impact statement. In many cases the trial is too speedy, or a bifurcation procedure has been used, for the victim to actually be present (7). Regarding the sentences' implementation phase, a law passed in 2000 (June 15) has ensured that whenever damages are to be paid, early release measures and remission are *inter alia* subjected to the offender actually paying them (8). Moreover, victims *can* now be asked to provide a written (in certain cases by phone) statement whereby they express their opinion on the early release of the offender (Penal Procedure Code, art. 716-16-1); this rule is in practice only applied for serious crimes. Victims are in any case not considered as being a party to release trials (Court of Cassation, Criminal Chamber, March 15, 2006, n 05-83.684) and cannot appraise the judge applying the sentence (*juge de l'application des peines*) of any claim; nor can they appear in court. Only with parole cases pertaining to sentences exceeding five years, can their attorney represent them in court (PPC, art. 730, sec. 4).

3. Alternatives to prison detention: an overview.

In the last decades, several alternatives to prison detention have been developed in France which take place during three phases of the penal process: pre-sentence (plea-bargaining; alternatives to prosecution; and alternatives to trial); sentencing (with community sentences), and release (with release measures or other sentence reduction systems).

3.1 Alternative procedures at the pre-sentence phase.

According to the French penal procedure code (hereinafter PPC) Public Prosecutors are vested with a decisional power called 'the principle of

opportunity', whereby they can decide over the action to be taken to address a felony offense. Article 40-1 of the penal procedure code states that prosecutors decide: '*... if it is opportune 1° either to initiate prosecution; 2° or to enforce an alternative procedure applying the regulation of articles 41-1 and 41-2; 3° or to close the case with no further action...*' (emphasis added) (9). In other words, prosecutors are in charge of what has become known as 'penal orientation'.

As a result, alternative procedures to prosecution or alternative procedures to judgment are both admissible. 'Alternative to prosecution' procedures have been developed in the 1990s. Initially their goal was not to reduce prison populations, but, quite the contrary, to actually deal with felony offences in a faster and more systematic way and, in particular, to end the widespread but contentious practice that consisted in 'closing the case with no further action'. At the outset, alternatives to prosecution were more akin to 'zero tolerance' policies than to rehabilitative or restorative approaches. Another rationale for prosecutors' office being vested with such crucial powers within felony courts was the desire of central executive bodies, particularly the Ministry of Justice, to have a decisive influence over the judiciary: in France, prosecutors are under the direct authority of the Ministry of Justice.

Thus a distinction was made between two forms of out of trial treatment of felony offences, which were regulated by a law passed on 23 of June 1999. On the one hand, 'the alternative measures of article 41-1 of the criminal procedure code, often labelled as simple alternatives' and, on the other hand article 41-2 penal composition 'which is presented as a punitive alternative, insofar as punishing the person is truly an advantage...' (10).

Alternative to trial procedures were also inspired by

the need to speed up the processing of felony offences. In fact, they were developed in order to provide a swift response without the need to assemble three judges to compose a felony court in collegial hearing or even when a hearing with one judge may have been an option (art. 398a, para. 3 PPC). However, prosecutors' decisions must be homologated by the President of the tribunal or a judge delegated by him/her. These procedures' main purpose is therefore to accelerate and systematise the handling of felony offences while simultaneously relieving felony courts. However, their implementation has as indirect impact on the reduction of incarceration.

3.1.1 Alternative procedures to prosecution.

The French PPC provides two alternative procedures to prosecution. The first alternative, regulated by article 41-1, is penal mediation. Article 41-1 contains a list of measures that public prosecutors can draw upon in the course of penal mediation. The overall goal is to fulfil three objectives, namely: a) ensure that the damages caused to the victim are compensated; b) put an end to the public disorder caused by the offence; c) allow perpetrators' reinsertion into society. Prosecutors must have these aims in mind when they choose between the following options: simply remind the offender of his legal obligations as a citizen; ask the offender to seek treatment, or improve his situation in terms of social insertion and employment, by referring him/her to a partner agency (often a third sector association); submit to a form of training or internship that pertains to citizenship, parental responsibility, or awareness on the use of drugs; or ask the offender to compensate for the damages, or to comply with the law.

The second alternative procedure to prosecution is embodied in article 41-2 PPC and relates to penal

composition. When a person admits to having committed a felony punishable by a fine or a prison sentence of up to five year, and in lieu of setting prosecution in motion, public prosecutors can draw upon a very long list of eighteen options, listed in article 41-2, and, inter alia: paying a fine; being deprived of the use of one's car or driving licence for six months and other confiscations; executing a maximum of sixty hours of community work; submitting to a form of training or internship; six months restraining order; submitting to various forms of mandatory treatment; and so forth. This procedure also applies to misdemeanours (art. 41-3 PPC).

The two procedures have a different impact on public prosecution. The full execution of the obligations imposed on the basis of article 41-2 extinguishes public prosecution; conversely, executing the constraints imposed on the basis of article 41-1 does not bar victims from lodging a complaint. However, the two procedures share one important thing in common, however: in both cases, no custodial sentence can be pronounced.

Going one step further, the aforementioned 2014 Act (Law of 15 August 2014, n° 2014-896 relative to the individualisation of sentences and strengthening the effectiveness of penal sentencing) allows higher rank police officers (those vested with important investigative powers) to propose a penal transaction to both natural and legal persons as long as no public action has been set in motion. Police Officer Penal Transaction as regulated by article 41-1-1 of the PPC only applies when the person has committed a felony which is punishable by up to one year imprisonment (with the exception of contempt offences). This transaction has to be authorised by the public prosecutor, must be accepted by the person in question, and then has to

be homologated by the president of the tribunal or by a judge delegated by him/her. The proposed transaction is '*determined on the basis of the circumstances and the severity of the offense, the personality and the material, family and social circumstances of the perpetrator as well as his/her resources and loads*'. Again, custodial sentences are excluded from Police Officer Penal Transactions.

3.1.2 Alternatives to trial procedures.

French law also establishes for two alternatives to trial procedures. The first alternative is Penal Ordinance for Felonies (*Ordonnance Pénale Délictuelle*), which was first created by the Law of 9 September 2002 (n° 2002-1138). This procedure allows the felony judge to impose a sentence to an adult offender who has committed a felony offence and has not also committed a misdemeanour. This procedure only applies to unintentional manslaughter or unintentional damage to a person. It can only be set in motion if the victim has not made his/her intentions clear at the investigation stage. As with the previous alternatives presented above, it does not allow imposing a custodial sentence (art. 495 PPC). In the case of Penal Ordinance for Felonies, the main explanation for this is that these are potentially relatively serious cases and the procedure does not provide for an adversarial hearing. Clearly, then, and regrettably, this procedure aims at bypassing due process.

