

The six month limit to community measures ‘under prison registry’: a study of professional perception¹

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Abstract

This paper deals with the sentence feasibility with a special focus on electronic monitoring. The purposes of this research were first to test the ‘six month limit’ idea amongst practitioners, before the Prison Law was implemented; second to determine whether they tailored their decisions accordingly; third, how they initially welcomed the reform and in particular whether they thought that a two years ‘mesure sous écrou’ was feasible; lastly, whether they had actually implemented the new two year limit and whether this had had an effect on how they perceived the six month absolute maximum. The conclusions put forward some reasons for this limit from the professional’s point of view.

Keywords: Electronic Monitoring – Reinsertion – Compliance – Practitioner’s perspective

Introduction

Since the French Prison Act (2009), electronic monitoring (hereafter EM) and semi-freedom or placement in the community (hereafter SF and PC³) can be granted to people who have been sentenced to up to two years (one year prior to the reform) custody, and only one year if they are recidivists, or have two (one if they are recidivist) years left to serve. These measures share several traits. Firstly, they are the only ones to which the new two years threshold applies; they are legally deemed interchangeable, which means courts can transform one into another at any time. Secondly, in the course of their execution, offenders are still legally inmates⁴. For this reason, these measures are called ‘*mesures sous écrou*’ – literally ‘measures under prison registry’ –, which means offenders are subjected to prison discipline and, if they

¹ I want to particularly thank the first reviewer of this article who pointed to its original important defaults and guided me in order to improve its theoretical framework.

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³ Two forms of day leave whereby offenders spend the day in the community for work, vocational training or treatment and the rest of their time in prison.

⁴ For the purpose of this article, in order to avoid the stigmatising connotation of offender, I shall use, whenever possible, the French expression of ‘*placé*’, i.e. person ‘placed’ under one of the three measures at stake.

are not present in a specified place at a specified time, are considered as prison escapees. Thirdly, *'mesures sous écrou'* can be either sentences (but this is rare in practice), or release measures, or ab initio deviation measures. In the latter case, the offender who has just been sentenced to imprisonment is heard in camera during an adversarial hearing and a judge can transform the sentence into what French law calls a 'sentence management measure', i.e. a measure which transforms or adapts a sentence into something else or releases an inmate (Penal Procedure Code, article 723-15 s.). In those last two instances, *'mesures sous écrou'* are pronounced by a one judge sentence implementation court ('juge de l'application des peines', hereafter JAP). Fourthly, the Prison Act has created a home detention curfew equivalent, where *probation* services can automatically release under EM *'placés'* who have four months left to serve on five years maximum custodial sentences.

The main reason for the 2009 reform was to free-up cells in an overcrowded prison system. France, like many European countries uses 'sentence management measures' to help solve its prisons' issues (see N. Padfield, D. van Zyl Smit and F. Dünkel, *Release from prison in Europe*, Cullompton, Willan publishing, 2010). Inevitably, though, this raises a question: is it feasible to submit a person to a *'mesure sous écrou'* for as long a period as two years? This question seemed particularly relevant in view of what practitioners, be they JAP, probation officers (hereafter PO) or prison staff had consistently told the author throughout her two decades' involvement in sentence implementation, namely, that, in their experience, these measures 'cannot last for more than six months' even though what exactly happened after six months was never made clear.

Relevant literature

There is no research directly testing the feasibility of a six months limit – or indeed any time limit - for EM, SF and similar sentences or measures. The deeply rooted idea, amongst French practitioners, that EM, SF and PC are not bearable by the offender for more than six months, was echoed in one research report on EM by a French sociologist, Guy Casadamont, (Casadamont, 2009). However, the six months limit was only mentioned in passing by one of the eight practitioners he interviewed: *'It's a little like with semi-freedom, after six months, things become... unless you tag someone who has virtually no risk of reoffending. It's the same here for a long EM. I think one must be really careful with this.'* (A prison officer). Mr Fenech (Fenech, 2005: 26), an MP, also merely mentioned the six month limit in his own public report on GPS-EM⁵. Likewise, in England and Wales, several authors have made passing remarks about a time limit to EM (Nellis, 2009:44; Mair and Nee, 1990; Mair and Mortiner, 1996). Lastly, interviewed by the French Human Right National Commission in 2007, Norman Bishop said that Swedish research had showed that EM was more efficient when it only lasted two months rather than three (CNCDH, 2007: 89).

More relevant are a host of other works looking into what May and Wood have recently revived under the notion of 'correctional punishment ranking' (May and Wood, 2010). This body of research fundamentally asks these simple questions: what does it take for an offender to prefer prison to a community sentence or measure; what is the exchange rate for these measures? It has showed for instance that, in the context of the U.S., Blacks are more likely than Whites to prefer prison (Crouch, 1993; Wood and May, 2003 – also see for different public opinion on EM: Payne and al., 2009) and offenders who have known prison before are

⁵ GPS-EM is another form of EM, which we shall not consider here as it is neither a sentence nor a sentence management measure, but a safety measure, i.e. a form of supervision that is imposed on dangerous offenders who have served their sentence.

less likely to fear returning to it (Williams and al., 2008). Wood and May (2010) demonstrated that female offenders seemed to have a lower threshold when it came to EM than their male counterparts. Staff behaviour is also a very significant factor which shows that the penal context and staff culture is paramount. In May and Wood, one consistently mentioned factor for a low tolerance to community punishment was the provocative and aggressive attitude of probation officers.

May and Wood (2010) did incorporate a time element to their ranking system. They did not only ask whether offenders would per se prefer prison or a community measure, but beyond what length of time they would not be ready to endure community supervision and would prefer prison. They thus established that time did matter. Interestingly, they showed that EM and intermittent incarceration did not fare very well and that offenders found these measures more punitive than other alternative ones, with the exception of county jail and boot camp – but one would argue that these are not actual, or comparable, ‘community’ sentences.

Previous research had been conducted in a different legal, penal and cultural context, but their relevance to France is debatable. For instance, county jails, boot camps and day reporting centres do not exist in this country. Also, female offenders’ lower tolerance to EM would probably not apply to France. In the U.S. it was correlated to two factors: first, curfew hours seemed to be too strict for women with children – often their sole carer – when in France curfew hours are tailored to the person’s day-life and context; second, the U.S. overall ethos of supervision seems to be by far more punitive than the French context, with probation staff having a different practice and professional habitus as we shall see hereafter (Teague, 2011) In the U.S., offenders seemed to be put under strong pressure and PO even sometimes pushed or tricked them into breaching, something that could not be more remote from French practice.

