

Questions Clients Are Asking

QE Paris Client Alert

COVID 19: Impact Of The State Of Health Emergency On Criminal Justice In France

Executive Order No. 2020-303 On Criminal Procedure Issued on 25 March 2020

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The Emergency Law No. 2020-290 of 23 March 2020 addressing the Covid-19 epidemic¹ empowered the Government, for a period of 3 months, to take any measure, by way of Executive Order, that would normally require an act of Parliament to “*adapt, for the exclusive purpose of limiting the propagation of the Covid-19 epidemic amongst persons participating in the conduct and organisation of hearings, the rules on territorial jurisdiction and on the composition of administrative and judicial Courts, as well as the rules relating to procedural deadlines and handing down judgments, publicity of hearings and their organization, the use of videoconferencing before these Courts, the means of seizing the Courts and of organizing adversarial proceedings before them*”.

Acting on these exceptional prerogatives, the Government issued an Executive Order adapting the rules of criminal procedure further to Law No. 2020-290, that was made public directly after the Council of Ministers of Wednesday 25 March 2020 (the “Order”). This Order enacts a series of measures to adapt French criminal procedure to the current health crisis and to the preventive measures that are necessary to limit the propagation of the coronavirus. The postponement of all hearings in criminal matters, with the exception of urgent matters (pre-trial detention matters, summary trials, etc.), had already been announced². In addition, the Order adapts in many respects the

¹ This legislation was published in the Official Bulletin on 24 March 2020 and is available in French [here](#).

² See the Justice Ministry’s press release published on its website on 17 March 2020 [here](#).

procedures for measures and hearings, in light of the confinement, on the one hand, and of the shortage of Court personnel and law professionals, on the other hand. The Order also contains substantive provisions to adapt procedural deadlines.

This communication will summarise the key provisions that are likely to be of interest to companies and their officers when dealing with criminal matters and procedural issues.

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1) Adjustment of procedural deadlines

All limitation periods are suspended retroactively as of 12 March 2020³. They will resume their course only after at the expiry of a one-month period from the end of the health emergency, i.e. on 24 June 2020 (subject to the extension of the health emergency). As a reminder, the health emergency came into effect on 24 March for an initial 2-month period.

Periods for filing appeals – whether against Criminal judgments or appeals to the Supreme Court – are doubled and can in no event be less than ten days⁴. This means, in practice, that deadlines for appeals against a Criminal judgment are extended to 20 days during the health emergency.

2) Practical adjustments to the organisation of hearings and procedural measures

Appeals and requests to judges can exceptionally be made, and writs and briefs be filed, in certain cases, by registered mail with acknowledgement of receipt and/or by email instead of requiring an in person filing of request with the court clerk. The Courts are required to systematically send read receipts for all electronic communications⁵.

The Order also generalises the possibility of using videoconferencing methods for exchanges with all persons participating in the criminal procedure and with the criminal Courts, without the parties' prior consent.⁶ For instance, investigating magistrates (*juges d'instruction*) will be able to conduct all pre-trial examinations by videoconference. In the event of a technical or material issue preventing the use of videoconferencing, the judge may use any other means of communication (including telephone) if it provides a sound transmission quality and allows the judge to check the parties' identities and maintain the confidentiality of the discussions between the parties and their counsel.

³ Executive Order adapting the rules of criminal procedure, Article 3.

⁴ Executive Order adapting the rules of criminal procedure, Article 4 para 1.

⁵ Executive Order adapting the rules of criminal procedure, Article 4 paras 2 to 5.

⁶ Executive Order adapting the rules of criminal procedure, Article 5.

The Order states that if such adjustment is decided, the judge will give due consideration to the rights of the defence and the principle of adversarial proceedings.

Presiding Judges may decide to restrict access to hearings, which represents a major deviation from the rule that hearings are public. They can even decide to hold hearings in closed sessions if it is impossible to ensure the protection of the participants. However, in this latter case, journalists must be allowed to attend under the conditions determined by the Presiding Judge.⁷ Judgments may also be rendered under the same conditions. In this event, the relevant provisions of the judgment will be displayed in the court's premises accessible to the public.⁸

Subject to the enactment of a later Decree⁹, it will be possible for hearings in criminal matters (whether in first instance matters or on appeal) to be held by a single judge (instead of a panel of three). This decision can be made, as applicable, by the Presiding Judge of the Court of First Instance (*Tribunal judiciaire*) or by the First Presiding Judge of the Court of Appeal, if they find that it is impossible to convene the full panel. The Order clarifies that Presiding Judges may refer the matter to a panel of three in case of serious or complex cases.¹⁰

If investigating magistrates are absent, sick or are prevented from working, the Order states the Presiding Judge of the Court of First Instance (*Tribunal judiciaire*) may ask trial judges to act as investigating magistrates.¹¹ This decision is administrative and cannot be appealed.¹²

Finally, when a Court of First Instance is unable to deal with all or part of its caseload, the First Presiding Judge of the Court of Appeal may request, after having consulted the representatives of the different judicial services, another Court of First Instance to take over all or part of the first court's caseload.¹³

3) Adjustment of police custody (“garde à vue”) procedures

The Order provides that the initial half-hour meeting between the person placed in custody and their attorney, as well as the attendance of attorneys at their clients' examinations throughout the duration of a custodial measure, can occur remotely through electronic communication means (including telephone) “*in conditions that ensure the confidentiality of these exchanges*”.¹⁴ The fact that the Order does not request the attorney's approval to make such adjustment is highly detrimental to the rights

⁷ Executive Order adapting the rules of criminal procedure, Article 7 para 1.

⁸ Executive Order adapting the rules of criminal procedure, Article 7 para 2

⁹ Executive Order adapting the rules of criminal procedure, Article 8.

¹⁰ Executive Order adapting the rules of criminal procedure, Article 9.

¹¹ Executive Order adapting the rules of criminal procedure, Article 12 para 1.

¹² Executive Order adapting the rules of criminal procedure, Article 12 para 2.

¹³ Executive Order adapting the rules of criminal procedure, Article 6.

¹⁴ Executive Order adapting the rules of criminal procedure, Article 13.

of the defence since such a situation will necessarily make the communication between attorneys and their clients more difficult.

Additionally, the Order allows the renewal of police custody for certain crimes (notably laundering), without the person held in custody being examined by the Public Prosecutor, which is mandatory in normal circumstances¹⁵ – another deviation that presents a serious risk of harming the rights of the defence.

4) Timing for the implementation of these measures

The provisions of the Order will enter into force from its publication in the Official Bulletin on 26 March 2020. They will remain in force until the expiry of a one-month period from the end of the health emergency, i.e. on 24 June 2020 (subject to the extension of the health emergency).¹⁶

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If you have any questions about the issues addressed in this memorandum or otherwise, please do not hesitate to reach out to us.

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¹⁵ Executive Order adapting the rules of criminal procedure, Article 14.

¹⁶ Executive Order adapting the rules of criminal procedure, Article 2.