Obdolženci v kazenskem postopku

Francija

V teh informativnih listih je pojasnjeno, kaj se zgodi, če je posameznik osumljen ali obtožen storitve kaznivega dejanja, o katerem se odloča v postopku pred sodiščem. Informacije o prekrških, kot so kršitve cestnoprometnih predpisov, ki so običajno sankcionirani z mandatno kaznijo, kot je globa, najdete na informativnem listu 5. Če ste žrtev kaznivega dejanja, lahko vse informacije o svojih pravicah najdete tukaj.

Splošni uvod

Sodne pristojnosti so štiri:

Sodišče za prekrške (tribunal de police)

Tu odloča en sam sodnik in ta načeloma obravnava kršitve petega razreda. Pritožba se vloži pri senatu za kazenske pritožbe (chambre des appels correctionnels), vendar samo v določenih primerih.

Okrajno sodišče (juridiction de proximité)

Tu odloča en sam sodnik. Obravnava kršitve prvih štirih razredov.

Prtožbo urejajo isti predpisi kot pritožbo na sodišču za prekrške..

Kazensko sodišče (tribunal correctionnel)

Običajno odločajo trije sodniki in v glavnem obravnava kazniva dejanja.

Pregon lahko izvaja sodišče, pristojno za območje, kjer je bilo kaznivo dejanje storjeno, ali tisto, ki je pristojno za območje, kjer živi oseba ali ena izmed oseb, ki so preganjane, ali sodišče, pristojno za območje, kjer je bila preganjana oseba prijeta.

Pritožbe na sodbe sodišč prve stopnje se vložijo pri pritožbenem sodišču, in sicer pri senatu za kazenske pritožbe.

Porotno sodišče (cour d'assises)

Pristojno je za odločanje o kaznivih dejanjih, ki so jih storile polnoletne osebe in ki ne spadajo pod posebno pristojnost.

Tu odločajo trije poklicni sodniki in devet porotnikov, ki so izžrebani med francoskimi državljani.

Tožilstvo in obsojeni obtoženci se zoper obsodbo lahko pritožijo pri porotnem sodišču (cour d'assises), ki ga sestavlja 12 porotnikov – državljanov in trije poklicni sodniki. Obtoženec in državni tožilec se lahko pritožita na sodbo porotnega sodišča, ne glede na to ali gre za obsodbo ali oprostitev. Civilni tožnik (partie civile) se lahko pritoži samo glede odškodnine, ki jo je določilo sodišče.

Kratek opis kazenskega postopka

Spodaj je naveden kratek opis običajnih faz kazenskega postopka

Preiskava

Vodi jo policija ali žandarmerija (gendarmerie), njen cilj pa je ugotoviti, ali je bilo storjeno kaznivo dejanje, o tem zbrati dokaze in poiskati storilce. Poteka pod vodstvom državnega tožilca. Preiskava se začne samodejno, če jo sproži državno tožilstvo.

Obstajata dve vrsti preiskave: vzporedna preiskava (preiskava kaznivih dejanj, ki se odvijajo ali so bila pravkar storjena (enquête de flagrance)) in predhodna preiskava (enquête préliminaire), ki jo po uradni dolžnosti vodi uradnik sodne policije ali se opravi po navodilih državnega tožilca.

V vsakem primeru je preiskava tajna in enostranska (nekontradiktorna).

Zbiranje dokazov

Cilj preiskave, ki jo vodi preiskovalni sodnik, je zbrati dokaze o storitvi kaznivega dejanja, in poiskati storilca. Na podlagi tega se ugotovi, ali obstaja dovolj dokazov, da se storilca pošlje pred pristojno sodišče. S pomočjo zbiranja dokazov postane zadeva primerna za sojenje. Zbiranje je tajno, vendar imajo strani, ki so udeležene v postopku, dostop do dokumentacije in lahko pogojno postavljajo zahteve glede preiskav.

Sojenje

Faza sojenja se odvija ob upoštevanju načela kontradiktornosti, javno in ustno. Sodniki izrečejo sodno odločbo, na katero se je mogoče pritožiti.

Podrobnosti o vseh teh stopnjah postopka in o vaših pravicah najdete na informativnih listih. Ti ne morejo nadomestiti posvetovanja z odvetnikom in služijo le kot napotki.

Vloga Evropske komisije

Prosimo upoštevajte, da Evropska komisija nima nobene vloge v kazenskih postopkih v državah članicah in vam ne more pomagati, če se želite pritožiti. Na informativnih listih boste našli informacije, kako in kje se lahko pritožite.

