COUNTRY FACTSHEET

Sentence Adjustment Mechanisms in Europe
Procedural Barriers & National Contexts

FRANCE

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EUROPEAN PRISON LITIGATION NETWORK

1. Introduction

France's current system of sentence adjustment is the result of a large number of reforms over the last few decades, with a particular intensity since the early 2000s and the intensification of jurisdiction in this area – almost the entire field of sentence adjustment now comes under the authority of sentence enforcement judges.

The main reforms over the last 15 years include the 2009 Act, which introduced the principle that imprisonment should be the exception and the alternative the rule; the 2014 Act, which created the mechanism of release under constraint ('*libération sous constrainte*' – LSC); the 2019 Act, which introduced a reform of the sentencing scale and affirmed the principle of the adjustment of sentences of one year or less; and the 2021 Act, which added a new form of automatic' LSC and reformed the system of sentence reductions.

However, despite the strengthening of procedures and the increased role of the judiciary in recent decades, the rates of sentence adjustment remain surprisingly low: around three quarters of prisoners in France serve their sentence to the end without benefiting from an early release. This situation can be explained by legal criteria that are sometimes unsuited to the socio-economic realities of prisoners, by the limited use of specific measures (for example, for parents, or ill and elderly people), and by a certain mistrust of certain profiles (particularly foreign nationals or people targeted by safety considerations).

The French system is also characterised by an accumulation of exception regimes that restrict the prospects of accommodation for an ever-growing panel of individuals. This gradual erosion of ordinary law reveals a deeper conflict between judicial independence and political interference. In other words, although the separation of powers has strengthened judicial autonomy, the latter appears at the same time to be subject to constant political pressure – officially justified by safety considerations or social expectations, but no less indicative of the executive's stranglehold on the field of sentence adjustment.

In addition, from a utilitarian point of view, sentence adjustments in France are caught up in a tension between prison overcrowding and penal populism, and therefore acting as an ambivalent political instrument aimed both at reducing the prison population and at reinforcing the perception of greater judicial severity. In the view of many observers, such ambivalence undermines the possibility of any clear guidelines for the enforcement of sentences. The concept of "extreme centre" theorised by historian Pierre Serna[1] may shed some light on this dynamic: penal policies move forward without coherence, guided by 'common sense' and an 'invisible penal hand' characteristic of all neoliberal systems. Yet French adherence to neoliberal pragmatism is expressed in several ways. Firstly, by a constant need to reform, at the risk of overcomplicating the law and losing sight of the guiding principles that govern this area. Secondly, by the adoption of laws that aim to 'restore the meaning of punishment', a consensual and politically profitable concept but rarely backed up by the material and human resources needed to implement it, nor by any truly binding effects. And thirdly, by a continuous increase of the prison capacity – which conveniently demonstrates that something is being done not only to deal with penal inflation

[1] *P. Serna, La république des girouettes. 1789-1815 et au-delà. Une anomalie politique : la France de l'extrême centre*, Paris, Champ Vallon, 2005.

but also to fight overcrowding – and regardless of the fact that this strategy has proved ineffective for over 40 years.

As a result, sentence adjustments are increasingly seen as tools for management and regulation, to the detriment of their initial function of rehabilitation. This approach exposes judges to a loss of meaning in their work, which is already weighed down by a crying lack of resources. This shift towards utilitarian management is illustrated by the strategy adopted by the government before the Committee of Ministers following the *J.M.B. v. France* judgment (see below). Since the possibilities for judges to adjust sentences have been expanded in recent years, the executive is relying on their 'common sense' to reduce prison inflation, while at the same time placing the responsibility for any failure on them.

All this raises a crucial question: are sentence adjustments in France still instruments of justice or have they become political tools for regulating the prison system?

2. Overview of France's Penal and Prison System

The French penitentiary context is plagued by several serious problems, first and foremost massive overcrowding and an advanced state of disrepair in many establishments, exposing their occupants to detention conditions that are often undignified. With an average density of 119.2 inmates per 100 places, France ranked 3th among Europeans countries with the most overcrowded prisons on 31 January 2023 (with a median density of 90.2 prisoners per 100 places in Europe)[2]. National data show that the situation has since worsened dramatically, with the density rising to 128.5 on 1 November 2024. At that date, 80,130 people were being held in French prisons, with only 62,357 operational places.

