



Fifty years of penal response to drug use (1970-2020)

Ivana Obradovic,
Caroline Protais,
Olivier Le Nézet

In recent years (2016–2020), an average of 180 000 people have been arrested every year by law enforcement services (police and gendarmerie) for a drug law offence in France¹. The majority of these proceedings are related to drug use, a mass litigation that resulted in more than 130 000 arrests in 2020.

Drug use is prohibited in France, without distinction of product as it is the case in some countries (United Kingdom, etc.). The 1970 French law relating to health measures to fight against drug addiction and combat the trafficking and use of poisonous substances punishes the use, possession, supply and trafficking of narcotics with prison sentences and fines. It places users “under the supervision of the health authority” and allows them to avoid criminal prosecution as long as they accept the possibility of treatment (guaranteed to be anonymous and free of charge). Formally, the 1970 French Law on Narcotics was repealed by the legislative order of 22 June 2000 and recodified in the French Public Health Code. However, the provisions against use have been maintained. Thus, under this framework, any offender faces a fine of up to € 3 750 and one year’s imprisonment: one of the most severe theoretical penalties in Europe. Designed primarily to deal with the social problem associated with heroin [1], the 1970 French Law on Narcotics was unique in Europe: it considered the user to be both an offender and a patient, and provided for the possibility of a health-based alternative to legal proceedings [2]. However, since 1970, the conditions for applying this legislative framework have evolved: it has been amended by a dozen criminal policy directives (issued between 1971 and 2012), inviting certain measures to be favoured and others to be prohibited², while ensuring compliance with the principle of individualisation of penalties. In addition, from 2000–2010, new types of criminal sanctions were created with the stated objective of “systematising the response to drug use”. Fifty years after the 1970 French Law on Narcotics, this contribution provides an overview of the penal response to drug use and its health dimension included in the legal framework.

Previous work by the OFDT has shown that the range of sanctions reserved for drug users has increased, reflecting a systematisation and diversification of penal responses

Developments in police and judicial treatment of illicit drug use in France since the 1970 French Law on Narcotics



to drug use [4]. Today, the criminalisation of drug use is reflected in a wide range of responses: prosecution may be suspended or overturned but sanctions may still be imposed, such as alternatives to prosecution³ or a fixed penalty notice⁴; other cases may result in legal proceedings (in rapid or simplified procedural forms), which can lead to a fine or other types of sentence (or even in some cases imprisonment) (See the possible paths of the drug user in the penal chain in the Appendix.). In the general context of an acceleration of penal response and a concern to relieve court congestion, several trends have emerged since the 2000s. Firstly, ‘third way’ measures are increasingly being used to deal with mass litigation involving ‘minor’ offences, such as road traffic offences [5]. In addition, new measures targeted specifically at drug users have been adopted, favouring an increasingly flexible and simplified framework for application, such as the drug awareness course created in 2007 [6], which has been

1. In France, substances classified as narcotics are listed in four annexes to the decree of 22 February 1990, based on international conventions.

2. For an analysis of developments in criminal policy guidelines and the social context of the 1970 French Law on Narcotics, see [3].

3. This generic term covers various measures: drug warning, conditional dropping of charges, mediation in criminal cases, penal reparation for minors, or court-ordered treatment. The fixed penalty notice is considered a ‘fourth way’ criminal option which, unlike alternatives to prosecution, must be approved by the President of the court after being proposed by the public prosecutor.

4. The fixed penalty notice was created by the Law of 23 June 1999 to provide a systematic response to minor offences that had previously not been prosecuted. Within this framework, the public prosecutor can propose various measures: fines, court-ordered treatment, but also new measures such as awareness courses. Since the law of 5 March 2007 on crime prevention, the fixed penalty notice has been extended to minors (aged 13 and over). Although decided by the public prosecutor’s office, the fixed penalty notice is registered in police records.

analysed as “a new form of penalty” [7]. More recently, the prerogatives of investigating police officers have been considerably extended. To deal with offences such as cannabis use, the police could resort to the penal transaction⁵ and now, since 2020, the criminal fixed fine: this simplified and rapid, but also highly controversial, method of dealing with offences allows police officers to respond directly to this type of litigation without the prior authorisation of a magistrate (see box on p. 3).

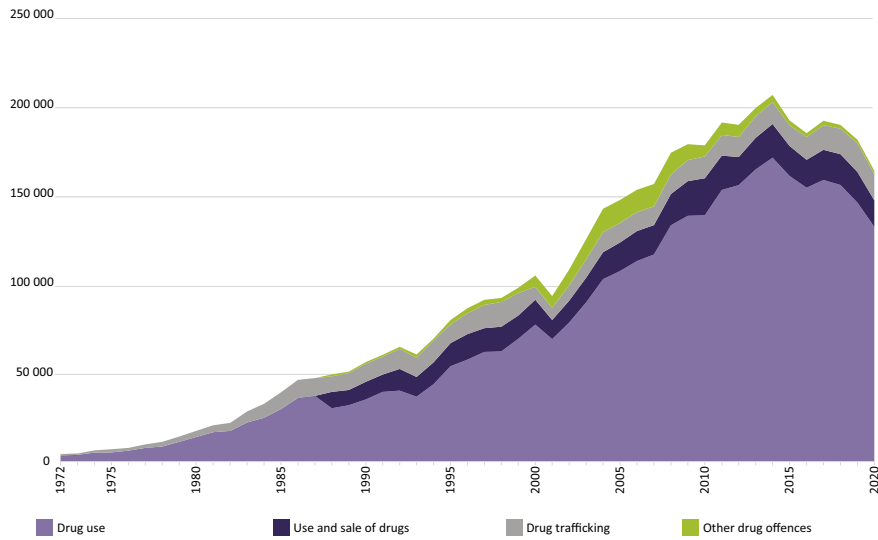
In the context of a resurgence of public debate on sanctions for cannabis users⁶, this issue of *Tendances* takes stock of half a century of criminal policies targeting drug use. Following on from the work carried out in France on criminal matters, which highlighted the problems of interpretation of the 1970 French Law on Narcotics⁷ [2, 4], it shows, on the basis of recent official statistics and taking into account their limitations (methodological references p. 8), the systematisation, acceleration and diversification of responses to drug use litigation since the 2000s. It also highlights the main developments in the penal treatment of drug users who are arrested, which is increasingly rapid and focused on financial sanctions to the detriment of health measures. These analyses are completed by a diagram describing the possible trajectories of drug users in the criminal justice system, a glossary and a chronology of criminal measures incurred by users, available online on the OFDT website (appendices).

■ **Drug use, a focus of police attention**

A strong increase in arrests for use

The number of people charged by the police or gendarmerie for a drug law offence has increased 40-fold since the 1970 French Law on Narcotics, from 4 000 to over 160 000 in 2020 (Figure 1). This evolution is mainly explained by the increase in the number of arrests for use. In 2020, most of the persons charged were users (131 385, or 81%), far ahead of those charged for use and sale (14 844 persons, or 9%), trafficking (14 791, or 9%) or other drug-related offences (1 769, or 1%). In the field of narcotics, the police activity is therefore centred on the fight against demand: since 1970, arrests for use have increased twice as fast as procedures for trafficking (Figure 1).

