

Strasbourg, 20 September 2012
pc-cp/docs 2012/pc-cp(2012)10e

PC-CP (2012) 10

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

COMPULSORY TREATMENT

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In French law, does the compulsory treatment prompt a form of coercion?

In France, the compulsory treatment is defined as:

- an obligation to undergo measures of examination, treatment or care even under conditions of hospitalisation, particularly for the purposes of detoxification or psychological or psychiatric follow-up,
- an obligation to receive medical, social or psychological treatment prescribed in respect of violence between spouses.

It is not a measure of stand-alone, but forms part of a coercive measure imposed by a judge or prosecutor on a person amenable to justice at the various stages of criminal procedure.

First part: the compulsory treatment in pre-sentence measures

1) Alternatives to prosecution

Penal process is a procedure which enables the state prosecutor to offer a person who has committed certain offences one or more alternative measures to prosecution. The accused in question must admit the acts charged, and give his/her consent.

The state prosecutor may propose to the perpetrator various measures including a treatment order. If, after consenting, he/she does not fully carry out the measures decided upon, the state prosecutor brings an action before the criminal courts.

2) “Quasi-coercive” measures for persons facing charges

Section 1: judicial control

Judicial control is a measure allowing a person to be placed under one or more obligations until brought before a trial court. It concerns persons charged who are awaiting trial, or persons under investigation.

The investigating judge, the judge responsible for release and custody, or the court, stipulates one or more obligations which the person must honour. These are, in particular, restriction on freedom of movement, surveillance, medical monitoring, and financial sureties.

Surveillance may notably include an obligation to undergo social and remedial mentoring (occupational activity or training).

If a person under investigation deliberately infringes the obligations of judicial control, the judge responsible for release and custody may decide to remand him/her in custody.

Section 2: house arrest under electronic monitoring

House arrest compels persons facing charges to remain at home or in another residence under electronic monitoring. They may only leave it on conditions and for reasons determined by the judge.

House arrest with electronic monitoring may be ordered when the following cumulative conditions are met:

- the judicial control measures are inadequate to the needs of the investigation or as a security measure,
- the person is liable to a prison sentence of at least 2 years, or a more severe penalty. House arrest can apply to a person liable to at least 6 months' imprisonment at summary trial as a culprit caught in the act.

House arrest is ordered with the person's consent, or even at his/her request (particularly when release is requested as an alternative to remand in custody). The judge's decision is delivered after debating at court.

House arrest with electronic monitoring may be accompanied by judicial control carrying obligations or prohibitions. A person amenable to justice is monitored by the penitentiary reintegration and probation service (SPIP) on court order.

If the obligations are breached, the investigating judge or the state prosecutor may refer the matter to the judge responsible for release and custody. The person may then be remanded in custody.

Section 3: remand

Remand in custody may be ordered where a person under investigation has breached the obligations of judicial control or house arrest with electronic monitoring.

It may also be ordered on 2 cumulative conditions. The first is inadequacy of the measures of court supervision or house arrest with electronic monitoring vis-à-vis the needs of the investigation or as a security measure. The second relates to the type of penalty associated with the alleged crime or offence. A person under investigation must be liable to a prison sentence of 3 years or more.

No specific obligations is attached to remand in custody.

3) Efficiency of the compulsory treatment and implications for the measure itself and for the potential sanction

In the context of the measure, a person amenable to justice regularly reports to the reintegration and probation counsellor of the penitentiary reintegration and probation service responsible for the measure and for verifying and overseeing the efficiency of the follow-up applied.

Before a person amenable to justice goes before the trial court, the committals judicial body may call for reports certifying the follow-up and the involvement or non-involvement. Infringement of the obligation may cause the cancellation of the measure, and indirectly influences sentencing e.g. SPIP. Thus the compulsory treatment, by definition and by its consequences, is coercive.

Second part: the compulsory treatment in post-sentence measures

In France, the compulsory treatment appears in alternatives to imprisonment restricting freedom in an open environment, and influences court decisions during detention.

Section 1: coercion in an open environment

The trial court must specify the particular obligations, but need not itemise the details of the obligation to be complied with, as one of the functions of the judge responsible for enforcing sanctions is to adapt the obligation prescribed by law to each situation.

It rests with the judge responsible for enforcing sanctions to determine the exact content of the care requirement to be met by the convicted person (cf. Crim. 13 November 2001, Bull.crim. n°234, Crim 27 March 2007 AJ pénal 2007.338). Article D.49-27 of the Code of Criminal Procedure provides that the judge responsible for enforcing sanctions shall be assisted by the SPIP which the judge instructs to monitor persons sentenced to a sanction involving restriction of freedom.

Oversight of obligations and assistance measures is performed by the prison reintegration and probation counsellors, bearing in mind as appropriate the general guidelines (Article D. 576, Code of Criminal Procedure) and the specific instructions issued by the judge responsible for enforcing sanctions (Article D. 577, Code of Criminal Procedure).