Although no pilot judgment has been handed down in France in the penitentiary field, it is worth noting the importance of the quasi-pilot judgment J.M.B. and others v. France issued on 30 January 20203 – the only one in which the Court applied Article 46 of the Convention. In this judgment, the Court found France guilty of inhuman and degrading treatments because of the conditions of detention inflicted on the applicants (violation of Article 3) and for failing to respect the right to an effective remedy (violation of Article 13). Above all, it found that the occupancy rates in the prisons concerned revealed the existence of a "structural phenomenon" (§ 315) and recommended that France "adopt general measures [...] to ensure that detainees are held in conditions consistent with Article 3 of the Convention" and, in this perspective, to reach "the definitive resorption of prison overcrowding", as well as to establish "a preventive remedy enabling prisoners, in an effective manner, in combination with the compensation remedy [...], to redress the situation of which they are victims" (§ 316).

Generally speaking, there are many similarities between France and Belgium in terms of penal rationale, the way the prison system operates and the enforcement of sentences.

[2] SPACE I, 2023.
[3] *J.M.B. and others v. France*, 30 January 2020, no. 9671/15 (and 31 others).

3. Overview of France's sentence adjustment mechanisms

France's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- Conditional release;
- House detention with electronic monitoring, semi-liberty or outside supervision;
- Release under constraint ('*libération sous contrainte*' – LSC), in its "classic" and "automatic" forms;
- Suspension and fragmentation of sentences for medical reasons;
- Reductions of sentences;
- Temporary leaves.

These mechanisms are all provided for in the Code of Criminal Procedure, and have been subject to major changes through several laws in 2014, 2019 and 2021.

a. Institutional architecture and players in the system

The system of sentence adjustments is based around the figure of the sentence enforcement judge ('*juge de l'application des peines'* – JAP). The function of JAP, created in 1958[4], was initially assigned to any judge of the *tribunal de grande instance* (now called *tribunal judiciaire*). This judge was mainly responsible for monitoring suspended sentences and probation, as well as measures for prisoners (temporary leave, semi-liberty). His role evolved in the 1960s and 1970s, with an increase in his jurisdiction over convicted prisoners. In 1986, this specialisation was reinforced by the creation of dedicated staff.

The reforms of the 2000s (laws of 2000[5], 2004[6] and 2005[7]) broadened the JAP's functions by introducing jurisdictional procedures (debate, reasoned decision, appeal) and new supervisory tools, in particular to better supervise the release of long-sentenced prisoners. Since then, the JAP has had general jurisdiction over measures to individualise custodial sentences – although some measures fall within the special jurisdiction of the sentence enforcement tribunal ('*tribunal de l'application des peines'* – TAP). Both the JAP and the TAP are courts of first instance, with decision-making, supervisory and monitoring powers.

- **JAP/TAP**: Broadly speaking:
    - The JAP has jurisdiction to adjust sentences of less than or equal to 10 years' imprisonment or when the time remaining is less than or equal to 3 years;
    - The TAP has jurisdiction to adjust sentences of more than 10 years' imprisonment and when the time remaining is more than 3 years (cumulative conditions). It also has exclusive jurisdiction over all applications for conditional release made by persons sentenced for the most serious crimes or those presenting a 'particular danger', as well as for crimes and offences committed

[4] Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature.
[5] Loi n° 2000-516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victimes.
[6] Loi n° 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité.
[7] Loi n° 2005-1549 du 12 décembre 2005 relative au traitement de la récidive des infractions pénales.

in the context of terrorism.

- **Sentence Enforcement Commission** (‘*commission de l’application des peines*’ – CAP): Produces an opinion for the JAP/TAP on requests for sentence adjustments.