Moreover, the present research was not concerned about the intrinsic feasibility of ‘*mesures sous écrou*’, but about the perception of practitioners, and the implication this had for their operational practice. What we wanted to determine was whether, according to French practitioners, ‘*mesures sous écrou*’ were seen as ‘feasible’, a concept initially coined by Carlen, which ‘raises questions about the likelihood of extremely disadvantaged offenders being able successfully to complete any very demanding non-custodial order’ (Carlen, 1989: 21). Defined as such, feasibility seems to dissolve into two cardinal French concepts, individualisation and reinsertion, although it also connotes elements of what is nowadays called ‘compliance’. First, the old principle of individualisation of sentences theorized by Saleilles (1898), has had a fundamental effect on the legal construct of French criminal law and penal system. Two introductory articles expressing fundamental rules have in fact been inserted both in the penal code (PC, art. 132-24) and in the penal procedure code (PPC, art. 707). These rules respectively ask sentencing courts and sentencing implementation judges and courts to individualise sentences and measures, i.e. to tailor them to offenders’ personality, and personal circumstances. Individualisation thus implies proportionality to the offender rather than the offence, as well as equality. For instance, it would not be feasible to expect a poor person to pay the same level of fine as a rich person, for a similar offence, something which is expressed in article 132-24.

Sentence feasibility is also contained within the French concept of ‘reinsertion’ (for a legal analysis see Gassin, 1996). This more recently articulated principle, also contained in articles 132-24 and 707, is just as cardinal as individualisation. It prospered after World War II, under the considerable influence of Marc Ancel (Levasseur, 1991), the creator of the theory of the

‘New Social Defence’ who also argued strongly in favour of humanity and what is known in England as ‘reintegration’ and ‘resettlement’, and in the USA as ‘re-entry’ (Ancel, 1954)⁶.

The principle of reinsertion⁷ has a series of very important implications for our line of questioning,

- *First, it implies that sentences and their implementation must be tailored, and implemented in view of their expected outcome, i.e. desistance and more interestingly, as McNeill puts it ‘integration in the community’. (McNeill, 2009) which is exactly what reinsertion conveys. In that respect ‘mesures sous écrou’ are seen as measures amongst others, which are tailored to the exact needs, circumstances and capacities of the person. It is thought that certain categories of people will benefit more from a stricter measure which will thus better support desistance (see Hucklesby, 2011 à propos of EM and desistance.*
- *Secondly, it implies that offenders are expected to make personal efforts towards their own reinsertion whilst in prison, or while in the community – the French verb ‘réinsérer’ is conjugated with a ‘se’, i.e. himself’. All legal rules defining the regime applying to community sentences and measures, and particularly to release measures, state that the offender must a) create a feasible and credible project with the help of their families and the probation service as they are deemed to be responsible actors in their own reinsertion process; b) that they are granted such measures based on the insertion efforts (work, paying damages, getting treatment...) which they have made.*
- *Thirdly, reinsertion requires that prison and probation services have an obligation to work with the eventual prospect of reinsertion in mind, and to act accordingly. In that vein, article 1 of the prison law states that reinsertion is at the root of prison services’ goals. In France, prison services include probation services and another Prison Law rule, article 13 also states that reinsertion is their main objective.*
- *Fourthly, reinsertion implies, thereby with an even stronger link to the sentence feasibility literature, that sentence management measures ‘must work’ and that practitioners must do their best in order to facilitate completion, which is the exact opposite of ‘setting offenders up to fail’ (Carlen and Tombs, 2006). ‘Making’ the measure work requires that everyone should work towards success which implies a mix of offender compliance, lack of incidents and breach. It also means that the offender should not be doomed to fail by a measure which is too constraining or ill-adapted to his circumstances or personality. As an illustration for this reason, French PO or other staff do not impose evening or night visits in the homes of ‘placés’, except in the case of absconding.*

The ideal of ‘reinsertion’ has always been rather nebulous and is arguably illuminated by the somewhat more precise concepts of rehabilitation, reentry, resettlement, desistance, sentence

⁶ It is interesting to note that Ancel was a legal ‘comparatavist’, and that his PhD concerned English common law (Ancel, 1927). Equally interesting is that he was at one point a close relation of Grammatica. Ancel inspired major legal changes after WWII, for instance, the creation of a sentence implementation judge, the importation of English probation, and prison reforms.

⁷ The French Ministry of Justice’s website only mentions reinsertion and individualisation of the sentence and not punitiveness as the founding principles of EM (see <http://www.justice.gouv.fr/prison-et-reinsertion-10036/placement-sous-surveillance-electronique-22563.html>, consulted on February 2012) and the video that it shows pictures an offender who is about to present the baccalauréat exam (equivalent of A levels) ‘thanks’ to being under EM.

feasibility, proportionality, all of which – semantically at least - it encompasses. In France, reinsertion has always implied that practitioner's should use discretion to balance control with efforts to be constructive and reasonable with offenders, to ensure that sentence completion is feasible.

As such reinsertion also raises issues of human rights. The probation literature is currently being made aware of the importance of human rights and legitimacy in probation (see eg Canton and Eadie, 2008; T. Ward and M. Connolly, 2008, McNeill, 2009). An international law scholar has recently been raising alarms at the increasing punitiveness of probation and the tendency of practitioners and their support groups to ignore issues of human rights (van Zyl Smit, forthcoming). In France, academics (Pitoun and al., 2004) and practitioners (Peretti, 2007) have been particularly concerned with issues of procedural fairness (Herzog-Evans, 2011b) or privacy (also see for England and Wales, Roberts, 2005). As Jacobs and Larrauri (2012) have showed, privacy is a very important concept in European continental culture.

In a context where practitioners want measures 'to work', they may be inclined to ignore non-compliance or to have a rather lenient attitude towards it (Herzog-Evans, 2012). More importantly, they may be more interested in substantive compliance rather than in merely instrumental compliance (Robinson and McNeill, 2008 and 2010) and even in long-term rather than just short-term compliance (Bottoms, 2002). They might also be legitimately more worried about the substantive and long term compliance of offenders serving '*mesures sous écrou*', given that harsher measures carry the risk of jeopardizing true compliance (Hucklesby, 2009), in particular if such measures last for a long time.

However, their perception is unlikely to be based solely on legal principles and goals of reinsertion. It is bound to depend heavily on their professional culture, habitus, and 'occupational culture' (Burke, 2011), which in turn can heavily impact their level of 'work engagement' (Butter and Hermanns, 2009). Crucially, practitioners can manifest what Deering (2011) calls 'occupational resistance' to unduly formal requirements and create a 'governmentality gap' (McNeill and al., 2009), which presents the risk of paralyzing the implementation of law reforms. For instance, a previous reform of 2004 which had tried to partly dejudicialise decision making in 'sentence's implementation' was thus totally paralysed by resistant PO and JAP. Would this also happen with regard to the new two years threshold?

