

# FACTSHEET

## France – Legal System (Release)

Prisoners Abroad, 89 – 93 Fonthill Road  
London, N4 3JH, United Kingdom  
Tel 020 7561 6820 Fax 020 7561 6821  
info@prisonersabroad.org.uk www.prisonersabroad.org.uk  
Charity Number 1093710



**The aim of this factsheet is to provide an insight into the French legal system, and in particular into aspects that affect the timing and conditions of release from detention. This factsheet is intended for guidance only, and is not designed to replace advice from a legal expert. People who need further explanation or clarification should seek advice from a lawyer, or contact Prisoners Abroad.**

### Contents

|    |  |   |
|----|--|---|
| 1  | What provision is there for early release? .....                       | 2 |
| 2  | Who will grant the conditional release? .....                          | 2 |
| 3  | When can the person apply for a conditional release? .....             | 2 |
| 4  | How can the person apply for conditional release? .....                | 3 |
| 5  | Can the person appeal against a refusal of conditional release? .....  | 4 |
| 6  | Can a private lawyer or a legal aid lawyer assist the applicant? ..... | 4 |
| 7  | What provision is there for reduction of sentence? .....               | 5 |
| 8  | What provision is there for clemency or pardon? .....                  | 6 |
| 9  | What provision is there for release on compassionate grounds? .....    | 6 |
| 10 | Is it possible to transfer to the UK? .....                            | 7 |
| 11 | What is a ban from French territory? .....                             | 7 |
| 12 | What is an expulsion order? .....                                      | 8 |

### Glossary

*Chambre de l'Application des Peines* (CAP): 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 or by the TAP.

*Juge de l'Application des Peines* (JAP): The JAP is 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 remission.

*Période de sûreté*: a measure imposed by the Judge to prevent prisoners from applying for any kind of release for a set portion of their sentence. During the *période de sûreté*, the prisoner cannot be granted conditional release, remission, or authorisation to leave the prison. Anyone still in a *période de sûreté* can only be granted a suspended sentence for medical release. This period can be added to the sentence automatically (it will depend on the offence) or it can be decided by the Judge at the time of conviction.

*Tribunal de l'Application des Peines* (TAP): The *tribunal* (court) is a jurisdiction which sits at the Court of Appeal and is formed with the President of the Court of Appeal and two *Juges de l'Application des Peines*. It is responsible for making decisions on conditional release for some detainees.

## **1 What provision is there for early release?**

Two recent laws have improved the system of conditional release. One came into force on 1<sup>st</sup> January 2001, and the other on the 1<sup>st</sup> January 2005. These laws have also affected community release, semi-release, the suspension or division of sentences and electronic tagging.

The changes to conditional release have been introduced to try to make the system fair to all prisoners. The decision regarding conditional release belongs to Judges. The right to appeal against all the decisions taken by the Judges is an additional guarantee offered to prisoners.

In principle, the person will still be closely monitored by the Judge after being granted his conditional release. Indeed, the judge often decides to add extra conditions to release with which the released prisoner must comply or risk being returned to prison to complete his sentence. However, in practice, for British nationals returning to the UK on conditional release there is limited follow-up. The only condition which is added to a decision of conditional release will often be expulsion from French territory (see Section 12).

Conditional release is seen as part of "rehabilitation", and figures show that the sooner conditional release is granted to prisoners, the less likely the person is to re-offend. Nevertheless, this measure is granted less and less to prisoners.

## **2 Who will grant the conditional release?**

The decision to grant conditional release is taken by the JAP at the Tribunal (inferior courts) or by the TAP.

The JAP deals with the application if the person has a sentence of less than ten years. The JAP also deals with the application if he has received a prison sentence of ten years or longer, and he has less than 3 years left to serve at the time of the application for conditional release.

The TAP has to deal with the application if the person has been sentenced to a term of ten years or longer.

## **3 When can the person apply for a conditional release?**

In principle:

- If the person is a first-time offender, he can apply for conditional release when he has served half the sentence.
- If the person is a second-time offender, he can apply for conditional release when he has served two-thirds of the sentence.

Exceptions:

- If the person has parental responsibility for a minor under the age of ten and the child lives with him, he can apply for conditional release without waiting for the half-way or two-thirds point of the sentence. The person

also needs to have less than four years to serve. This provision cannot be applied if he has been convicted for an offence against a minor.