Figure 1. Evolution of persons arrested for a drug offence, by category of offence (1972-2020)



Source: Annual État 4001, DCP and SSMSI / Ministry of the Interior (metropolitan France, police and gendarmerie)

N.B. : Since 1972, arrests have been broken down into 4 categories: use, use and sale, trafficking and resale without use, other drug offences. The count here is of persons arrested by the police or gendarmerie.

This upward trend in arrests for drug use took place in several phases (Figure 1). After an initial period of steady increase up to the mid-1980s, the number of users arrested accelerated from the 1990s onwards: they doubled during this decade, then doubled again during the 2000s, marked by a significant rate of increase (+8.7% per year on average between 1990 and 2000 and +7.0% between 2000 and 2010). This almost continuous growth over 40 years (apart from a few ‘dips’ in the curve, linked to the years of presidential amnesty) has recently come to a halt, after a historic peak of over 200 000 arrests. In recent years, partly due to breaks in the statistical series (see methodology), the number of arrests of users has been on a downward trend (-4% per year on average between 2014 and 2020), i.e. an average ratio of 3.9 arrests per 1 000 inhabitants aged 15 to 64⁸ despite territorial variations [10]. This decline can be linked to the official abandonment of the ‘policy of numbers’, for a few years (from 2013), which had previously led to the optimisation of the search for offences revealed by the services (IRAS) in order to meet performance targets within police stations [5].

Obviously, arrest statistics reflect the activity of the police and gendarmerie services more than they do the phenomenon of illicit drug use. Nevertheless, they reveal the attention and priority given by the police and gendarmerie to certain offences. As an indication, in 2010, the last year for which details by product are available, the volume of arrests represented less than 4% of the estimated number of current cannabis users (approximately 5 million), which has increased in recent years and which ranks cannabis first

among illicit products, far ahead of the others (600 000 current cocaine users and 400 000 current MDMA/ecstasy users). The predominance of cannabis in arrests for use logically reflects an increase in consumption in the general population [11]. It also reflects an increase in police activity targeting users of this product, as evidenced by the growing role given to them in the response to this litigation. Cannabis accounted for 90% of the proceedings for use in 2010 compared to 40% in 1985 [4]⁹.

Arrests for use dependent on police strategies

The evolution of arrests for drug use is strongly influenced by police¹⁰ strategies. Drug use is an offence ‘revealed’ by the police and usually does not require any prior investigation: the police and gendarmerie do not arrest the offender after a complaint has been lodged, but

5. Under the decree of 13 October 2015, which aims to relieve the courts of ‘minor’ offences (punishable by prison sentences of up to one year), the investigating police officer could propose a ‘penal transaction’ in the case of drug use (with the authorisation of the public prosecutor), resulting in the immediate payment of a fine. Inspired by customs practices in certain areas, the penal transaction extinguishes the criminal action and is not registered in police records. The penal transaction was repealed by the 2018-2022 Programming Act for Justice, enacted on 23 March 2019.

6. Since 2018, the public debate on the legal status of cannabis has been revived on multiple occasions, in particular in 2020-2021, with the work of the French Parliament’s information mission on the regulation and impact of cannabis use for medicinal, “wellness”, and recreational purposes respectively.

7. How to differentiate between ‘ordinary’ use and use and sale during arrest, and between acts preparatory to use (purchase, possession) and use itself during criminal classification? On these methodological issues, see in particular [8, 9].

8. Source: Insee 2020.

9. Result obtained by using the Ostris database (different field from the data shown in Figure 1) which does not cover all of the persons charged and has no longer provided details by product since 2010.

10. According to the classification made by the French National Supervisory Body on Crime and Punishment (ONDRP).

on their own initiative. The police may, therefore, have an interest in targeting this type of offence, which is 'cleared' as soon as it is recorded, automatically leading to an improvement in the clearance rate of police units. Therefore, the clearance rate of solving this type of case can reach and even exceed 100%¹¹ [12]. Whatever the judicial outcome, the proceedings are recorded in the police files and therefore constitute a recorded arrest history.

Young adults and men are over-represented among the cannabis users arrested

Since the 1970s, cannabis has supplanted other drugs in arrests for use. In 1985, it accounted for approximately 40% of drug arrests, with almost equal shares for use or trafficking and use and sale. This proportion increased from 56% to 90% in 25 years (1985-2010), growing faster than general population use levels¹².

Various studies have shown that the population arrested differs from the cannabis users described in the general population [2]. Young adults and men are particularly over-represented [13]. Through the choice of procedural direction, this over-representation is then reflected in the distribution of persons convicted for drug use, marked by a higher proportion of young people under the age of 25, persons born abroad or unemployed persons [14]. Of the users arrested by the police in 2019, 90% were male, compared to 67% aged between 18-64 and 75% who were regular users (who have used drugs at least 10 times in the last month)¹³. On the other hand, the over-representation of younger users in arrests for use, observed during the 2000s [4], seems to have been declining in recent years: 43% of users arrested today are between 18 and 25 years old, while representing 37% of all adult users. Finally, drug-related offences, particularly use, are more often committed by young adults under 25 years of age who commit several offences [15].

■ An increasingly systematic and diversified penal response

The increase in arrests for ordinary use of narcotics (particularly cannabis) has been accompanied by a systematisation and diversification of the penal responses to this behaviour. The penal response rate has exceeded 90% since the early 2000s, with cases being dropped becoming rare. This development is explained by the increasing use of alternatives to prosecution since the 1990s (also referred to as 'third way' measures), in line with successive and converging recommendations by the Ministry of Justice¹⁴ [16]. As a rapid sanction for dealing with petty crime, alternatives to prosecution make it possible to limit the number of cases

'Simplifying' and 'speeding up' the penal response? The criminal fixed fine

In order to strengthen the penal response to drug-related offences, the law of 23 March 2019 on the reform of the criminal justice system opened up the possibility for law enforcement services to fine any adult user, caught using in flagrante delicto in public, by means of a criminal fixed fine. Created by the law of 18 November 2016 (known as the Urvoas law) to deal with certain road traffic offences without going to court (driving without a licence or insurance), the criminal fixed fine takes the form of a settlement. A drug user can thus avoid the risk of being arrested if they agree to: 1) hand over the quantity of drugs they are in possession of; 2) the principle of a penalty notice (issued by electronic report). The amount of the criminal fixed fine is fixed at 200 euros (reduced to 150 euros if paid within 15 days or increased to 450 euros after 45 days).

Initially tested in a few jurisdictions (Reims, Rennes and Créteil in June 2020, followed by Marseille and Lille), the criminal fixed fine has been extended to the entire country since 1 September 2020. This early generalisation was announced by the Prime Minister during a visit to Nice in response to score-settling between traffickers in July 2020: the criminal fixed fine was presented as a measure to systematise and accelerate the response to the problems posed by drug use and trafficking, upstream of the criminal procedure. However, this measure appears controversial. As soon as it was put up for debate, during the preparation of the 2018-2022 Programming Act for Justice, it gave rise to the publication of an inter-associative white paper contesting its relevance in November 2018, and then to a referral to the Constitutional Council by 19 organisations from the judicial and socio-health fields in February 2019 (considering that Article 58, which extends the criminal fixed fine to the offence of drug use, infringes on a number of constitutional principles). Although the Constitutional Council did not follow up on this appeal and validated the extension of the criminal fixed fine (decision of 21 March 2019), the criminal fixed fine has continued to be criticised, denouncing the risk of standardising the penal response, deprived of the dimension of access to care.