In view of the literature this would strongly depend on who these practitioners were. In France, several categories of professionals play a part in the supervision of '*mesures sous écrou*'. First, the JAP, who is in charge of pronouncing these measures, of supervising the '*placés*', of sanctioning breach, and who can adapt the measure as time passes (eg adding obligations or extending curfew hours). Typically the judges who choose to become JAP as opposed to other court personnel, do so because they want to help with reinsertion. They have a strong reinsertion culture, as the aforementioned ongoing research on JAP professional culture has already revealed. Second, PO are in charge of the daily supervision of '*placés*'. They appear to attract an growing number of lawyers, according to the National Penitentiary School (ENAP⁸) regular demographic studies. They are considerably confused about their role and their professional ethics (Lhuilier, 2007; Dindo, 2011), which consists of an odd mix of prison and probation thinking, limited reference to evidence-based practices despite strong pressure on them to 'become criminologists' overnight. As in all modern public services they are subject to managerialism (Emery, Martin, 2010) and they have titanic caseloads which limits how much they can actually individualise those under their supervision (Herzog-Evans,

⁸ http://www.enap.justice.fr/elevés/conseillers_insertion_probation_donnees.php, accessed on Feb. 28, 2012.

2011c). A significant proportion of French POs adhere to what Liebling (2004) calls the ‘efficiency credo’, i.e. the subordination of personal and humanistic concerns about offenders to economy, efficiency and effectiveness (or what stands for these in a non evidence based managerial system), which dismally translates in practice into letting offenders ‘make do with deprivation’, as the French expression goes. This fosters a depressing lack of active support for offenders’ reinsertion among POs (Herzog-Evans, 2011a).

A third category of actors plays a role in ‘*placés*’ supervision. In France, prison guards are in charge of installing and decommissioning EM equipment, and of monitoring curfew hours’ compliance, as well as contacting the ‘*placé*’ and visiting his home in case of an unexplained alarm. They are naturally in charge of the wing of the prison of the SF centres and, with some forms of PC called ‘PC with surveillance’, prison guards are on site supervising offenders 20/24. Unfortunately, there are no studies addressing their professional identity and in particular whether they retain the traditionally strong culture of prison guards⁹. In England and Wales, Hucklesby (2011) found that private sector ‘monitoring officers’ (who install EM equipment and manage many offenders subject to it) had more affinity with prison guards’ culture than police or PO’s culture. It is very likely that in France, the guards involved in supervising ‘*placés*’ are a fortiori closer to prison guards’ culture than to POs, given that they can return to normal prison work at any time, and that, unlike their English equivalents, they work from the prison itself. However, one must bear in mind that prisons are also – formally at least - bound by the reinsertion principle.

Methodology

The Prison Act (2009) was implemented only gradually from 2010, giving us the opportunity to ask questions ‘before’ and ‘after’ implementation, over a two year period. During the first year, we questioned practitioners about their perception and practice of ‘*mesures sous écrou*’ lasting from six months to one year as opposed to those lasting for shorter periods of time. We also wanted to ascertain their thoughts about the new legislative maxima for EM, SF and PC and what they anticipated doing when the law came into force. During the second year, we examined whether practitioners had actually resisted or adapted to the new two years maximum and how.

The team was composed of five fifth year law students (first year: Marie-Mathilde Richard, Nattie Beaufreton and Mélanie Pronost ; second year: Jennifer Marchand and Morgane Roussel) supervised by the author. The team and the author covered several areas: one in the Paris region (Region A); two in the East of France (Regions B and C); three on the West coast (Regions D, E and F), one in the centre (Region G) and one in the South of France Region (J). In certain cases, we were allowed access to files. In most cases, we were allowed to attend interviews with offenders, staff meetings both in probation services and prisons along with incarceration and tagging procedures. We visited sites such as EM surveillance centres, SF prison units and PC sites, such as a Zoo (Bernard and al., 2009). The author had designed questionnaires which enabled the team to conduct semi-directive interviews with practitioners. Over the two years, we interviewed: 31 probation officers (PO) (28 were face-to-face interviews and 3 written questionnaires); 4 chief PO; 3 Directors of SPIP; 2 specialized barristers; 9 JAP (in the regions which we studied, along with two close areas, in

⁹ A research did however show that they enjoyed working in the community rather than in prison: Cardet and al. 2003.

the West, region H¹⁰, and in the centre, region I, along with the president of the JAP Union); 1 prosecutor; 1 prison governor; 2 directors of a prison semi-freedom unit.

We interviewed a few offenders on EM or SF, and in some cases their families, but we did not generate a large enough sample to be exploited here. As mentioned in previous research (Herzog-Evans, 2011a), it is extremely difficult to access offenders in the course of academic research in France for various reasons ranging from the principle of professional secrecy, the prohibition of access to criminal records, the prevailing idea that once an offender has served his sentence, he should be left in peace, and a strong culture of privacy. In any case, the focus of this research was on practitioners, their views and actions.

All our interviewees were guaranteed anonymity. Most accepted audio recording; only one JAP refused.

Over the two year period, we encountered some difficulties. First, we spent months trying to convince practitioners to contribute to the research. Probation staff, being under the scrutiny of a quasi military hierarchy – the penitentiary administration – , tend to be very cautious about outside scrutiny. As for JAP, being courts of law, they are expected to show exceptional prudence in respect of explaining their decisions. During the first year, our difficulties were somewhat overcome with patience and effort. However, an unforeseen difficulty arose in January 2011, around the middle of our second year. In Pornic, on the West Coast, where both probation staff and the JAP were overloaded (with an average 200 files per PO), an offender on probation who had not in practice been supervised at all, committed a horrific murder. This understandably made the headlines, and for the first time in French history, probation services were directly accused of negligence, which had an immediate ‘freezing effect’ on our research activity. Virtually overnight, all research in probation services was put on hold and, for our team, this meant that access to files and other sensitive material was denied or interrupted, and interviews were postponed indefinitely. This ‘Pornic effect’ eventually waned slightly and it later became possible to conduct further interviews; however, access to files remained prohibited. Nonetheless, despite all our difficulties, the research yielded some interesting results.

First findings of the research

1° Local and personal variables

1.1. Statistics

National figures were published in 2003. They only concerned the experimental phase of EM in a few regions, this from 2000 to 2002. They showed that the original median length of EM was 2.4 months. In all, 22% were tagged for less than a month; 51%, for less than two months; 16% for four months and more (Kensey and al., 2003).