Za informacije, ki jih potrebujete, kliknite na spodnje hiperpovezave

1 – Posvetovanje z odvetnikom

2 – Moje pravice med preiskavo

Moje pravice med priporom

Moje pravice med prvim zaslišanjem

Status preiskave in nadzorovane priče

Zaključek preiskave

Evropski nalog za prijetje

Priprava obrambe na sojenje

3 – Moje pravice med postopkom

4 – Moje pravice po postopku

5 – Kršitve cestnoprometnega zakonika in drugi prekrški

Sorodne povezave

Vaše pravice

Zadnja posodobitev: 06/12/2021

Strani v jezikih držav članic pripravljajo posamezni nacionalni organi, njihov prevod pa zagotavlja prevajalska služba Evropske komisije. Prevodi zato morda še ne vsebujejo kasnejših sprememb izvirnika, ki so jih vnesli nacionalni organi. Evropska komisija ne prevzema nobene odgovornosti za informacije ali

podatke, ki jih vsebuje oziroma na katere se sklicuje ta dokument. Za pravila o avtorskih pravicah države članice, ki je odgovorna za to stran, glejte pravno obvestilo.

1 – Consulting a lawyer

It is very important to get independent advice from a lawyer when you are involved in any way in criminal proceedings. The fact sheets tell you when and under what circumstances you are entitled to be represented by a lawyer. They also tell you how the lawyer will help you. This general fact sheet will show you how to find a lawyer and how the lawyer's fees will be covered if you are not in a position to pay them.

Finding a lawyer

Except in cases of crime as defined under French law, the assistance of a lawyer is not compulsory but it is advisable.

Freedom to choose a lawyer is a fundamental principle.

You may freely choose a lawyer if you know one or you may ask for one to be appointed.

You may choose a lawyer by "word-of-mouth" if anyone you know is a lawyer or if a friend or relative recommends one.

You may consult the list of lawyers close to where you live, either at the *Tribunal d'instance* (Court of First Instance) in your town, at many town halls or at the Bar Association closest to where you live.

You may also look in the telephone directory or search on the Internet.

Several sites offer online directories of lawyers, broken down by specialist area:

Conseil National des Barreaux (National Bar Council)

Paris Bar Association (Paris Bar Association)

Ministère de la justice (Ministry of Justice)

Many Bar Associations also have contact points in courts of law, town halls or *Maisons de justice et du Droit* (justice and law information centres).

If you are held in custody, you have several possibilities for choosing a lawyer.

Lists of lawyers are posted inside remand centres.

Associations working in the prison environment can advise you and help you to choose a lawyer. (International Prison Observatory, Association of Prison Visitors, etc.).

The consular services of your country of origin can help you to choose a lawyer.

You may also ask the President of the Bar Association in your territorial jurisdiction to nominate a lawyer to help you.

Paying your lawyer

If you retain a lawyer, you will have to pay fees. The lawyer's fees are established freely by agreement with you.

You may sign a fee agreement with the lawyer, who is entitled to ask you to put down deposits whilst your case is being dealt with.

However, if your means are below a certain ceiling, you may be able to obtain legal aid under certain conditions.

Depending on your income, the State can therefore cover all or part of the court-appointed lawyer's fees. If you are not entitled to legal aid, the court appointment becomes a personal appointment and you must then establish the amount of fees with the lawyer.

If you are only entitled to partial legal aid, you must pay the balance of fees to the lawyer.

Last update: 06/12/2021

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Izvirna jezikovna različica te strani fr je bila pred kratkim spremenjena. To jezikovno različico trenutno prevajajo naši prevajalci.

2 - My rights during the investigation of a crime

What is the purpose of the criminal inquiry and investigation?

The *enquête judiciaire* (criminal inquiry) includes all the investigations by the CID, under the supervision of a judge, in respect of the commission of an offence.

The criminal inquiry can be conducted independently of the pre-trial investigation and consists of establishing the offence, gathering evidence and seeking the perpetrators.

A distinction is made between the *enquête de flagrance* (urgent inquiry) and the *enquête préliminaire* (preliminary inquiry). The former is undertaken when a crime is being or has just been committed and grants the police strong powers of coercion. The latter is conducted in other cases. Its originally less coercive arrangements have become much closer to those of the *enquête de flagrance* as a result of recent legislation.