An initial study of the criminal fixed fine was carried out by the National Agency for Automated Offence Processing (ANTAI) in the five experimental jurisdictions (Rennes, Reims, Créteil, Lille and Marseille). It reports that 647 drug offences were detected in two and a half months (16 June 2020 to 31 August 2020 inclusive), of which 566 (87%) had resulted in the notification of a criminal fixed fine by 1 February 2021. Since the introduction of the criminal fixed fine, almost 27 300 fines have been issued in four months (from 1 September to 31 December 2020), i.e. more than 220 fines per day, with a sharp increase in the first month. Most of them were recorded in urban areas (72% by the police and 28% by the gendarmerie). Most of the fines relate to the use of cannabis (almost 98%), far ahead of cocaine (less than 2%), with other products accounting for virtually no share.

The implementation of the criminal fixed fine reveals significant territorial variations. Two departments stand out with a ratio of criminal fixed fines well above the national average (41 per 100 000 inhabitants): Seine-Saint-Denis (148 per 100 000 inhabitants) and Bouches-du-Rhône (134 per 100 000). Other variations may be related to the quantity of the drug for which a fine is imposed. For example, some prosecutors have revised downwards the quantities indicated by the Ministry of Justice: in Lille, for example, the 'national' limit (100 grams of cannabis) has been lowered to 20 grams. Furthermore, as the Ministry of Justice has left the choice of products targeted to the discretion of prosecutors, some jurisdictions have targeted criminal fixed fines towards cannabis, excluding cocaine for example.

In general, the criminal fixed fine appears to be more of a new procedure than a change in criminal policy. It is by no means a matter of decriminalisation: drug use remains an offence, punishable by imprisonment, particularly in the case of repeated offences, even though it is most often dealt with by alternative sanctions, before the courts.

being dropped for low-level offences and thus to increase the penal response rate without increasing the number of prosecutions.

In 2019, at national level, the courts dealt with almost 120 000 cases of drug use. In the Paris area (Île-de-France), which accounts for a quarter of national disputes, the data available over two decades (2001-2019) confirms the sharp increase in the volume of drug use cases handled by the public prosecutor's office (+140%).

11. If a person is caught in possession of a small quantity of cannabis or for use in flagrante delicto, the police count registers one recorded incident and one cleared incident. If this person is asked about their past use and declares that they have smoked in the previous year in another district, the investigating police officer can record one recorded incident and one cleared (although not recorded) incident. Source: Central Directorate of the Judicial Police, Ministry of the Interior.

12. In two decades (1990-2010), user arrests increased sevenfold for cannabis, compared to twelvefold for cocaine and ninefold for MDMA/ecstasy [4].

13. Source: secondary analysis of the 2017 Health Barometer, Santé publique France, processed by the OFDT.

14. For a reminder of the main circulars, see box 4 of the first version of this text [25].

This figure has more than doubled from around 10 000 cases in 2001 to between 25 000 and 30 000 in the second half of the 2010s, reflecting the increased flow of proceedings from the police and gendarmerie to the prosecution service. At the same time, the proportion of cases judged ‘not prosecutable’ has fallen drastically (from 11% to 2%), as has the rate of cases dropped (from 21% to less than 5%), with the result that the penal response rate¹⁵ has risen from 79% to more than 95% in twenty years (Figure 2).

This strong mobilisation of the criminal justice system around drug use cases has benefited alternatives to prosecution. Rare until the end of the 1990s, they now represent two-thirds of the referrals made, after exceeding the 50% threshold in the early 2000s (Figure 2). However, although the criminal treatment of drug use cases initially evolved in the direction of a rapid increase in the use of alternatives to prosecution, since 2008 there has also been a resurgence in the prosecution of drug users, which has increased further since 2014: in 2019, criminal prosecutions¹⁶ represented one third of the cases dealt with, compared to only one quarter in 2014, i.e. an increase of 8 points in five years. This increase in prosecutions of drug users can be interpreted as an indication of a firmer application of the legislation inherited from the 1970s and a ‘re-criminalisation’ of the response to drug use. It is also the result of the increased use of criminal orders, which are quick and simplified

judgments without a hearing, notified by letter¹⁷ [17]. Nevertheless, alternatives to prosecution are still preferred in cases involving minors: they are ordered in nine out of ten cases of use when the user is under the age of 18 [18].

The gradual phasing out of alternative measures with a health dimension

After a significant increase in the 2000s, alternative health-based measures, in the form of court-ordered treatment or referral to health and social services, became rare in the 2010s. Despite regional variations, the decline in health-based sanctions in penal practice has been to the benefit of warnings, which were already in the majority but which now represent almost all referrals to an alternative to prosecution.

The structure of alternatives to prosecution for drug users has fluctuated over the last 20 years, reflecting changes in criminal policy (Figure 3). Initially, there was a decline in drug warnings¹⁸ during the 2000s, before a dynamic upturn since 2010, so that they have now regained their dominant place in the penal response to the offence of use (92% of alternative prosecutions). At the same time, alternative measures with a health component increased for about ten years, before a clear decline in recent years in court-ordered treatment and charges being dropped with a referral to health and social services. Health-based sanctions now account for 7% of the alternatives

prescribed to punish a drug offence, the lowest level ever recorded. This observation is confirmed by taking into account the transformation of the procedural channels through which health-based measures are prescribed: the proportion of court-ordered treatment prescribed throughout the country as part of a fixed penalty notice is also falling.

Conversely, the use of other types of measures, such as the penal transaction, seems to be on the rise, contributing to the systematisation and standardisation of the penal response to drug use. Since their implementation, the number of penal transactions has increased by 43%, from 5 454 measures in 2017 to 7 787 in 2019, handed down in the framework of a fixed penalty notice.

The development of alternative measures with a health component, which had accelerated during the 2000s, therefore stalled in the 2010s. This is mainly due to the virtual disappearance of court-ordered treatment, which is now at its

15. The penal response rate measures the proportion of ‘prosecutable cases’ (where there are sufficient charges and evidence to prosecute a clearly identified perpetrator) that are either prosecuted or an alternative measure is taken. It therefore adds up prosecutions and alternatives to prosecution.

16. Criminal proceedings bring the accused before the criminal court if he/she is of age (generally by direct summons), or more rarely before the investigating judge or the juvenile judge if he/she is a minor.

17. See glossary in Appendix.

18. Warning or admonition in the form of a letter or a judicial summons by the public prosecutor or the delegate of the public prosecutor.

