Political context of the setting up of a national epidemiological study in France

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Abstract
In France, a recent law has instituted systematic narcotics screening in cases of fatal road accidents. Even though the results can be used by the magistrate to determine the judicial consequences to be given to this matter, no specific offence has been created. The data gathered following the setting up of this new measure will allow a vast epidemiological survey to be carried out, the conclusions of which, expected at the end of 2004, will enable legislation to be introduced on the issue of driving while under the influence of narcotics.

This law and the setting up of the study have aroused and continue to arouse numerous debates which this presentation proposes to pick up and replace in the current French context.

Introduction
For several years, many French members of parliament have wanted to create an offence of driving while under the influence of narcotics. The public authorities preferred to carry out an epidemiological study first so that the legislator can be provided with the necessary known facts on the link between road accidents and the use of narcotics. This study, carried out over 3 years, began on 1 October 2001 and its results will not be known until the end of 2004.

Here, therefore, it is a question of describing and understanding the process which has led to this epidemiological study being embarked upon and which has postponed the debate on incrimination from the use of narcotics while driving: in what context was this law passed? How has it been received? What must this epidemiological study provide?

Discussion
For foreign observers, this presentation gives the opportunity on the one hand to pinpoint and understand the status of the political debate in France on the question of narcotics while driving, on the other, to present a large-scale epidemiological study which will enrich the corpus of international data in this field.

Methods
L'Observatoire français des drogues et des toxicomanies is at the heart of this system (implementation and monitoring of the study). It therefore offers an ideal observation ground, putting in contact the researchers and the administration in order to produce the data essential to the political decision-makers. For the examination of the origin of this law and the debates
that have surrounded its adoption, all the legislative and regulatory texts and the minutes of the debates have been gathered together and examined in accordance with the method for analysing public policies.

Development

The wish to create an offence of driving while under the influence of narcotics is not new in France. In 1995, the group of French experts who were approached to draft an official report recommended in particular "a legislative amendment of the highway code to organise research into driving while under the influence of substances, illegal or misused, capable of altering the ability to drive" (Lagier et al., 1996, p.190). In 1996, several private bills, aimed at narcotics screening for all drivers involved in a traffic accident causing physical injury, were put forward but were never examined by the official authorities.

The bill being examined here, tabled in February 1998, did not include the previous details and limits the provisions to systematic screening in the event of a fatal accident "which will enable the knowledge to be improved and to be used, when the time comes, as the basis for specific adapted prohibition and law enforcement measures concerning driving while under the influence of narcotics" (bill no. 302 of 19 February 1998).

This text creates an obligation to screen whereas, to date, only the judge could order it in cases of homicide. The other particularities of this text are on the one hand the experimental nature of the system (this law claims to be an initial step in a process which could lead to more restrictive measures) and, on the other, the application context of the screening (limited to fatal accidents, only to the drivers involved, while the product testing is limited to those classed as narcotics). It was primarily on these two aspects that this bill would be attacked during the 16 months following its first introduction, during discussions at the two authorities responsible for passing laws in France (the Senate and the National Assembly).

The examination of the law: criticisms and defence of the bill

Overall, during the voting and discussions before the various assemblies, even though all those present seemed to advocate an initiative on the subject of narcotics screening, many considered that the bill did not go far enough, either in relation to the sphere of the study (which is restricted to fatal accidents), or in relation to the substances targeted (medicines excluded from the initial bill), or again in relation to the absence of penalty (except in the event of refusal to submit oneself to the screening). All these points would be the subject of various amendments but would never receive unanimous approval and would therefore not be adopted by the relevant assemblies.

The principal criticism focused on the very essence of the law and the absence of creation of a specific offence of driving while under the influence of narcotics.

The defenders of this law mentioned the lack of knowledge about the role of narcotics in the occurrence of a road accident and their questions on the screening tests (their reliability and their reproducibility). The penalising of driving while under the influence of narcotics can only take place if certainty exists over the behaviour to be penalised and the way of disclosing it. The planned study must provide these certainties: what is the risk attributable to the use of narcotics while driving? Are the existing tests reliable and suitable for mass screening?
Furthermore, they mentioned the current arrangements which already allow the magistrates to order narcotics testing in the event of fatal or serious accidents and to use the results as an aggravating circumstance (remember that the use of narcotics is prohibited in France).