In more complicated cases, an inquiry may also be undertaken as part of the pre-trial investigation and then consists of carrying out the instructions of the examining judge. The pre-trial investigation has the more specific purpose of determining whether there is sufficient evidence to commit the perpetrator of an offence for trial and, if necessary, to prepare the case for judgment.

It is only compulsory in criminal matters.

What are the stages in the inquiry and pre-trial investigation?

An *enquête de flagrance* can commence when an offence is being or has just been committed, or where a person is suspected of involvement in an offence. This inquiry lasts eight days and may be extended by the public prosecutor, under certain conditions, for a maximum period of eight days.

During the *enquête de flagrance*, the CID officer may, in particular, travel to the scene of the offence, make findings of fact, seize any objects or proof serving to establish the truth, search the homes of people who appear to have been involved in the offence or who hold documents or information relating to the events, question anyone likely to provide information on the facts, or take anyone suspected of involvement in the offence into police custody.

In the *enquête préliminaire*, the CID officer advises the public prosecutor as soon as the likely perpetrator of the offence has been identified.

In the pre-trial investigation, the judge investigates the case for and against and does everything he considers useful to establish the truth. He may take action ex officio, or at the request of the public prosecutor or the parties (e.g. attendance at the scene, hearings, searches, etc.). The judge must give reasons for refusing requests and it is possible to appeal against his decision.

In the case of letters rogatory, the examining judge can delegate CID officers to carry out these tasks.

When he considers the pre-trial investigation complete, the examining judge notifies the parties and their lawyers simultaneously. The public prosecutor and the parties then have a period of one month if the person is charged or three months otherwise to send comments or reasoned requests to the examining judge.

After that period, the prosecution has 10 days (if the person who has been charged is in custody) or one month (otherwise) to send its arguments or additional comments to the examining judge in respect of the information received.

The examining judge will then order:

either non-suit if he considers that the facts referred to him do not constitute a crime, *délit* (lesser offence not classed as a "crime" under French law) or petty offence or if the perpetrator is unknown or if there is not sufficient evidence against that person; or
committal for trial (in the case of *délits* and petty offences) or indictment (in criminal matters) when there is sufficient evidence to charge the accused with an offence.

My rights during the inquiry and pre-trial investigation

My rights in police custody (1)
My rights during first appearance questioning (2)
Being charged and *témoin assisté* (legally-represented witness) status (3)
Completion of the pre-trial investigation (4)
The European arrest warrant (5)
Preparation of the case by the defence (6)

My rights in police custody (1)

If you are suspected of involvement in committing an offence, the CID officer may take you into police custody. He must immediately inform the public prosecutor or examining judge, as applicable.
For a common law offence, you cannot be detained for more than 24 hours, a period that can be extended once for a further period of 24 hours by the public prosecutor in connection with the inquiry, or by the examining judge in connection with the pre-trial investigation.
There are, however, exceptions to these police custody arrangements. In the case of delinquency or organised crime, drug trafficking or terrorism, detention periods are longer. Moreover, generally speaking, the conditions for placing a person in police custody and the possibility of extending this measure are more strictly controlled in the case of minors.
Failure to comply with the time limit on police custody can result in annulment of the measure and all subsequent acts for which it forms the necessary basis.

What will I be told about the terms of police custody?

The rights of someone held in police custody are basic rights. You must be informed immediately of the nature of the offence to which the investigations refer, the duration of the period of police custody and your rights. This information must be given to you in a language you understand. You may therefore receive the services of an interpreter free of charge.
Records will be kept of the notification and exercise of these rights.

Right to inform someone close to you

You have the right to have someone close informed (a person with whom you habitually live, a blood relative, one of your brothers or sisters, or your employer), who will be contacted by telephone by the CID officer within three hours of your being taken into police custody.

Right to see a doctor

You have the right to request a medical examination during each 24-hour period of police custody. The doctor will be chosen by the CID officer or public prosecutor.

Right to ask to consult a lawyer

You may ask to consult a lawyer for a period not exceeding 30 minutes. This conversation is confidential. The lawyer may make written comments that will be entered in the case file.
You may choose a lawyer if you know one or you may ask for one to be appointed for you ex officio by the president of the Bar Association (a "court-appointed" lawyer).
If taken into police custody for a common law offence, you can consult your lawyer as soon as the period of police custody starts and, if it is extended, at the start of the extended period.
However, you will not be able to consult a lawyer until the 48th or 72nd hour if you are taken into police custody for an offence relating to delinquency or organised crime, drug trafficking or terrorist activity.
The CID officer is considered to have met his obligation when he has made every effort to contact the lawyer.

