

Covid-19: French rules of criminal procedure have been adapted

In order to ensure the continued operation of French criminal courts necessary to maintain public order, the Government adopted on March 25, 2020 Ordinance 2020-303^[1] (the “Ordinance”) in furtherance of the Emergency Law of March 23, 2020^[2]. The Ordinance adapts the rules applicable to courts ruling on criminal matters, an adaptation made necessary to face the current health crisis in France.

These derogations from the procedural rules usually applicable in criminal matters were taken primarily for obvious health reasons, in order to reduce physical contacts, but also to ensure the continued operation of the French public Justice System, a public service which, in the context of the minimum service due to all citizens, cannot afford to come to a complete standstill.

The provisions of the Ordinance are immediately applicable until up to one month after the end of the state of health emergency, as provided for in Article 4 of the Emergency Law of March 23, 2020.

Adaptation of applicable time limits

Chapter 1 of the Ordinance is devoted to the adaptation of the time limits initially provided for in the French Code of Criminal Procedure.

As such, Article 3 of the Ordinance provides that the time limits for prosecution and the time limits for sentencing are suspended as of March 12, 2020. Contrary to the interruption of time limits, suspension does

not wipe out the period that has already elapsed. Consequently, the period elapsed before the suspension (i.e. before March 12, 2020) is to be taken into account in the calculation of the limitation period.

Article 4 doubles the time limits for exercising remedies provided for in the French Code of Criminal Procedure, which may not be less than 10 days (subject to exceptions specified by the Ordinance). As such, for example, the time limit for lodging an appeal is increased from 10 days to 20 days.

This Article also relaxes strict procedural formalities by allowing to lodge an appeal before the Court of Appeals or the *Cour de Cassation* (French Supreme Court) by registered letter, return receipt requested, or by e-mail.

Receipt of the e-mails sent in this context to the courts must be acknowledged by the latter and are considered as received on the date of dispatch of the notice of receipt.

Specific arrangements for hearings

Article 5 of the Ordinance provides for the generalized use of videoconferencing which is normally exceptional and limited to the very specific situations provided for in Article 706-71 of the French Code of Criminal Procedure (i.e. only if the judge in charge of the proceedings or the President of the court deems it necessary, in the conditions strictly provided for in the Article in question, etc.).

The special feature of this derogatory provision under which videoconferencing becomes the rule rather than the exception is that the parties may not raise any objection whereas their consent is always required in normal circumstances.

Article 5 also specifies that if videoconferencing is technically or materially impossible, the use of any other means of electronic telecommunication is possible, as long as this is authorized by the Judge. Indeed, the Judge remains responsible for guaranteeing respect for the rights of the defense and the rules of adversarial proceedings, as the right to a fair trial is not to be prejudiced despite the current exceptional health circumstances.

It should also be pointed out that these provisions are not applicable to criminal courts adjudicating crimes but they are applicable to all other criminal courts.

Pursuant to Article 6 of the Ordinance, wherever it is impossible for a first-instance criminal court to operate normally, the First President of the Court of Appeals within the territorial jurisdiction of that court may designate another first-instance criminal court within the same territorial jurisdiction to take over the matters to be adjudicated. The replacement court thus designated shall then have the power and authority to rule on all cases that were pending on the date of entry into force of the First President's designation order.

Article 7 of the Ordinance authorizes the President of the court to restrict public access to hearing, in a coherent logic of limiting physical contacts.

Composition of the courts

Consistent with the same health approach, Article 9 authorizes the criminal investigation chamber, criminal courts adjudicating misdemeanors, the criminal appeals division and the special juvenile division to sit as a single judge, thereby derogating from the principle of collective decisions by a panel of judges.

Similarly, Article 10 of the Ordinance provides that the juvenile court may also sit as a single judge, i.e. without the presence of lay assessors. The same applies to the sentence enforcement court (Article 11 of the Ordinance).

Article 12 of the Ordinance stipulates that if an investigating judge is unable to fulfill his/her duties, a sitting judge may be called upon to replace him/her, pursuant to an appointment order of the President of court where the investigating judge works.

Police custody

In line with Article 5, Article 13 of the Ordinance provides that the 30-minute interview between a person in police custody or in customs detention and his/her lawyer may be conducted by electronic means of communication. Similarly, the assistance of the person held in police custody or in customs detention during hearings/examinations may be carried out via electronic communication.

The extended role of the lawyer during police custody, a recent breakthrough in French rules of criminal procedure, has been reduced and weakened - although it is essential since persons in police custody are in a particularly vulnerable situation where the physical presence of their lawyer is intended to be reassuring.

Pre-trial detention

In anticipation of a major disruption of the judicial activity of the courts, in particular in the time limits for investigations and hearings, Articles 15 to 20 of the Ordinance authorize the extension of the maximum time limits for pre-trial detention and house arrest. It is unfortunate to note that through these provisions, the Government does not take into account the increased risks of spreading Covid-19 within places of deprivation of liberty, which are already congested.

Inmate placement and enforcement of custodial sentences

Articles 21 to 29 of the Ordinance concerning inmate placement and the enforcement of custodial sentences depart from the provisions of the French Code of Criminal Procedure, in particular by authorizing the pretrial detention of persons indicted, under investigations or accused in prisons if *maisons d'arrêt* (i.e. detention centers for prisoners awaiting trial or sentencing, or those sentenced to a short term of imprisonment) become congested.

This is obviously one of the major problems raised by the prison system crisis, as the risk of spreading contamination is very high because of the overcrowding in prisons and other places of deprivation of liberty.



Prosecution and sentencing of juveniles

Measures for the placement of juvenile offenders may, under Article 30 of the Ordinance, be extended upon expiry, for a period not exceeding four months. For the other measures provided for in the Ordinance of February 2, 1945 on juvenile offenders, the period of extension may not exceed seven months.

[\[1\] Ordinance No. 2020-303 of March 25, 2020 adapting the rules of criminal procedure adopted in furtherance of the Emergency Law No. 2020-290 of March 23, 2020 to deal with the Covid-19 epidemic](#)

[\[2\] Law No. 2020-290 of March 23, 2020 to deal with the Covid-19 epidemic](#)

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