- **Prosecutors**: Represent the state and may challenge decisions granting adjustments.
- **Prison and probation office** (‘*Service pénitentiaire d’insertion et de* probation’ – SPIP): Prepare criminological and social reports on inmates’ situations and supervise released individuals.
  Each prisoner is individually monitored by a dedicated officer.
- **Prison Administration**: Prison directors play a role in providing opinions on inmates' behaviour and suitability for adjustment mechanisms.
- **Lawyers**: Advocate for inmates’ applications and represent them in legal proceedings

b. Criteria for granting sentence adjustment

i. Conditional release

Eligibility:

- For “classical” sentence, after half of the sentence has been served
- For long sentences, the person needs in addition:
  - To have completed their security period (*i.e.* the minimum period of detention before they can apply to have their sentence adjusted)
  - To go through a multidisciplinary assessment of dangerousness carried out in a specialised department responsible for observing detainees, together with a medical expertise.
- Judge or court may impose parole conditional upon the prior granting of another sentence adjustment measure or a temporary leave.

Assessment criteria:

- The judge will look at the “serious efforts towards reintegration” of the convict person. Such efforts are assessed in the light of:
  - either the exercise of a professional activity, an internship or a temporary job, or their attendance at an education or vocational training course;
  - their essential participation in the life of their family;
  - the need to undergo medical treatment;
  - their efforts to compensate their victims;
  - or their involvement in any other serious integration or rehabilitation project.

Specific provisions:

- For parents and pregnant women:
  - Possible when the sentence doesn’t last more than 4 years, or 4 year before the end of the sentence;
  - The children must 10 years old or less
  - The pregnant women must be 12 weeks pregnant

- not applicable to persons convicted of a crime committed against a minor (exception provided by case law)

- For elderly:
  - Possible with no time limit for people aged 70 or over
  - The measure may be refused if there is a serious risk of the offence being repeated or if release is likely to cause a "serious disturbance to public order"

- For medical reasons:
  - Possible one year after the granting of a suspension of sentence on medical grounds.
  - A new expert opinion must establish that the prisoner's physical or mental health is still permanently incompatible with continued detention, and that the prisoner can provide care appropriate to his situation.

- For foreign nationals sentenced to deportation order:
  - Possible on condition that the measure is executed
  - Exception for criminal deportation orders: the person can be released on parole, and have their order automatically lifted at the end of the parole if they have complied with the conditions.

- For perpetrators of terrorist acts:
  - Only granted by the TAP
  - Only after the opinion of a commission responsible for carrying out a multidisciplinary assessment of the person's ‘dangerousness’
  - Parole may be refused if the TAP considers that the person is likely to cause a “serious disturbance to public order”.

ii. House detention with electronic monitoring, semi-liberty or outside supervision

Eligibility:

- Can be decided when the person's remaining sentence is less than or equal to 2 years

Assessment criteria:

- The judge will look at the “serious efforts towards reintegration” of the convict person (see ‘Conditionnal release’)

iii. Release under constraint (‘libération sous contrainte’ – LSC)

Eligibility:

- For “classical” LSC (created in 2014), only for people sentenced to up to 5 years' imprisonment and after two-thirds of the sentence has been served
- For “automatic” LSC (created in 2021), only for people sentenced to up to 2 years' imprisonment and 3 months before the end of the sentence.

Assessment criteria:

- None – this mechanism was designed (in 2014) and then developed (in 2019 and 2021) to concern people who do not have a particularly defined exit plan
- But the judge can refuse when "it is impossible to implement" one of the sentence adjustments.
- For "automatic" LSC, the judge can refuse "in the event of material impossibility resulting from the absence of accommodation".

Exception regimes: "Automatic" LSC does not apply either:

  - For persons convicted of crimes, acts of terrorism or any type of violence against minors under the age of 15, against a public official or against a partner;
  - For prisoners who have been subject to a disciplinary sanction during their detention for different kinds of offences (violence, resistance, participation to a collective action, etc.).

  - in the event of "material impossibility resulting from the absence of accommodation" (Code of criminal procedure, Article 720).

  - For foreign nationals sentenced to deportation order.

iv. Suspension and fragmentation of sentences for medical reasons

Eligibility:

- Convicted can be granted any adjustment measure, as well as a split or suspended sentence on medical ground.

- Person on remand can also apply for release until trial on medical grounds.
- Time threshold: none.

Criteria:

- The person must be able to justify one of the following two criteria:
  - Incompatible of the health condition with detention;
  - Vital prognosis engaged, *i.e.* if the detainee suffers from a life-threatening condition in the short term.

