



Organisation of Justice and the profession of lawyers during the Pandemic in France



- **Message from the French Minister of Justice 14. March 2020:**

- In response to the accelerating spread of the Covid 19 virus, the Prime Minister announced last night the strengthening of measures to prevent people-to-people contact, which is the main factor in the spread of the virus. The closures that these measures entail must not affect the services that are essential to the lives of our fellow citizens, which must remain open.
- The public service of justice is obviously essential to the lives of our fellow citizens. It must be possible to maintain the criminal and civil emergency services of the courts, incarceration in conditions worthy of prisoners or the reception of minors entrusted to the judicial protection of young people, and the essential missions of the central administration in a framework that prevents the spread of the virus, both with regard to the staff and the public received or cared for by the staff of the Ministry of Justice.



- From Monday 16 March 2020, business continuity plans will be activated in all jurisdictions to prevent the spread of the virus. The courts will therefore be closed except for the handling of essential litigation:
- - Correctional hearings for pre-trial detention and judicial review measures;
- - Immediate appearance hearings;
- - Presentations before the examining magistrate and the liberty and custody judge;
- - Sentence enforcement judge hearings for emergency management;
- - Hearings of the juvenile court and the juvenile judge for emergency management, including educational assistance;
- - Public prosecutor's offices;
- - Referrals to the judicial court for emergency cases, and urgent measures under the jurisdiction of the family court judge (in particular buildings threatening ruin, eviction of a violent spouse);
- - Hearings before a civil liberties and detention judge (hospitalization under duress, detention of foreigners);
- - The permanence in the juvenile court, emergency educational assistance;
- - Hearings before the examining magistrate's chamber for detention;
- - Hearings of the correctional appeals chamber and the sentence enforcement chamber for emergency management.
- As far as possible, hearings should be cancelled in view of the risk of contagion to jurors and the public. Trials may be adjourned within reasonable time limits and within the time limits for pre-trial detention.
- The public reception services will therefore be closed, as well as the houses of justice and the law and the points of access to the law. The officers of these services will no longer receive the public. They will, however, continue to be available by telephone to respond to emergency situations.



- **Information of the Paris Bar on 17. March, first day of Block Down :**

- organization of the civil chambers at the Paris Court of Justice:
 - - All scheduled hearings are cancelled;
 - - The deliberations scheduled from Tuesday, March 17, 2020 are extended;
 - - No telephone or physical reception will be provided;
 - - No diligence is required of the parties;
 - - The electronic (RPVA) messages will not be processed.
- Please do not send a RPVA message.



- The state of health emergency was ordered for two months from 24 March 2020 (Loi d'urgence of 23 March 2020) until 24 May 2020.
- The text presented by the government extended the state of health emergency until 23 July 2020, due to the high level of coronavirus circulation and the risk of epidemic recurrence. The law adopted by the Parliament on 11 MAY reduced this extension to **10 July 2020 inclusive**.
- The Lockdown began on 17 March and ended on 11 May.



- CIVIL AND COMMERCIAL PROCEDURES

- During the “lockdown”, the courts were officially closed and the only applications that could be submitted were very urgent ones as in family matters international child abduction cases or urgent claims to obtain a restraining order in cases of domestic violence.
- For pending cases:
 - The hearings that were originally set during the “lockdown period” have been usually cancelled and postponed at another date,
 - In written proceedings where the representation by a lawyer is mandatory, such as divorce, or in oral proceedings when the two parties have a lawyer, the court can decide that the proceeding will continue only in written that is so say without a hearing, solution that can be refused by the parties,
 - Decisions that were supposed to be rendered during the “lockdown” can be postponed. Exceptionally, some decisions related to cases already heard in Court could be issued and sent to the parties by all means.



- CIVIL AND COMMERCIAL PROCEDURES

- After the lockdown:
- The hearings will slowly begin in June, mostly in september
 - In written proceedings where the representation by a lawyer is mandatory or in oral proceedings when the two parties have a lawyer, the courts strongly invite the parties to accept that the proceeding will continue only in written that is so say without a hearing, solution that can be refused by the parties; then the hearing will be postponedprobably next year If not later...
- It has not been decided yet if courts should work in summer....



