

FACTSHEET

France – Customs Fines



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Concerns about the payment of Customs fines have frequently arisen among prisoners in France while they are serving their sentence. The aim of this factsheet is to provide information on how the system works. Since January 1st 2005, changes have been introduced to the legislation dealing with Customs fines and they have been incorporated into this factsheet.

People who need further explanation on certain points of the legislation or of the system itself should seek advice from a lawyer.

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Glossary

Chambre de l'Application des Peines: This jurisdiction sits at the Court of appeal and it is formed by one President of the Court and two counsellors. This Court is in charge of examining appeals against decisions taken by the JAP.

Contrainte judiciaire: Extra time served in prison as a result of not paying a customs fine.

Juge de l'Application des Peines (JAP): The judge sitting at the *Tribunal de Grande Instance* (inferior court) responsible for most of the decisions dealing with issues which arise post-conviction such as conditional release and or remissions.

Libération conditionnelle: Parole

1 Introduction

In drugs cases, the judge imposes a heavy fine in addition to a prison sentence. The amount of the fine is supposedly equal to the street value of the drugs seized on arrest and often runs into the equivalent of several thousand pounds. Once sentenced, the person may appeal the decision of imprisonment and also the amount of the fine.

If, while serving the sentence, matters with customs have not been resolved, the prisoner's application for parole (*"libération conditionnelle"*) is more likely to be refused. After finishing the custodial sentence (the prison term), if the fine has not been paid, or the person has not reached an agreement with customs, the prisoner may have to serve extra time in prison. This extra time is called *"contrainte judiciaire"* (previously known as *"contrainte par corps"*).

If the person cannot pay the total amount of the fine, three options are open to him:

- To negotiate to pay in instalments
- To attempt to prove insolvency
- To serve the extra time

Each of these options is discussed below.

2 Negotiating with customs to pay in instalments

It is often possible to negotiate with the authorities to pay a portion of the fine immediately, with the remainder of the fine covered by an agreed repayment program thereafter. It should be clarified that this process does not reduce the total amount of the fine that the person is expected to pay. Rather, what it does mean is that the person may go through a process of negotiation with customs whereby he establishes a first payment which, when paid, will make him eligible for release. The person still technically remains liable for the rest of the total fine. In most cases, customs set up a system of monthly instalments for the person, once released.

The first step in doing this is for the person (or his family or lawyer) to write or phone customs and explain to them that he is unable to pay the total fine.

Customs will often write back and make an initial offer. If the initial amount asked for is still too high, it is possible to contact them again offering a lesser amount. Our experience of dealing with people in this situation shows that, in most cases, this sum may be negotiated to anything between € 1000 and € 7000 (in some cases it has been more).

Customs officials will usually take the personal circumstances into consideration when deciding on the final amount. Therefore, if it appears that the person is a first-time offender, or if there is evidence to suggest that he was working as a "mule" on behalf of a larger operation, they may be more lenient. However, if the person is a repeat offender, or if (for example) it has been proved that he is part of an international drugs trafficking operation, he may be expected to pay more.

The process of negotiation by telephone may be quicker than written correspondence (e.g. letter, fax). If the person is not permitted to phone customs from prison, his family may call on his behalf. Some customs officials do speak and write English, but it should not be assumed that they will all be able to. We also understand that some lawyers have offered to lead negotiations over the phone.

After the initial payment is made, the prisoner usually becomes eligible for release, and can return to the UK. After keeping up the repayments on the rest of the fine for a while they can request a remission of penalty ("*remise de pénalités*"). The application is made to customs, who will then submit the request to the Court which set the level of the fine in the first place. The Court will have to agree to write off the outstanding amount of the fine. This can be requested when the person has shown good faith and paid a considerable amount of the original fine. The Court will also take into consideration the present financial situation of the person.

3 Attempting to prove insolvency

If the prisoner successfully manages to prove insolvency (i.e. that he has no money to pay the fine that has been imposed), he does not have to serve the extra time. Proving insolvency also means that the person can apply for parole and that his application is more likely to be successful. However, even if the insolvency claim has been successful, the Judge (in consultation with customs) can decide to grant release on the condition that a small portion of the total fine is paid. Even if insolvency has been proven, it is usually seen as a sign of good behaviour or rehabilitation when the person makes small, regular payments on his own initiative.

The person can only prove his own insolvency by gathering documents that show that he has no money. He will need to write to various agencies in the UK that can provide letters to act as evidence of his financial status. Prisoners Abroad has sample letters which can help the person when writing to these agencies.

If the person is not able to write to the relevant agencies and would like someone else to do it on his behalf (i.e. a partner or relative), he should remember that he will need to provide them with a signed letter of authorisation which gives the named person permission to access financial records. They will need to send a copy of this letter to each agency the person wishes to approach.