- The application may be rejected if there is a "serious risk of the offence being repeated".
- The materiality of the health condition must be based on one or more medical reports.

v. Reductions of sentences

Eligibility:

- Maximum of 6 months per year of imprisonment
- Maximum of 14 days per month for a period of imprisonment of less than one year

Exception regimes:

- For persons convicted of terrorist offences (except in cases of provocation or apology):
    - 3 months per year of imprisonment.
    - 7 days per month for less than one year's imprisonment.

- For persons convicted of certain offences (violence of any kind, murder, aggravated murder, torture or acts of barbarism) committed against a public official after 26 May 2021 (or 23 December 2021 for some of them):
    - If a crime: 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.

    - If a 'less serious offence' (*délit*[8]): 4 months per year of imprisonment and 9 days per month for less than one year's imprisonment.

- For people who do not follow the proposed medical treatment, although they have been found criminally liable but their discernment was impaired at the time of the offence, or they have been convicted of an offence for which socio-judicial supervision is incurred: 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.

Assessment criteria:

- Evidences of "good conduct" including:
    - the absence of incidents in detention;
    - compliance with the establishment's internal rules or service instructions;
    - involvement in daily life;
    - or behaviour with prison staff or those working in the establishment, with other detainees and with persons on mission or visiting.

- "Serious efforts toward reintegration", including:
    - regular attendance at school, university or vocational training aimed at acquiring new knowledge;
    - progress in education or training;
    - commitment to learning reading, writing and arithmetic;
    - work activity;
    - taking part in cultural activities, particularly reading;
    - participation in supervised sporting activities;
    - following a therapy designed to limit the risk of re-offending;
    - sustained investment in a care programme offered by the prison integration and probation service;
    - or voluntary payment of sums due to victims and the Treasury.

[8] French offences are divided into *crimes*, *délits* and *contraventions*.

vi. Temporary leaves

Eligibility:

- A one-day leave can be granted for several reasons (see below) to a convicted serving a sentence of up to 5 years' imprisonment, or to a convicted serving a sentence of more than 5 years and who has served half the sentence

- A 3 days leave can be granted to a convicted in the event of serious illness or death of a close family member, or the birth of his child, when the person is serving a sentence of up to 5 years' imprisonment, or a sentence of more than 5 years and half the sentence has been served.

- A 3 to 10 days leave can be granted to maintain family ties or prepare for professional or social reintegration, the time threshold and duration depends on the type of establishment in which the person is imprisoned:

    - If the convicted is held in a maison d'arrêt (prisons for short sentences and pre-trial detention), a maison centrale (prison for long sentences) or a semi-liberty centre, he/she is eligible for a 3 days leave maximum when:
        - the sentence is one year or less;
        - they have served half of their sentence and have less than 3 years left to serve.

    - If the convicted is held in a or a structure d'accompagnement vers la sortie (dedicated to the professional integration of prisoners at the end of their sentence), he/she is eligible for a 3 days leave maximum without time threshold.

If the convicted is held in a centre de detention (prison for medium to long sentences), he/she is eligible for a 5 days (and once a year 10 days) leave when they have served one third of their sentence.

Assessment criteria:

- One-day leave can be granted for:
    - Meeting any employers or professional or educational facilities when the convicted is soon to be released or may be eligible for a sentence adjustment;
    - Taking an examination;
    - Going to a care facility;
    - Voting.
- For others leaves, the person must provide the relevant supporting documents.
- The judge takes into account the behaviour of the person in detention as well as the existence of disciplinary sanctions.
- Foreign nationals subject to a deportation order may not be granted temporary leave. However, there is an exception in the case of a judicial deportation order: the person may apply for leave to prepare an application to lift the ban.

c. Procedure for applying

The sentence adjustment request must be submitted in writing to the sentence enforcement judge (JAP), through the prison administration office or via registered mail. Incarcerated individuals can also file a declaration with the prison's director, which must be signed, dated, and forwarded to the judge's office. Requests that do not follow this procedure may be ignored by the JAP. The judge can also act on his or her own initiative to process improperly

filed or missing requests. If the request is within the jurisdiction of the sentence enforcement court (TAP), the JAP's clerk forwards it unless it is inadmissible.