The second alternative to trial is the procedure of Appearance on Prior Guilty Plea (*Comparution sur Reconnaissance Préalable de Culpabilité* (CRPC). Pursuant to CRPC, a sentence is proposed by the public prosecutor following the accused's appearance before him/her. In this case, legal assistance is mandatory. This sentence can only be executed if it is accepted by the accused and then approved by the president of the tribunal or a judge

delegated by him/her. In the absence of such an agreement or approval, the accused is summoned before a regular felony court in order to be tried. This procedure does not rule out the imposition of a custodial sentence. However, such a sentence should be reduced by comparison with the Penal Code tariff. Article 495-8 of the PPC thus states: *'when a prison sentence is proposed, its duration cannot exceed one year nor exceed half of the applicable prison sentence'*. In other words, this procedure is not truly an alternative to imprisonment; it is more precisely a procedure which allows reducing the length of custodial sentences.

According to the last statistics published by the Ministry of Justice (11) in relation to 'prosecutable cases' (1.379.076 representing 100%), the public prosecution decided to resort to alternative procedures in the following proportions: a) penal compositions 5,5% (75.493); b) alternative procedures 39,7% (547.678). The decisions to prosecute amounted to 43,8% of the sum total of all cases (603.582), while 11% were closed without further action (152.333). According to the same data and relating to the total number of decisions to prosecute (603.582, representing therefore 43,8% of the prosecutable cases) prosecutions before felony court amounted to 492.304 cases representing 81,56% of the trialled cases. Of these procedures CRPC represented 10,78% (65.106) and Penal Ordinance for Felonies represented 24,20% (146.102 cases).

3.2 Alternative sentences.

It can be argued that prison sentences remain the reference sentence in France, occupying the leading position in the convictions pronounced by French penal courts. In fact, all crimes and felonies are punishable by a custodial sentence, at least according to the Penal Code. As for felonies,

however, article 132-19 of the Penal Code (hereinafter PC) as amended by the Law of 15 August 2014 affirms that felony courts can only pronounce custodial sentences:

- a) *'when the gravity of the offense and the personality of the offender make this sentence necessary and if any other sentence is clearly inadequate'* and in such cases, the courts must, if possible, try to convert it into an alternative sentence.
- b) if they justified in their ruling the reasons why such a sentence was appropriate, why no other sentences was sufficient, and, furthermore, why they did not deem possible to convert a custodial sentence into a community sentence or measure; as a matter of fact the Court of Cassation stringently controls that felony courts submit to article 132-19 constraints (12).

The central role of imprisonment sentences is confirmed by the following data. In 2012, 617.221 convictions were pronounced, 47,37 % of which were prison sentences (292.399 in total). Of these prison sentences, 122.301 (41,8%) comprised one part custodial and one part non-custodial (probation) ('mixed sentences').

In reality, though, French felony courts can choose form a vast array, and often rather sophisticated, list of alternative sentences. These first of all include fines, which consist in the payment to the Public Treasury, of a sum of money. Fines amounted to 36,54% of the pronounced sentences during the year 2012 (225.582 fines were pronounced). Fines can be pronounced either as a standalone sentence or additionally to another sentence, and in particular to custodial sentences.

A specific sentence not implying incarceration is day-fine. Article 131-5 of the PC stipulates that *'when an offense is punishable by a prison sentence, the felony*

court can pronounce a day-fine consisting for the convicted in paying a sum of money to the Treasury, the amount of which results from the determination by the judge of a daily contribution during a specific number of days'. When choosing a given number of day-fines, and the exact amount for each day, the judge has to take into account the person's financial situation. It is important to note that this sentence is not completely detached from the prison sentence because if the person does not pay, he/she will then have to serve the number of prison days attached to the day-fine. A day-fine can, and usually is, pronounced not by the felony court itself, but by the re-entry judge (*juge de l'application des peines* – hereafter JAP). During the year 2012, 24.271 sentences of day-fine were pronounced, that is 3,93% of all sentences.

Suspended prison sentences represent a second type of alternative. In this case a custodial sentence is imposed, but not executed. The suspended sentence is not executed if the person does not commit further offences during the probationary period attached to this sentence and, when this probationary period comprises a probation order, if the person does not violate his/her obligations. Suspended sentences are either 'simple' or 'with probation'. The custodial sentence which is pronounced is either entirely suspended or partially suspended, in which case it is called a 'mixed sentence'. Articles 132-29 to 132-57 of the PC specify the cases and the conditions under which these sentences can be pronounced or revoked.

In the case of a simple suspension, the conviction is 'annulled' (that is, it disappears retroactively and is erased from criminal records), if the beneficiary is not convicted again for a crime or an offense within a period of five years after sentencing. Conversely, a conviction for another offense during this five year

period causes the withdrawing of the suspension. Any new sentence pronounced for the new offence is thus executed following the original suspended sentence; they cannot be served concurrently. However, the court can exempt the convicted of the withdrawal of the initial sentence (13). Relative to the suspended sentence with probation, the offender must serve a probation order as determined by the felony court, which cannot exceed three years (and is typically of eighteen months to two years); five years for recidivists and seven for people twice sentenced as recidivists. If, during this probation period, the person is neither sentenced for a new offence, nor held in breach of the conditions attached to the order, as with simple suspension, the sentence is retroactively annulled. If the person commits a new offence, the felony court, and if the person breaches the order, the JAP, can revoke entirely the suspended custodial sentence. They can alternatively prolong the order if the initial order did not exceed the aforementioned maxima; they can also partially revoke the custodial sentence (14).

