

Managing civil disputes in France during COVID-19 crisis (II)

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The outbreak of COVID-19 has created substantial disruption and uncertainty with respect to civil litigation management. The health crisis linked to COVID-19 affects procedural deadlines, whether they relate to ongoing proceedings or proceedings to be initiated. Deadlines for the acquisition and extinction of rights and actions also need to be adapted to this pandemic.

The Emergency Bill passed on 22 March 2020 has been published on 24 March 2020 and its Article 11, 2° empowers the government to proceed by way of an order to adapt the rules of procedure.

Under Article 4 of the Emergency Bill, "*a state of health emergency shall be declared for a period of two months from the entry into force of this Act*", it being specified that the Emergency Bill entered into force on the day of its publication. Hence, the state of health emergency is deemed to begin on 24 March 2020 for a 2-months period (*i.e.* until 24 May 2020). The health emergency period may be extended by law, and it may be terminated early by decree of the Ministers' Council.

It is under such circumstances that the order adapting the rules applicable to the courts in non-criminal matters¹ and the order relating to the extension of time limits during the emergency period and adapting procedures² were adopted by the French Council of Ministers on 25 March 2020.

¹ Order n°2020-304 dated 25 March 2020 adapting the rules applicable to the courts in non-criminal matters and relating to *syndic* condominium contracts https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000041755577

² Order n°2020-306 dated 25 March 2020 relating to the extension of time limits during the emergency period and adapting procedures https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000041755644

1. Provisions relating to civil procedure

Territorial jurisdiction: The order provides for a transfer of territorial jurisdiction with the possibility for the First President of the Court of Appeal to designate, by order, a court or tribunal within its own jurisdiction to hear and determine all or part of the activity falling within the jurisdiction of another jurisdiction which would be unable to perform it.

Procedural communication: Communication “*by any means and in particular electronic*” (Article 4) is recommended, and parties are invited to “*exchange their briefs and documents by any means*” (Article 6 para. 1).

Single Judge: The president of the court may decide that the court seized shall rule “*as a single judge in first instance and on appeal in all submitted cases*” (Article 5).

Publicity of court hearings during the confinement period: The president of the court may decide that “*hearings will take place with limited publicity.*” It is further added that “*if the necessary conditions to protect people’s health cannot be guaranteed, then the hearings shall be held in council chambers,*” with the presence of journalists where appropriate (Article 6).

The use of videoconferencing: The judge may “*by a decision not subject to appeal, decide that the hearing will be held using an audiovisual telecommunication means,*” or even “*in the event of technical or material impossibility of using such a means*” the judge may “*decide to hear the parties and their lawyers by any means of electronic communication, including telephone*” (Article 7).

Procedure without hearing: “*where representation is mandatory or the parties are assisted or represented by a lawyer, the judge, or the presiding judge may decide to proceed without a hearing*”. It is added that “*with the exception of summary proceedings, accelerated proceedings on the merits and procedures in which the judge must rule within a specified period, the parties have a period of fifteen days to object to the procedure without hearing*”(Article 8).

Filtering before the summary proceeding: “*the application for summary proceedings may be dismissed before the hearing by a non-adversarial order if the application is inadmissible or if there is no need for summary proceedings*” (Article 9).

The provisions of the ordinance shall apply subject to its effective application by each jurisdiction, taking into account their respective means. It will therefore be necessary to proceed by reference to the continuity plans (“*plan de continuité d’activité*”) deployed by each of the jurisdictions.

2. Procedural deadlines

Procedural deadlines are intended to ensure the protection of the parties and the adversarial nature of the proceedings. These deadlines risk being missed due to the current health crisis. The ordinance relating to the extension of the deadlines expired during the health emergency period adopted on 25 March 2020 which was largely inspired by the 31 July 1968 law relating to foreclosures which had to be adopted in the context of the events of May and June 1968 in France.

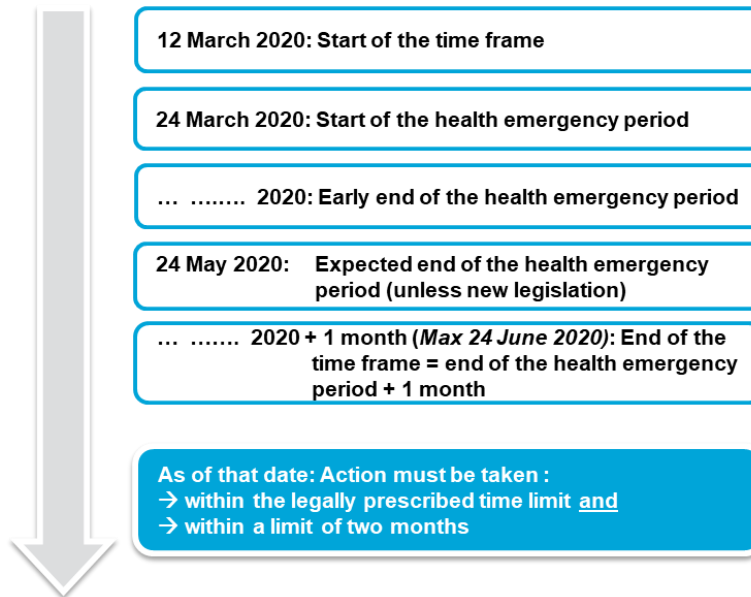
The scope of the health emergency period relates to the periods and measures expiring between 12 March 2020 and one month from the end of the state of health emergency, i.e. 24 June 2020 (except extension of the state of emergency by a future law).

Interruption of procedural deadlines capped at two months: “*Any act, appeal, legal action, formality, registration, declaration, notification or publication prescribed by law or regulation under penalty of nullity, sanction, lapse, foreclosure, prescription, unenforceability, inadmissibility, expiration, automatic withdrawal, application of a special regime, nullity or forfeiture of any right and which should have been completed during the period mentioned in Article 1 will be deemed to have been made in time if it has been made within a period which may not exceed, from the end of this period, the period legally allowed*”

to act, within the limit of two months" (Article 2). As a consequence, a new deadline will begin running again after the end of the state of health emergency, but such extension of time may not exceed two months.

Postponement of procedural deadlines

Time periods and measures that expire or are to expire between 12 March 2020 and one month from the end of the health emergency period



While the scope of the order is very broad, it is subject to several **exceptions** with regard to "the periods whose term has expired before 12 March 2020: their term is not extended" and "the periods whose term is fixed beyond the month following the date of cessation of the state of health emergency: these periods are neither suspended nor extended".

It remains unclear how the courts will apply these laws. The COVID-19 pandemic introduces uncertainties in our fairly complex system.

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