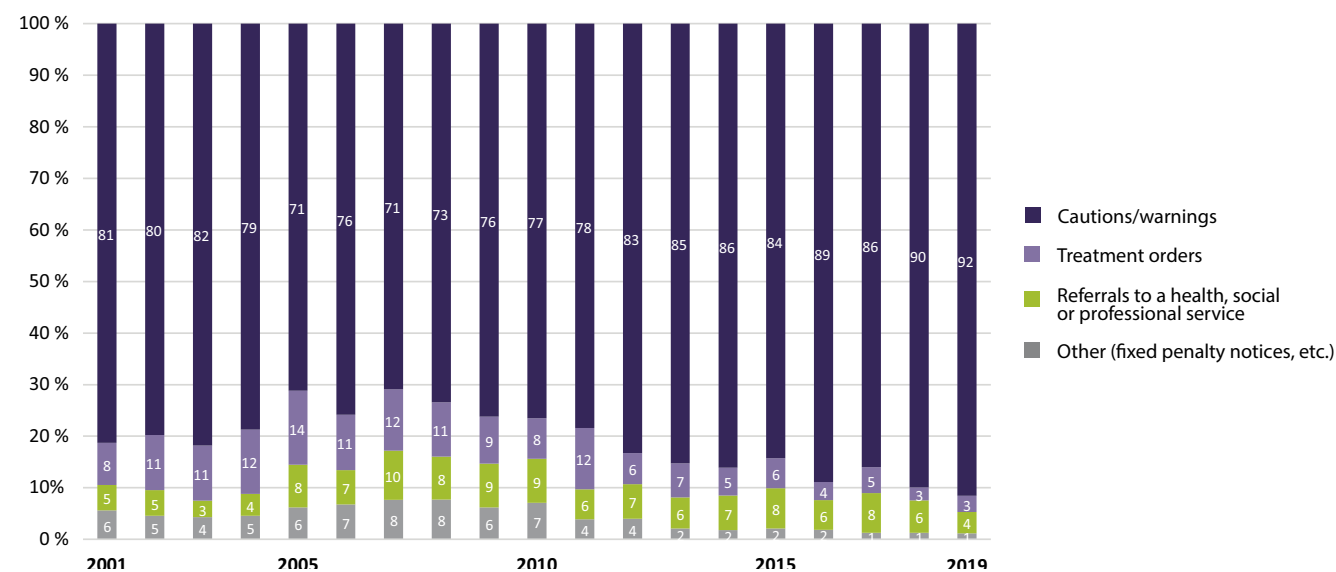
Figure 2. Evolution of the penal response of public prosecutors to drug use cases in the Paris region (2001-2019)



Source: Ministry of Justice, data for 7 jurisdictions in the Île-de-France region (Évry, Bobigny, Créteil, Paris, Nanterre, Pontoise, Versailles), representing approximately 25% of criminal disputes, sources: NCP for 2001-2010, then Infocentre for 2011-2013, then Cassiopée since 2012.

Note: The sum of the percentages may exceed 100% in some years due to rounding.

Figure 3. Structure of alternatives to prosecution for drug use in the Paris region (2001-2019)



Source: Ministry of Justice, data for 7 jurisdictions in the Île-de-France region (Évry, Bobigny, Créteil, Paris, Nanterre, Pontoise, Versailles), representing approximately 25% of criminal litigation, sources NCP for 2001-2010, then Infocentre for 2011, then Cassiopée since 2012.

Note: The sum of the percentages may exceed 100% in some years due to rounding.

lowest level (4% of alternatives to prosecution). Handed down in only a few jurisdictions, mainly in the Paris region, they very rarely target cannabis users: according to the activity report of the regional health authority (ARS) in the Paris area (Île-de-France) in charge of court-ordered treatment, those referred to this measure are mainly crack and cocaine users, in the absence of more substantial social and health care options, including accommodation and comprehensive care [19].

Similarly, referrals to health and social services, which had experienced a significant increase from 2004 onwards, have recently declined. This was reflected in the referral of cannabis users to youth addiction outpatient clinics (CJC). These litigants received at CJsCs included mainly adult cannabis users (18-25 years old), males, with few qualifications and unemployed or lacking job security. Compared to other referrals, whether referred spontaneously or through family, school or medical care, those referred by the justice system more often include occasional cannabis users who are highly visible in the public space because they are for example, smoking in the street, in groups and in a 'party' context [20].

The rise of 'drug awareness courses': a hybrid penal response?

The 2010s have seen a reorientation of penal responses: collective measures have been added to individual measures, claiming an 'educational' scope, such as the awareness course on the dangers of drug use. Aimed at occasional and non-addict users, the 'drug awareness course' was created by the Law of 5

March 2007 in order to allow the judge to deal with use disputes by means of a simplified and accelerated procedural method. This financial penalty, which is also intended to educate and make people aware of their responsibilities, aims to "make the convicted person aware of the harmful consequences for human health and society of the use of such products"¹⁹. It can be handed down at any stage of the criminal procedure: by the public prosecutor (as an alternative to prosecution or as part of a fixed penalty notice) or by the magistrates of the court (as part of a criminal order or as an additional penalty).

While the first evaluation of the system showed that the use of awareness courses was on the rise among penal practice [6], the development of the system has accelerated further since 2012 (Figure 4). In 2018, more than 20 000 awareness courses were prescribed as part of a criminal sanction. While the comparison is subject to some bias²⁰, awareness courses are most often related to a conviction (10 031 or 44%). One third of these are ordered as part of a fixed penalty notice (7 362, or 33%) and just over 20% are awareness courses prescribed as an alternative to prosecution (5 149). Fixed penalty notices have progressively integrated awareness courses, to the detriment of fines. Thus, in 2018, almost 60% of fixed penalty notices included a 'drug awareness course'.

The rise of this type of measure, coupled with the decline in alternatives to prosecution with a health dimension, seems to indicate a new trend in the penal response to drug use, gradually abandoning the dichotomous logic of treatment or punishment in favour of hybrid measures,

combining penalties and educational aims, sometimes with an opening onto treatment, more in line with an ideal of making users responsible.

Record levels of convictions for use in the 2010s

Use accounts for more than 7% of offences punished by a criminal conviction, a figure that has not been seen for thirty years and that has been steadily increasing since the 2000s (when it accounted for 2% of convictions for offences). Among drug law offences, use occupies a predominant place: during the 2010s, the share of convictions for use rose to a level exceeding 50% of all drug offence convictions, while it was 13% in 1994, 14% in 1999, jumping to 41% in 2009. In 2018 (provisional data), 34 894 judicial convictions were made for use as the principal offence, almost ten times more than in 2000 (3 669) and more than twice as many as ten years earlier (14 158 in 2008). This is therefore mass litigation, especially if we add the 49 925 convictions for driving while under the influence of drugs, which mainly concern cannabis.

This volume of convictions reflects a sustained police attention to drug users but also more frequent prosecution. After several criminal policy directives inviting prosecutors to abandon prosecution in favour of alternative measures, in particular between 1999

19. Implementing decree of 26 September 2007.

20. Fixed penalty notices and alternatives to prosecution count the number of awareness courses carried out, while convictions relate to awareness course measures that have been handed down (with no guarantee of effectiveness).

(Guigou circular of 17 June 1999) and 2012 (circular of 16 February 2012), recent developments have tended to emphasise the principle of an early police or judicial response, from the first offence. A number of measures created since the end of the 2000s have been explicitly aimed at 'first-time offenders', i.e. drug users arrested for the first time: this is the case of 'drug awareness courses' or, more recently, the penal transaction and the criminal fixed fine. This increase in the number of cases has gone hand in hand with a higher proportion of recidivists among those convicted of a drug offence: from 10% to 15% between 2009 and 2018.