We do not have recent figures pertaining to the proportion of long measures. However, national statistics for 2010 reveal that there has been a serious increase in sentence management measures, with a 22.6% increase between 2009 and 2010. Of 9769 measures, 19.24% consisted in SF, 76.48% in EM and 4.25% in PC (www.gouvernement.fr., 21 Jan., 2010).

¹⁰ In smaller jurisdictions, there might be only judge acting as a JAP and it was necessary, to obtain a higher number of judges, to interview their colleagues from nearby tribunals.

Some of our local data varied according to what was available and accessible in particular regions. Because of the ‘Pornic effect’ and a traditional institutional rigidity, for example, we could not access the equivalent time-periods and/or measures across the different sites we studied. Also the penitentiary administration seemed to be more willing to communicate about its token measure, EM, than about other ones. We had no access to any data in regions C and G.

In **region A**, we only had access to 2009 data and only for EM. At the time, the maximum length of EM was one year. Coherent with JAP’s discourse (see *infra*), these courts did not hesitate to pronounce a significant proportion of measures lasting six months and more: 30.92% (over 194 EM measures) However, in practice, the effective length of these measures was much shorter: only 14.43% of all measures actually lasted six months or more.

In **region B**, in 2009, only 44 people were placed under EM, only 4 lasted six or more than six months (9%). The maximum effective length was nine months and 28 days. The same year, 23 were under PC. Of these, none lasted six months or more; 134 were under SF – i.e. setting Region B apart from the rest of France, much more than EM – and only 5.9% lasted six months or more.

In **region D**, we had access to data for both 2008 and 2009. In 2008, 173 people were under EM. Of these measures, only 4.6% lasted six or more months. In 2009, 209 people were placed under EM; of those measures, 8.1% lasted six or more months.

In **region E**, the student had access to files covering two years. For 2009, 24% of EM lasted more than six months; in 2010, only 15% lasted more than six months. In short, rather than increasing in number with the implementation of the Prison Act, it actually diminished.

In **region F**, 167 measures were supervised in 2010, 15.5 % of which lasted longer than six months. Also, only 30 people were placed in PC in 2010; of these 16.6 lasted six or more months.

These figures pertain to the length of measures as they are pronounced in court. In practice, they rarely last that long. As we shall see, usually they are ‘managed’, i.e. shortened with remission and/or interrupted by conditional release as practitioners think they cannot feasibly exceed a certain length of time.

1.2. Practitioners’ views on the six months limit

The research first showed that most of our interviewees did believe that there was a time limit for ‘*mesures sous écrou*’, based on the level of pressure they thought offenders could cope with. If they did not always set it exactly at six months, **most of them did quote figures that were very close to six months**: four, five, six, seven or eight months, depending, as we shall see later, on the measure.

‘The six months limit is clearly exceptionally difficult to get past’ (PO 2, Region C)

However, before the Prison Act was implemented, the research also showed that there were **local variables**. In particular, there was a drastic difference between Region A and the other regions. In A, the idea of measures exceeding six months did not raise many questions. Elsewhere, and during year I, it was nearly unanimously rejected.

‘I don’t really believe in this but this is the law. Besides, why not try this new thing and see what happens? Of course we’ll have to adapt the measure during its

execution, and transform it into something else. But I am not too sure. EM is a good tool. It would be a pity if we destroyed it' (PO, Region A).

How might this marked difference in operational practice be explained? Region A may have been a special case, as it was situated in the densely populated Paris region, where the pressing need to free prison space, along with the closeness of the headquarters of the penitentiary administration, may well both have played a part. Also, even though Region A practitioners were ready to implement the law in the traditional way, by acknowledging that the measure would need to be 'managed', what they actually said was that the offender would not in practice be under a '*mesure sous écrou*' for two years. In any case, at the time our student was investigating in Region A, the Prison Act had not been implemented and practitioners had not actually been confronted by such long measures. All they had encountered so far were measures that would not exceed the one year limit and which, even then, would in fact never last that long due to the conjugated effects of remission and conditional release being granted at half point or earlier. Overall, at the time, in all the sites, most practitioners had never encountered a measure which lasted more than seven or eight months – with an exception in region A (a ten months PC measure) –, even though one JAP (Region G) pointed out that there could in fact sometimes be an addition of several EM or SF measures due to several small prison sentences being successively managed.

In other words, during the first year, practitioners were mostly conjecturing about the future, based on what they had experienced and learnt up to then, from implementing and managing sentences with one year maxima.

'To be honest that's just my opinion. It is not based on fact. I must admit I simply don't know' (Chief probation service region B)

'The maximum I ever saw was an offender under EM and it had been ten months. But he has a family, children, a regular life, so that's OK. With the new law making it possible to get two years EM they'd better make sure they go back to the old system and carefully choose the offenders' (Director of the EM control centre Region D).

Our second finding in the course of year I, with the exception of a few practitioners in A, **nearly all practitioners said *they did not believe in measures that would last more than a year and definitely not up to two years.***

'They will just blow a fuse' (prison guard, semi-freedom unit, Region B).

'The only reason why this two years new rule has been voted is to empty prisons. It is so obviously crazy, my God they must never had been in the field nor interviewed a single practitioner, that's for sure' (PO, region D)

'It's a total load of rubbish!' (JAP, Region E).

'I have no idea how I could write a report for a measure that long! What on earth could I possibly write?' (PO, region C).

Interestingly, though, during the second year of the research, as the Prison Act started being implemented, this unanimity had diminished. Most practitioners still adhered to the idea that around six months, things became more difficult (with only one exception) and all

but three¹¹ declared that they were still strongly against the two year maximum. However, the six JAP interviewed that year declared that they had to implement the law despite being against it¹². The JAP and all the other practitioners did mention that they were starting to pronounce or see longer measures. Two JAPs were now saying that indeed, about six months was a valid limit, but that an absolute limit would now be one year, implying that the law had indeed had a direct influence on their perception of what was feasible, even if not desirable¹³.

‘Six months... that was the rule a few years back. Now I’d say one can go up one year. But over one year I’d say that’s a problem’ (JAP region H).

To be sure, the flows of ‘managed’ longer sentences that policymakers had hoped for were not yet visible, for two reasons¹⁴. The first reason was that recidivists were excluded from the new maximum, whereas long sentences such as two years custody were often precisely imposed on recidivists. The second was that offenders’ sentenced to two years had a more dangerous or serious profile than those sentenced to only one year, which meant that courts had to be more careful. As one JAP put it *‘at the end of the day it is my responsibility’*, meaning that if things went wrong (and they were now at a higher risk of going wrong), he would be blamed for it.