The PC allows pronouncing other sentences, when imprisonment is applicable. One main category of such sentences is Community Work (*travail d'intérêt general* - TIG) is regulated by articles 131-8 and 131-22 of the PC. It can apply to felony offences punishable by custodial sentences. Depending on the court's decision, the person can be sentenced to 'carry out for a period of 20 to 280 hours of non-paid community work for either a public *law legal person*, or a *private law legal person that has received a public service delegation*, or for a *not for-profit association*'. This sentence can only be pronounced if it is formally accepted by the person immediately after his/her conviction (15). Not complying with TIG constitutes an offense which is punishable by up to

two year imprisonment, and/or a fine of up to 30.000 euros (art. 434-32 PC). TIG can also be mixed with suspended sentence with probation (see *supra*). It then constitutes a separate sentence called STIG (*sursis avec mise à l'épreuve et travail d'intérêt général*). Albeit autonomous from both suspended sentence with probation and TGI, STIG nonetheless comprises legal consequences attached to both sentences, such as: a custodial sentence; which is suspended; plus a probation order; plus community work. If STIG is a sentence, the JAP can also pronounce STIG to transform a custodial sentence of up to six months in the context of article 723-15 procedure (see below). If either the obligations or the community work attached to STIG are not complied with, the JAP can revoke all or part of the custodial sentence. In practice, it is most of the time preceded by one or even two 'reminding of the law' informal hearing(s) with the JAP.

In 2012, 25.732 TIG sentences were pronounced, that is slightly in excess of 4% of the total number of sentences. These numbers include STIG with the following distribution: 8.721 STIG and 17.011 TIG. For the year 2011, the Ministry of Justice estimated that almost 77% of all TIG were correctly executed, that is to say that offenders both complied with their work obligation and their obligations and did not commit a new offence. On January 1st 2013, the Ministry of Justice further indicated that the probation services (*services pénitentiaires d'insertion et de probation* - hereafter SPIP) supervised 34.096 persons either for a TIG or a STIG (unfortunately official statistics did not specify). These numbers increased up to 36.588 on January 1st, 2014 (16).

A third alternative sentence is a 'citizenship course' (*stage de citoyenneté*). It can be pronounced in lieu of a custodial sentence (art. 131-5-1 PC). *Stage de*

citoyenneté is a form of educational refreshing class which should 'remind' the offender of '*republican values of tolerance and of respect for human dignity on which society is based*'. Fees for the class are to be paid by the offender and for this reason, can only be pronounced if he or she agrees. Therefore it cannot be pronounced against a person who is not present at his/her hearing.

A fourth series of alternatives to imprisonment is listed in article 131-6 of the PC. These so-called 'complementary sentences' can, in actual fact, either be pronounced as a stand-alone sentence or as a complementary sentence. These sentences can either deprive or restrict a person's liberty or rights. They consist in, inter alia: suspending a driving license; prohibiting the use of certain vehicles; cancelling a driving license; prohibiting the carrying of weapons, or the confiscation of weapons. In 2011, 198.505 'complementary sentences' were pronounced in repression of felony offences. These included: 3.053 exclusions from the French territory; 90.887 driving license suspension; 26.707 prohibitions to retake a driving license test after annulment; and 42.390 confiscations (17).

A fifth category of alternatives to custodial sentences is 'punishment and redress' (art. 131-8-1 PC). It can be pronounced 'instead of or at the same time as' a prison sentence. It consists in obliging the person to repair the damages caused to the victim within a time frame defined by the felony court. If the convicted individual does not respect this obligation, (s)he faces the execution of a prison sentence, which cannot exceed six months, which is pre-determined by the felony court should this happen.

A sixth category of alternatives, adjournment, is not in actual fact an alternative sentence. It represents the caesura of the penal process between the

conviction and the sentencing phase, when, in all other instances, these two phases traditionally take place in the course of one single hearing. In such a case, the felony court decides that the person is guilty and convicts the person, but temporarily exempts him or her of any sentence, by adjourning the sentencing to another hearing, at a further date up to one year. This is typically decided at the conviction, but can exceptionally occur a second time, when there has been a first adjournment. Adjournment can be 'simple' or conditional. If the adjournment is simple, the person simply has to avoid committing a new offence. If adjournment is conditional, the person is submitted to a probation period, during which he or she is submitted to various obligations, identical in nature to those which prevail with suspended sentences with probation (e.g. pay damages; submit to treatment; seek employment, and so forth). During the second trial, set on a date no later than a year after the first hearing, the felony court can either sentence the person, exempt the person of any sentence, or adjourn again if the maximum one year maximum was not exceeded the first time around. Unfortunately adjournments are quite rare. On January 1st 2014, there were only 184 people benefitting from conditional adjournment and supervised by the PSIP. Although penal caesura seems very positive on paper, in overburdened French felony courts' real life, it is simply impossible to devote two hearings to a given case.

In France, sentencing is typically hurriedly decided upon on the basis of a single hearing. It is made at the very same time as the conviction decision on the basis of very little, if any, psycho-social information pertaining to the person and his/her circumstances. Most decisions are made in the absence of a pre-sentencing report; French probation services no

longer consider that this is part of their job. This is very important since studies show that the less information a court has on an offender, the highest his risks are of being sentenced to prison (18). This is one of the major obstacles in this jurisdiction, to the development of alternative sentences.

In 2011, 290.322 custodial sentences were pronounced for felony offences. Of these however, only 89.484 were not suspended or otherwise converted. Partial simple suspension amounted to 4.557 decisions; partial conditioned suspension to 27.505 cases; total simple suspensions, to 111.015 cases; total conditional suspension to 49.207 cases; and, lastly STIG accounted for 8.554 decisions. Data of 2011, as published by the Ministry of Justice, included all types of offences, ranging from the most serious to the less serious offences: crimes, felonies, and misdemeanours. On this basis, 593.143 sentences were pronounced comprising: 291.849 custodial sentences (90.317 unsuspended; 32.468 partially suspended; 169.064 totally suspended); 206.049 fines; and 6.639 sentence exemptions.

Penal constraint (*contrainte pénale* - hereafter CP) is an additional probation sentence created by the Law of August 15, 2014. CP consists in a probation period of six months to five years. It can include identical obligations attached to conditional sentence suspension or STIG; it can thus include community work. It can even include mandatory treatment for sex offenders, although in practice CP is not the sentence of choice for such offences. Its official goal was to compete with imprisonment. In actual fact, however, it was presented as a competitor for all the other alternative sentences, which it was supposed to abrogate and replace as of 2017. The resulting impact would have been a net widening effect, as PC was in fact supposedly more constraining than other alternative sentences with

probation, had it been successful. Instead, its implementation rather pathetically failed, as predicted (19). Indeed, although it was nearly identical to conditional sentence suspension, it was much more complicated technically and much less thorough in terms of its legal provisions (20). A second reason was that it was apparent from the very beginning that SPIP would not be in a capacity to develop the full range of evidence-based practices and more stringent probation supervision that penal constraint was supposed to entail. Thirdly, SPIP had strongly opposed any partial privatisation to the not-for-profit sector to help them implement a sentence they advocated but could not implement. Lastly, the so-called detachment from custodial sentence that CP was supposed to represent was patently false: in order to sanction a person serving CP who would not comply with his/her obligation or would commit another offence, the felony court had to pre-determine a custodial offence. Rather than allowing the JAP to implement this sentence as is the case with other alternative sentences, the law created an extremely impractical system, which has strongly contributed to courts' detestation of this sentence.