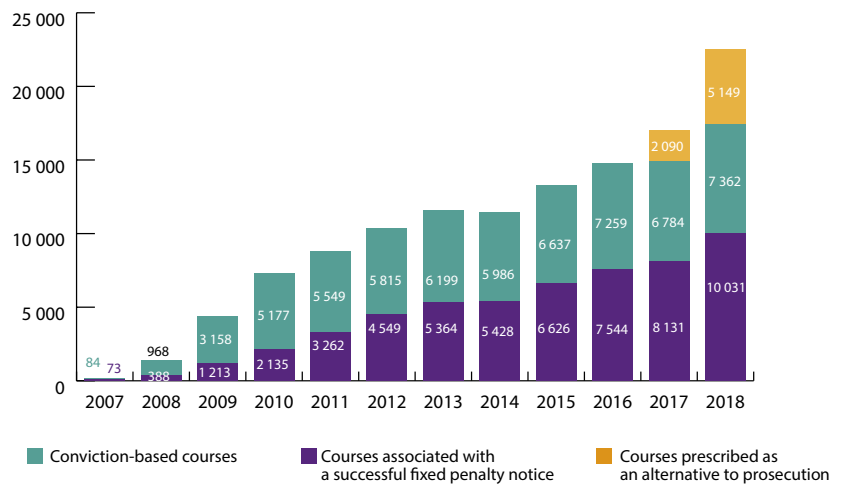
Decline in custodial sentences and increase in fines

Fines accounted for 72% of drug use convictions in 2018, compared to 41% ten years earlier (2008). The volume of convictions for use (as a principal offence) has increased sharply over the last two decades: it has increased fivefold, while arrests for use have increased sevenfold. The proportion of convictions for use has been increasing over the last ten years (Figure 5). Every year, more than 30 000 convictions are made for drug use. In particular, principal offences for use alone, without any associated offence, have increased much faster than those for use among other offences: they have increased, respectively, from 3 811 to 33 040 for use as a single offence between 1989 and 2018 (i.e. an eightfold increase in about 30 years), and from 4 653 to 27 639 for use as an associated offence (sixfold increase).

In parallel with this development, the structure of penalties for use, which in the early 1980s was exclusively centred on prison sentences, has been gradually expanded and modified. Fines and alternative measures (such as day-fines²¹ or community service) have become the most frequent court responses to drug use over the last 30 years, accounting for more than three quarters of the penalties handed down for illicit use (72% and 10% of convictions respectively) (Figure 5). This increase in fines is explained by the transformation of the procedural channels for dealing with drug use since the Law of 5 March 2007, which opens up the possibility of resorting to criminal orders for ordinary users; however, the criminal order most often includes a fine.

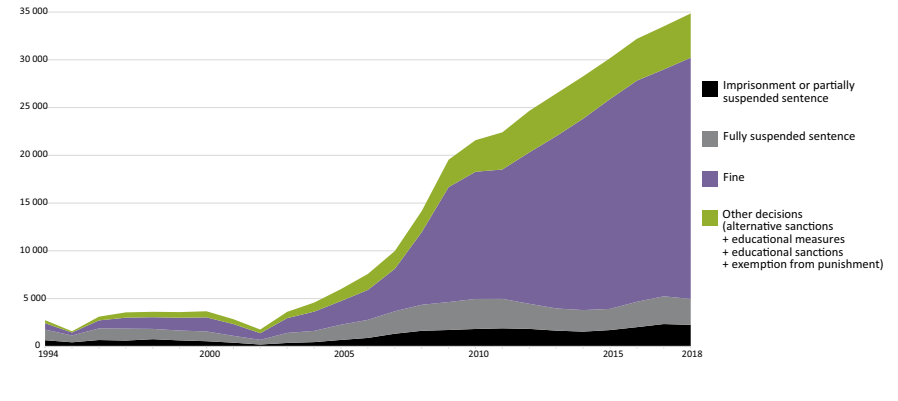
As part of this trend towards a decline in prison sentences, the number of fixed penalty notices has risen very rapidly (from 23 in 2004 to 8 493 in 2018). Initially mostly in the form of fines, they seem to have been refocused on 'prison-alternative' sentences in recent years, which are more geared towards rehabilitation and community service. This favouring of probation sentences

Figure 4. Evolution of the number of awareness courses at different stages of the penal process



Source: Ministry of Justice/SG/SEM/SDSE - Cassiopée statistical files (for alternatives to prosecution) and National Criminal Record of individuals (for fixed penalty notices and convictions)

Figure 5. Trends in convictions for use as a primary offence (alone or in combination with others): 1994 - 2018 (scope: the whole of France)



Source: National Criminal Record, Ministry of Justice (data smoothed by the Ministry)
 Note for the reader: the data has been adjusted by the Ministerial Statistical Service of Justice since 1994 to allow comparability of the data up to the present day, the previous data, available since 1984 (automation of the Criminal Record), is not indicated, unlike the previous series of figures published by the OFDT.

is reflected in the constant increase in the number of people sentenced to an awareness course on the dangers of drug use as an additional sentence since the introduction of this new sanction in 2007 (6 609 in 2018).

In comparison, the proportion of custodial sentences has fallen significantly: after a brief upturn in the 2000s, it has returned to the level of the 1980s. In 2018, 2 251 prison sentences were handed down for ordinary use (as a single offence, all products combined), probably linked to repeat offences [21]. It should be noted that the serving of a prison sentence may be modified (by the enforcement judge): it may, for example, be converted into electronic

monitoring, community service, or be transformed into conditional release, work release or semi-custodial measure (with, where appropriate, a treatment obligation). This does not mean that each of these convictions results in imprisonment.

Conclusion

With an average of 180 000 indictments per year for drug offences, including 130 000 for use, illicit drug use (particu-

21. A person sentenced to n day-fines of x euros must pay n x x euros by a fixed date. For every x euros missing, they must serve one day in prison. The day-fine penalty may not be imposed on a minor.

larly cannabis) is a mass dispute. France has some of the toughest legislation in Europe, including the possibility of imprisonment for use, while at the same time having some of the highest levels of drug use in Europe, particularly among young people. Policy analysis shows a continuing trend towards penalising street drug use, which has gone hand in hand with a change in the structure of sanctions imposed.

Since the 2000s, drug-related arrests have focused heavily on users, particularly of cannabis. In response to this influx of criminal justice proceedings, the penal response to drug use has intensified since the 1970s, especially since the 2010s when the penal response rate reached almost 100%. This

decade has been characterised by more systematic criminal sanctions, increasingly applied in the context of rapid and simplified procedures. The increasing use of simplified procedures contributes even more to the systematisation of penal responses as it does not always exclude legal proceedings (as in the case of criminal orders). In addition, the range of penal responses to use cases has continued to expand and was further supplemented in 2020 by the criminal fixed fine. In other words, compared to the 1980s, the criminalisation of use is reflected in sanctions pronounced not only by the courts but also by the public prosecutor's office (upstream of the courts). And, since 2020, it can even come under the direct control of law enforcement.

