

FACTSHEET

France — Legal System (Remand)

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The aim of this fact sheet is to provide an insight into the French legal system, incorporating the major reform in criminal justice dating from September 2003. People who need further explanation on certain points of the legislation or of the system itself should seek advice from a lawyer.

NB: People are entitled to an interpreter at each stage of the procedure. If, at any stage, they are denied access to an interpreter, they should tell their lawyer as this may have a bearing on their case.

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Glossary

Juge des Libertés et de la Détention (JLD): The “Judge of freedom and detention” is in charge of making the decision of placing someone on remand, of renewing the remand period or put an end to the remand period.

Examining Magistrate (EM): When a serious crime has been committed, an Examining Magistrate is nominated and is in charge of investigating/preparing the case for the trial. The EM does not have any power to sentence the person.

Chambre de l'Instruction: A second-degree jurisdiction, which has to examine in appeal the decision taken by the EM and by the JLD; and can therefore decide either to confirm or to cancel their decision.

Tribunal de Police: The Police Court is in charge of judging minor offences. It can only sentence people to a fine and/or in some cases add a restriction of certain rights (suspension of driving licence).

Tribunal Correctionnel: The Correctional Court is in charge of judging people who are accused of having committed a crime (*délits*) for which they are facing a maximum of 10 years imprisonment.

Cour d'Assises: The *Cour d'Assises* is in charge of judging people who are accused of having committed the most serious crime (for example murder or rape). If the person is convicted for the crime, s/he would have to serve at least 10 years imprisonment.

Cour d'Appel: Decisions made by the *Tribunal Correctionnel* and the *Cour d'Assises* can be re-examined in appeal at the *Cour d'Appel*. It will re-examine all the element of the case (facts, evidence etc...) and can shorten or lengthen the decision made in first instance.

Cour de Cassation: Supreme Court of Appeal. When a decision has been made by the *Cour d'Appel*, it is possible to lodge a last appeal before the *Cour de Cassation*. This Court will only examine if the law have been properly apply to the case.

Avocat: A lawyer, in charge of assisting people who are charged with an offence with their case. An *avocat* will assist people from the moment they are arrested to the moment they are judged.

1 What type of legal system is used in France?

France has an inquisitorial system, based on the separation of powers between the police authorities, public prosecutors and criminal courts. The police authorities have the power to identify and arrest perpetrators of criminal offences, the public prosecutors decide whether or not to prosecute individuals and the criminal courts have jurisdiction to rule on whether the accused are guilty and then sentence them to criminal sanctions.

2 What happens during the remand period?

In the French legal system, the decision to place a person on remand has to be taken as a last resort and must remain an "exception". Technically, under French law any person is considered innocent until proven guilty and should remain free until trial. However, in some cases, judges are allowed to place people in custody, and in practice, remand is used widely by judges (four prisoners out of ten currently held in France are on remand awaiting trial). A person can be placed in custody if they are facing a prison sentence of at least three years or have not respected the conditions raised by the decision of bail (see Section 3).

2.1 How long can the defendant remain in custody?

The length of the remand period depends on the seriousness of the crime. The French system makes a distinction between *crime* and *délits*. A *crime* is a more serious offence than a *délit* and will consequently lead to a longer prison sentence if the person is found guilty.

For a *délit*, the length of time spent on remand cannot exceed four months as long as the person fulfils all of the following three conditions:

- the defendant has never been convicted of serious offences (*crime*);
- the defendant has never been sentenced to a prison term longer than one year without probation;
- the defendant is facing a prison term of a maximum of five years.

In some cases the JLD (*Juge des Libertés et de la Détention*) can renew the remand for another four-month period.

In certain cases (e.g. drug trafficking or offences committed outside France) the maximum length of the remand period is two years, which can be extended by four months in exceptional circumstances.

For a *crime*, the length of the remand period should not be longer than one year, but this period can be renewed for successive extra six month period. Therefore, when the defendant is facing a maximum of 20 years in prison, his remand period could be lengthen to two years. It will be three years, if the person is facing a sentence longer than 20 years. If the crime has been committed outside France, these lengths can respectively become three years and four years.

If the defendant is accused of acts of terrorism, drug trafficking, having committed multiple *crimes*, the maximum remand period will also be four years.

2.2 For what reasons can someone be placed on remand?

A custody order can only be taken if the person:

- is accused of a *crime*;
- is accused of a *délit* which would incur a sentence of three years or more; or
- does not meet the obligations imposed by his bail.

Moreover, it can only be acted upon if it is the only way:

- to keep evidence or material clues;
- to prevent any pressure on the witnesses, any fraudulent meeting between the defendant and his presumed accomplices;
- to offer protection to the defendant;
- to prevent the defendant from re-offending, or to be sure that the defendant is present if the judge decides to organise a hearing; or
- to put an end to a public order offence when the person is facing a sentence of at least ten years.