3.3 Release measures.

Article 707 of the PPC contains a list of principles which must guide the JAP and TAP (a three JAP court competent for the most serious cases) when they make decisions pertaining to the sentences' implementation phase: 1) sentencing decisions must be executed swiftly; 2) offenders' reinsertion and rehabilitation are, along with the prevention of reoffending, the ultimate goals of sentences' implementation; 3) most prisoners should be early released on license. '*Back door*' decisions – called 'sentence management' in French – is the most widely used path used to avoid or shorten

imprisonment.

As mentioned supra, felony courts can pronounce a prison sentence and immediately convert them into an alternative sentence or measure. However, in practice, sentencing courts do not have the time, nor the information required to convert custodial sentences to fit the person's personality and circumstances. Sentence conversion or 'management' is therefore mostly done in the context of one of two procedures, that take place after the sentencing phase and are pronounced by the JAP, or for the long sentences, in certain cases, by the TAP. The first, and very original, of these procedures is that of 'ab initio sentence management' as regulated by articles 747 and 723-15 of the PPC – otherwise known as 'procedure 723-15' – whereby the JAP can convert a custodial sentence of up to two years into a community sentence or measure (one year if the person is a recidivist) (I). More traditional is the release procedure, yet France is also original in that its legal systems has a great number of releases; not limited to parole, unlike many other European (21) or other legal systems (II). These measures are equally applicable in the context of article 723-15.

3.3.1 Sentence reduction before execution.

Articles 474, and 723-15 is a particularly original procedure. 'Procedure 723-15' applies to any person sentenced to one or several custodial sanctions of up to two years (one if he/she is a recidivist), a person who is convicted to one or more sentences, the total of which does not exceed two years, who is not yet incarcerated for another reason. Should the felony court object to article 723-15 being applied, it must then issue a bench warrant. The offender is convoked before the JAP and the SPIP may be asked to issue a report on his/her personality and circumstances. In many cases the

attorney acts in lieu of the SPIP and provides documented proofs. The JAP can transform the sanctions normally available for prisoners, into: 1) a STIG sentence – in this case only if the person has up to six month to serve; 2) a day-fine – with the same six month limit; 3) parole (only in two cases: in the form of ‘parental parole’ if the person has at least one child under the age of ten, whom the person has physical and legal custody of; or, if the person does not have children, if (s)he has been previously provisionally detained and then released and has therefore executed part of his/her sentence); 4) semi-freedom (a measure whereby the person has reinsertion activities in the community and sleeps in the prison at night where he/she also stays on non-working days); 5) ‘placement in the community’ (a measure which applies to people with multiple social, psychological, and criminogenic needs (22); 6) electronic monitoring (23).

No official statistics exist pertaining to article 723-15, as this would be a rather contentious subject. However, the first author who was consulted by the leading author of a public report, at the beginning of 2016 heard the latter, M. Delbos, confiding that officially up to 30.000 custodial sentences are avoided each year thanks to this procedure. However, he refrained from writing it in his report (24). In other words, ‘procedure 723-15’ is an extremely efficient alternative procedure; but it is efficient precisely by remaining hidden from the general public. That being said, and as mentioned previously, the court can always prevent its implementation by issuing a bench warrant; moreover, the leading author of this article has been the direct witness during her own research (25) that an important proportion of offenders simply do not turn up at the tribunal when they are convoked,

thereby waiving their right to an *ab initio* release measure.

3.3.2 Sentence reduction during the execution of an effective sentence.

When a custodial sentence is implemented, the person can still benefit from the reduction of his/her sentence. In this regard, France presents three particularities. Firstly, it is a court that pronounces the decisions, not an administrative commission or authority. This court, the JAP, constitutes in essence the ancestor of ‘problem-solving court’ (26). Secondly, as indicated above, there is a host of different release measures in the French legal system. Thirdly, this legal system has been amended multiple times in the recent period – with the latest episode of this legal saga being the aforementioned 2014 Act – which has rendered the field of sentence implementation extremely complex and confusing, one consequence being that several procedures can lead to different release measures. Some of these procedures abide by due process rules; others do not.

Regardless of the release measure solicited by the prisoner, the person must normally file a petition with the JAP or TAP and prepare a release plan (‘the Project’), either with the help of the SPIP, or increasingly, with his attorney, the third sector, and relatives. The decision, subject to appeal, is then made in the context of adversarial hearing. Parallel to this mainstream due process procedure, the 2014 Act has created a supposedly fast-track procedure, precisely because it has been deprived of its due process attributes. However, this procedure has predictably failed, as previous similar procedures had, as they do not provide JAP with enough information and offenders prefer having a voice in the proceeding (27). Regardless of the sentence reduction, the JAP rules on the basis of the quality

of the release project and, in particular, on employment, education, and addiction or other forms of treatment. They also take into account the reinsertion efforts made in prison. They also pay attention to previous community sentences or measures, and whether they were complied with (28).

Needless to say that JAP and TAP pay particular attention to reoffending risk levels. However, in the absence of evidence-based assessment tools, this consideration is essentially present with serious offenses, long sentences or violent offenses. In France, the purely disciplinary behaviour while in detention has very little weight in the decision making. Unfortunately with the so-called fast track release created by the 2014 Act, JAP have such little information that they have to rely heavily on such behaviour and sometimes merely on flimsy information pertaining to whether the person does something, in fact *anything*, whilst in prison.