Once the person has obtained the necessary documents, he can apply to the *JAP* for a hearing which will decide whether or not he is insolvent and therefore whether or not he is able to pay all, or any part, of the fine. To request a hearing, the prisoner should ask his prison social worker for an application form. The person is entitled to be assisted by a lawyer and by an interpreter. If the person cannot afford to pay, he can ask for a legal aid lawyer.

If the application for insolvency is rejected by the judge, the person can either appeal the decision or apply again at a later stage. It might be useful to consult a lawyer when thinking of appealing the decision. If the person only has a small amount of evidence proving his insolvency, it might be useful to gather together more evidence and ask for a second hearing at a later stage. However, if he thinks the documents already obtained should have been enough to prove insolvency, the person may wish to decide to place an appeal against the decision of the *JAP*.

As of January 1st 2005, the *JAP* is responsible for deciding whether or not the person is insolvent. According to Article 752 of the French Code of Criminal Procedure, the person may attempt to prove insolvency by any means. The *JAP* is then free to accept the submitted paperwork as proof of insolvency and make the decision based on the information that has been presented. Nevertheless, it seems that in practice, a letter from the Inland Revenue confirming financial status is the most effective way of proving insolvency as indicated in the guidelines on the new regulations.

The following sections describe examples of documents which can be used to prove insolvency:

3.1 A letter from the Inland Revenue

A letter from the person's tax office (Inland Revenue) indicating that he has not paid any tax, and that he has not done so since a specified date/time is an effective way of demonstrating insolvency.

To get such a letter from the Inland Revenue office, the person, or someone acting on his behalf, should:

- write to the tax office that last dealt with his affairs **if he was working before arrest** or;
- write to the local tax office of the place where he was last resident in the U.K. **if he was not working before arrest**

The person should ask for a letter stating that he has not paid tax over a given period.

3.2 Proof of benefits

Any official documents which attest that the person was claiming Social Security Benefits (incapacity, unemployment, crisis loans...) before going to prison can be used to help prove insolvency.

If the person was on benefits, the Department of Work and Pensions (known before as the DSS or Department of Social Security) will have sent him several documents outlining his situation, such as the amount of benefit received monthly or the period of time he has been on benefits. These documents might be helpful to prove his financial situation.

If the person has not kept these documents (or if he does not know anyone who could send them on to him) he can contact his local jobcentre and ask for a letter from the local DSS office. They may be able to send a letter stating the amount he has received in the last few years.

3.3 Any documents regarding the person's financial situation

Other documents that can also be used as evidence of insolvency include bank statements, copies of rent agreements or a mortgage (especially relating to arrears or repossession). If a bankruptcy order has been served against the person recently, this can be also used as evidence of insolvency.

4 Serving extra time ("contrainte") for non-payment of fines

Following a request from customs, via the Public Prosecutor, the *JAP* may decide that the extra time will have to be served if the person has not proved insolvency (as

outlined above); or if he has not paid the fine (the original amount as issued by the sentencing judge or the amount that was subsequently negotiated with customs).

Before making a decision, the *JAP* will have to consult a member of prison staff, the Public Prosecutor, the prisoner and his lawyer (if he has one). Both the prisoner and the Public Prosecutor can appeal the *JAP*'s decision before the *Chambre de l'Application des Peines* within 10 days of receiving notification of the decision.

The extra time served for non-payment of the fine is not a substitute for paying the fine itself. Even after serving this period of extra time, the person is still technically liable for payment of the total amount. However, although payment of the fine is still due, the person cannot be imprisoned again for non-payment.

The Code of Criminal Procedure (Article 706-31 and Article 750) fixes some limits to this extra time which correspond to the amount of the fine, as shown in the table below.

Amount of fine	Maximum additional time
€ 4000	20 days
€ 4000 – 800	1 month
€ 8000 – 15,000	2 months
More than € 15,000	3 months
More than €100,000	1 year (only for drugs cases)

These limits are the maximum amount of time the *JAP* can impose. The whole period of time will have to be served; remission or conditional release cannot be granted during this period.

Some people are exempt from serving extra time:

- People who were aged 65 years or over when they were sentenced (Article 751 of the code of criminal procedure). Some courts have also allowed exemptions for people who are aged 65 years or over when the extra time is due to commence (Court of Appeal, located in Rennes, dated 20th June 1995).
- People who succeed in proving that they are financially insolvent (please see above).

If you have any further questions or would like more details on anything contained in this factsheet, please contact the casework team at Prisoners Abroad on 0808 172 0098 or casework@prisonersabroad.org.uk.

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