

# COMPULSORY CARE FOR DRUG ABUSERS

*Laurence SIMMAT-DURAND, Lecturer on demography at Tours University and researcher at the CESDIP summarizes the main findings of a study conducted on contract with the INSERM (Institut national de la santé et de la recherche médicale) Health and Society programme.*

The present research suggests various approaches to the implementation of the 1970 law on drug abusers. Three aspects of this work are summarized here.

## I - Sanitary and penal measures

### 1) The original scheme

The 1970 legislation<sup>1</sup> defines three points in the penal process at which compulsory care may be demanded for a drug abuser:

- ↳ at the outset of the judicial process, it may be suggested by the Prosecutor's office as an alternative to prosecution (art. L. 628-1 CSP<sup>2</sup>);
- ↳ during the judicial process, the examining judge or the juvenile court judge may order medical surveillance (art. L. 628-2 CSP);
- ↳ at sentencing, the court may impose treatment (art. L. 628-3 CSP), either because the abuser previously refused it or conversely, to extend it if it was begun under the above article.

In practice, the tendency is to focus on the first approach, while the latter two have practically disappeared, and are replaced by ordinary provisions.

### 2) The present scheme

Little is known about the present scheme, if only because of a lack of nation-wide statistics on the legally prescribed measures.

#### *Treatment under a prosecutor's injunction*

The original compulsory care measure defined in article L. 628-1 has been repeatedly readjusted; it is commonly known as *injonction thérapeutique*, treatment under a prosecutor's injunction, since the 1984 Ministry of Justice instructions using that term<sup>3</sup>. Its implementation was so difficult at the outset that it seemed doomed to be abandoned once and for all, in the 1980s. It was rediscovered, however, following a highly publicized redeployment, in 1987, with the allocation of specially earmarked funds. This measure was later included in the "agreements on objectives", signed in 1993 between the central government and the local governments; a number of official instructions encouraged its generalization to the entire country.

#### *Other types of compulsory care*

The two other types of compulsory care are no longer enforced by judges, and have been replaced by ordinary provisions involving medical surveillance and applicable irrespective of the offence. It is a fact that the original scheme only applies to offences defined in article L. 628 — that is, illicit drug use only —, thus excluding other drug offences and connected offences (such as thefts).

The first type is a part of pretrial surveillance, and may be pronounced during direct prosecution by a *tribunal correctionnel*<sup>4</sup> or during the preliminary judicial investigation; it involves a number of obligations to which the accused must be submitted, and possibly including treatment.

The second is ordered by the court in the framework of a suspended sentence with probation. Sentencing to a prison term with totally or partially suspended imprisonment entails a number of obligations. If these are shirked, the judge in charge of enforcement of sentences may demand revocation of the suspension. At present, this measure is defined in article 132-45, paragraph 3, of the new criminal code<sup>5</sup>. These measures are not aimed exclusively at drug abusers, but are applicable to them.

The new criminal code provides for adjournment with probation<sup>6</sup>, in which the pronouncement of a sentence is suspended on the acceptance of special obligations, including compulsory care.

Fourth and last, compulsory care may be ordered by the judge in charge of enforcement of sentences in the framework of release on parole, available to any sentenced prisoner having served half of his or her prison term<sup>7</sup>.

## II - National statistics

Data-collection, organized by the Ministry of Justice in the form of "Statistics on the application of the 31st December 1970 legislation" was dropped in 1981.

At that date, data collection on the number of prosecutor's injunctions to treatment was resumed for two years within statistics of the Public prosecutor's office activities, and then eliminated, to be reinstated in 1992.

Data collection on other types of compulsory care was first included in the "Statistics", then definitively abandoned in 1981<sup>8</sup>.

Through the DDASS (*Départementale* direction of Social and Sanitary Affairs), the Ministry of Health, in turn, has instituted a count of the measures prescribed by the Public prosecutors' offices and monitored by the health services. These findings are not published on a regular basis.

<sup>4</sup> French law divides offences into three categories, on the basis of increasing seriousness:

- *contraventions* (minor offences), which are judged by *tribunaux de police*;
- *délits* (moderately serious offences), which are judged by *tribunaux correctionnels*;
- *crimes* (major offences), which are judged by *cours d'assises*, in which a jury sits.

<sup>5</sup> "Accepting to undergo medical examination, treatment and care measures, including hospitalization".

<sup>6</sup> Article 132-63 of the New Criminal Code.

<sup>7</sup> Article 729 of the Code of Criminal Proceedings.

