

The French government is planning on creating a new probation order. This sentence should, in the long term (approx. 3 years), replace all the existing sentences and in particular our probation order with suspended custody, our community work and our mix of probation order plus suspended custody, plus community work.

The government pledges that this will be a complete revolution: the probation order will not be linked to a custodial suspended sentence. It imagines that less people will end up in custody.

This is a rather superficial and purely legalistic viewpoint as:

- 1) All will depend on courts' attitude. So long as courts are not convinced that the new sentence is really different (which it is not) and in particular more efficient and more credible than the previous ones, why should it work? (Herzog-Evans, 2013 c and d)
- 2) What courts do depends to a great extent on numerous other factors (Boone and Herzog-Evans, forthcoming) and none is addressed by the Bill.
- 3) We need much more probation officers. Granted the MoJ has just announced that it will hire 1000 new PO (a lot of them will merely replace retiring baby boomers however). However it does not address the urgent question of their skills. In France rather than looking for specific skills, we look for diplomas and academic knowledge. The result is that we have been essentially recruiting lawyers for the last twenty odd years, hence to too great an extent pen-pusher/computer savvy people who more often than not, tend to think their job is to be 'an interface' between offenders and the judiciary (Herzog-Evans, 2013 e)

The crucial question, however, was always going to be what to do in case of breach.

It is all nice and gentle to affirm that this sentence is not linked to imprisonment but unless when the offender breaches he/she is not sent back to prison this is just talk. Considering the French legal system only two solutions were possible

- Either the sentencing court pronounced along with the probation order a potential prison sentence which would be enforced should the offender breach and the sentences' implementation judge (*juge de l'application des peines* – JAP – see my book 2013, b) bit then there was hardly any difference with the former probation order with suspended custody;
- Or the JAP referred the offender to the sentencing court which could then sentence the offender, breach being an offence (as it is currently the case with community work). In this case, the JAP was ousted which would have had a predictably very bad result: JAP are very lenient (see Herzog-Evans, 2013 a and b) and very much aware of the complexity of the desistance process. They systematically first do of reminding of law procedure called 'recadrage' (very similar to the one which Raynor describes in

his chapter in the latest Ugwudike and Raynor publication) and only recall if – and not always if – the probationer further breaches his order. There is no way in the world that French McJustice correctional courts would have the same attitude, nor the time, nor the information... I thus predicted more recall than with our current system, in spite of the government's pledge to reduce incarceration.

So in its latest shape, the Bill opts for a similarly counter-productive solution: the JAP will refer the case to the president of the tribunal – who's just as ignorant about offenders, their desistance (or reoffending) paths and will definitely not have the time to do a recadrage procedure.

As usual France thinks in terms of legal reasoning rather than in terms of evidence and knowledge, of skills, of humans, of institutions and agencies, of collaboration and so forth.

There were, however, several avenues if one wants to be more efficient when dealing with non-compliance and here I shall draw upon the long body of literature which I am listing below. To name but a few:

- First, and foremost having skilled PO who are able – and institutionally encouraged – to develop a therapeutic alliance with offenders;
- Second, and in the same vein work collaboratively with offenders in order to develop their agency and sustain their substantive compliance;
- Third, work collaboratively with other agencies and the judiciary;
- Fourth, base probation work on evidence and science and constantly adapt to it (including RNR, core correctional practices and in particular problem-solving and motivational interviewing)
- Fifth, keep the only good thing that French probation has, i.e. judicial intervention with a holistic and humane judge who respects fair trial;
- Sixth, really react to every breach case and this swiftly – it does not mean harshly at all; but it does mean detecting and reacting to violations;
- Seven, using alternative sentences (the Bill suggests a few but has little imagination): placing offenders under EM for a few weeks; short custodial sanctions, which, for instance can be enforced over the week-ends, adding obligations, modifying obligations, having week-end curfews....
- Eight, using rewards – not material ones, but for instance, anticipating the end of the order (in a solemn way – see Maruna, 2001 and 2011) and above all, praising success (Wodahl et al. estimated that in order to have an impact on compliance there should be four rewards to a punishment). People react

more to human encouragement and cognitive enforcement than to being given material rewards:

Needless to say French probation does not tick any of these boxes (see M. Herzog-Evans, 2013 f)... and this is what the current government and prison services should address rather than enacting an umpteenth useless legal reform.

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