- If the person is serving a life sentence, he will have to wait 15 years before applying for conditional release.
- If the Court has decided to add a *période de sûreté* to the sentence, the person will have to wait for the end of this period before asking for conditional release.

The time that the person has served on remand is taken into account when calculating the date of eligibility for parole.

If the person served a period of time in a foreign country awaiting extradition to France (in connection with the sentence he is now serving), this is equivalent to a period of remand and so must be taken into account when calculating the date for conditional release. This means that if, for instance, the person was awaiting extradition for 1 month and 17 days in Spain and then served one year on remand in France, the total remand period which will have to be deducted from the sentence will be 13 months and 17 days. This rule was set by a decision of the French Criminal Courts (reference - *Arret de la chambre criminelle de la Cour de cassation du 18 decembre 1996 / Arret de la Cour d'Appel de Lyon du 4 juin 2003*).

Any pardons granted plus any remission earned should be deducted from the sentence of the prisoner before calculating the half-way or two-thirds point of sentence. These deductions will affect the date of the end of the sentence.

#### **4 How can the person apply for conditional release?**

If the person wishes to apply for conditional release:

- He should ask to see the Clerk of the Prison (*le Greffe*) and request an application form.
- Then **either** send a written request, by registered post, to the JAP or to the TAP **or** present the request, in person, to the JAP.

The JAP and the TAP will give their decisions on the request for conditional release after consulting a member of prison staff such as the prison director or the director of the social and probation services. The person or his lawyer may present a written statement in support of the request. The person may also be assisted by his lawyer to make a statement in person before the judge.

Before making his decision, the JAP and the TAP have to hear the Public Prosecutor, plus the person and his lawyer (if he has one). The judge will check that he has presented all the correct documents and establish whether he has shown "serious efforts of social rehabilitation" to obtain conditional release.

The criteria taken into account can be:

- behaviour during detention, i.e. the person has no disciplinary sanctions against him;
- if the person has worked whilst in prison;
- if he completed a professional training or study course;

- if he started repaying a customs fine (where applicable);
- if he has started paying compensation to the complainant (if appropriate);
- if he has organised a job to go into after release;
- if his financial support is needed by his family; or
- if he has accommodation to return to.

It might be helpful to submit the following documents to support the request:

- A contract of employment on company letterhead, or a letter from the forthcoming employer, which should be stamped with the company stamp. The contract might detail the position, salary and hours.
- A copy of a household bill should be supplied for the address which the person plans to return to in the UK. This should have the name of the person who is guaranteeing the accommodation upon release.

Even if a prisoner fulfils all those criteria, the judge is still entitled to deny conditional release.

## **5 Can the person appeal against a refusal of conditional release?**

Once the decision is announced, the person and the Public Prosecutor (*Procureur de la Republique*) have the right to appeal against it within 10 days of the date he received notification. This appeal takes place before the CAP, where a legal aid lawyer can assist him.

The person is the only one who can decide whether or not to appeal this decision, but it could be useful to obtain as much advice as possible before appealing; a lawyer (if he has one) can tell him what he thinks about the likelihood of a successful appeal. If the person thinks that he should have obtained conditional release because, for example, he has evidence of an offer of employment (e.g. a contract from his forthcoming employer), he can appeal against the decision.

In the event of an unsuccessful appeal, the Court is entitled to set a minimum period of time during which the person may not re-apply for conditional release.

If the appeal is unsuccessful the case can be taken to the *Cour de Cassation* (Supreme Court of Appeal) which will investigate why the appeal has been refused. They will assess whether or not they consider the tribunal has been fair in their decision. But this Court does not reconsider the facts presented; it will only check if the criminal law and proceedings have been followed and enforced.

## **6 Can a private lawyer or a legal aid lawyer assist the applicant?**

The prisoner is entitled to a private lawyer or legal aid lawyer to assist him with the case for conditional release, but this is not compulsory. If the case is quite complicated (e.g. involving a long-term sentence) or the person has difficulties understanding the application procedure, it could be helpful to be assisted by a lawyer.

If the person wishes to be assisted by a lawyer with the JAP he should:

- Inform the JAP of the name of the chosen lawyer or ask the lawyer to inform the JAP that he will be representing him.
- If the person does not have a lawyer, he must inform the JAP that he would like one. The person can ask the clerk of the prison for a legal aid (*aide juridictionnelle*) application form.