<sup>8</sup> For a statistical analysis of these measures, see L. SIMMAT-DURAND and T. ROUAULT, "Injonction thérapeutique et autres obligations de soins", in *Revue Documentaire Toxibase*, n° 3, 3<sup>ème</sup> trimestre 1997, pp. 1-28.

<sup>1</sup> Act n° 70-1320, 31st December 1970, on sanitary measures for combating drug abuse and for the punishment of trafficking and illicit use of poisonous substances.

<sup>2</sup> CSP = *Code de la Santé Publique*, Public Health Code.

<sup>3</sup> Instruction dated 17th September 1984.

Using these various sources, we have succeeded in compiling a practically complete series of data from 1971 on:

**Table 1: Number of injunctions to treatment pronounced by Public Prosecutor's Offices nationwide**

Years	Number	Years	Number
1971	352	1984	
1972	532	1985	
1973	598	1986	2108
1974	732	1987	2617
1975	815	1988	3803
1976	847	1989	
1977	1318	1990	3541
1978	952	1991	
1979	1187	1992	4935
1980	1388	1993	6149
1981	2075	1994	7678
1982	3229	1995	8630
1983	2893	1996	8812

*Source:* 1971-1981, "fiche de renseignements statistiques"; 1982-1983, Public prosecutor's office (unpublished); 1986-1990, Ministry of Health surveys; 1992-1996, Public prosecutor's office.

The SESI<sup>9</sup> survey estimates the number of drug abusers seen by specialized agencies upon judicial order, but does not distinguish treatment under prosecutor's injunction from other types of compulsory care. In recent years, about 10% of drug abusers seen in November were in that category.

### III - Findings of a local survey

#### Methodology

Two cohorts of drug users subjected to compulsory care in 1995 in a same court district were studied.

The first cohort involved users for whom treatment was ordered under a prosecutor's injunction. Data was taken from the records of the drug section, the court clerk's office and the DDASS. Past criminal history was assessed on the basis of the court clerks' records, which go back to 1973.

The second cohort involved people sentenced to suspended imprisonment with parole and compulsory care for any drug-related offence, including offering, use, possession, importing and trafficking. The CPAL monitoring records were analysed; they generally include the sentence, medical certificates and a criminal record bulletin, used to evaluate the past history, along with the monitoring forms.

In the absence of national figures, a field survey was conducted in one Paris area *département*, to establish data on individuals subjected to compulsory care. Two cohorts were studied, both for the year 1995: the first contained individuals under a prosecutor's injunction, while the second involved compulsory care while on probation, in the case of a suspended prison term.

#### 1) Treatment under a prosecutor's injunction

The public prosecutor's office studied issued 333 treatment injunctions in 1995. As specified in the official instructions, this correctional measure is practically exclusively reserved for heroin and cocaine users (79% and 11% respectively), while

only 6% were cannabis consumers. However, it has been found that many Public prosecutor's offices across the nation tend to apply this measure more extensively to cannabis users<sup>10</sup>.

#### Description of the people involved

Treatment on prosecutor's injunction was mostly applied to men (close to 87%), French (88%), with an average and median age very close to 28.5 years. These general features tally well with the figures found in previous surveys in the same district, as well as with the sanitary situation findings yielded by the SESI November survey.

Of the 333 individuals to which this measure was applied, 182 appeared at their legal appointment at the public prosecutor's office and were oriented to the DDASS agency, which had an office in the court building itself.

Information on the people seen by the representative of the DDASS was very accurate and enabled us to refine our figures on their age: users in this group had a high average age, connected with a long period of drug use: they were in late adolescence when first introduced to an illicit substance.

For present heroin-users only, the first illicit substance taken was cannabis in nearly half of cases (first use at age 16 to 20): the other half began directly with heroin, often as adults. Chart 1 shows these two courses, superimposed.

**Chart 1: Distribution of heroin users with respect to age at first use and first substance used**

Only 38% of all individuals subjected to a prosecutor's injunction to treatment had no previous judicial history. For the others, whether or not they complied with the prosecutor's injunction was found to depend on their past history: individuals with a great many antecedents (over 11) tended to appear far more often. This finding corresponds to the perceptions of actors in the health sector, according to whom people who have had repeated contact with the criminal justice system know how to use it better, including to escape prosecution.

#### Sanitary monitoring

Negotiation between the Public prosecutor's office and the DDASS services led to an agreement stipulating that sanitary monitoring would be viewed as positive if the drug abuser consulted on three occasions. The latter notion is extremely broad, since the consultation may be a visit to a doctor or an appointment with a citizens' group.