France oldest release measure is parole (conditional release). France was indeed the first European country which created this measure as early as 1885 and for decades, it was the only available release measure. Today it is little pronounced because of the competition with other existing measures. As a matter of fact, there is not one type, but several types of parole. The first is ordinary parole as regulated by article 729 of the PPC. It is accessible to prisoners who have a minimum of half of their sentence left to serve. It is important to note however that this 'half' point condition does not represent exactly half of the sentence since two types of remission, one for good conduct, one for resocialisation efforts, apply and may reduce gradually, but significantly, what is left to serve. In practice, it is thus not rare that offenders can apply for parole when they have actually served only a

third of their sentence. The 2014 Act moreover abrogated the more stringent rule that previously applied to recidivists who had to have served two thirds (minus remission) of their sentence. Adding to this, Mister Sarkozy's Prison Act (2009) allows offenders to apply for semi-freedom, placement in the community, or electronic monitoring as a probationary measure to parole, to which it is then attached, one year before they are eligible to parole. One can thus see that the lack of success of parole may be due to its extremely generous conditions – far more than any other European jurisdiction. Courts may have become a little weary of such generosity and opted for more constraining measures. Nonetheless, legislators' generosity is also patent with the second type of parole, namely Parental Parole (art. 729-3 PPC). Parental parole is available to any person convicted to a sentence of up to four years or who have up to four years to serve on a longer sentence, and who have both physical and legal custody of at least one child aged up to ten years old, with whom they effectively and habitually reside. A third type of release on parole applies to elderly prisoners who are at least seventy year old (art. 729, last but one paragraph, PPC), providing they have a bare minimum release plan (e.g. reside in a pensioners' home) and do not represent a serious risk of harm. Special rules, regulated by article 730-2 of the PPC created by the August 10th 2011 Act, C, apply to all these types of parole, to several categories of offenders serving long sentences who have committed serious crimes (notably sex offences or very violent homicides), and, since the antiterrorist Act of June 3, 2016 (n°2016-731), which has introduced in the PPC a new article 730-2-1, to terrorists. According to articles 730-2 and 730-2-1, these dangerous offenders cannot be released on parole unless they

have submitted to a long series of expert risk assessment, and unless they first serve a one to three year period under one of the aforementioned three stringent measures under prison registry, i.e. semi-freedom, placement in the community, or electronic monitoring.

As mentioned *supra*, these three measures are also release measures. They are increasingly favoured by JAP; this is particularly the case of electronic monitoring, which the prison services have chosen to fund much more extensively than semi-freedom and placement in the community.

According to official statistics provided on January 1st 2015 (29), only 20,9% of prisoners had benefitted from an early release measure. This can be explained by two factors. On the one hand, the vast majority of prisoners serve short sentences, which does not allow probation services to prepare them for release. On the other hand, a gradual shift in probation services' professional culture (30) has led them to behave more like paralegals than social workers (31) – this terminology having been voluntarily deleted from the PPC by the prison services with which probation services have been merged. The result of this shift is that probation services do not actively prepare offenders for release, this job being increasingly taken, but insufficiently so, by third sector charities and, in many cases, by prisoners' families and their attorneys (32). Naively, prison services imagined that by creating a new release procedure, devoid of any social or merit condition, it would force judges to release more prisoners.

3.3.3 The procedure of release under constraint.

The Law of August 15th 2014 created a parallel procedure of anticipated release (33), called release under constraint (*libération sous contrainte* – LSC) whereby prisoners having served two thirds of their

sentence (minus remission) would automatically see their fate examined by the JAP. Said JAP could pronounce, in theory, parole, and the three measures under prison registry, in reality only semi-freedom, where it existed, or electronic monitoring. Prison authorities, which drafted this law, hoped that by bypassing due process (prisoners would hardly ever appear), by pretending on the basis of a spurious legal reasoning, that the usual rules applying to release measures did not apply to LSC (34) and by surrounding JAP with prison and probation officials when they made their decision, they would both gain time and force Judges to release more offenders. Prison authorities had attempted similar techniques in 2004 (35) and in 2009. In both cases, rather than releasing more offenders, JAP released less. The leading author of this article has been conducting an evaluation of LSC (36) and has found that LC has failed for similar reasons. The first reason is that both judges and prisoners, as our research has found, favour hearings, and the legitimacy of justice that fair trial represents (37). The second reason is that France does not seem to understand that judges cannot be forced to make decisions on the basis of inferior substantive norms and procedures; they take the risk of releasing offenders when they have more information on them, rather than less (38). Indeed, our study shows that probation services write useless reports with merely narrative information ('Mr X has a wife and two children and says he wants to look for a job'), do not support offenders in the least to prepare a release plan, because their administration has told them that LSC did not require such a plan, which do little to help the JAP want to release totally unprepared offenders. Precisely, a third to half of all prisoners refuse to 'benefit' from LSC measure (39) because no re-

entry plan has been put in place for them or with them.

3.3.4 'Release measures' adaptation.

The three aforementioned measures under prison registry can be transformed into each other at any point in time during their execution. The JAP can for instance transform a semi-freedom into an electronic measure in order to alleviate the constraints imposed on an offender who is compliant; (s)he can conversely convert electronic monitoring into semi-freedom as a sanction for non-compliance, rather than recalling the offender to prison, and so on. The sheer number of release measures allows JAPs to better adapt supervision. The JAPs can also transform measures under prison registry into parole, again, when the probationer is compliant. This is frequent because practitioners consider that measures under prison registry are not bearable for more than six months (40).

4. Alternatives to detention for specific categories of persons.

We have presented general rules that apply to most prisoners. It is now necessary to briefly describe different rules that apply to specific categories of prisoners.

4.1 Psychiatric prisoners.

Psychiatric inmates have very rarely been the focus of public reports and official data. As an exception to this rule, a joint report by the Ministry of Health and the Ministry of Justice was published in 2003, which unsurprisingly pointed towards inmates' considerable higher psychiatric morbidity compared with the general population: 55% of those who entered prison suffered from anxiety and 33% of depression; 42% had behavioural problems; 24% had intelligence impairments; and 19% had a

psychosis diagnosis (41). The report pointed to the difficult collaboration and the lack of communication between prison staff and medical staff and complained about what they perceived as being prison services' attempts to infringe on medical secrecy.