Right to remain silent

You will not be notified of this right by the CID officer, but you are nevertheless free to remain silent and not to incriminate yourself.

Right to ask for the consulate of the State of which you are a national to be informed of your arrest

What happens if I do not agree with the way my statements have been transcribed?

You may refuse to sign the record in which they have been transcribed.

What can happen at the end of the period of police custody?

The public prosecutor or examining judge, as applicable, can terminate the period of police custody at any time. You may be set free or, if you have been taken into police custody in the course of an inquiry, be brought before an examining judge with a view to opening a pre-trial investigation, or before the *tribunal correctionnel* (court dealing with *délits*).
If a pre-trial investigation is opened, a first appearance hearing will be held and you may then be charged or granted the status of *témoin assisté* (legally-represented witness, i.e. not simply a witness but to some extent a suspect, meaning that you have rights not afforded to ordinary witnesses). If you are charged, you may be released subject to legal restrictions or remanded in custody.
If you are brought before a *tribunal correctionnel*, that court may either judge the case immediately if it is in a position to do so, or grant you a period to prepare your defence if you so request. In that case, a decision will be taken on whether to place you on remand or release you subject to legal restrictions.

Will I be asked to provide fingerprints, DNA samples or other body fluids? What are my rights?

If you are a witness or suspect in criminal proceedings, you may be subjected, with authorisation from the public prosecutor, to external sample taking (e.g. saliva samples for the purpose of analysing your genetic fingerprint) and identification procedures (e.g. taking your fingerprints, palm prints or photographs).
You may refuse but, when the aforesaid operations are carried out under legal conditions, refusal to submit to them can, under certain circumstances, constitute an offence punishable by one year's imprisonment and a €15,000 fine.

Can I be subjected to a body search?

In general, a CID officer will carry out a security check (patting down over clothing) designed to ascertain that you are not carrying any object posing a danger to yourself or anyone else.
For security reasons or the needs of the investigation, the CID officer may order a body search involving total or partial undressing. Only a doctor is permitted to perform an internal search on you.
These operations may only be carried out by a CID officer of the same sex as yourself.
All personal effects will be recorded and returned to you at the end of the period of police custody if you are released.

Can my home, office, car, etc. be searched?

A search can only be conducted between 6 a.m. and 9 p.m. However, a search that begins before 9 p.m. may be continued into the night.
Exceptions are permitted in cases of organised crime, terrorism, pimping and drug trafficking, under the control of a judge.
A search can be carried out at any domicile where objects whose discovery might help to establish the truth might be found.
This could be your home or that of another person likely to contain objects connected with the offence.
Domicile means the place where an individual has his or her main establishment but also the place, whether or not he or she lives there, which that individual is entitled to call home.
Consequently, various places of residence (e.g. hotel rooms) and their outbuildings are considered as domiciles.
It is up to the judge to assess the notion of a domicile. This means that while a vehicle is not, in principle, considered as a domicile, this does not apply if it is lived in.

Can I lodge an appeal?

Failure to observe the above formalities entails a breach of the rights to defence and can be the subject of an action to annul the search and seizures.

The preliminary investigation: My rights during first appearance questioning (2)

At the first appearance hearing, you will be questioned about the accusations against you.
After checking your identity, the examining judge will remind you of the actions referred to him and their legal classification.

The examining judge will inform you of your rights:

You are entitled to a sworn interpreter,
You are entitled to the assistance of a lawyer (chosen by you or court-appointed).
You may attend this hearing with your lawyer and you will then be questioned immediately. Otherwise, the examining judge is obliged to inform you again of your right to legal assistance, if necessary from a court-appointed lawyer.
If you choose to be assisted by a lawyer, the latter can consult the case file and report to you under certain conditions.
You have the right to remain silent.
If the actions in respect of which proceedings are being brought against you constitute a crime, you will undergo audiovisual cross-examination.

Can I plead guilty before the trial to all or some of the charges?

You may acknowledge the accusations or just some of them. This is a matter of strategy that should be discussed with your lawyer.

Can the charges/indictment be amended before the trial?

During the pre-trial investigation of the evidence for or against, the classification of the actions referred to the examining judge can be changed (reclassifying a "*crime*" as a "*délit*" or vice versa).
If, during the pre-trial investigation, new offences are discovered, the judge may investigate the new developments at the request of the public prosecutor.

Can I be accused of an offence for which proceedings have already been brought against me in another Member State?