Once the request is submitted, a hearing before the judge must take place within 4 months, or 6 months if under the TAP. If this deadline is missed, the convicted person may directly petition the sentence enforcement chamber (appeal court). The person is informed of the hearing date at least 10 days in advance, and their lawyer is notified.

For release under constraint, no procedure is required and the situation is automatically presented to the Sentence Enforcement Commission.

4. Statistics

Based on the data from the sources referenced earlier, the rates of granting different sentence adjustment measures remain consistently low.

For example:

- Overall Sentence Adjustment Rate: As of August 1, 2024, only 27.6% of convicted and incarcerated individuals benefited from sentence adjustments. This means that nearly three-quarters of inmates are released without any adjustment. This rate has remained stable for the past 30 years.
- Release Under Constraint (‘*libération sous conrainte’* – LSC): Although the 2014 impact study estimated that 14,000 to 29,000 LSC measures would be granted annually, only 3,000 were granted each year between 2015 and 2018, rising to 6,000 annually between 2019 and 2021. By the end of 2024, the average grant rate for “automatic” LSC measures stood at just 59%.
- Conditional release: As of March 31, 2024, only 3,811 individuals were under conditional release in the community, including 764 within the framework of LSC.
- Sentence reductions: In the first 16 months after the new sentence reduction regime took effect on January 1, 2023, only 62% of eligible reductions were granted, compared to 72% under the previous regime in 2019. Consequently, the number of sentence reduction granted has fallen by nearly 19 days per one-year sentence, increasing the length of sentences accordingly.
- Semi-liberty: As of January 1, 2024, only 2,222 individuals were under the semi-freedom regime.
- House detention with electronic monitoring: By January 1, 2024, this measure applied to 14,984 of the 15,750 incarcerated individuals who were not physically detained (95%).
- Outside supervision: As of January 1, 2024, only 766 sentenced individuals were on outside supervision without accommodation provided by the prison administration (e.g., hosted by partner structures), while 211 were placed with prison-administered accommodation.
- Foreign nationals: On 30 June 2024, only 9.5% of people on probation were foreign nationals, compared with 24.8% in prison.

5. Procedural and substantial barriers

Observation of the French system reveals a number of initial trends that help to explain the low rate of sentence adjustment.

a. Accumulation of exception regimes

A characteristic of the French sentencing system is the accumulation of exceptional regimes for the adjustment of sentences. These regimes, which vary according to the type of offender, concern both the possibilities of granting adjustment measures and sentence reductions. They also concern an increasingly varied range of offences. Indeed, while the first legal restrictions originally concerned the perpetrators of acts of terrorism and then sexual offences, recent legislative developments have brought the perpetrators of violence against public officials and domestic violence within the scope of the exception. For different reasons – in that they are only legally discriminated against when they are subject to a deportation order, but also empirically as soon as they are in an irregular situation – foreign nationals also suffer from a largely unfavourable application of sentence enforcement law.

Broadly speaking, these exceptions involve the inaccessibility of certain measures (semi-liberty and outside supervision for terrorists), “automatic” release under constraint for perpetrators of violence against a public official or domestic violence), the requirement of additional conditions (care injunction, socio-judicial monitoring), reduced maximum sentence reductions, etc. This accumulation of exceptions not only overcomplicates the system of sentence adjustment to the point where professionals in the system lose their way, but also contributes to the reasons for the low overall adjustment rates.

b. The managerialisation of sentence adjustments

Another major trend is that the jurisdictionalistion of sentence adjustment has been accompanied by growing procedural complexity, as the judge has gradually increased his area of jurisdiction – which in turn has led to procedural congestion due to the mass influx of prisoners and the multiplication of deadlines. The procedures frequently overlap, particularly for short sentences, where release under constraint (LSC) and ordinary procedures compete with each other. The new sentence reduction scheme makes the situation even more complex, sometimes limiting access to LSC. This complexity makes it difficult for prisoners to understand the procedures and increases the risk of errors, reinforcing a feeling of opacity.

Overload also affects the efficiency of the system. The Sentence Enforcement Commissions, which are responsible for examining an ever-increasing number of procedures, deal with a considerable volume of cases, leaving a particularly limited amount of time for each case.