Over the course of half a century, criminal sanctions for drug use have become more diverse. Although they appear to be less oriented towards deprivation of liberty (rare for ordinary use), they are more frequent and above all focused on financial sanctions, sometimes claiming an 'educational' scope (drug awareness courses). Indeed, drug use can now be subject to financial penalties at all stages of criminal proceedings: criminal fixed fine, drug awareness course (often perceived as a 'fine in disguise'), fixed penalty notice in the form of a fine, sentencing to a fine [3]. However, the increase in this dynamic of financial penalisation has been to the detriment of individualised, health-based measures, which have become rare, far behind collective measures such

Methodology

The analysis is based on statistical series from the government ministries, available over the longest possible period: 1972-2020 for arrests, 2001-2019 for criminal proceedings and 1994-1998 for convictions. These descriptions provide an overview of their respective observation perimeters and possible interpretation biases.

Through the Central Directorate of the Judicial Police before 2014 and the Ministerial Statistical Service of Internal Security (SSMSI) since 2015, the **Ministry of the Interior** has been providing statistics on recorded incidents and persons charged by the police and gendarmerie, known as 'État 4001'. Since its creation in 1972, this database has made it possible to monitor recorded and cleared incidents and the number of persons implicated for drug offences by the police and gendarmerie services (assimilated to arrests).

The **Ministry of Justice** publishes two types of figures that are useful for analysing the evolution of the penal response to drug use. On the one hand, the annual data from Cassiopée (which has replaced the 'cadres du parquet' since 2012) makes it possible to trace the criminal proceedings of all the judicial courts in France, from the filing of a complaint to the penal response. This national statistical compendium follows on from the statistical data centre which was previously tested in two appeal courts in the Paris region (Paris and Versailles), starting in 2001. In order to allow for a long-term monitoring of criminal proceedings, the analysis was therefore limited to data from the Ile-de-France available since 2001 (i.e. a quarter of national drug cases), which makes it possible to measure the evolution of the structure of penal responses by the public prosecutor's office (cases dropped, prosecution and alternatives to prosecution) and the structure of these alternatives (drug warning, court-ordered treatment, etc.) over two decades. The resulting long-term trend was compared with national data which are more recently monitored (from 2012).

On the other hand, data from the **National Police Records** (managed by the Sub-Directorate for Statistics and Studies of the Ministry of Justice) make it possible to describe both the offences sanctioned by the courts (including fixed penalty notices), the trial procedures, the nature and quantum of sentences, as well as the socio-demographic profile of convicts since 1984 (the year the register was automated). These data have been recalculated by the Ministry since 1994, due to a change in the format of the databases in 1993. The Ministry has revised its data since 1994, so that comparability with the earlier period (from the automation of the Criminal Record in 1984 to 1994) is weakened, although the trends remain. This also explains the discrepancy between the data in the Ministry of Justice's annual publication, *Les condamnations*, and the 'adjusted' data delivered to the OFDT.

There are advantages and disadvantages to analysing criminal policy through administrative statistics. Their main interest lies in the regularity of the data (annual), the explicitness of the collection methods (sometimes with a methodological guide detailing their limits) and their exhaustiveness, which guarantees a large, highly representative sample volume and territorialised data. One of the disadvantages is that there are breaks in the series due to changes in counting methods. However, during the 2010s, both ministries overhauled their statistical systems. In 2016, the Ministry of the Interior computerised the reporting of data from the police and gendarmerie services, which went hand in hand with changes in the way data is processed. The deployment of new statistical recording systems, since 2012, by the national gendarmerie (the 'Pulsar-MIS/Statistical Information Messages' system) and the national police (software for drafting procedures for the national police, known as LRPPN v3), have gone hand in hand with a statistical break in certain series [23]. In addition, since 2011, the figures for arrests no longer systematically take into account details by product. Similarly, in 2014-2015, the Ministry of Justice reviewed its statistical information system, reclassifying certain offences as they progressed through the criminal justice process, which resulted in a change in the count of convictions for drug offences. Another limitation of interpretation is the comparability of data from one source to another. As these statistical 'rationalisation' initiatives have been developed at the level of the ministries, it remains difficult to relate recorded incidents, arrests, convictions and incarcerations, due to different classifications. Until 2013, *État 4001* referred to police qualifications established according to 4 classes, while the judicial statistics were based on a more detailed nomenclature, known as 'NATINF', grouping some thirty drug offence qualifications aggregated into 7 classes (use, incitement to use, aiding use, possession/acquisition, sale or offer, trafficking, other), distinct from the police categories. Since 2014, NATINFs have been compiled using software that integrates the reconciliation between the counting units of the Ministries of the Interior and Justice, but the flow of procedures does not allow for longitudinal monitoring of users throughout the criminal justice system [24].

Thus, reconciling data from different ministries and registration databases is problematic for three reasons. First, the units of account remain differentiated, as the offence can be re-characterised at each stage of the criminal proceedings. Secondly, the annual data do not allow for the monitoring of cohorts of users in the criminal justice system, but simply for the observation of stock data that are not comparable. Finally, the criminal treatment of use is difficult to observe in its own right as it is often associated with other offences. More than 40% of all sanctioned use offences are level 2, 3 or 4 offences, yet only one conviction is handed down for several offences (the multiplicity of offences aggravates the sentence handed down).

as awareness courses on the dangers of drug use (which claim to have an educational and empowering effect but do not include any individualised follow-up). This development seems to contradict the spirit of the 1970 French Law on Narcotics, which considered the drug user as a criminal but also as a patient who might need treatment. But above all, the decline in health-based measures observed since the 2010s raises questions about the capacity of the judicial system to direct drug users towards existing care facilities, particularly youth addiction outpatient centres (CJC) [22].

Lastly, it is important to emphasise the tendency to apply the sanctions initially

provided for road traffic offences to drug use: after the criminal order, created in 2002 to systematise and accelerate the handling of road traffic disputes, before being extended to drug use by the Law of 5 March 2007, which also created drug awareness courses (inspired by road safety awareness courses), the criminal fixed fine is in turn helping to categorise drug use as a mass offence, considered to be a minor offence, subject to standardised treatment, such as breaches of the highway code. Thus, a growing proportion of drug-related cases are being dealt with in a standardised, simplified and accelerated manner, which is at odds with the principle of individualised sentencing.

Depending on the level of implementation of criminal fixed fines in the coming years, this new measure could possibly reinforce the systematic nature of the response to drug use if it is taken up by law enforcement. The evolution of criminal policies towards drug users therefore deserves to be followed closely, in a changing international context, with several European countries having decriminalised the possession of small quantities of cannabis since the 2000s and with some states in the Americas moving away from prohibition in the 2010s by legalising cannabis (fifteen US states, Canada and Uruguay).