The 1958 Code of Criminal Procedure saw the appearance of the schedules of obligations which could be imposed on a convicted person subject to certain sanctions or measures.

The following are the usual ones applied:

Control measures, for the essential purpose of controlling the convicted person's residence and activity. In order to do so, the latter must convey certain information and obtain certain authorisations (respond to summonses, receive the notified visits, furnish proofs, report changes of address or situation, etc.).

Specific obligations, aimed at obliging the convicted person to perform or to refrain from a given action more or less directly linked with the offence committed. These obligations concern the convicted person's health, social and occupational life, prevention of reoffending, and the judicial, non-pecuniary or pecuniary satisfaction of damages claimed by the civil parties to the process.

Assistance measures affording the convicted person, through the agency of the SPIP, access to the network run by the service (appointments with the ordinary welfare bodies, readier access to services providing care, housing, etc.) and in some cases receipt of loans or gifts of money.

If no punishable incident occurs, the measure is considered annulled. Where the convicted person does not comply with the control measures or the obligations, or has committed an offence followed by a conviction, the judge responsible for enforcing sanctions may order extension of the trial period or cancellation of the measure.

The compulsory treatment should be distinguished from the treatment injunction. The latter, created by the act of 17 June 1998 on prevention and punishment of sexual offences and protection of minors, operates in the ambit of social and judicial follow-up. This consists of judicial, social and possibly medical supervision aimed at preventing the relapse of sexual offenders. It is ordered by the court in addition to or in place of the custodial sanction.

The trial court must inform convicted persons that no treatment can be effected without their consent, but that if they refuse they may be imprisoned for a term specified in the sentencing decision. Where a treatment injunction is added to a prison sentence without remission, the convicted person must be informed that he/she may commence treatment while serving the sentence.

Gradually, the treatment injunction was made for sanctions and measures other than social and judicial monitoring, provided that this sanction was incurred.

Since 2007, the treatment injunction has been subject to certain conditions:

- the person must have been convicted of a felony or a lesser offence incurring social and judicial monitoring,
- it must be established by prior medical expertise that the convicted person is amenable to treatment.

The judge responsible for enforcing sanctions issues an order appointing a co-ordinating physician to ensure liaison between the justice and health sectors.

In the event of non-compliance with the surveillance measures, obligations, assistance measures or treatment injunction, the court responsible for enforcing sanctions may, of its own motion or at the call of the state prosecutor, deliver a reasoned decision ordering the partial or complete enforcement of the prison sentence passed by the trial court.

Section 2: coercion in prison

There is no treatment obligation during imprisonment, but the judge responsible for enforcing sanctions takes account of the prisoner's personal involvement, in matters including medical provision, for a number of decisions: granting additional remissions of sentence, leave of absence and sentencing reduction.

a) additional reductions of sentence (RSP)

The act of 29 December 1972 introduced reductions of sentence, granted by the judge responsible for enforcing sanctions. Reduction of sentence means reduction of the term of imprisonment remaining to be served, independent of how many sentences are to be served. The calculation thus results in advancing the date of the end of the sentence.

The Law of 9 March 2004 overhauled the entire apparatus, reforming the additional reductions of sentence.

Additional reduction of sentence is granted by the judge responsible for enforcing sentences to sentenced persons who show serious efforts at social reintegration in the course of imprisonment. The Law of 12 December 2005 dealing with recidivism in case of criminal offences introduced more stringent rules for sentencing and for enforcement of penalties vis-à-vis persons convicted of repeat offences (particularly regarding the award of the "sentence remission credit" - CRP).

The independent Law of 10 August 2007 increased the severity of the conditions governing award of additional remission of sentence (RSP) where treatment is refused by persons convicted of a felony or a lesser offence incurring social and judicial monitoring. The act of 25 February 2008 reduced the maximum amount of RSP available to persons convicted of the felonies or crimes of manslaughter or

murder, torture or barbaric acts, rape, sexual assault or sexual abuse of a minor when they refuse to undergo care and are nonetheless granted additional remissions of sentence.

b) Leave of absence

Leave of absence is the permission given to a sentenced person to leave a prison for a specified period counted as part of the prison term, in order to go to a place within the national territory (Article 723-3, D. 142 to D. 147, Code of Criminal Procedure). The court responsible for enforcing sanctions (or juvenile court) rules by reasoned order after consulting the sentence enforcement commission. The convicted person must file a request; the court takes into account conduct and efforts during imprisonment having regard to the nature of the sanction and of the facts including of any treatment it may have ordered during imprisonment (psychological, psychiatric or addictological follow-up).

c) Sentencing reduction

Article 707 of the Code of Criminal Procedure provides that *the execution of sentences shall favour, in accordance with the interests of society and the rights of victims, the integration or reintegration of sentenced persons as well as the prevention of reoffending and that individualisation of sentences must wherever possible allow the sentenced person's progressive return to freedom and avert release without any form of judicial oversight*. The latter provision is general in nature and is intended to avert "abrupt" ending of sentences that is release of convicted prisoners without supervision or supportive measures.