In other words, during year II, the implementation of the Prison Act provided practitioners with a direct experience of measures lasting one to two years and this seemed to have slightly altered their perceptions and practices. Ready acceptance of these longer measures probably reflects the punitive trend that has been characterising France over the last decade, which may have habituated professionals to stricter measures more generally. In ten years, ten laws have been passed which have considerably changed ‘sentence management’. Dangerous offenders can now be placed, after they have served their prison term under ‘safety measures’, which can comprise probation order with GPS-EM, surveillance, for a long period of time – potentially indefinitely, and certainly several years, under stricter conditions than a regular EM measure. The tracked person is restricted to a perimeter around the house or flat and may be virtually banned from any social life as a result of all these constraints: the technical device worn by the offender is visible and makes loud warning sounds if he approaches a forbidden perimeter (Herzog-Evans, 2010). At the other end of the spectrum, people sentenced to up to five years imprisonment, who have not been released by the JAP and have just up to four months left to serve can now be incarcerated at home with an EM device, this, under extremely strict curfew hours, i.e. two to four hours a day, which roughly corresponds to the

¹¹ Interestingly, two of these were not in direct contact with offenders and were under strong pressure from the penitentiary administration to implement the law: one was a chief of SPIP the other one a SPIP director. Only one JAP (region E) declared he was in favour of long measures because of the state of French prisons.

¹² In the course of our ongoing research on JAP’s professional culture, the 31 Jap that we have so far interviewed have voiced similar opinions.

¹³ Consistent with this, was an interesting observation by a probation service director. He suggested that the six months limit, so frequently referred to by practitioners, may have originated in the law itself. Before 2000, the maximum custody sentence which would allow an offender to obtain an *ab initio* ‘*mesure sous écrou*’, was of six months. In 2000 a decree extended this maximum to one year. The six month ‘myth’ may well have originated in the older rule.

¹⁴ The research actually showed that penal courts were also changing their sentencing practice and were, like in Belgium (Beyens and al., 2010), clearly pronouncing sentences slightly in excess of two years (as opposed to one year previously) in order to make sure that serious offences would not fall into the ‘management’ threshold of two years.

exercise periods in the prison courtyard. These '*placés*' cannot work or have other useful activities and there is no supervision of any sort. With both these new sets of rules, practitioners may well have become accustomed to measures that are much harsher than hitherto, much less desistance-oriented, if they are at all. One of our respondents recognised this process:

'We always find a way. What stupefies me is that the judicial system always adapts in the end. Whatever they load us with, with their ten thousands new laws, in the end, we always adapt' (JAP Region H).

Nonetheless, the operational discretion of practitioners to 'manage' sentences has not ceased. Two recent laws enacted respectively in 2004 and in 2009 (: the Prison Act) have re-enforced the notion that JAP have an obligation, unless it is really impossible or not reasonable, to pronounce 'sentence management measures'. It has thus incorporated in the aforementioned 707 article of the PPC that '*sentences are adapted before they are executed or during their execution if the personality and the material, family and social circumstances of the sentenced person or his/her evolution allows it*'¹⁵. 'Sentence management measures' have thus virtually become a right. As one JAP (JAP 1, Region G) illustrated, a sexual offender had been sentenced to up to two years and applied for ab initio EM. The JAP obviously was wary of granting EM to a person exhibiting such a profile and had doubts about measures that lasted that long, but still said:

'I consider that sentence management measures are a right: I cannot deny them to a person on principle. I don't see what right I have to deny him this when on paper there does not seem to be any contra-indication.... so up till now he's been under EM for six months and there's been no incident...'

Despite the success in this particular case, there was a more broadly perceived risk that longer measures would produce more violations and/or reduced success in respect of reinsertion, it was manifestly clear that a change from the traditional way of seeing sentence management was occurring within the new legislative framework. As we have seen, traditionally, practitioners exercise discretion carefully, applying the individualisation principle and trying hard at 'making measures work'. With home detention, safety measures, automatic release measures, and so on, this traditional approach may be at risk of extinction in the future. Failure to get offenders to complete their measures which was often seen as a personal failure for practitioners, may thus become more acceptable, if the new laws require and normalise it. Consequently, practitioners may be starting to accept – however reluctantly - that offenders can be offered schemes that are not in practice as feasible to complete, nor as adaptable as before, and which may or may not 'work' as they did in the past.

The very reason why the new maximum was set, i.e. freeing prison space, is undoubtedly resented by practitioners. Some of them, however, in particular some JAP, are now pragmatically embracing this rationale: even a badly tailored community measure may after all be better than incarceration. As the JAP of region E put it, albeit adhering to the six months limit principle, the two years new threshold '*would not be acceptable if prison conditions were acceptable, but the current prison conditions aren't*'. In other words, longer measures might not work as well as shorter ones do, but in practice one cannot afford the

¹⁵ Our translation.

luxury of bringing sensible professional experience to bear any more. The JAP were thus pushed into taking more risks with regard to offenders sentenced to each type of the new two year measure.

3° Measure variables: ‘the pains of probation’¹⁶

Contrary to traditional probation, which can last for several years without being experienced as onerous, the three ‘*mesures sous écrou*’ studied here are extremely restricting. As was mentioned earlier, the very fact that they are more constraining than other sentences (eg probation) or release measures (eg parole) is precisely the reason why they are chosen for some offenders. As Hucklesby has revealed in EM research in England (Hucklesby, 2008), it is important to punitively-inclined policymakers that probationers’ compliance is rendered ‘tangible’, their ‘pain’ made more demonstrably intense. However, the nature of tangible constraints which each one of the three ‘*mesures sous écrou*’ in France imposes on offenders is very different.

3.1. Electronic monitoring

It is with EM that practitioners seemed to agree the most with the six months limit. Several practitioners said that EM only fits exceptionally mature and well organized people, with a well structured and supportive family, who, needless to say, were not the majority. For the others, there were several reasons why this measure was deemed intolerable over the long run.

Practitioners usually first mentioned the **extreme difficulty for ‘*placés*’** of having to exercise **self control** all throughout the execution of their EM measure, or as the French expression says ‘to be their own prison officer’ (Herzog-Evans, 2011-2012: n° 443.63). Many told us that all ‘*placés*’ had to do was to open the door. Many probationers, they added, had addictions or behavioural problems and found it hard to resist temptations of all sorts. This is one marked difference of EM with measures such as parole (Kilgore, 2012).

Practitioners equally mentioned the **extreme difficulty** for these ‘*placés*’ to have **to pre-empt every single one of their acts**.

*‘We have ‘*placés*’ who, for the large majority, cannot anticipate, prepare their actions in advance. With EM they have to plan ahead each one of their actions on a permanent basis. For instance they have to calculate when to put the bin out... and the same with absolutely everything. You should hear the things we have to ask them, like “do you have a dog ?” for Christ sake! A dog might need to go out outside curfew hours. We once had a client whose dog had escaped. He could not go out and get the dog so he asked his friend who told him “why don’t you do it yourself?”, but our client did not want to tell him about the tag so he ended up breaching by going out to find the dog!’* (PO, region D).

