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

The Emergency Law to deal with the Covid-19 epidemic of March 23, 2020 (the “Emergency Law”) came into force on March 24, 2020, i.e. the date on which it was published in the Official Gazette. Article 4 of the Emergency Law declares health emergency throughout the national territory for a period of two months, i.e. until May 24, 2020.

Article 3 of the Emergency Law also empowers the Government to take, by means of Ordinances, the adaptation measures intended to put in place health emergency arrangements, under the conditions set out in Article 38 of the French Constitution.

As a result, the Government adopted 25 Ordinances on March 25, 2020.

In judicial matters, several Ordinances were issued to govern the organization of courts and procedures during this crisis.

In particular, the rules of criminal procedure were adapted by Ordinance No. 2020-303 of March 25, 2020^[1] and rules applicable before administrative courts were amended by Ordinance No. 2020-305 of March 25, 2020^[2].

Regarding specifically civil proceedings, two Ordinances have been adopted:

- Ordinance No. 2020-304 of March 25, 2020^[3] on the adaptation of the rules applicable to the judicial courts ruling in non-criminal matters and matters related to homeowner association contracts (*contrats de syndic de copropriété*);
- Ordinance No. 2020-306 of March 25, 2020^[4] on the extension of deadlines expiring during the state of health emergency and on the adaptation of procedures during that same period.

This article focuses on the two abovementioned pieces of legislation which have a significant impact on applicable time-limits and the conduct of civil proceedings (1) and the operation of judicial courts ruling in non-criminal matters (2).

1. The adaptation of time-limits and civil proceedings

The most notable measure in this exceptional legislative package is undoubtedly the introduction of an extension of procedural deadlines, which are to be understood in a broad sense.

Article 2 of Ordinance No. 2020-304 of March 25, 2020 provides as follows:

“Any act, appeal, legal action, formality, registration, declaration, notification or publication prescribed by law or regulation under penalty of nullity, sanction, lapse, foreclosure, limitations, unenforceability, inadmissibility, expiration, automatic withdrawal, application of a special regime, nullity or forfeiture of any right and which should have been performed/completed during the period mentioned in Article 1 shall be deemed to have been made in time if it has been made within a period which may not exceed, from the end of the aforementioned period, the period legally prescribed for taking action, within a maximum of two months.

The same shall apply to any payment prescribed by law or regulation with a view to the acquisition or retention of a right”.

This provision is applicable for the **period from March 12, 2020 until the expiry of a one-month period from the end of the state of health emergency** (Article 1 of the aforementioned Ordinance). As indicated above, the Emergency Law, applicable from March 24, 2020, declared health emergency for 2 months, i.e. until May 24, 2020.

Consequently, the reference period covered by the Ordinance currently runs from March 12, 2020 to June 24, 2020.

As such, any action that should have been taken within this period, but was not carried out until two months later, i.e. until August 24, 2020 (for the time being), will therefore be deemed to have been carried out on time.

Article 3 of Ordinance No. 2020-306 also provides for an automatic extension until the end of the two-month period following the end of the health emergency (i.e., for the time being, until August 24, 2020) of the following administrative or jurisdictional measures which would otherwise expire during that period:

“1° Interim, investigative, conciliation or mediation measures;

2° Prohibition or suspension measures that have not been pronounced as a sanction/penalty;

3° Authorizations, permits and approvals;

4° Measures to assist, help or support socially disadvantaged people;

5° Measures to assist in the management of the family budget”.

Some provisions have also been adopted to clarify contractual relationships.

As such, Article 4 of Ordinance No. 2020-306 provides that penalty payments, penalty clauses, termination clauses and forfeiture clauses intended to sanction the non-performance of an obligation may not take effect during the period from March 12 to June 24, 2020, but only from one month thereafter, i.e. from July 24, 2020. Penalty payments and other similar clauses which took effect before March 12, 2020 shall also be suspended from March 12 to June 24, 2020.

Article 5 of the same Ordinance specifies that concerning deadlines for terminating and withdrawing from contracts which are to expire within the period from March 12 to June 24, 2020, those deadlines are extended by two months from the end of that period, i.e. until August 24, 2020.

2. The adaptation of the operation of judicial courts ruling in non-criminal matters

Needless to say that the functioning of the French justice system is of course very much affected by the current situation: except for emergencies, hearings are postponed and many courts have shut down.

To remedy this situation, and to avoid as far as possible a total paralysis of the operation of the French justice system, Ordinance No. 2020-304 of March 25, 2020 provides for a certain number of measures aimed at adapting the rules governing the operation of judicial courts ruling in non-criminal matters.

First of all, Article 2 of said Ordinance specifies that the extension of procedural time limits provided for under Ordinance No. 2020-306 of March 25, 2020 applies to all judicial courts ruling in non-criminal matters, with the exception of the following:

- the *juge des libertés et de la détention civil* (civil liberty and custody Judge) before whom specific legislative and regulatory rules apply;
- juvenile courts for which special provisions have been adopted (Articles 13 *et seq.* of the aforementioned Ordinance;

- attachments of real estate properties for which applicable time-limits have been suspended.

In addition, the measures for the protection of adults and victims of domestic violence are extended until August 24, 2020 (Article 12 of the aforementioned Ordinance).

Regarding the organization of French courts, the following measures have been adopted:

Territorial jurisdiction

The First President of the Court of Appeals is empowered to designate, pursuant to a court order, a court within its own jurisdiction to replace another court within the same jurisdiction that is unable to operate (Article 3 of the aforementioned Ordinance).

Postponement of hearings and production of procedural documents

The conditions in which hearings can be postponed are simplified and postponement can be carried out by any means, including electronic means (Article 4 of the aforementioned Ordinance).

Documents, written submissions and briefs may also be produced by any means, provided however that the principle of adversarial proceedings is respected (Article 6 of the aforementioned Ordinance).

Single judge

Rulings may, pursuant to a decision of the President of the court, be rendered by single judge in first instance and on appeal (Article 5 of the aforementioned Ordinance) and the President of the court may also decide that the proceedings will be held with limited public access to court or even in chambers (Article 6 of the aforementioned Ordinance).

Use of videoconference and conference call

Hearings may take place by videoconference or even, if videoconference is impossible, by conference call, provided however that the technologies used must enable the identification of the parties, guarantee a good transmission quality and preserve the confidentiality of the exchanges between the parties and their lawyers (Article 7 of the aforementioned Ordinance).

Rulings without hearings

The court may also decide to issue rulings without any hearing being held, by following a procedure based exclusively on the parties' written submissions and briefs.

The parties will have 15 days to object to this procedure, except in case of urgent and expedited proceedings (Article 8 of the aforementioned Ordinance).

Filter for applications for summary proceedings

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Regarding summary proceedings for interim measures, the court may, pursuant to an *ex parte* order, dismiss an application for summary proceedings if said application is inadmissible or does not meet the applicable requirements (Article 9 of the aforementioned Ordinance).

In our opinion, these new rules governing the organization and the operation of judicial French judicial courts should be viewed with caution by legal practitioners and litigants.

While they make it possible to ensure to some extent the continued operation of justice, they nevertheless entail a restriction of essential procedural principles such as the adversarial principle or the public conduct of proceedings. As for the possibility of “dematerialized” hearings, these will have to meet high security requirements.

[1] <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755529&dateTexte=20200401>

[2] <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755612&dateTexte=20200401>

[3] <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755577&dateTexte=20200401>

[4] <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755644&dateTexte=20200401>

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