Bibliography

- Bergeron H. L'État et la toxicomanie : histoire d'une singularité française. Paris, PUF, coll. Sociologies, 1999, 370 p.
- Barré M.-D. La répression de l'usage de produits illicites : état des lieux. *Questions Pénales*, Cespip, 2008, Vol. 21, n° 2, 4 p.
- Obradovic I. La pénalisation de l'usage de stupéfiants en France au miroir des statistiques administratives. Enjeux et controverses. *Déviante et Société*, 2012, Vol. 36, n° 4, p. 441-469.
- Obradovic I. Trente ans de réponse pénale à l'usage de stupéfiants. *Tendances*, OFDT, 2015, n°103, 6 p.
- Mouhanna C., Bastard B. Procureurs et substituts : l'évolution du système de production des décisions pénales. *Droit et Société*, 2010, n° 74, p. 35-53.
- Obradovic I. [Awareness courses on the dangers of drug and alcohol use](#). *Tendances*, OFDT, 2012, n° 81, 6 p.
- Gautron V., Raphalen P. Les stages : une nouvelle forme de pénalité ? *Déviante et Société*, 2013, Vol. 37, n° 1, p. 27-50.
- Aubusson De Cavarlay B. Les mineurs mis en cause selon les statistiques de police. *Questions Pénales*, CESDIP, 2013, Vol. 26, n° 2, 4 p.
- Robert P., Zauberman R. Mesurer la délinquance. Paris, Presses de Sciences Po, 2011, 179 p.
- Douchet M.-A. Cannapol. Statut légal du cannabis et politiques publiques. Paris, IRIS, 2019, 46 p.
- Spilka S., Richard J.-B., Le Nézet O., Janssen E., Brissot A., Philippon A., Shah J., Chyderiotis S., Andler R., Cogordan C. [Levels of illicit drug use in France in 2017](#). *Tendances*, OFDT, 2018, n° 128, 6 p.
- ONDRP. Tableaux de bord annuels sur les faits élucidés, les personnes mises en cause et le rapport « Mis en cause / Faits élucidés » de 2008 à 2013 en France métropolitaine (Police nationale). Paris, INHESJ, 2014, 105 p.
- Peretti-Watel P., Beck F., Legleye S. Usagers interpellés, usagers déclarés : les deux visages du fumeur de cannabis. *Déviante et Société*, 2004, Vol. 28, n° 3, p. 335-352.
- Gautron V., Retière J.-N. Des destinées judiciaires pénalement et socialement marquées, dans Danet J. (Dir.), *La réponse pénale*. Dix ans de traitement des délits, Rennes, PUR, 2013, p. 211-251.
- Viard-Guillot L. Le traitement judiciaire des infractions liées aux stupéfiants en 2015. *Infostat Justice*, Ministère de la Justice, 2017, n° 150, 8 p.
- Lenoir A., Gautron V. Les pratiques des parquets face à l'injonction politique de réduire le taux de classement sans suite. *Droit et Société*, 2014, n° 88, p. 591-606.
- Roussel G. L'essor de l'ordonnance pénale délictuelle. *Droit et Société*, 2014, n° 88, p. 607-620.
- Mainaud T. Une justice pénale des mineurs adaptée à une délinquance particulière. *Infostat Justice*, 2015, n° 133, 8 p.
- Gautron V., Obradovic I. Entre incitation aux soins, punition et gestion des flux : les ambivalences du traitement de l'usage de stupéfiants par les magistrats du parquet, dans Gautron V. (Dir.), *Réprimer et soigner. Pratiques et enjeux d'une articulation complexe*, Rennes, PUR, à paraître en 2022.
- Obradovic I. Dix ans d'activité des « consultations jeunes consommateurs ». *Tendances*, OFDT, 2015, n° 101, 8 p.
- Josnin R. Une approche statistique de la récidive des personnes condamnées. *Infostat Justice*, 2014, n° 127, 8 p.
- Obradovic I. Consultations jeunes consommateurs : bilan après 10 ans d'activité. *La Santé en action*, 2018, n° 446, p. 39-41.
- Ministère de l'Intérieur, Ministère de la Justice. *Interstats Méthode n°4 : Statistiques sur les crimes et délits enregistrés par la police et la gendarmerie : correction des ruptures techniques liées aux modes de collecte*. 2015, 53 p.
- Ministère de l'Intérieur, Ministère de la Justice. *Interstats Méthode n°8 : Pour une méthodologie d'analyse comparée des statistiques Sécurité et Justice : l'exemple des infractions liées aux stupéfiants*. 2016, 52 p.
- Obradovic I. [The criminalization of drug use in France](#). *Tendances*, OFDT, 2010, n° 72, 6 p.

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French Monitoring Centre
for Drugs and Drug Addiction

69 rue de Varenne
CS 70780 - 75700 Paris Cedex 07
France

Phone: +33 1 41 62 77 16
e-mail: ofdt@ofdt.fr



www.ofdt.fr



Fifty years of penal response to drug use (1970-2020)

Appendices Tendances n° 144

Authors: Ivana Obradovic, Caroline Protais, Olivier Le Nézet

Glossary of criminal measures cited

■ **Alternative procedures to prosecution (known as the “third way“)** were included in the French Criminal Procedure Code by Law 99-515 of 23 June 1999. They are intended to avoid leaving an offence unresolved while avoiding a magistrates’ criminal hearing. They mainly include a drug warning, a referral to health and social service (including, in some cases, an «awareness course on the dangers of drug use»), and a court-ordered treatment. They do not appear on the Criminal Record. The public prosecutor will close the case once the perpetrator has completed the measures proposed by the former. However, if the measures set have not been completed, the prosecutor may initiate proceedings. Alternative measures to prosecution can be implemented regardless of the offence committed and the age of the offender (whether a minor or an adult). In principle, the use of alternative measures to prosecution is reserved for low-level offences.

The drug warning is one of the alternatives to prosecution included in the French Penal Code by the Law of 23 June 1999. It is a light procedure that can be adapted to a large number of offences, designed to remind the offender of the acts of which they are accused, the laws governing the offence(s) committed and the penalties incurred. It may take the form of a written letter, a drug warning by the investigating police officer, or a summons to appear before the public prosecutor or a representative of the public prosecutor.

■ **Referral to health and social services** (treatment referral) is one of the alternative procedures to prosecution created by Law no. 99-515 of 23 June 1999 and supplemented by the Law of 9 March 2004. The prosecutor may decide to ask the offender to contact one of the designated facilities. While there can be no obligation of result in terms of health guidance, the perpetrator is required to produce evidence that this has been done. Treatment referral can also be used to implement alternative ‘courses’ to prosecution: road safety awareness training, drug use awareness training, parental training and citizenship training.

■ **Treatment order** was originally intended for people addicted to alcohol or drugs. It was introduced as a result of the 1970 French Law on Narcotics, which penalises the use, possession, supply and trafficking of drugs, while providing curative measures for offenders. Since the Law of 5 March 2007, the treatment order measure can be issued at all stages of criminal proceedings for all offences if the circumstances have revealed an addiction. It can be used as an alternative to prosecution and as part of a fixed penalty notice for an adult user as well as a minor of thirteen years of age. It can also be used as part of a judicial supervision, as an additional sentence or as a means of enforcing a sentence (as part of a suspended sentence).

A qualified practitioner other than the carer is appointed as a relay doctor, who acts as an interface between the judicial institution and the carers responsible for monitoring the offender. This practitioner thus informs the judicial authority of compliance with the measure. The establishment and updating of departmental lists of relay doctors is carried out by the directors of regional health agencies.

■ **Penal transaction** is a measure introduced by the Law of 15 August 2014 for offences punishable by up to one year's imprisonment, including drug use. It is part of the alternatives to prosecution and consists of the payment of a certain amount of money by the offender, which may be subject to certain obligations. It can also be implemented by the police and gendarmerie services with the agreement of the public prosecutor. Its implementing decree of 13 October 2015 was annulled by the decision of the Council of State on 24 May 2017. The penal transaction has since been abrogated by the Law of 23 March 2019, which created the criminal fixed fine.