This massification of procedures seems to raise doubts about the ability of magistrates, prison probation officers and prison staff to carry out their duties under optimum conditions. In addition, this over-proceduralisation leaves many justice professionals with a lack of sense of their role, faced with the feeling that the reforms undertaken in recent years are aimed more at managing and regulating the system than at genuinely individualising it.

c. Major material and human shortcomings

In line with the previous point, a number of reports in recent years have highlighted the profound institutional shortcomings of both probation staff (with regard to the supposedly individualised execution of sentences) and judges (in terms of considering requests for sentence adjustment). The findings point to a serious lack of human resources: up to half the number of judges on duty compared to the needs, and a caseload per probation officer that is still well above European standards (and even worse in the most overcrowded prisons).

These shortcomings are also material and affect the capacity of alternative regimes (in particular semi-liberty and work release), which does not encourage judges to impose these measures.

d. The weight of behaviour and discipline

The criteria for granting a sentence adjustment focus mainly on demonstrating “serious efforts towards rehabilitation” and assessing the individual's “personality”, which is a key factor in the evolution of the execution of the sentence. Consequently, behaviour in prison and the existence of incidents have a significant influence on the prospects of sentence adjustment and reduction. As regards the latter, the Code of Criminal Procedure explicitly authorises judges to take note of the fact that a prisoner has not behaved “good”. This covers both sanctioned and non-sanctioned behaviour, criminal offences or not, the existence or non-existence of evidence as to the materiality of the facts, and so on. In other words, the all-encompassing dimension of “good behaviour” is generally insecure for prisoners seeking to have their sentences adjusted. This insecurity applies to all sentence adjustments, even though “good” or “bad” behaviour is largely dependent on the context of imprisonment and poor conditions of detention.

The effect of behaviour on the prospects of reintegration is all the more striking in the case of the “automatic” release under constraint (LSC) introduced in 2021, which exclude prisoners who have been disciplined for acts of violence against staff or prisoners, for resisting orders or for taking part in disruptive collective action. These exclusions, which enshrine the link between administrative measures and judicial decisions, are indicative of the pre-eminence of the former over the latter, which for several observers reveals an infringement of the separation of powers.

The judicial supreme court does not follow this line of reasoning. On the contrary, it has upheld that disciplinary sanctions and sentence reductions serve distinct purposes-security and individualized sentencing-and can coexist without violating the principle of *non bis in idem*.

e. Appeals from the public prosecutor

A possible conflict with the European Convention arises from the frequent opposition by public prosecutors to sentence adjustment requests and its resulting consequences. If a convicted individual appeals a denial of sentence adjustment, the appeal lacks suspensive effect. However, when a public prosecutor appeals a favorable decision, enforcement is suspended, keeping the person detained until the *chambre de l’application des peines* (responsible for appeals) delivers its ruling. This delay, often lasting up to two months, frequently undermines employment opportunities that are crucial for obtaining sentence adjustment, leading to the failure of many appeals. This imbalance, favoring the prosecution,

breaches the principle of equality of arms guaranteed by the Convention. It often results in initial favorable decisions for the offender being overturned.

f. Poor compliance with procedural deadlines

However, the convicted person may waive the presence of their lawyer or the notice period. However, in practice, the 4- or 6-months deadlines are often exceeded. Appeals to the Chap by convicted persons or their lawyers remain uncommon.

Another recurring problem concerns long sentences, and relates to the length of time needed to undergo the multidisciplinary assessment required for any decision to adjust a sentence. The wait to be transferred to a centre dedicated to this assessment is particularly long (up to 18 months), sometimes rendering obsolete the psychological assessments also required, which are valid for 2 years. More generally, there are many shortcomings in the way long-sentence prisoners are dealt with, which are exacerbated by the length of the procedures.

6. Recall

The law[9] allows parole to be withdrawn in the event of:

- A new conviction;
- Notorious misconduct;
- Breach of the conditions or non-compliance with the measures set out in the parole decision;
- Refusal to start or continue the treatment prescribed by the doctor treating the offender and offered to the offender under a treatment order.

While the concept of “notorious misconduct” has been the subject of recurring criticism for its lack of a clear definition and the resulting risk of arbitrariness, the *Cour de cassation* considers that it complies with the principles of criminal legality and the intelligibility of criminal law, since it is up to the judge, through his or her power of interpretation, “to qualify behaviour that the legislator cannot list exhaustively a priori” (Crim., 15 January 2014, no. 13-83542).