Anticipating is particularly complicated when it comes to work. Offenders who have part time jobs are required to give documented proof of their whereabouts, and thus to ask the temp agency to give them a written document of any new mission they take on or any new shift they have. Many agencies end up thinking ‘*placés*’ are a bother and do not hire them anymore. Telling the agency about the tag can lead to an identical result. In the same vein, offenders in full-time work face a dilemma: they cannot do overtime because this would require a sudden change in their curfew hours, which might put them at risk of being made

¹⁶ Durnescu, 2010

redundant. Conversely, if they tell their boss about their tag, they are also at risk of losing their position.

With EM, practitioners told us, **families are also punished** (Bales and al., 2010: 89-93). The spouse has to do all the shopping and has to go alone to most family or other obligatory events. Often, children wonder why their parent can never go to their football match over the week-end – an example which was given to us by numerous practitioners. As a result, there could be resentment and problems in the household. Also, there could be a ‘retirement syndrome’: whereas spouses had spent most of their conjugal time outside the house prior to EM, during its execution they have to spend a lot of time together, which might reveal underlying difficulties. Overall, the family ambience and nature of the relationship plays a big part (see Hucklesby, 2009). Unfortunately, probation services have had to deal with a serious increase in their various tasks over the last few years and in order to deal with this increase, in 2009, their central administration has decided to put an end to family and environment visits that used to constitute the prerequisite of all EM measures¹⁷. Difficult personal circumstances are now at a higher risk of going unnoticed.

Naturally the severity of the duress that people on EM face depends on several factors. It will come as no surprise that a person who lives in a big **house** with a garden can find it less painful to endure EM than a person living in an overcrowded little flat. We were more surprised to hear about a **seasonal factor**. Whereas in regions A and B we were told that winters were hard:

‘I would also say that in winter people are more depressed, it gets dark earlier and especially when they live alone, it can be actually worse in the early evening.’ (PO Region A).

In the South of France, near the Mediterranean sea, it seemed to be actually harder in the summer:

‘Something extremely important here and I am not joking, I mean really majorly important is that in the summer EM does not work. We get lots of curfew violations because people want to go and stay by the beach... they also get fed up with having to hide their tag and want to wear shorts or dresses, depending on their gender. So if EM starts in spring or worse in the summer, you are talking much less than six months maximum’ (PO Region J).

However, even practitioners who were adamant that a measure could not objectively last more than about six months did concede that it mostly depended on **the person’s personality**. A person who did not mind staying at home for long periods, who had regular hours and life, who was mature and disciplined enough would probably tolerate longer measures. However, in practice, most ‘*placés*’ are in fact complex, immature, impulsive people often with addictions and/or psychological problems, or mental illnesses¹⁸, who find it extremely taxing to have to self control and abide by strict hours in the long run. In that respect, the new changes imprinted in the letter and the philosophy of legal rules whereby more serious

¹⁷ In 2009, home visits have been abolished by the AP central administration, something which may in time reduce compliance (see, again, Hucklesby, 2009: 270).

¹⁸ One PO recalled of a schizophrenic who thought the JAP had put an electronic device in his head in order to constantly monitor him. (PO Nantes, former social assistant 1).

offences, more difficult offenders and longer sentences can benefit from ‘sentence management measures’ presents the risk of multiplying incidents.

In the course of the second year of our research, **home detention** had started being implemented. Even though it can only last for up to four months, its conditions are much stricter than with regular EM, where the person is allowed to go out all day for work, or other activities. With home detention, offenders are restricted to their homes, except for the equivalent of the daily two-to-four-hour period of prison exercise, enforcing the idea that the home is turned into a prison (Payne and Gayney, 2004). Even though it was ~~then~~ too soon at the time of our research to evaluate what the maximum tolerable time under this particular form of EM would be, practitioners were unanimous in thinking it would be significantly reduced.

‘Two hours a day, in my view this is ridiculous. No one can stand being locked home for four months whilst being allowed outside only 2 hours a day’ (JAP Region I)?

This length may well also be reduced when it comes to SF.

3.2. Semi-freedom

The research showed that practitioners thought that the **maximum tolerable** length of time under SF was shorter than six months, i.e. between **three to four months**. Most practitioners considered that SF was much harder to bear because it involved partial custody and because violations would be consequently more apparent.

Indeed, SF was often presented as being-**Janus-faced**, with its part free world /part custody dichotomy. Whereas the person would go about freely and be treated normally during the day, at night and over the week-end, he would have to submit to prison regulations, body searches, and to endure proximity to other inmates and staff. Each night, the offender would have to have the courage to return to the prison and ring the bell to be let in. One PO illustrated this as follows:

‘This ‘placé’ had four months SF to do. He was doing perfectly OK. But eight days before the end he suddenly did not come back to prison one evening. He did not go that far. When we got back in contact, which was easy as he did not hide or anything, he simply said: “I know I’ve been stupid. I just could not face sleeping there that night anymore” ’ (PO, region C).

Also, our practitioners were unanimous in saying that whereas with EM, if a person took **drugs or got drunk**, but did it at home during his curfew hours, he would go undetected and would be deemed compliant, with SF such behaviour would **be revealed**. It was actually for these very reasons that JAP would choose SF over EM whenever they thought an offender needed more control. Such was in particular the case with drug addicts. Unfortunately, the prison administration had had an all-EM policy over the last few years and as a result, there were now comparatively fewer SF – and even less PC – places to choose from.

The research also showed that the length of time an offender would be able to endure SF, also **depended on the type of place where he was detained**. In France, people placed under SF can stay in one of three types of settings. They can stay: first in a form of open prison (‘centre pour peines aménagées’) (PPC, art. D 72-1); second, in a SF centre; third, in the SF unit of a regular prison. In the area where we conducted our research, we only encountered the last two situations. Unanimously, practitioners told us that it was much harder to stay in a regular prison SF unit. We were also made aware that SF centres were more pliable when it

came to curfew hours, which gave more leeway with work and other activities and consequently were less taxing for *'placés'*. In region D, we were told that things were at their best when the centre was not fully occupied which meant that *'placés'* had a chance to be alone in their cells. In region E, a SPIP director remarked that in the case of a prison SF unit, an important factor was how it was managed. He quoted the case of one prison where the unit remained virtually untouched by guards and other prison staff for a long time and where conditions were terrible for inmates (extortion, drug trafficking, violence...). When POs got involved in the unit and proposed a host of activities, tensions and problems drastically diminished.