Sentenced persons nearing the end of their term may receive reduction of the sentence in the form of semi-custody, extramural placement, being put under electronic monitoring, or release on parole. A reduction of the sentence may carry one or more obligations under Article 132-45 of the Penal Code, including the obligation for treatment.

Sentenced persons are ineligible for reduction of the sentence where they have shown misconduct during imprisonment and do not present a serious reintegration plan, including unjustified absence of treatment.

Third part: security measures

Where a person displays a dangerous character, the judge may decide to apply a preventive measure or a "security measure", such as judicial monitoring, security surveillance and security detention. The obligation for treatment takes on a particular dimension in the context of preventing reoffending and dangerousness.

Section 1: judicial monitoring

Judicial monitoring consists in a set of control measures and obligations which apply to released persons. Its main aim is to avert reoffending. It is applied in an open environment for the period corresponding to the sentence reduction credit.

Judicial monitoring allows persons amenable to justice to be subjected to various measures and obligations, specified in the decision of the judge or court responsible for enforcing sanctions. If the stipulated measures and obligations are not complied with, the court may withdraw all or part of the sentence reductions granted. The person is then returned to prison for a term corresponding to the withdrawal.

Section 2: security surveillance

Security surveillance consists in subjecting certain perpetrators of crime, owing to a risk of their reoffending, to obligations or prohibitions. This measure is taken after social and judicial monitoring, judicial control, release on parole with a treatment injunction, or security detention.

Security surveillance can be ordered in respect of persons convicted of murder, manslaughter, torture or barbaric acts, rape, abduction or illegal confinement. These crimes must have been committed against a minor, or against an adult if the crime is aggravated, inter alia because it is a repeated offence.

Security surveillance may be ordered for as long as dangerousness persists:

- further to the obligations attached to social and judicial monitoring or judicial control. The person must have been sentenced to at least 15 years of imprisonment for the same offences as those prescribed in the case of security detention,

- further to the obligations attached to release on parole with treatment injunction where the person was sentenced to life imprisonment,
- at the end of a term of security detention.

Security surveillance can only be ordered where:

- entry in the automated national judicial register of perpetrators of sexual or violent offences does not suffice to guard against the risk of reoffending,
- and this measure is the sole means of achieving the above.

The decision to place a person under security surveillance is taken by the regional court in charge of security detention. This court rules at the proposal of the multidisciplinary commission on security measures. The person concerned is placed under the supervision of the court responsible for enforcing sanctions.

The person concerned must comply with the obligations defined by the regional court in charge of security detention. These obligations are the ones prescribed by release on parole, social and judicial monitoring or judicial control, notably:

- treatment injunction,
- being put under mobile electronic monitoring,
- subjection to measures of oversight by a social worker,
- prohibition to be in certain places,
- prohibition of associating with certain persons.

If the obligations imposed are not respected, the president of the regional court may of his own motion order provisional placement in a social-medical-judicial security centre. This is the case where the person refuses to commence or continue a course of medical treatment stipulated or suggested in connection with a treatment injunction.

Section 3: security detention

Security detention consists in placing a perpetrator of crime who is deemed particularly dangerous in a socio-medico-judicial security centre. Medical, social and psychological treatment is permanently available.

Security detention concerns certain perpetrators of crime:

- suffering from a severe personality disorder,
- and displaying particular dangerousness marked by very high probability of reoffending.

Only persons who have committed a most serious crime can be placed in security detention.

They are persons sentenced to at least 15 years of penal servitude for certain crimes:

- murder or manslaughter,
- torture or barbaric acts,
- rape, abduction or illegal confinement.

The crime must have been committed against:

- either an underage victim,
- or an adult, and be aggravated by certain circumstances or have been a repeat offence.

Security detention can apply:

- when the enforcement of the sanction is completed,
- where a person placed under security surveillance infringes the obligations imposed.

The decision is taken by the regional court in charge of security detention, after adversarial proceedings. The assize court must have made express provision in its decision that on completion of sentence the person may have his/her situation re-examined with a view to possible security detention.

Before the execution of his/her sentence ends, the prisoner's situation is reviewed by the multidisciplinary commission on security measures:

- after placement for at least 6 weeks in a specialised service responsible for observation of prisoners,
- and for the purposes of a multidisciplinary appraisal of dangerousness in conjunction with medical expertise.

If it concludes that there is dangerousness, the commission proposes by reasoned opinion that the person should be placed in security detention subject to these 3 conditions:

- that a less coercive measure does not suffice to prevent the commission of crimes;
- that security detention constitutes the sole means to prevent the (most probable) commission of crimes,
- the sentenced person, while serving his/her sentence, has benefited from suitable medical, social and psychological provision.

The detention measure is ordered for a term of 1 year and is renewable subject to the approval of the multidisciplinary commission on security measures where the sentenced person still displays risks of dangerousness.