- EXTENSION OF TIME LIMITS

- The period concerned: the introduction of a legally protected period
- The Ordinance devotes a so-called "legally protected" period (the term used in the Circular) which covers the periods and measures that expire or expired between 12 March 2020 and the expiry of one month from the date of cessation of the state of health emergency.
- As a reminder, Act n°2020-290 of 23 March 2020 on emergency measures to deal with the covid-19 epidemic published on 24 March 2020 in the Official Gazette established a state of public health emergency from the date of its publication for a period of two months, i.e. for the time being from 24 March to 24 May 2020.
- Thus, the legally protected period extends for the time being from 12 March to 24 June 2020 (end of the period of the state of health emergency increased by one month). This period has not been extended although the period of health emergency has been extended to 10 July 2020.



- "Any act, appeal, legal action, formality, registration, declaration, notification or publication prescribed by law or regulation shall be subject to nullity, sanction, lapse, foreclosure, prescription, inopposability, inadmissibility, lapse, automatic withdrawal, application of a special regime, nullity or forfeiture of any right whatsoever and which should have been accomplished during the period mentioned in Article 1 shall be deemed to have been done in time if it has been done within a period which may not exceed, as from the end of that period, the time legally prescribed for taking action, within a limit of two months.
- The same shall apply to any payment prescribed by law or regulation for the acquisition or retention of a right. »



- As for lawyers.....
- - difficult, even dangerous conditions during the lockdown for activities in Court (no measures of protection)
- - some financial aids (tax, Bars, etc.)
- - 28% of law firms could disappear....



- Force majeure is a complex concept which must be assessed on a case-by-case basis in order to be able to exonerate a contracting party from its contractual non-performance.
- Covid-19 is not automatically a case of force majeure.
- An event of force majeure is an event (Article 1218 of the Civil Code, which takes up the jurisprudential principles established before the reform of contract law):
 - which is beyond the control of the debtor of the contractual obligation,
 - could not be reasonably foreseen at the time of the conclusion of the contract,
 - the effects of which cannot be avoided by appropriate measures,
 - which prevents the performance of the obligation concerned.
- It is up to the debtor of the obligation to provide evidence of the combination of these elements, it being understood that these criteria are strictly assessed by the case-law.



- As for lawyers.....
- - difficult, even dangerous conditions during the lockdown for activities in Court (no measures of protection)
- - some financial aids (tax, Bars, etc.)
- - 28% of law firms could disappear....



- **NO AUDIOVISUAL TELECOMMUNICATION IN CRIMINAL CASES**

- On 30 April 2020, the Constitutional Council censured the provisions of article 706-71 of the Code of Criminal Procedure providing for the possible use of an audio-visual means of telecommunication during criminal proceedings, in particular for hearings of the examining magistrate's chamber relating to pretrial detention.
- The Council considers that these provisions unduly infringe the rights of the defence. Indeed, they would not prevent a person placed in pre-trial detention from being deprived, in criminal proceedings, of the possibility of physically appearing before a judge for a whole year.
- The Constitutional Council reiterates the same grounds for censure as those of its decision No. 2019-802 of 20 September 2019. The date for repeal of the contested provisions is set by the Council at 31 October 2020.



- **NEW CREATION DUE TO THE PANDEMIC**
- **PLEX: a platform to facilitate the exchange of information in criminal matters**
- The external exchange platform "PLEX", recently launched by the Ministry of Justice, enables secure file exchanges. It aims to simplify, speed up and secure exchanges between Ministry staff and trusted partners outside the State, including lawyers.
- The PLEX platform is :
 - Sending magistrates' and clerks' files via a download link on the RPVA messaging system;
 - Access only to lawyers registered in the RPVA;
 - Registration when the first link is sent by the Ministry.



CONCLUSION

- The Pandemic has shown that the Justice in France does not have the necessary economical means (people, material)
- There will be an enormous delay and as for Spain « Late Justice is not Justice » and Danger: restriction of hearings
- Possibilities: alternative such as mediation and agreement out of Court



- FUTURE

- Important role of international cooperation between Bar Associations, Lawyers Associations, Law offices
- To exchange experiences, ideas, possible solutions
- As.....
 - **ASSOCIATION EUROPÉENNE DES AVOCATS**
 - **EUROPEAN ASSOCIATION OF LAWYERS**
-