At the sanitary level, the average duration of monitoring was about four months. The option taken was usually a specialized centre or a hospital (53%) or a general practitioner in the city/hospital network scheme (23%), in a few cases the DDASS itself, the family doctor or some other agency of the CMS or

<sup>9</sup> Statistics Department, Ministry of Health, known as the "November survey".

<sup>10</sup> For examples, see the DGLDT report on interministerial action in 1995, or V. SAGANT, Bilan de l'application de la circulaire du 28 avril 1995, ministère de la Justice, janvier 1997, 95 pages.

CMPP type<sup>11</sup>. In comparison with the options taken in other comparable areas, the fact that the *département* was rich in specialized agencies accounts, to a large extent for these results.

Of the 182 individuals guided by the DDASS, 163 underwent compulsory care and monitoring was positive.

Conversely, if we examine previous use of drugs and the outcome of sanitary monitoring exclusively, monitoring is generally viewed as negative (by the DDASS services) when the person had more than two antecedents of drug use, and most often positive when the person had no antecedent of that sort.

#### *Court decisions*

Of the 333 prosecutor's injunctions to treatment pronounced, 190 ended in dismissal and 119 led to a hearing at a *tribunal correctionnel*. Sentences were severe, since 45% involved a suspended sentence with probation and 38% an unsuspended prison term. A fine was imposed in a single instance. It is important to point out that since it is a police officer who delivers a summons to the hearing, all of these convictions are supposed to involve a defended trial.

The public prosecutor's office decision is directly linked to the outcome of the DDASS monitoring, since 86% of dismissals were pronounced following positive monitoring.

#### **2) Compulsory care monitored by the CPAL<sup>12</sup>**

The second cohort studied involved people given a suspended imprisonment sentence with probation and subjected to compulsory care. As opposed to the cohort under prosecutor's injunction, for whom the only offence for which treatment was ordered was illicit use of drugs, this group includes other drug offences: 30% convicted of providing/sale or carrying and 3% of trafficking.

The main substance is again heroin (80%), followed by cocaine, alone or with another drug (11%).

Three fourths of these people were judged under a simplified and accelerated procedure, but one fourth was given a regular judicial investigation. One fourth of the cohort was given a sentence involving some unsuspended imprisonment.

Of the 139 individuals in the cohort, 83% were effectively followed up by the CPAL, the others were handed over to another agency or could not be located.

#### *Description of the individuals*

Here again, average age was 28. 86% were men; 77% were French and 14% Algerian, Moroccan or Tunisian.

The people involved were generally in a precarious living situation: 27% drew their subsistence from the RMI<sup>13</sup> or the allowance for disabled adults. Nearly 30% were on unemployment, and usually had been unemployed for a prolonged period (over one year in two thirds of cases).

The individuals studied also had serious judiciary and sanitary antecedents: only one fourth of them had a clean criminal record and two thirds were already being monitored by the health department. Of the hundred-odd individuals for whom medical information is available, 30 were contaminated by the HIV or hepatitis and 7 were dependent on alcohol or pharmaceuticals.

Monitoring lasted 26 months, on the average. Over that period,

people consulted an average of 1.67 health units. In 44% of cases, monitoring took place in a specialized centre, in 41% in a hospital and the remaining 15% consulted a private physician.

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This brief analysis points to several features of the two types of compulsory care.

The two measures have different legal implications. It should be recalled that a prosecutor's injunction is only applicable for illicit use, whereas the other type of compulsory care may be demanded for any offence. Treatment under a prosecutor's injunction is linked to case dismissal, and therefore remains relatively informal, as shown by the disparities in its implementation across the country.

Conversely, compulsory care in the framework of a suspended prison sentence with probation is an integral part of the sentence, and as such is implemented by the sentence enforcement department, through probation committees and in accordance with the resources at their disposal for follow-up.

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For further information, see:

SIMMAT-DURAND (L.), CESONI (M.L.), KLETZLEN (A.), GOYAUX (N.), MARTINEAU (H.), *L'usager de stupéfiants entre répression et soins: la mise en œuvre de la loi de 1970*, Guyancourt, CESDIP, Etudes & Données Pénales, n° 77, 1998, 460 pages.

<sup>11</sup> Medical/Social Centre or Medical/Psychological/Educational Centre.

<sup>12</sup> Committee for Probation and Help for Released Prisoners.

<sup>13</sup> Guaranteed minimum income.