## **7 What provision is there for reduction of sentence?**

Prisoners who are on remand cannot earn remission; it is only given to prisoners who have received a final sentence and who have exhausted all appeal procedures. However, time spent on remand is taken into consideration when a detainee applies for release.

In the French legal system, there are two categories of remission:

- "remission for good behaviour": good behaviour means that, for instance, the prisoner has a job, is following study courses or training, or does not have any disciplinary sanctions.
- "remission for good efforts in social rehabilitation": if, for instance, the person has passed an exam, if he has improved his skills during training or study, or if the person has started to pay any civil damages (which can be set by the judge when sentenced) those factors could be considered by the judge as proof of "good efforts of social rehabilitation". This type of remission is rarely granted.

As of 1<sup>st</sup> January 2005, the Judge no longer grants the first of these categories of remission at the same level on an annual basis. Now, what the law calls a credit of remission (*credit de réduction*) is given to each detainee when he receives his final sentence from a judge. This earns the detainee remission at the following rates:

- Three months for the first year in prison
- Two months for each following year
- Seven days per month if the year is not completed

The second category of remission ("remission for good efforts in social rehabilitation") continues to be granted each year at the discretion of the JAP, who decides whether the detainee has met the set criteria. So, in addition to remission earned under the first category, a prisoner could also earn:

- Three months per year if the person is a first-time offender (and 7 days per month if the prisoner has less than one year to serve)
- Two months per year if it is the person's second offence (and 4 days per month if the prisoner has less than one year to serve)

So, for example, if the detainee has a 24 month sentence, at sentencing/conviction, he will receive a credit of:

- 3 months for the first category of remission for the first year served
- 2 months for the first category of remission for the second year

The total remission credited after conviction is five months, so that, in theory, the total sentence will now be 19 months. The JAP could also decide to grant the person several months of remission for the second category to reduce this further.

However, the Judge could also decide to withdraw some of the first category of remission if, for example, the prisoner has received disciplinary sanctions whilst detained.

This new provision is applied for detainees who were convicted on or after 1<sup>st</sup> January 2005. For prisoners who were convicted before this date, the new provision is only applied to the part of the sentence that has not yet been served. Previous regulations regarding remission will have been applied to the part of the sentence served before this date.

From the 31<sup>st</sup> December 2005, prisoners may appeal against the decision of the judge if they believe that they should have had more remission.

## **8 What provision is there for clemency or pardon?**

Presidential Pardons (*graces présidentielles*) are occasionally given out to mark special occasions, such as the 14<sup>th</sup> of July or presidential elections. The *graces* of 14<sup>th</sup> of July are granted each year; it is a custom that has existed for a long time. Other presidential pardons, for example around the time of an election, are rare.

A set amount of time is deducted from the sentence, depending on how long is left to serve. This measure is automatically granted; prisoners do not have to ask or apply for it. Some prisoners do not benefit from these pardons due to the nature of their offence (e.g. people found guilty of acts of terrorism or drug trafficking may be exempt), and people who are yet to be convicted when *graces* are granted do not receive them; i.e. this concerns remand prisoners and other people who are awaiting trial on the date of the pardon.

## **9 What provision is there for release on compassionate grounds?**

If a prisoner has a serious medical problem (e.g. if he has a terminal illness or if it is impossible for him to stay in prison due to a serious health problem), the sentence can be suspended. This is only granted on compassionate/humanitarian grounds, and only then in very exceptional circumstances.

This means that the prisoner can be allowed to leave prison for an indefinite period of time. Two medical experts have to give their opinion on the prisoner's health and then the JAP (for sentences of less than ten years) or the TAP (for sentences of more than ten years) decides, taking into account the experts' advice, whether or not to grant the suspension.

The only aspect of the case under consideration here is the prisoner's health. The length of the sentence the prisoner has left to serve, the offence he has committed, and other criteria such as the possible threat to public order are not taken into account. The judge cannot set a specific deadline for the end of the suspension period. Whether the prisoner must return to serve the remainder of his sentence depends entirely on whether his state of health changes or improves.

If the judge refuses to grant the prisoner a suspended sentence on medical grounds, he can appeal before the CAP.

## **10 Is it possible to transfer to the UK?**

A person may apply to be transferred back to a prison in the U.K. if:

- he is a British citizen or has close ties with Britain;
- his sentence is final (no appeals);
- he has at least six months or more left to serve of his sentence;
- he has been sentenced for an offence in France which is also a crime in the U.K.
- the French and British authorities agree to the transfer; and/or
- he has no outstanding fines or civil debts.