If proceedings have been brought against you in another Member State but you have not been judged, you can be questioned on French territory in that regard.
Conversely, if you have been judged in those proceedings in another Member State, you may not, by virtue of the *non bis in idem* principle (you cannot be judged twice for the same offence), be prosecuted or judged in France.

Will I be told about the witnesses making statements against me and the existing evidence against me?

By virtue of the principles of due hearing of the parties, you will be notified of all elements of proof (witness statements, material evidence) so that you can best prepare your defence and make your comments.
These elements will appear in the case file, copies of which you can obtain through your lawyer following authorisation from the judge.
You and your lawyer must refrain from passing these documents to third parties at the risk of violating the secrecy of the pre-trial investigation.

Will information be requested on any criminal record I may have?

A summary of your past convictions or a statement to the effect that you do not have any must necessarily appear in the pre-trial investigation file.

I am a national of another country. Must I be present during the pre-trial investigation?

By virtue of the obligations that may be established if you are released subject to legal restrictions, you will not be able to leave French territory during the pre-trial investigation procedure.

Being charged and *témoin assisté* (legally-represented witness) status (3)

Following the first appearance hearing, the examining judge will either notify you that you are being charged or afford you the status of *témoin assisté* (legally-represented witness).
Being charged means that there is serious or concordant evidence against you allowing a presumption that you have been involved in committing an offence.
You are an actual party to the criminal proceedings, which does not apply in the case of legally-represented witnesses.
Conversely, legally-represented witness status means that there is some evidence but this is not sufficiently definite for you to be charged. In this regard, although not party to the criminal proceedings, legally-represented witnesses do have access to the case file, enjoy rights to defence and may ask the examining judge to carry out a certain number of actions.
The two situations have different consequences. Only someone who has been charged can, by justified decision of a judge, be released subject to legal restrictions, known as being placed under *contrôle judiciaire*, (and thus be forbidden from leaving French territory) or on remand and only such a person can be brought before a court.
You may then apply for conditional release.
If you have legally-represented witness status, you may ask to be charged at any time during the proceedings.

What are the terms of *contrôle judiciaire*?

You may be released subject to legal restrictions if you are facing a prison sentence or more serious penalty.
Legal restrictions are justified by the needs of the pre-trial investigation (e.g. to prevent you from fleeing abroad) or as a security measure (e.g. ban on meeting the victim). Most of the measures adopted in connection with *contrôle judiciaire* are designed to prevent the offender from absconding.
This measure may be terminated at any time by decision of the examining judge, by order of the public prosecutor or at your request.
If you make such a request, the examining judge must give his decision within five days.
If you seek to avoid the legal restrictions, you run the risk of being placed on remand.
Finally, you may challenge the order placing you under *contrôle judiciaire* by appealing to the *Chambre de l'instruction* (examining chamber, a second-degree jurisdiction).

What are the terms of remand?

To be placed on remand, you must be facing a penalty exceeding a certain level of seriousness, i.e. a prison sentence of three years or more.

Remand can only be ordered if it is the only way of: preserving the proof or material evidence needed to establish the truth; preventing pressure on witnesses or victims and their families; preventing improper consultation between the person who has been charged and the other perpetrators or accomplices; protecting the person who has been charged; ensuring that the person remains at the disposal of the justice system; putting an end to the offence or preventing re-offending; and, in criminal matters, putting an end to an exceptional, persistent breach of public order caused by the seriousness of the offence.
You may challenge the order remanding you in custody within 10 days from notification, by statement made to the head of the penal institution where you are held or the clerk's office of the court which handed down the decision.

Completion of the pre-trial investigation (4)

The pre-trial investigation may end with various kinds of judge's order:

Non-suit

The judge may order non-suit because he has not gathered enough evidence against you. This may be total or partial.
In the event of partial non-suit, the investigating judge will order committal for trial or indictment for the remaining accusations.
If a total non-suit is ordered and you were on remand, you will be released and the seized objects will be returned to you.
You will be able to bring proceedings for compensation.
Remember, however, that the civil claimant can lodge an appeal against this order within 10 days from notification at the clerk's office of the court which pronounced the decision.

Committal for trial

If the judge considers that he has sufficient evidence against you, he may decide to send you for trial.
If you were free subject to legal restrictions or on remand, this order terminates those arrangements.
However, the judge may decide, by means of a further order, giving specific reasons, to maintain those arrangements for a period of no longer than two months. If, at the end of this period, you have not appeared before the competent court, you will be released.
The judge may, by issuing an order explaining why it is impossible to judge the case within two months, order two extensions of two months each, but only "on an exceptional basis". If a judgment has not been handed down at the end of the six-month period you will be released.
You do not have any remedy at law against this order, except where you consider that the actions referred to the *tribunal correctionnel* constitute a crime (rather than a *délit*) which should have been the subject of an indictment before the *cour d'assise*. This remedy at law is also open to the civil claimant.