The case must be referred to the competent court no later than one month after the end of the period for assistance and supervision.[10]

While legal provisions allow the judge to withdraw the benefit of a modified sentence in certain specific cases, some authors have pointed out that sentence enforcement courts sometimes interpret these provisions much more broadly than the law allows[11].

7. Differential impact for categories of prisoners

The French system provides for several ‘preferential’ regimes:

- For people over the age of 70: If the convicted person is over the age of 70, parole

[9] Code of criminal procedure, Article 733.
[10] Code of criminal procedure, Article 712-20.
[11] Léa Déplante, « Du retrait de mesures d'aménagement de peine résultant d'une interprétation extensive des textes », in *Bulletin des arrêts de la cour d’appel de Grenoble*, 2024/2.

may be granted without a time limit, provided that the person's integration or reintegration is assured – in particular, if the person receives care adapted to his or her situation on leaving the prison or if he or she has accommodation. The measure may be refused if there is a serious risk that the offence will be repeated or if release is likely to cause a "serious disturbance to public order".

- For parents of young children or pregnant women: A special arrangement, commonly known as "parental parole", is provided for people who are parents of minors and have been sentenced to a custodial sentence of 4 years or less, or for whom the remaining sentence is 4 years or less. For this to be the case, the person concerned must exercise parental authority over a child under the age of 10 who is ordinarily resident with the detained parent. The same arrangement is possible for women who are more than 12 weeks pregnant. However, this system does not apply to persons convicted of a felony or misdemeanour committed against a minor (Cass. crim.,1 June 2022, no. 21-84648).

On the other hand, a number of restrictive regimes are provided for by law:

- **For people convicted of acts of terrorism** (except for apology of terrorism), conditional release can only be granted by the sentence enforcement court (i.e. by a panel of judges) and following the opinion of a special commission responsible for carrying out a multidisciplinary assessment of the dangerousness of the person. Parole may also be refused if the court considers that the person is likely to cause a "serious disturbance to public order". In all other respects, the person must meet the ordinary law requirements for conditional release. However, a law passed in 2016 considerably reduced the possibilities of sentence adjustment for people convicted of terrorism-related offences, excluding them from the benefits of semi-liberty and work release, including probation. The only remaining option is to make conditional release conditional on the execution, on a probationary basis, of a home detention order under electronic surveillance. Persons sentenced before 22 July 2016 are eligible for the full range of sentence adjustments. The judicial supreme court has also confirmed that foreign nationals subject to a deportation order, including those convicted of terrorist offences, may apply for 'deportation' (or, where applicable, 'suspension') parole (Cass. crim., 20 October 2021, no. 20-84240).

- **Foreign nationals** subject to a deportation order cannot be granted any adjustment or leave. The only exception, which is rarely applied, is in the event of a judicial deportation order.

- "Automatic" LSC is excluded for persons convicted of crimes, acts of terrorism or any **type of violence against minors** under the age of 15, against a public official or against a partner, and for prisoners who have been subject to a disciplinary sanction during their detention for different kinds of offences (violence, resistance, participation to a collective action, etc.).

- "Automatic" LSC is also excluded "in the event of material impossibility resulting from the **absence of accommodation**".[12]

[12] Code of criminal procedure, Article 720.

- The law provides for a reduction in the maximum amount of sentence reduction that can be granted:

    - For people convicted of acts of terrorism (except for apology of terrorism): 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.

    - For persons convicted of certain offences (violence of any kind, murder, aggravated murder, torture or acts of barbarism) committed against a public official after 26 May 2021 (or 23 December 2021 for some of them):
        - If a crime: 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.
        - If a 'less serious offence' (*délit*[13]): 4 months per year of imprisonment and 9 days per month for less than one year's imprisonment.

    - For people who do not follow the proposed medical treatment, although they have been found criminally liable but their discernment was impaired at the time of the offence, or they have been convicted of an offence for which socio-judicial supervision is incurred: 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.