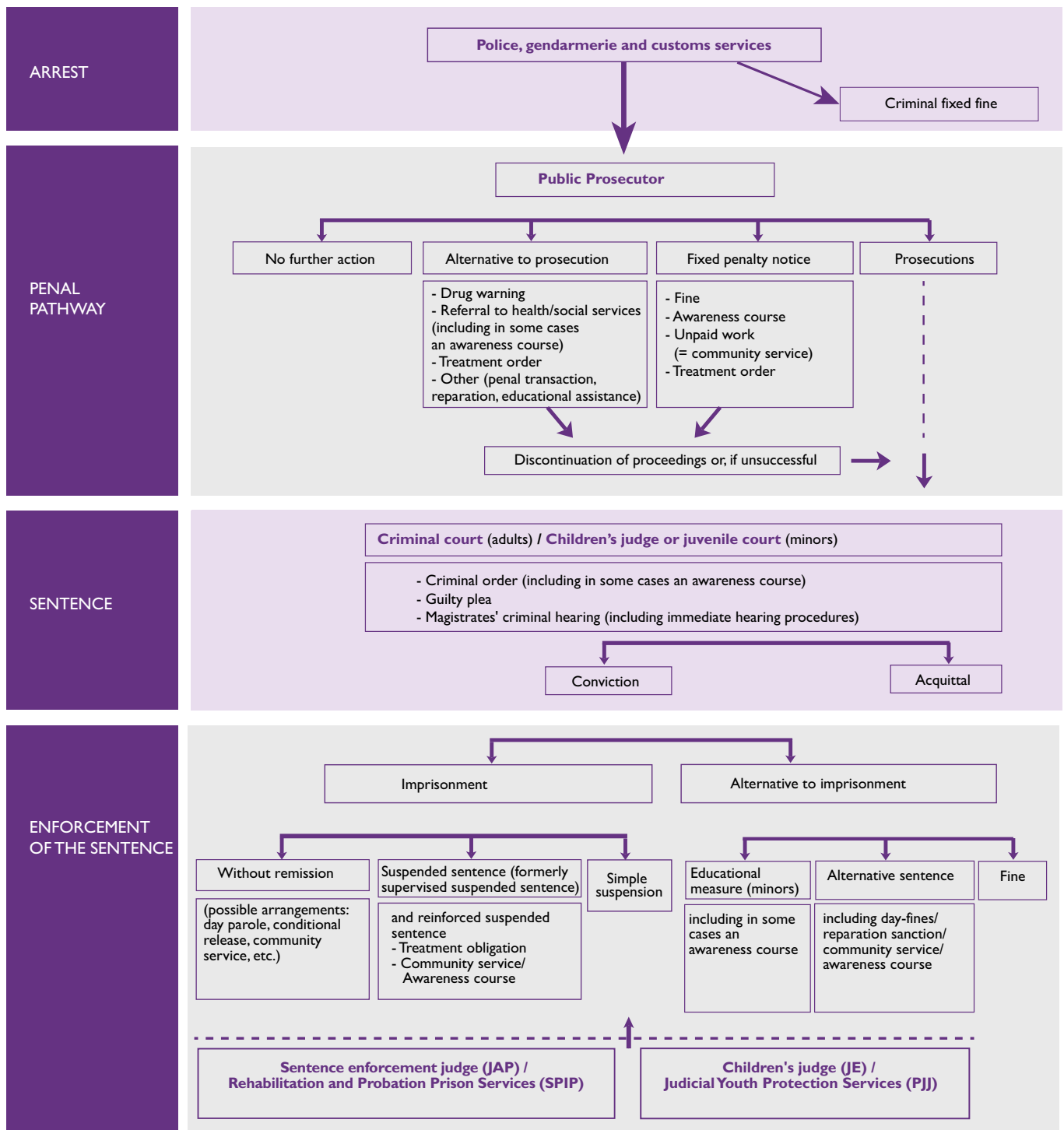
■ **Fixed penalty notice (known as the “fourth way”)** was introduced by the Law of 23 June 1999, in order to provide a systematic and dissuasive response to acts of low-level crime that had previously been dismissed. This is a measure taken by the public prosecutor (or their representative) as an alternative to prosecution. It is proposed to the person and then validated by a judge. In the context of a fixed penalty notice, the public prosecutor proposes various measures to be carried out by the defendant (fine, unpaid work, internship or training in a health facility, etc.). Carrying out the fixed penalty notice extinguishes the public action: if it is carried out, it is followed by a dismissal of the case. However, it is listed in the Criminal Record. It does not count as the first term of recidivism, as it is not a conviction but an alternative measure to prosecution. Since the Law of 5 March 2007, the fixed penalty notice has been extended to minors (from 13 years of age) and can include new measures, such as the awareness course on the dangers of drug and alcohol use or on road safety. Thus, in 2018, almost 60% of the sentences handed down for drug use included an awareness course on the dangers of drug use.

■ **Criminal order** is a simplified and rapid trial procedure, rendered by a criminal court, introduced in France by the Law of 3 January 1972 to 'absorb' the mass litigation relating to road-traffic offences, before being extended to other offences by the Law of 9 September 2002, to drug use in March 2007, and then to supply and sale for personal use in March 2019. It allows the public prosecutor to prosecute offenders by presenting their recommendations to a judge who rules without debate: the judge examines the offender's situation on the basis of the file, without appearing in court. The sentence is then limited to the fine and the additional penalties incurred, which may also be imposed as a principal penalty.

■ **Awareness courses on the dangers of drug and alcohol use** were introduced by the Law on Crime Prevention of 5 March 2007. Persons arrested for possession and use of drugs can be ordered to carry out this type of measure. Inspired by road safety awareness courses, this educational sanction, the cost of which is borne by the offender, is aimed at occasional, non-addict drug users. These courses usually take place over two days and consist of group sessions usually co-facilitated by care professionals and law enforcement officials. They aim to dissuade offenders from repeating their use by making them aware of the consequences of their consumption.

■ **“Alternative” or “replacement” sentences** are available to the judge as alternatives to prison. They only concern perpetrators. They aim to prevent the risk of recidivism, the marginalising nature of imprisonment and prison overcrowding. They have been implemented gradually. The Law of 11 July 1975 introduced restrictive or status penalties (restrictions on driving licences, professional and weapons bans, etc.); the Law of 10 June 1983 introduced community service in France and the day-fine, which consists of a daily financial contribution by the convicted person for a number of days previously defined by the judge. If they are not paid, these days are converted into days of imprisonment. In the 2000s, two new penalties were introduced: the Law of 9 March 2004 introduced a citizenship course aimed at reminding the offender of the 'values of the Republic and the duties of a citizen'; the reparation penalty introduced by the Law of 5 March 2007 obliges the convicted person to make reparation to the victim within a predefined period.

Possible paths of the drug user in the French penal chain



Chronology of the main penal measures to address drug use in France



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French monitoring centre for drugs
and drug addiction

69 rue de Varenne
CS 70780 - 75700 Paris Cedex 07
France

Tel.: +33 | 41 62 77 16 / e-mail: ofdt@ofdt.fr