The last point of these is the most problematic for anyone detained in France on a drug-related offence, as they are likely to have a customs fine which needs to be paid before they may apply for transfer to a UK prison.

To apply, a letter should be sent to the Prison Director requesting a transfer to the U.K. under the Convention on the Transfer of Sentenced Persons. The British Consulate should also be informed that a transfer has been requested. Even if all the above criteria are fulfilled, a decision takes a very long time (currently at least one year).

## **11 What is a ban from French territory?**

In addition to a sentence (whether suspended or custodial) and/or a fine, the Court can impose a ban from returning to France. The Court also sets the length of this ban; it can be temporary (maximum of ten years) or permanent. This means that from the time the person leaves France (after receiving a suspended sentence or after being released), they are not allowed to come back to France during the period set by the Court.

Someone who has been banned from French territory is escorted from the prison to the airport or ferry by police on the day of release. The person can be expelled directly or can be sent for, in practice, a maximum of 48 hours to a *Centre de retention*, which is a place where foreign nationals wait for expulsion/deportation.

We have been told that in some areas, if there are not enough prison staff available, the person might receive a letter in which it is explained that he has to leave the country unaccompanied within a certain period of time (which is usually 48 hours).

The person is entitled to appeal against a ban from French territory. An application must be made to the court which handed down the original sentence and issued the ban; this could be the Correctional Court or the Court of Appeal.

In French, this procedure is called *une demande de relèvement d'une interdiction de territoire français* (application for a ban from French territory to be lifted). There are several conditions to fulfil if the person wants to bring his case before the Court:

- the person has to apply in writing to the court or ask a lawyer to do it on his behalf;
- the person has to wait for a minimum of 6 months after the date of sentencing if he wants to ask the judge to lift this decision; and
- at the time of his application, the person must be in prison, or not on French territory (i.e. he has to be back in UK).

This kind of procedure might take a bit of time, and it could be quite complicated for someone who does not know the French legal system. The person can ask the lawyer who dealt with his original legal case to assist. The person is entitled to have a legal aid lawyer if he is unable to pay for one.

## **12 What is an expulsion order?**

If the person has not received a ban from French territory, they can receive an expulsion order if they are seen to represent a threat to public order. This is often given at or near the end of the sentence.

The *Préfet* (who is a local authority in an administrative area) is in charge of making the decision regarding expulsion. He has to ask the local expulsion commission for their reasoning for the expulsion of the person. The prisoner is required to attend a meeting of the commission, of which he will receive 15 days' prior notice. The person is entitled not to go if he so wishes. If the person does decide to attend the commission, he is entitled to be assisted by an interpreter and by a lawyer (private or legal aid).

After the meeting of the commission, the *Préfet* has to decide whether or not the person will be expelled. The person receives the expulsion order in writing. The person has a period of two months to lodge the case before the Administrative Court and ask them to cancel the order ("procédure d'annulation"). If the Court refuses to cancel the order, the person can still appeal the decision before the Administrative Court of Appeal. The person is also entitled to ask the *Préfet* or Ministry of the Interior to repeal the order (*procédure d'abrogation*). If those authorities do not answer the request within a four month period, this should be considered as a refusal.

As long as the expulsion order has not been cancelled or repealed, the person is not allowed to come back to France.

The information provided in this factsheet is intended for information purposes only. It is not intended to constitute, nor does it constitute legal advice. Prisoners Abroad recommend that professional legal advice should always be sought. The information contained in this factsheet is subject to change and may not be up-to-date or accurate. Prisoners Abroad gives no warranty and makes no representation regarding the accuracy or completeness of the information provided. Prisoners Abroad will not be held responsible for any loss or damage arising from the use of the information provided.

If you spot any errors or inaccuracies in this factsheet please let us by emailing [info@prisonersabroad.org.uk](mailto:info@prisonersabroad.org.uk). Thank you.

If you require this leaflet in a large print format, please contact us. Our details are below.

Tel: 020 7561 6820

+44 20 7561 6820 from outside the UK

Email: [info@PrisonersAbroad.org.uk](mailto:info@PrisonersAbroad.org.uk)

Mail: Prisoners Abroad, 89-93 Fonthill Road, London  
N4 3JH, United Kingdom