Lifers

The conditional release of individuals sentenced to life imprisonment or long sentences for the most serious crimes is determined by the sentence enforcement court (TAP) following a multidisciplinary assessment of dangerousness conducted at the national assessment centre, supplemented by medical expertise. In cases involving specific crimes, two additional experts evaluate the appropriateness of medical treatment to inhibit libido. These assessments must be completed within six months and remain valid for two years; however, in practice, these deadlines are rarely met.

Crucially, the offender must have served their full safety period before becoming eligible for a sentence adjustment. This period—set at the discretion of the trial court—precludes any possibility of early release and has been firmly established as an integral part of the sentence by the supreme courts. The Constitutional Council has ruled that the safety period is a sentencing component, as it is determined by the trial court when deciding on the accused's guilt (Cons. const., 3 September 1986, no. 86-215 DC). Likewise, the Cour de Cassation has confirmed that the safety period is a method of sentence enforcement rather than a separate measure (Crim., 16 January 1985, no. 84-93553).

While the safety period can be lifted, the law stipulates that this is only possible in exceptional cases where the offender demonstrates "serious signs of social rehabilitation."[14] However, as the legislation does not define this concept, its interpretation is left to the discretion of the

[13] French offences are divided into *crimes*, *délits* and *contraventions*.
[14] Code of criminal procedure, Article 720-4.

judge reviewing the application (Crim.,[1] October 2003, no. 03-84375; Crim., 21 October 2015, no. 14-86990).

Foreigners

In principle, foreign prisoners are entitled to have their sentences adjusted in accordance with the criteria of ordinary law, but specific provisions apply in certain situations. For example, if they are subject to an administrative or judicial deportation order, their conditional release is subject to the condition that this order is carried out – this provision may be decided without the person's consent.[15] On release from prison, the person is therefore taken directly to the airport or to an administrative detention centre. This specific conditional release, according to the case law of the judicial supreme court, "does not have to be examined in the light of the personal, family and social criteria" of the person (Cass. crim., 6 March 2002, no. 01-85914). The decision to impose this measure is merely an option for the sentence enforcement court, which is responsible for making its own assessment of whether it is appropriate, in the light of the convicted person's personality, the concrete prospects of his removal from national territory, his plans for resettlement and, where applicable, the progress of the probationary measures to which he has been subjected (Cass. crim., 27 May 2021, no. 20-82727).

However, an exception has existed since 2003:[16] the sentence enforcement judge may grant conditional release to a foreign national subject to a judicial deportation sentence (but not an administrative one), by ordering the suspension of the enforcement of this sentence for the duration of the conditional release. If the person has complied with their obligations and prohibitions by the end of their conditional release, his or her deportation sentence is automatically lifted. The texts also provide for the possibility of making the conditional release of a foreign national subject to the obligation to "leave the national territory and not appear there again".[17] This measure is intended to be used in the case of foreign nationals who are not subject to a deportation order (this time both judicial and administrative) and who base their plan to have their sentence adjusted on a desire to settle in a country other than France. Unlike the "deportation" conditional release, this measure cannot be imposed on the person concerned.

With regard to "automatic" release under constraint, the Code of criminal procedure stipulates that it only applies to foreign nationals subject to an administrative or judicial deportation measure on condition that the measure is carried out[18]. Like "deportation" conditional release, it can be decided without the consent of the foreign national concerned.

Concerning foreign nationals not subject to a deportation order, the law does not make the granting of a sentence adjustment conditional on the production of a valid residence permit. In practice, however, judges are often reluctant to grant such a measure to illegal foreign nationals.[19] This is clearly demonstrated by the proportion of foreign nationals on open probation (i.e. being monitored on the outside as part of a probation measure): on 30 June

[15] Code of criminal procedure, Article 729-2.
[16] Law no. 2003-1119 of 26 November 2003 on immigration control.
[17] Code of criminal procedure, Article D.535.
[18] Code of criminal procedure, Article 720 (IV).
[19] Laurence Blisson et Morgan Donaz-Pernier, « L'aménagement des peines : sortir de l'impasse ! », *Plein droit*, Gisti, n° 138, octobre 2023, p. 13.

2024, only 9.5% of people on probation were foreign nationals, compared with 24.8% in prison.[20]

[20] Prison administration, quarterly statistics for closed prisons and open regimes, second quarter 2024.

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