The reasons for the high prevalence of mental illness lie in the very limited use of article 122-1 section 1 of the penal code (the French equivalent of a 'not guilty for reason of insanity'), which is itself due to a dual phenomenon: on the one hand, the impact of the antipsychiatry movement particularly in the 1970s, which led to the *en masse* closing of asylums; on the other hand, the conviction amongst the majority of French psychiatrists that people with such diagnosis who also offend *need* to be punished by the criminal justice system. The result is that the vast majority of such offenders are now housed in prison. In order to tackle these difficulties, policies inaugurated during former president Nicolas Sarkozy's government have consisted in creating special prison units within psychiatric hospitals, and in doubling the number of 'Units for Difficult Patients' (*unités pour malades difficiles*), which are psychiatric units for very dangerous offenders with a mental health diagnosis and focus both on treatment and containment.

4.2 Drug addicts.

France produces slightly more studies on addicted offenders. The French Observatory for Drugs and Addictions (OFDT) has devoted a handful of its studies to prisons. In 2005, a report showed that detection was still not systematic. However, it declared that the treatment of addicts in prison had 'remarkably' improved (42). Conversely, a more recent report by the National Medicine Research Centre sadly concluded: 'Today there is no risk

reduction policy in France' (43). It added that the principle of the equivalence of treatment access between prisons and the outside world was simply not implemented. Any offender with an addiction diagnosis who serves a community sentence or (release) measure is generally subjected to mandatory treatment (art. 132-45, 3° of the penal code). However, there is no systematic screening of all these probationers and parolees and judges generally order mandatory treatment solely based on the nature of the offence. Moreover, France rarely tests whether they are still taking drugs or abusing alcohol during their probation order.

4.3 Foreign detainees.

Finally, it should be noted that French studies on foreign prisoners are also rare. A European study by Delgrande and Aebi compared 27 European countries and found that France (with 19,8% of foreign prisoners) was mid-way between the two extremes (Romania with less than 10% of foreign prisoners and Luxemburg with more than 75%) (44). An old study by Tournier, published at a time where the political debate focused on foreign delinquents, showed that prisoners systematically feared worse at each stage of the criminal justice process (45). Over a decade later, the National Council on Human Rights published a report on foreign prisoners and commented that they now were 'largely ignored in the public debate and by prison research' (46). As most agencies or institutions focusing on the CJS in France, they deplored the total lack of official data on this subject. From the legal viewpoint, foreign inmates are not treated differently than French citizens so long as they are not to be deported. However, this quasi-robotic and purely apparent equality very likely masks actual inequalities, for instance in terms of access to rights and treatment, education and

early release. It is telling that France has completely ignored the Council of Europe's recommendation on foreign prisoners (2012) whilst it has long used the European Prison Rules (2006) and is currently using the European Probation Rules (2010).

5. To conclude.

This contribution on the existing alternatives to detention in the French legal system has highlighted a number of specific features pertaining to its criminal policy and criminal justice.

First of all, it is noteworthy that France has paid relatively limited attention to collecting adequate statistical information about its prison population(s), as well as the application of prison sentences and their alternatives. As a result, it has proven very difficult to conduct thorough policy and public debates about these issues, e.g. about the philosophy of prison sentences, or present serious analyses of the costs and benefits of either option.

When it comes to the legal provisions relating to alternatives to detention, one element is certainly striking, namely the large number of alternatives that exist in France in several phases of the criminal justice system. Pre-sentencing alternatives are numerous and they are applied in high numbers. The same is true for alternative sanctions to imprisonment like fines, community work, and citizenship courses. As to sentences themselves, they are executed quite rapidly, and may also give rise to substantial reductions of prison time.

Whether France occupies a specific place in the wider context of Europe remains to be studied in more detail. Obviously, each country has its own criminological considerations and legal arrangements, and it is therefore of crucial importance to conduct adequate comparative research to highlight similarities and differences,

and identify 'good practices' that may be eligible for transfer between countries and regions.

Notes.

(1). See Herzog-Evans M., 'France: legal architecture, political posturing, 'prisonbation' and adieu social work', in Robinson G. et McNeill F. (eds.), *Community Punishment: European Perspectives*, Routledge, Abingdon, 2015.

(2). Cour des comptes, *La prise en charge et le suivi, par l'administration pénitentiaires, des majeurs condamnés. Rapport en Référé*, 22 mars 2016.

(3). Administration Pénitentiaire, *Les chiffres clés au 1er janv. 2013*, 2014.

(4). Kensey A., Narcy M., « Les caractéristiques socio-démographiques des personnes sous PSE (2000-2006) », *Cahiers d'études pénitentiaires et criminologiques*, n°21, Feb 2008.

(5). Cassan F., Toulemon L., « L'histoire familiale des hommes détenus », *INSEE Première*, n°706, April 2000.

(6). For a short introduction on victim-friendly restorative justice approaches see Sullo P., "Restorative Justice", in Wolfrum R. (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2016.

(7). Cario R., *Victimologie. De l'infraction du lien subjectif à la restauration sociale*, l'Harmattan, Paris, 2012.

(8). Herzog-Evans M., « Les victimes et l'exécution des peines. En finir avec le déni et l'idéologie », *AjPénal*, 2008, p. 356.

(9). As Grunvald wrote: "The orientation of a criminal case, is not so much an implementation of the principle of opportunity (the conditions for closing the case without further action having been widely examined to limit it) as a decision about 'the opportunity of the modalities of the penal response'" (Grunvald S., « Les choix et schémas d'orientation », in Danet J. (dir.), *La réponse pénale, 10 ans de traitement des délits*, Editions Presses Universitaires de Rennes, 2014, pp. 83-112). In other words, the orientation of criminal cases has become an essential decision within criminal courts and according to the decision taken in this regard, a prison sentence can or cannot be considered.

(10). Pouget Ph., (2014) « La mise en place de la diversification du traitement des délits à travers la législation », in Danet J. (dir.), *op. cit.*, pp. 54-81, 54, and particularly his analysis of the two alternatives encompassed in articles 41-1 et 41-2 CPP.

(11). « Les chiffres clés de la Justice 2013 » - Sous-direction de la Statistique et des Etudes du Ministère de la Justice. See : www.justice.gouv.fr/art_pix/1_stat_Chiffres_cles_2013.pdf

(12). See e.g. Court of Cassation. Criminal Chamber June 29, 2016, n° 15-82, p. 114; *AjPénal* 2016, p. 515, obs. M. Herzog-Evans.

(13). It must be specified that the Law of 15 August 2014 puts the individualization of sentencing in perspective and improving the effectiveness of criminal punishment foresees that every new conviction, within a period of five years, no longer automatically results in a dismissal of a previous common suspension. Article 8 of the

mentioned law thereby suppresses the automatism of this dismissal, thus giving flexibility to the criminal courts. This measure took effect from January 1st 2015.