Indictment

This order can be made by the examining judge in respect of crimes.
If you are free subject to legal restrictions when the judge makes the order, that measure will be maintained.
In your capacity as an indicted person, you have the right to appeal against this order.

The European arrest warrant (5)

The European arrest warrant is a procedure intended to replace the extradition procedure between the Member States.
It is a judicial decision issued by a Member State of the European Union with a view to the arrest and surrender by another Member State of a person wanted in connection with criminal proceedings or to serve a sentence or preventive detention measure.
Any Member State may adopt necessary and proportionate coercive measures against a wanted person.
When the wanted person is arrested, he or she is entitled to be informed of the content of the warrant and to receive the services of a lawyer and an interpreter.
In all cases, the executing authority is entitled to decide to keep the person in custody or release him or her subject to certain conditions.
Pending a decision, the executing authority hears the person concerned. The executing judicial authority must take a final decision on enforcement of the European arrest warrant no later than sixty days after the arrest. It must then immediately notify the issuing authority of its decision. However, if the information provided is insufficient, the executing authority may ask the issuing authority for additional information.
Any period of detention relating to the European arrest warrant must be deducted from the total period of deprivation of liberty imposed.

Preparation of the case by the defence (6)

Your relationship with your lawyer is based on mutual trust; he or she is your confidant. In this respect, your lawyer is bound by professional secrecy.
You should therefore be sure to ask all the questions of concern to you and seek all necessary explanations to avoid misunderstandings.
At your first meeting, hand the lawyer all the documents and information related to your case so that he or she can prepare your defence in the best possible way.
Discuss all the questions you have, especially concerning the course of proceedings, the strategy to adopt regarding the choice of procedure or the kind of questions that the judges dealing with your case are likely to ask.
Be sure to ask questions about the outcome of the proceedings, the penalties you face and the sentencing options available.

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3 - My rights during the trial

If you are of age, you admit the accusations against you and your offence is punishable by a fine or a maximum of five years' imprisonment, you may take advantage of the procedure known as "*comparution immédiate sur reconnaissance préalable de culpabilité*" (immediate appearance with prior acknowledgement of guilt). It is compulsory for you to be assisted by a lawyer. This accelerated procedure makes it possible for you to receive a lighter penalty.

Where will the trial be held?

The scope of jurisdiction depends on the nature of the offence and territorial competence. For petty offences, the police court or local court of the place where the offence was committed, or your place of residence, will have jurisdiction.
In the case of *délits* (lesser offences), the *tribunal correctionnel* (criminal court dealing with *délits*) of the place where the offence was committed, or your place of residence or arrest, will have jurisdiction.
Finally, in the case of a crime, the *cour d'assises* (criminal court dealing with the most serious offences) of the place where the offence was committed, or your place of residence or arrest, will have jurisdiction.
Proceedings in criminal trials are oral and public. By way of exception, the trial may be held in camera, in cases of juvenile delinquency or at the victim's request in cases of rape, torture and acts of savagery accompanied by sexual assault.

In the case of *délits* and petty offences, decisions are taken by one or more professional judges, whereas the *cour d'assises*, made up of nine citizen jurors and three professional judges, takes decisions by qualified majority of eight people.

Can accusations/charges be changed during the trial?

Only the accusations described in the document instituting proceedings will be referred to the court, which cannot take other charges into account.

However, the court is entitled during the hearing to reclassify the actions referred to it, on condition that you have been able to submit your comments on the new charges. If this reclassification involves extending the referral to new developments, you must agree to attend on a voluntary basis to answer the charges.

The procedure of pleading guilty does not exist in France. It is only possible, for some offences, to ask to take advantage of the accelerated procedure (immediate appearance with prior acknowledgement of guilt) before any trial. Any confessions you make will be subject to examination and assessed by the judges during the proceedings, like any other element of proof.

What are my rights during the trial?

Your presence is compulsory throughout the trial. Unless you have a valid excuse, you will be judged in absentia except where the court agrees to defer the hearing until your return. However, the court is not obliged to grant such a request. If your lawyer is present, however, he or she may be heard and represent you. In cases involving crimes under French law, a warrant may be issued for your arrest.

