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Covid-19: Extension of the state of health emergency

Law No. 2020-546 of May 11, 2020 (the “Law”) extends the state of health emergency until July 10, 2020 included. As a reminder, the state of health emergency was declared by the Law of March 23, 2020 for an initial period of two months. In addition to this one-and-a-half-month extension of the state of emergency, the provisions of the Law mark a cautious and progressive lifting of the lockdown in France.

The Law extending the state of health emergency and supplementing its provisions^[1] was adopted on May 9, 2020 by a Joint Committee of the French Parliament (i.e. a legislative committee composed of an equal number of members from the Senate and the National Assembly).

On the same day, the Law was referred to the French Constitutional Council by the President of the Republic, the President of the Senate and also by several members of the French Parliament the following day, for a prior constitutional review.

In a decision No. 2020-800 DC of May 11, 2020^[2], the Constitutional Council invalidated some of its provisions and expressed several reservations concerning the interpretation of the Law which are detailed below.

What is the content of the Law that has been finally promulgated? This article provides an overview of the main measures adopted.

Extension of the state of health emergency

Unsurprisingly, the main provision of the Law is the extension of the state of health emergency in France. Initially scheduled to last until May 23 included, the state of emergency will be maintained until July 10.

It is important to specify that the reference period that had been set for the extension of the procedural deadlines by Ordinance No. 2020-306 of March 25, 2020 will not follow the extension of this state of health emergency period.

In fact, a new Ordinance No.2020-560 of May 13, 2020[3] specifies that the reference period will remain fixed from March 12 to June 23, 2020 included (and no longer until the expiry of a one-month period after the end of the state of emergency, as previously indicated).

For more information on the impact of Covid-19 on procedural deadlines, please refer to previously published articles[4].

Ordinary criminal law provisions on pre-trial detention become applicable again

Ordinance No. 2020-303 of March 25, 2020 provided for the automatic extension of the maximum periods of pretrial detention in the context of the state of health emergency.

This measure has not been renewed since the Law now provides that pretrial detention may only be extended by decision of a competent court following an adversarial debate.

Criminal liability of mayors and employers

Many parliamentary debates have focused on the issue of the criminal liability of mayors and employers in the context of the pandemic.

The French Parliament finally chose to clarify the regime established by the Law of July 10, 2000, known as the Fauchon Law, on unintentional offences.

A new article L3136-2 has been introduced in the French Public Health Code and provides that, in the event of prosecution, liability must be assessed *“taking into account the skills, power and means available to the perpetrator in the crisis situation that justified the state of health emergency, as well as the nature of his/her missions or functions, in particular as a local authority or employer”*. [5]

Quarantine and isolation measures

In order to allow the gradual ease of the lockdown of the population, specific quarantine and isolation systems have been introduced.

The measures, which will be specified in a Decree of the Prime Minister after the opinion of the scientific committee, shall apply to *“persons who, having stayed during the previous month in an area where the virus is*

circulating, enter the national territory, arrive in Corsica or in one of the overseas territories.”

Individual measures will be taken by the *préfet* (local representative of the Government), following the advice of the General Director of the local Regional Health Agency on the basis of a medical certificate. An appeal against such measures may be lodged before the *juge des libertés et de la détention civil* (civil liberty and custody Judge) who will rule within 72 hours.

Quarantine or isolation may take place, at the choice of the person concerned, at his/her home or in other suitable accommodations. The duration of the measure is limited to 14 days, may be renewed only on medical advice and may in no event exceed one month.

A welcome clarification: persons who are victims of domestic or family violence may not be placed in quarantine or isolation in the same place as the violent spouse or parent, including in cases of alleged violence.

The French Constitutional Council has validated the provisions of these quarantine and isolation systems as it considers it necessary to pursue the objective of health protection, an objective recognized as having constitutional value, insofar as these measures are aimed at preventing the spread of the disease.

It nevertheless made a reservation on the interpretation of the Law: since isolation or quarantine constitute, in the event of a prohibition to leave/exit the place where a person stays, a deprivation of liberty, any prefectoral measure requiring the person concerned to remain at home or in a specific place of accommodation for a period of at least one month, must be approved by the judge.

Implementation of the patient monitoring system

Another controversial subject is the computerized tracing of the Covid-19 contamination chains. For more information in this respect, please refer to our previous article on the subject[\[6\]](#).

The Law empowers the French Health Minister to implement a system for the processing and sharing of health data relating to persons infected by the virus and to persons who have been in contact with them.

The information system, which will be created by Decree, should be based on two tools:

- a national database called *Sidep* (integrated screening and prevention service) to centralize information and share it with the various health actors and practitioners;
- the Health Insurance Fund's *Contact Covid* teleservice to monitor patients and identify contact cases.

The system will be strictly regulated:

- it will only be set up for a maximum period of six months;
- the nature of the processed and shared data will be limited, in particular to the virological or serological status of the person;
- the data may not be kept for more than three months;

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- the personnel having access to the data will be bound by professional secrecy;
- data used for epidemiological monitoring purposes will be anonymized.

In addition, the creation of a Covid-19 monitoring and liaison committee made up of members of the French Parliament and civil society is planned in order to monitor the system put in place.

The terms and conditions governing the practical implementation of the new system will be specified by Decree following a public opinion from the French Data Protection Authority.

The French Constitutional Council has considered that the introduction of this system corresponds to the objective of health protection, an objective recognized as having constitutional value.

Several reservations concerning the interpretation of the Law have nevertheless been expressed, in particular concerning the anonymization of data, which must now be extended to the telephone and e-mail addresses of the persons concerned.

The French Constitutional Council also invalidated a provision of the law allowing bodies to access data without the consent of the individuals, a provision which violated the right to privacy.

Other measures

A number of other measures have also been adopted, again with the aim of ensuring a gradual lifting of the lockdown.

As such, the Prime Minister will be able to regulate, by means of Decrees, the movement, access and use of transport and the opening of establishments open to the public (and no longer just limit or prohibit openings).

Finally, the so-called winter truce (*trêve hivernale*, i.e. a period during which tenant evictions are officially prohibited) is extended until July 10, 2020, just like the ban on cutting off tenant's electricity or gas.

[1]

https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=3004CE478209C6EC503C8296EB222F98.tplgfr35s_2?cidTexte=JORFTEXT000041865244&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT00041865241

[2] <https://www.conseil-constitutionnel.fr/decision/2020/2020800DC.htm>

[3]

https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=FF8F14BC9ADF0C8D10C3C9D437F30C3B.tplgfr29s_3?cidTexte=JORFTEXT000041876355&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000041875892

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[4] See in particular our articles entitled [Covid-19: French rules of civil procedure have been adapted](#) and [Covid-19: French rules of criminal procedure have been adapted](#) published on our Blog in April 2020

[5]

https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=01DB44E684C5CDA362FE78AF11CB610F.tplgfr35s_2?idArticle=LEGIARTI0000041866200&cidTexte=LEGITEXT000006072665&dateTexte=20200513&categorieLien=id&oldAction=&nbResultRech=

[6] See our article entitled [Covid-19 and Contact Tracing](#) published on our Blog in May 2020

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