(14). On these alternatives and how they are applied by JAP: Herzog-Evans M., *French reentry courts and rehabilitation: Mister Jourdain of desistance*, l'Harmattan, Paris, 2014.

(15). If a CW can be pronounced instead of a prison sentence, it can never be in addition to an effective sentence (except, in application of the Law of 15 August 2014, when it is pronounced as an obligation of criminal coercion).

(16). Ministère de la Justice. Direction de l'Administration Pénitentiaire - Bureau des études et de la prospective (PMJ5), *Trimestrial statistics of the population subjected to the community sentences - January 2014 - Table 13. - Statistiques trimestrielles de la population prise en charge en milieu ouvert. Mouvements au cours du premier trimestre 2013. Situation au 1er janvier 2014*, n°18.

(17). Unfortunately it was not detailed in the statistics of the department if it concerns primary or additional sentences.

(18). E.g. Hough M., Jacobson J., Millie A., *The Decision to Imprison: Sentencing and the Prison Population*, Prison Reform Trust, London, 2003; Tombs J., *A Unique Punishment. Sentencing and the Prison Population in Scotland*, Edinburgh, the Scottish Consortium on Crime & Criminal Justice, 2004; Boone M., Herzog-Evans M., "Decision-Making and Offender Supervision", McNeill F., Beyens K. (dir.), *Offender Supervision in Europe*, Palgrave MacMillan, London, 2013, pp. 51-96.

(19). Herzog-Evans M., « Récidive et surpopulation: pas de baguette magique juridique », *AjPénal*, mars 2013, pp.: 136-139.

(20). See Herzog-Evans M., *La contrainte pénale ne marche pas. C'est donc une bonne mesure !*, 2016. Available at <http://herzog-evans.com/la-contrainte-penale-ne-marche-pas-cest-donc-une-bonne-mesure>, retrieved on Dec. 12, 2016.

(21). Padfield N., van Zyl Smit D., Dünkel F., *Release from Prison. European policy and practice*, Willan Publishing, Cullompton, 2010.

(22). This measure is in a way the French version of the North-American half-way houses or the approved premises of the United Kingdom.

(23). On semi-freedom, placement in the community, and electronic monitoring, see Herzog-Evans M., "The six month limit to community measures 'under prison registry': a study of professional perception", *European Journal of Probation*, vol. 4, n. 2, 2012, pp. 23-45.

(24). Delbos V., *Rapport sur la mise en oeuvre de la loi du 15 août 2014 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales*. Rapport au Ministre de la Justice, 2016.

(25). Herzog-Evans M., *French reentry courts, op. cit.*

(26). See. Herzog-Evans M., "Is the French *Juge de l'application des peines* a Problem-Solving Court?", in Herzog-Evans M. (ed.), *Offender Release and Supervision: The role of courts and the use of discretion*, Wolf Legal Publishers, Nijmegen, 2015, pp. 409-446.

(27). Herzog-Evans M. (forthcoming), *La mise en œuvre de la libération sous contrainte dans le Nord-Est de la France*,

Rapport de Recherche pour la Mission Droit et Justice, Convention n°215.05.27.29.

(28). Herzog-Evans M., *French Re-entry Courts and Rehabilitation*, op.cit.

(29). Direction de l'Administration Pénitentiaire, *Les Chiffres clés de l'administration pénitentiaire au 1er janvier 2015*.

(30). de Larminat X., *La probation en quête d'approbation. L'exécution des peines en milieu ouvert entre gestion des risques et gestion des flux*, Thèse Cesdip-Université de Versailles-Saint Quentin, 2012.

(31). Herzog-Evans M., "French probation and prisoner resettlement: Involuntary 'privatisation' and corporatism", in T. Daems T., Vander Beken T. (eds.), *Privatising punishment in Europe?*, Routledge, Abingdon (forthcoming).

(32). Herzog-Evans M., "Release and Supervision: relationships and Support from Classic and Holistic Attorneys", *International Journal of Therapeutic Jurisprudence*, 1(1), 2016, pp. 23-58.

(33). Article 720 PPC (entry into force postponed on the 1st of January 2015).

(34). Herzog-Evans M. (forthcoming), *La mise en œuvre de la libération sous contrainte*, op. cit.

(35). Garreaud P., « Les Spip et le volet application des peines de la loi du 9 mars 2004 : l'écueil de l'ambiguïté – l'impératif de crédibilité », *AJ pénal*, 2004, pp. 339- 402.

(36). Herzog-Evans M. (forthcoming), *La mise en œuvre de la libération sous contrainte*, op. cit.

(37). Tyler T.R., 'What is procedural justice? Criteria used by citizens to assess the fairness of legal procedures', *Law & Society Review*, vol. 22, n. 1, 1988, pp. 103-134; De Mesmaecker V., *Perceptions of Criminal Justice*, Routledge, Abingdon, 2014; Digard L., 'Compliance and desistance. Contemporary Approaches to Increasing Parole Compliance: The Roles of Structure and Relationships', in H-Evans M. (ed.), *Offender release and supervision: The role of Courts and the use of discretion*, Nijmegen, Wolf Legal Publishers, 2015, pp. 279-280.

(38). Boone M., Herzog-Evans M., 'Decision-making and Offender Supervision', in McNeill F., Beyens K.(eds.), *Offender Supervision in Europe*, Palgrave Macmillan, London, 2013, pp. 51-96.

(39). We do not have national statistics in this regard. These statistics pertain to the four sites investigated by M. Herzog-Evans.

(40). Herzog-Evans M., "The six month limit to community measures «under prison registry»: A study of professional perception", *European Journal of Probation*, vol. 4, n. 2, 2012, pp. 23-45.

(41). Ministère de la Santé, Ministère de la Justice, *Santé mentale des personnes détenues et troubles du comportement*, April 2003.

(42). OFDT, *Tendances*, Jan. 2005, n° 41.

(43). INSERM, *Réduction des risques infectieux chez les usagers de drogue*, 2010.

(44). Delgrande N., Aebi M., « Les détenus étrangers en Europe: Quelques considérations critiques sur les données disponibles de 1989 à 2006 », *Déviance & Société*, n°4, 2009, pp. 475-499.

(45). Tournier V., *Etrangers et délinquances les chiffres du débat*, l'Harmattan, Paris, 1991.