In France, the use of videoconferencing is permitted exclusively for the hearing of witnesses, civil claimants and experts.

If you do not understand the language of the court, an interpreter will be appointed for you.

The assistance of a lawyer is mandatory where crimes are involved. It is only optional in the case of *délits* and petty offences. You may change your lawyer during the trial.

You will be given the opportunity to speak during the trial. However, you have the right to remain silent throughout the proceedings. This stance may have an effect on the judges' intimate conviction.

You cannot be convicted simply because you have lied at the hearing. However, lying will influence the court's decision. Moreover, it might compromise your lawyer's strategy.

What are my rights in relation to evidence put forward against me?

All elements of proof in the case must be submitted for full argument on both sides so that you can debate them. Any form of evidence is admissible in French criminal law and can be produced in all circumstances. You may therefore produce all the elements of proof you need, including those collected by a private detective, the only restriction being that the evidence must be legal.

You may ask for witnesses to be heard. You may put questions, either directly or through your lawyer, to witnesses at the hearing and contest their evidence by any means.

Will information on my criminal record be taken into consideration?

The judges will look at the content of your criminal record. A statement will be on file throughout the proceedings. The competent judicial authority to which your case is referred may possibly ask another Member State for extracts of your criminal record.

What will happen at the end of the trial?

The outcome of your trial will have been considered beforehand with your lawyer, on condition that you have fully informed him or her of your position. It could be discharge, acquittal or conviction.

In the event of conviction, the possible penalties are:

Deprivation of freedom:

In the case of crimes, either life imprisonment or a fixed prison sentence. For the latter, the criminal code establishes maximum terms of between 10 and 30 years.

In the case of *délits*, the maximum prison sentence is 10 years.

Penalties involving deprivation of freedom may, if they are not mandatory sentences, be commuted, for example to conditional release, day release or remission.

Other penalties:

In all cases, a fine may be imposed, of an amount set for each offence.

In the case of *délits* and petty offences, "reparation" may be ordered, i.e. you may be sentenced to make good the loss suffered by the victim.

Supplementary penalties may be imposed, such as community work (with your consent), deprivation of certain rights (driving licence, etc.), confiscation of property, closure of an establishment, withdrawal of civic rights (right to vote, etc.) or ban on issuing cheques. In addition, banishment from French territory (if you are a foreigner) or parts of French territory may be ordered.

What is the victim's role during the trial?

Victims may be present or represented at the trial. Failing this, victims are deemed to have abandoned their suit. The victim may instigate proceedings. The presence of the victim or his/her lawyer at the trial ensures that the victim's interests are protected and reparation can be sought for the harm suffered.

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4 - My rights after the court has pronounced its decision

Can I file an appeal?

In the case of petty offences, you may appeal against certain judgments of the police court and local courts within 10 days from their pronouncement, before the *Chambre des appels correctionnels* (Court of Appeal, Criminal Appeals Division).

In the case of *délits*, you may appeal against judgments of the *tribunal correctionnel* (court dealing with lesser offences) within 10 days from their pronouncement, before the *Chambre des appels correctionnels* (Court of Appeal, Criminal Appeals Division).

For crimes, you may appeal against conviction by the *Cour d'Assises* (court dealing with the most serious offences) before another *Cour d'Assises* within 10 days from pronouncement of the judgment.

You may appeal either against the judgment pronounced in the criminal proceedings (sentence) or against the judgment pronounced in the civil action (damages and interest awarded to the victim).

You may also appeal to the Criminal Division of the Court of Cassation against higher court judgments given on appeal and judgments of last resort, within five days of the date when the contested decision was pronounced.

The Court of Cassation, as supreme court, will give a decision within a set period on whether the appeal is admissible; if the appeal is deemed admissible, the Court of Cassation can only rule on the application of law and does not therefore decide on the merits of the case.

Notice of appeal must be given to the clerk's office of the court that pronounced the contested decision or the head of the penal institution if you are detained. In all cases it is imperative that you sign the notice of appeal.

What will happen if I file an appeal?

During the term of appeal and proceedings before the Court of Appeal, or during the term of appeal and proceedings before the Court of Cassation, enforcement of the contested decision is, in principle, suspended.

However, if you have been sentenced to a penalty involving deprivation of freedom and then placed in detention, appealing against the contested decision does not have the effect of putting an end to detention pending the further decision.

Once the notice of appeal has been registered by the court to which it has been referred, the hearing must be held within a "reasonable" period.

What will happen at the hearing before the Court of Appeal or Court of Cassation?