Finally, they stated that the principal obstacle to the creation of an offence remains the definition of the concentration thresholds above which the influence of the product used on the driver's performance would be established beyond doubt. The knowledge on this subject is insufficient.

On the part of the detractors of the text, the arguments in favour of penalising driving while under the influence of narcotics were numerous.

First of all, they put forward the fact that many neighbouring European countries have adopted more restrictive measures concerning narcotics while driving. On the question of the thresholds, only Belgian law fixes these. In other countries, this point is left to the estimation of the judges (Groupe Pompidou [Pompidou Group], 2001). The checks are made either randomly or in the event of suspicions of narcotics use. These measures should prove that the screening equipment does exist and is applicable to mass screening.

The detractors of the draft law also emphasised that the principal of suppression of alcohol while driving was accepted in France in 1970, before the means and conditions for screening for it were specified.

Gradually, the debate on the law under examination would slowly evolve. It was recognised that it was necessary to have access to the knowledge on this issue in order to set up a system of enforcement. But some people questioned whether the knowledge currently available in France or abroad was sufficient to reach a conclusion on the role of narcotics in road accidents. The few results published on the subject were likely to be included in this debate.

Nevertheless, the majority of the results put forward were limited to data from the use of narcotics among some drivers involved in accidents. Now these figures only allow measurement of the significance of a co-occurrence between driving a car and the fact of having used a drug. They are not sufficient to reach a conclusion on the link between use and the fact of the accident occurring.

In addition to the absence of enforcement measures, the 1998 bill was criticised for restricting the framework of intervention of the narcotics testing solely to accidents resulting in an immediate fatality whereas those accidents resulting in physical injury ought to be examined as well. For the promoters of the law, it was once again a question of an experimental system aimed at obtaining sufficient data to carry out an epidemiological study. Now the annual number of fatal accidents in France (in the order of 7,000) meets such requirements. In other respects, the fact of limiting the study to those deaths certified as occurring immediately was also challenged. In fact, a not insignificant number of deaths occur subsequently. But it was out of a concern for efficiency that this criterion was accepted: the ability, upon the arrival of the police units, to decide on including the accident in the study and therefore on the need to carry out a narcotics test. Furthermore, testing for narcotics six days after the accident (official period for the definition of a fatal accident) had become meaningless, as narcotics do not remain in the body for a long time.
Finally, the third argument put forward against this law stemmed from the type of substances for which tests are carried out: only those products classed as narcotics and alcohol are subject to screening. Psychotropic drugs, presented however as risk factors, were not retained. It was considered that they would fall within a different study. It was therefore only in the decree, the text stating the conditions of application of this law, that medicines were introduced, as a possible confusion factor. Tests for these will only be carried out in the event of positive screening for narcotics.

Despite these many criticisms and the various private bills tabled during this period of examination and demanding the creation of a specific offence, the text was passed on 18 June 1999, almost in its initial form: the obligation for the police officers to carry out narcotics screening in the event of an accident resulting in an immediate fatality, the only penalty being stipulated for those who refuse to submit themselves to this screening.

The decree stage
The application text of the law, which states the manner in which the screening will be carried out, the clinical and biological examinations and a whole series of material provisions, was presented to the Council of State in 2000. It was also the subject of a number of examinations. The reservations focused on the question of the making the legal files anonymous and the legality of transmitting confidential legal data to a research team.

A decision was therefore taken to amend the text of the decree, stating that only those procedures where the enquiry is closed will be transmitted to the research organisation. Moreover, all the applicative texts were supplemented by an order from the health ministry stating the conditions for processing the data collected during this study and the way in which the researchers will render anonymous the information that will be provided to them.

The other points of the decree did not raise any problems and the text was adopted on 27 August 2001 to come into force on 1 October 2001.