(46). Conseil national des droits de l'homme, *Etude sur les étrangers détenus*, CNDH, Paris, 2004, p. 1.

Bibliography.

- Administration Pénitentiaire, *Les chiffres clés au 1er janv. 2013*, 2014.
- Boone M., Herzog-Evans M., "Decision-Making and Offender Supervision", in McNeill F., Beyens K. (dir.), *Offender Supervision in Europe*, Palgrave Macmillan, London, 2013, pp. 51-96.
- Cario R., *Victimologie. De l'infraction du lien subjectif à la restauration sociale*, l'Harmattan, Paris, 2012.
- Cassan F., Toulemon L., « L'histoire familiale des hommes détenus », *INSEE Première*, n°706, April 2000.
- Conseil national des droits de l'homme, *Etude sur les étrangers détenus*, CNDH, Paris, 2004.
- Cour des comptes, *La prise en charge et le suivi, par l'administration pénitentiaires, des majeurs condamnés. Rapport en Référé*, 22 mars 2016.
- de Larminat X., *La probation en quête d'approbation. L'exécution des peines en milieu ouvert entre gestion des risques et gestion des flux*, Thèse Cesdip-Université de Versailles-Saint Quentin, 2012.
- De Mesmaecker V., *Perceptions of Criminal Justice*, Routledge, Abingdon, 2014.
- Delbos V., *Rapport sur la mise en oeuvre de la loi du 15 août 2014 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales*. Rapport au Ministre de la Justice, 2016.
- Delgrande N., Aebi M., « Les détenus étrangers en Europe: Quelques considérations critiques sur les données disponibles de 1989 à 2006 », *Déviance & Société*, n°4, 2009, pp. 475-499.
- Digard L., 'Compliance and desistance. Contemporary Approaches to Increasing Parole Compliance: The Roles of Structure and Relationships', in H-Evans M. (ed.), *Offender release and supervision: The role of Courts and the use of discretion*, Nijmegen, Wolf Legal Publishers, 2015, pp. 279-280.
- Direction de l'Administration Pénitentiaire, *Les Chiffres clés de l'administration pénitentiaire au 1er janvier 2015*.
- Garreaud P., « Les Spip et le volet application des peines de la loi du 9 mars 2004 : l'écueil de l'ambiguïté – l'impératif de crédibilité », *AJ pénal*, 2004, pp. 339- 402.
- Grunvald S., « Les choix et schémas d'orientation », in Danet J. (dir.), *La réponse pénale, 10 ans de traitement des délits*, Editions Presses Universitaires de Rennes, 2014, pp. 83-112
- Herzog-Evans M., « Les victimes et l'exécution des peines. En finir avec le déni et l'idéologie », *AJ pénal*, 2008, p. 356.

- Herzog-Evans M., “The six month limit to community measures ‘under prison registry’: a study of professional perception”, *European Journal of Probation*, vol. 4, n. 2, 2012, pp. 23-45.
- Herzog-Evans M., « Récidive et surpopulation: pas de baguette magique juridique », *AJpénal*, mars 2013, pp. 136-139.
- Herzog-Evans M., *French reentry courts and rehabilitation: Mister Jourdain of desistance*, L’Harmattan, Paris, 2014.
- Herzog-Evans M., ‘France: legal architecture, political posturing, ‘prisonbation’ and adieu social work’, in Robinson G. et McNeill F. (eds.), *Community Punishment: European Perspectives*, Routledge, Abingdon, 2015.
- Herzog-Evans M., “Is the French *Juge de l’application des peines* a Problem-Solving Court?”, in Herzog-Evans M. (ed.), *Offender Release and Supervision: The role of courts and the use of discretion*, Wolf Legal Publishers, Nijmegen, 2015, pp. 409-446.
- Herzog-Evans M., “Release and Supervision: relationships and Support from Classic and Holistic Attorneys”, *International Journal of Therapeutic Jurisprudence*, 1(1), 2016, pp. 23-58.
- Herzog-Evans M., *La contrainte pénale ne marche pas. C’est donc une bonne mesure !*, 2016. Available at <http://herzog-evans.com/la-contrainte-penale-ne-marche-pas-cest-donc-une-bonne-mesure>, retrieved on Dec. 12, 2016.
- Herzog-Evans M. (forthcoming), *La mise en œuvre de la libération sous contrainte dans le Nord-Est de la France*, Rapport de Recherche pour la Mission Droit et Justice, Convention n°215.05.27.29.
- Hough M., Jacobson J., Millie A., *The Decision to Imprison: Sentencing and the Prison Population*, Prison Reform Trust, London, 2003.
- INSERM, *Réduction des risques infectieux chez les usagers de drogue*, 2010.
- Kensey A.,Narcy M., « Les caractéristiques socio-démographiques des personnes sous PSE (2000-2006) », *Cahiers d’études pénitentiaires et criminologiques*, n°21, Feb 2008.
- Ministère de la Justice, *Les chiffres clés de la Justice 2013*, - Sous-direction de la Statistique et des Etudes. See : www.justice.gouv.fr/art_pix/1_stat_Chiffres_cles_2013.pdf
- Ministère de la Justice. Direction de l’Administration Pénitentiaire. Bureau des études et de la prospective (PMJ5), *Trimestrial statistics of the population subjected to the community sentences - January 2014 – Table 13. – Statistiques trimestrielles de la population prise en charge en milieu ouvert. Mouvements au cours du premier trimestre 2013. Situation au 1er janvier 2014*, n°18.
- Ministère de la Santé, Ministère de la Justice, *Santé mentale des personnes détenues et troubles du comportement*, April 2003.
- OFDT, *Tendances*, Jan. 2005, n° 41.
- Padfield N., van Zyl Smit D., Dünkel F., *Release from Prison. European policy and practice*, Willan Publishing, Cullompton, 2010.
- Sullo P., “Restorative Justice”, in Wolfrum R. (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2016.
- Tombs J., *A Unique Punishment. Sentencing and the Prison Population in Scotland*, Edinburgh, the Scottish Consortium on Crime & Criminal Justice, 2004.
- Tournier V., *Etrangers et délinquances les chiffres du débat*, l’Harmattan, Paris, 1991.
- Tyler T.R., ‘What is procedural justice? Criteria used by citizens to assess the fairness of legal procedures’, *Law & Society Review*, vol. 22, n. 1, 1988, pp. 103-134.