As criminal proceedings are oral, you have the option of presenting and developing new evidence and elements of proof during the appeal, which will hear full argument on both sides.

Ruling on appeal, the *Chambre des appels correctionnels* or *Cour d'Assises* may either confirm or overturn the contested decision.

In certain cases only, particularly where the public prosecutor has filed a principal appeal or appeal on a point of law, you could on appeal incur a heavier penalty than the original sentence and an increase in the damages and interest requested by the civil claimant (victim).

The Court of Cassation, ruling on the application of law, can quash and annul the contested decision and may or may not refer the parties back to the Court of Appeal.

A judicial decision only becomes final when the time limits for exercising the remedies at law have expired.

If, on conclusion of the appeal lodged against the initial conviction, you are discharged or acquitted by a final judgment of the appeal court, you may, subject to certain conditions, apply for full reparation of the material loss and pain and suffering that the "arbitrary" detention has caused you.

You will be informed of your right to obtain reparation upon notification of the decision to discharge or acquit you.

In this regard, you have a period of six months from notification of the discharge or acquittal decision to make an application to the First President of the Court of Appeal in whose jurisdiction the decision was pronounced.

The latter will rule on the application for reparation in a decision stating reasons, pronounced following a public hearing during which you may ask to be heard personally or through your lawyer.

The decision of the First President of the Court of Appeal may be the subject of an appeal lodged before the *Commission Nationale de réparation des détentions* (CNR - a national body dealing with applications for compensation for unjustified detention) within a period of 10 days from its notification.

The CNR rules sovereignly and its decisions are not liable to appeal.

The reparation awarded is payable by the State.

What information is contained in the criminal record?

If, on conclusion of the appeal to the Court of Appeal or Court of Cassation, a final judgment has sentenced you to a penalty, the conviction will be recorded in your criminal record held by the judicial administration of your country of origin.

I am a national of a Member State. Can I be sent back after the trial?

By virtue of the Convention on the transfer of sentenced persons of 21 March 1983, transfer to your country of origin may be requested either by the latter or by France, the sentencing state.

However, implementation of the transfer requires your prior, free, and informed consent, which means that you must be fully and precisely informed of the consequences of transfer.

In addition, you may personally request a voluntary transfer to your country of origin. Your request may be accepted if various conditions are met.

If I am convicted, can I be judged again for the same actions?

By virtue of the "Non bis in idem" principle that governs French criminal law, if you have been judged and convicted by virtue of a final judgment in a Member State, you cannot be either prosecuted or convicted for the same actions in another Member State.

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5 - Breaches of the traffic regulations and other petty offences

In France, a number of petty offences, mainly breaches of the traffic regulations, are handled directly by the Administration rather than the judicial authorities. The relevant procedures ensure that your basic rights, particularly rights to defence, are protected. Moreover, an administrative penalty can never consist of deprivation of freedom.

The penalty is imposed on you, ex officio, directly by the competent administrative authority that has noted a breach of a legal obligation. Reasons must be given for any decision imposing a penalty and you may dispute it. The penalty is enforceable immediately, even if you decide to lodge an appeal.

How are minor breaches of the traffic regulations handled?

Breaches of the traffic regulations are handled directly by the officer noting the particulars of an offence, e.g. a police officer or gendarme. If there has been an offence, you will be told immediately what the applicable penalty is. The reasons for the penalty will first be explained to you and you can make comments. You will be given a statement recording your offence and the penalty imposed. You must discharge the penalty as soon as it is imposed.

Penalties consist of a fine of a fixed amount and sometimes the immobilisation of your vehicle.

As a national of another Member State, if you do not comply with the traffic regulations, you will be penalised in France. If you do not discharge the penalty before returning to your own country, it is possible that legal action will be taken against you.

If you do not agree with the decision, you may dispute it within two months. You may be assured that the penalty imposed on you cannot be increased during the appeal proceedings.

Disputes are handled directly by the Administration, without any trial. The appeal is lodged with the authority that initially imposed the penalty (application for review) and, if it is rejected, you may take your dispute to the next echelon of that authority (appeal to a higher authority).

The procedure to follow will be explained to you directly on the statement given to you.

You must first exhaust these avenues of appeal before you can approach the administrative court.

How are other petty offences handled?

Other offences handled under administrative law are more serious, relating to regulation of the financial markets, the law on competition or tax or immigration regulations.

Will these offences appear on my criminal record?

Offences handled under administrative law in France, especially as regards breaches of the traffic regulations, will not be entered in your criminal record.

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