Several practitioners involved in SF told us that in their opinion, there was more recall with **people who had not known prison before** as they would not know what to expect, and less with those coming straight from a regular prison as the latter knew what they were at risk of losing. In Region D where we had some hard data: the statistics which we were able to draw from the files revealed that those coming from the free world were recalled in 6% of the cases, in 2008 and 4% in 2009 but those who were released from prison were recalled in 14% of cases in 2008 and 7% in 2009.

Another important thing to note, which practitioners pointed at in Region D, was that before EM was generalised in France, and before the central penitentiary administration and Ministry of Justice made it their favourite measure, people under EM or under SF were rather similar. Since it had been decided to place more and more people under EM, those who were now placed under SF were **people with more social and psychological issues**. In their case, SF was chosen because prison offered a stricter environment.

So far, we have been discussing classic SF, whereby the person returns to the prison at night and over the week-end – and perhaps gradually obtains furlough over the week-ends. However, in certain areas, usually due to the lack of space in the SF unit of the local prison, JAP use what has been labelled **'end of the week SF'** or **'week-end SF'**, whereby the *'placé'* sleeps at home during the week and only stays in the prison over the week-end. Strictly speaking, the law does not forbid such a daring construction (Herzog-Evans, 2011-2012 Chap. 123). However, this version of the measure hardly deserves its label of **'semi-freedom'** and is consequently much easier to endure.

In such a case 'if the measure lasts for more than six months, the offender is hardly going to die, is he?' (JAP, Region H).

Naturally other more personal factors were pointed at as being important. Like with EM, those who were more mature, more organized without addictions and had a supporting family would find it easier to comply. Such a perfect profile was however exceptional, and even more so with placement in the community.

3.3. Placement in the community

With PC, but with a few exceptions, practitioners were actually divided. Some thought that being on PC was harder than on SF, since offenders on PC had even more social, health, addiction or other problems. On the other hand, others pointed out that PC was precisely tailored to adequately address these issues, with its host of interventions, number of on-site devoted people and work and housing provided for (Castel, 2001). For this reason, they argued, it could last longer without much trouble. And indeed, in regions B and C, before the Prison Act was implemented, we did find several cases of people under PC for seven or eight months and one for up to ten months, when such lengths were virtually unheard of with the

other measures. Some added that in fact it was best if the measure did last longer, given the seriousness of the social and personal issues of the offenders: more time was needed to help them return to the community. Unfortunately, PC only concerns a very small portion of offenders who benefit from a 'sentence management measure': in a time where successfully helping a person desist is less prominent on the political and professional agenda (as opposed to ensuring a quick prison cell turnover), and where budgets are tight, PC is at serious risk of becoming extinct.

4° 'Managing sentence management measures'

Literature suggests that incentives may be important with regard to compliance (Hucklesby, 2009), although research into corporate contexts has showed that it could also have detrimental effects (Braithwaite, 2002). One form of incentive which may serve to motivate offenders is progressively lessening the intensity of a measure in order to make it more bearable, and to prepare offenders gradually for the moment when they finally live without supervision.

During the first year of our research, when the legal maximum of EM, SF and PC was one year, such measures never actually lasted that long. They would be reduced, loosened and adapted as time passed, precisely because JAP and other staff expected a measure to fail past a few months and because they reacted to signs of distress or discouragement. This observation was confirmed during the second year of the study, when long measures started to be actually pronounced. Putting it in French wording, it meant that 'sentence management measures' had to be 'managed' (sic) i.e. transformed, tailored and modified along the way. Confirming practitioners' insight, National Guidelines enacted by the Ministry of Justice later insisted on the necessity to adapt the measure, with a succession of other measures (Circulaire of December 10, 2010, relative à la présentation des dispositifs de la loi n° 2009-1436 du 24 novembre 2009 pénitentiaire et du décret n° 2010-1276 du 27 octobre 2010 relative à la procédure simplifiée d'aménagements de peine).

JAP have a host of measures at their dispositions when it comes to 'managing' '*mesures sous écrou*'. Because '*placés*' are still legally prisoners, they can be granted **remission**, in particular three months remission per year (for shorter sentences: seven days per month) rewarding their reinsertion efforts (PPC, art. 721-1). In practice, some JAP consider that as they already benefit from a 'sentence management measure' based on their reinsertion efforts, they should not be further recompensed by a second one. However, with longer measures now at stake, remission might become more frequent.

A second management measure is **furlough** over the week-ends, bank holidays or holidays (PPC, art. D 143-1). Here again, important variations can be observed with some JAP actually preparing future furlough in the very decision whereby they grant the '*mesure sous écrou*', others waiting until the person has proved he is worthy of them, and others routinely or gradually granting furlough after a certain amount of time.

A third method consists in **alleviating the obligations** the '*placés*' have to submit to. Curfew hours can then be loosened (except with home detention); a person might be allowed to go home after his work day for dinner before going back to the SF centre or unit.

However, the measure of choice is **conditional release**. During the first year of the research we realised that the six month limit was often de facto observed with JAP granting conditional release at this point in time, which was exactly half way point for people who reached the maximum of one year. Granting conditional release when 'things went right' was then a

common practice, coherent with the idea that past around six months, the '*placé*' had had enough and unless he had been sanctioned, deserved a respite. In the course of year II, it became apparent that conditional release had become even more important. Practitioners mentioned it spontaneously before we had time to ask. They were unanimous in saying that the only way a measure – be it EM, SF or PC – which would last more than one year would 'hold', was if conditional release at the half point became systematic. This was the flexible practice that all the JAP we interviewed had embraced or meant to, otherwise, in their opinion, incidents would occur.

5° What do practitioners think happens around the 'six months limit' ?

As was explained previously, it was difficult to access files and statistics and particularly during the second year of our study. We could thus not work in any meaningful way on figures which would have confirmed or disconfirmed practitioners' views on what could go wrong after six months and in particular whether they noticed more breach or whether more offenders were recalled to prison or otherwise sanctioned. This is why our research is limited to an analysis of practitioner's perceptions, and why we must emphasise that we are not claiming to have discovered what the optimum length of any of '*mesures sous écrou*' actually is.

However, practitioner perceptions do not emerge in a vacuum. They are based on experience, and hopefully on professional reflection, and in any case, whether the perceptions are accurate or not, their operational judgements about what works best, and why, do have practical consequences for the offenders under their supervision. Professionals thought that with EM, for example, the most frequent causes of breach were curfew violations whereas with SF, they more often consisted in the '*placé*' going back to the prison or centre under the influence of alcohol or drugs, or trying to smuggle drugs inside the prison. As we have seen, practitioners thought that with SF, violations were more easily detected than on EM. This kind of knowledge – identifying what sorts of violations typically need to be prevented - guides the way in which practitioners help offenders towards completion of the measure.