Presentation of the epidemiological study
Let us remind ourselves of the objectives of the study, as they were set out in 1998: "the obligation to screen for the drug at the time of fatal accidents therefore responds to a serious concern, on the one hand to know and analyse the phenomenon and, on the other, rationally to study, validate and set up […] the technical system for sample-taking and analysis which, today, does not exist" (Mr. Gayssot, transport minister, discussions in the Senate on 7 April 1998). The government then said that the recommendations of several experts were to be followed and, as a result, the protocol was drawn up.

The legislative system stipulates the systematic urinary screening for narcotics (cannabis and by-products, opiates, cocaine and amphetamines) for all drivers involved in a traffic accident resulting in an immediate fatality, between 1 October 2001 and 1 October 2003. When the screening proves positive, a blood sample is taken and sent to a laboratory which transmits the dosage of narcotics and that of medicines if there are any (anxiolytic agents, hypnotics, antidepressants and substitution products – methadone or Subutex). In parallel, a medical examination is carried out when the condition of the subject permits. The results with regard to alcohol are provided automatically in this type of accident.
The only penalty stipulated concerns the refusal to submit oneself to these tests since the objective of these legislative provisions is the carrying out of an epidemiological study, as an essential prerequisite to the possible creation of a specific offence targeting the use of narcotics while driving.

The study must provide results on the one hand on the role of narcotics in the occurrence of these accidents (calculation of relative risks), and on the other on the quality of the tests used (urinary screening and confirmation by blood test using gaseous chromatography coupled with mass spectrometry). For the calculation of the relative risks, the control population is made up of the drivers who are not responsible for the accident. The level of responsibility will be determined by various experts, in accordance with the method well-known in international literature under the name of "Responsibility analysis" and similar to that developed by K.W. Terhune.

The gathering of information is planned over two years, namely an estimated 10-12 000 accidents resulting in an immediate fatality and around 20 000 drivers involved.

Since 1 October...

No results are currently available since the processing of the first procedures has barely begun. The results are expected for 2004.

Since 1 October, some difficulties in setting up the legislative system have become apparent, as the units on the ground have not been sufficiently prepared for the procedure to be carried out and the equipment has not necessarily been available in time. The OFDT has therefore undertaken steps aimed at improving the collection of the information required for the epidemiological study.

Since the setting up of the screening system on the roads, the press has been regularly echoing the preoccupations of French people on the subject of drugs while driving. The hundred or so articles gathered illustrate these preoccupations which revolve around the facts which have already stoked the debate in the National Assembly and the Senate: is the system sufficient? Might the knowledge not already allow for enforcement measures?

As during the debate before the two official authorities, many figures have been put forward, highlighting the extent of the phenomenon of drug use among drivers, thus emphasising the urgency of the situation. The studies being embarked upon to this end do not usually have a solid methodological protocol (absence of control group, sample that is statistically too weak, population that is too specific and not representative of drivers in general, etc.). This examination of the press and of the studies mentioned allows the OFDT to maintain clear communication on this subject.

Conclusion

During this legislative process, we have seen the emergence, in France, of all the problems currently linked to the issue of using narcotics and driving cars and to the uncertainties that remain: what is the current level of knowledge? what system can be set up for screening? etc.

The creation of a specific offence has been postponed, while the knowledge will enable thresholds to be established and a roadside screening method to be set up.

But the question of thresholds is particularly sensitive in a country in which the use of narcotics, whatever the quantity discovered, is prohibited. What should be done so that this threshold is not interpreted as a limit value below which use would be tolerated? Is zero tolerance for narcotics screening while driving more suitable for the French situation? The question is particularly sensitive and is the subject of debates, particularly during the
presidential election period in which the subject of the decriminalisation of cannabis use in France is emerging in the political debate of the presidential campaign.

Bibliography/references


La conduite sous l’emprise de produits stupéfiants [Driving while under the influence of narcotic products], Paris, Senate, 2001 (Senate working documents. Comparative legislation series).