Any statistics which might be obtained in the course of future research would, in any case, need to be carefully examined in the light of the extreme leniency of practitioners. As other research has showed, JAP, in particular are rather lenient with violations, and, unless there is a new offence, often merely summon the offender for a '*rappel à la loi*' at the tribunal, i.e. give a solemn reminder of his legal obligations. JAP only recall if there is a repeat violation (Herzog-Evans, 2012), adopting the same gradual approach advocated by Huckelsby (2009) who herself borrows from Braithwaite's 'regulatory pyramid' (Braithwaite, 2002).

With their focus still on reinsertion and their efforts still aiming at 'making measures work', probation officers also claimed that the occurrence of **smaller incidents** signalled an offender's increasing discomfort at the constraints placed on him. In fact, practitioners mentioned 'incidents' rather than 'violations' and some institutional documents mentioned 'failure' in lieu of 'recall'.

'The truth is that many measures hold only because we are incredibly understanding – to a degree which is actually bordering on ridiculous' (probation chief, Region B)

Practitioners were on their guard for these smaller incidents, and aspired to act before it became too late. What they observed around the six months limit was a more volatile situation where '*placés*' would become more agitated or anxious, would call their PO more often, and ask the JAP for changes (less obligations, looser curfew hours...). Officers also noted the

increasing incidence of small violations – such as arriving late at home every evening five minutes late – or sudden violations when there had been none in the first months.

If practitioners were proactive, it was also because they considered that they had to play their part in the success of the measure. Three of them mentioned that since the offender had given his consent, he was under a form of moral, if not legal, contract; and this meant that somehow, the co-contractor was the probation service itself, impersonated by his PO. This contract, they added, needed being ‘reactivated’ on a regular basis. Offenders would behave well for a certain amount of time and would then expect something in return. If that did not happen, they would manifest their discontent. After a few months, and definitely around six months, the offender needed rewards in the form of remission, furlough or conditional release. So ‘managing the sentence management measure’ as we put it above, was not only required in order to alleviate the pains associated with the measure, but also in order to reward compliance.

‘If the client does not get any reward for what he considers doing his part of the bargain, that’s when he starts doing silly things. And the reward needs to be significant, such as remission, or (more) free week-ends’ (probation chief, Region D)

A second idea was that humans needed to have a clear picture of their future. One deputy director of probation service (Region E) even mentioned a biological dimension to this:

‘Gestation lasts nine months, but after six months women start being fed up with it... We are talking about the same sort of natural cycles here.... six months is like a birthday date... one needs to rest, and then restart the machine again in order to save energy in order to go on. One does not pay enough attention to these cycles’.

Despite the development of automatic release schemes such as home detention, which have little regard for outcome, practitioners still seem to **keep the ‘big picture’ in mind**: they hope that sentence management will keep its promises, i.e. really help the offender desist, or at least make a small step in that direction. Consequently, they are not content with formal or instrumental compliance; they aspire to substantive or normative compliance (Robinson and McNeill, 2010).

One JAP expressed this as follows:

*‘Personally I think that it is more a question of whether a person has the capacity to really change. Over two or three months.... he can... accept the control, even though he does not fully accept the changes it implies in his life... but in my opinion when he reaches the six/seven months threshold, if he has not really accepted that he must turn his life around, give up alcohol, work, if he has just *made out* he was looking for a job for three months and has tolerated the restricted curfew hours he had because he did not yet have a job... then it becomes unbearable. Also around six months, that’s when the person is supposed to see the measure progress, where he can obtain conditional release, get furlough, can have more time outside. If he does not get all this, it is also because he has not been able to change the way he was supposed to. So what I think is that the six months threshold limit crystallizes underlying problems’* (JAP 1, Region G).

The ‘big picture’ is precisely why practitioners, in particular JAP, are rather lenient, as we mentioned previously. Also, with SF this ‘big picture’ has to compromise with prison thinking and logics. The prison commanding guard does exercise discretion when referring

cases to the JAP as he would do in a regular prison with referring disciplinary offences to the governor. As a result, unless the offence or breach is too serious, he has to manage a group of inmates and needs to keep the peace and tends to be deal with issues within the prison. When he informs the JAP of the violations, the latter tends to be more severe, precisely because he takes into consideration the impact that the violation would have on the whole group.

Conclusion

The research confirmed that, in the perception of practitioners, there was indeed a maximum length of time that was considered tolerable for offenders. Given the way practitioners still perceived ‘sentence management measures’ i.e. measures which were supposed to help people desist, beyond a point situated around six months time, they assumed that things did not work so well. However, the research highlighted the relevance of local, personal and institutional variables across the regions we worked in. It was apparent, for example, that with SF in particular, three to four months was deemed a more pertinent maximum. Yet, as we progressed into the second year of the research, when the Prison Act (2009) really started being implemented, a certain habituation amongst practitioners became apparent. While most of them were still hostile to two year long measures, they – JAP in particular – accepted they had ‘to implement the law’, and had integrated the idea that even though long measures would not work as well as shorter ones, at least they were better than incarceration, especially in poor prison conditions. So there also was some form of resignation to the new developments: whether this becomes a lasting trend remains to be seen. Our research shows that practitioners are no longer able to use their professional discretion in the way they used to and are being pushed into practices they consider unwise and unhelpful. However, in practice, during the period of our research, no offender was serving the full two years under EM, SF or PC; and practitioners were unanimous in saying that these measures would have to change along the way and that conditional release would have to be systematically granted at the half point or sooner.

The research also revealed that even though the legal and institutional environment of practitioners is constantly undergoing seismic disruption (Herzog-Evans, 2011c), so far, they still try and follow the compass of reinsertion: what they do and what the measures they are in charge of are supposed to generate, is a contribution to desistance.

Other research is now needed in order to test our first finding. More substantial research would also be required to test the actual feasibility of two year long ‘*mesures sous écrou*’.

Other research would also be needed in order to determine just how much the feasibility of a sentence or ‘*mesure sous écrou*’ is dependent on the way it is actually implemented and adapted to a person’s actual needs and context. The advent of a new form of EM, sold as the solution to prison overcrowding, but tailored in order to mirror prison conditions, appears particularly inflexible and thus, difficult to bear in the long run. In France, EM has been ‘sold’ to the public and to practitioners as a one size fit all, when in fact other measures may often be more adapted to the probationer’s circumstances. Some of those would have been placed under SF or PC in the past or would have benefitted from parole, a measure which is much less onerous for offenders. This net-widening effect also needs being investigated further.

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