2.3 Who takes the decision to place the defendant on remand?

The decision to place someone on remand, to end remand, or to lengthen the period of custody belongs to the JLD. If the Examining Magistrate (EM) is considering placing someone on remand, he has to bring the case before the JLD who takes the final decision. If bail is refused, the JLD must explain the reasons for his decision.

Before taking his decision, the JLD has to hear the opinion of the public prosecutor, the person who is charged with the offence and his lawyer.

The decision taken by the JLD can be appealed. The defendant has ten days to appeal this decision, but has to remain in custody while the court makes the decision. The appeal is heard by the *Chambre de l'Instruction*, which must respond within ten days.

3 What provision is there for bail?

In France, the decision to grant bail (*contrôle judiciaire*) is taken by the EM (or by the JLD). It only applies to someone who is charged with an offence but has not yet been convicted by a judge. If bail is granted, the person remains free until trial (usually after paying a surety/sum of money as a guarantee) but must comply with any conditions imposed by the judge. Any breach of these conditions means that he may be taken into custody.

Bail is rarely granted to foreign nationals detained in France, as there is a difficulty guaranteeing that the accused will present himself for trial, and there is an increased risk that the accused will abscond. When bail is granted to a foreign national, it is usually on the condition that they provide large cash deposit as a surety and will remain in France until the case comes to trial.

3.1 Can the defendant ask for bail if the investigation is still in process?

If the defendant is placed on remand, he can present a request for release on bail (*mise en liberté provisoire*) to the judge while awaiting trial. There is no minimum

length of time before a request can be placed. The release can be requested either by the lawyer or by the person concerned. In the application, the defendant or his lawyer has to prove that the conditions for being placed on remand are not or no longer fulfilled and that the character of the person and details of his file require his release. Supporting evidence in the form of documents regarding employment, financial resources, accommodation and family responsibilities will help an application.

In practice, the judge has to take into consideration the likely date of the court hearing, the time that the person has already spent on remand, the kind of offence the person is accused of having committed, and the risks of the person absconding.

The application for release on bail has to be addressed to the EM. This magistrate can decide to grant bail, but if he rejects the application, he has to forward it on to the JLD who has to decide within three days whether or not to allow bail. In exceptional circumstances, when the investigation is not finished and if no hearing happens with the EM within four months, the person can make a request to the *Chambre de l'Instruction* for bail.

3.2 Can the person ask for bail when the investigation on his case is finished?

The process for applying for bail at this stage is dependent on which court will be hearing the case: the *Tribunal Correctionnel* or the *Cour d'Assises*. For further information see Section 6, "Where will the case be heard?"

Theoretically, if the case is to be sent to the *Tribunal Correctionnel* for trial, the remand ends when the investigation is finished. However, the EM can decide to lengthen the period of remand for six months, and sometimes longer. If at the end of this period the trial has not yet started, the person has to be released. While in detention the person has to apply for bail to the *Tribunal Correctionnel*. If this court refuses bail, the person can appeal against this decision within 24 hours. The Court of Appeal has a 20-day time limit to give its decision.

When the case has to be judged by the *Cour d'Assises*, the person can remain on remand until the date of his trial. The defendant normally has to be tried within 12 months of the end of the investigation, but the pre-trial period can be lengthened by six months, and this can be renewed once, so that, from the end of the investigation, the person can remain in custody for a maximum of two years before coming to trial.

The application for bail has to be sent either to the *Cour d'Assises* or to the *Chambre de l'Instruction*. As the *Cour d'Assises* only sits every three months, applications may be sent to the *Chambre de l'Instruction* as an alternative.

4 What kind of legal assistance is available?

4.1 Is legal representation compulsory?

The help of a lawyer (*avocat* in French) is not compulsory (except when the trial will take place before the *Cour d'Assises*) but is recommended. A defendant can decide to change his lawyer at any point during the trial procedure; if there are any problems

or difficulties with the appointed legal representative, complaints can be made to the President of the Bar (*Batonnier*).

If the person requires legal representation but is not eligible for legal aid (see below), he will need to pay for a private lawyer. A private lawyer can set his own fees, but will have to explain to the client if this is a fixed fee that covers all services or if they expect to be paid further fees for additional work or services done at a later stage. Negotiations over fees should always be in writing to prevent misunderstandings. Lists of private lawyers can be obtained from the British Consulate.

It is the EM who builds up the case in France, and not, as in the UK, the parties' lawyers. Despite this, a good private lawyer can still be useful in making a strong case for bail, explaining the system, keeping in touch or visiting regularly, and making an effective presentation at court.

4.2 Are there special provisions set out for communication with the lawyer?

Communication between a defendant and his lawyer is strictly confidential. Prison staff are not permitted to open correspondence between lawyer and client. Legal visits should take place in a separate room where conversations cannot be heard by prison staff, and which staff are not allowed to enter during the visit. Prison staff are not permitted to prevent or restrict communication between a prisoner and his lawyer.

4.3 What kind of help can the lawyer provide?

People have the right to legal assistance (whether legal aid or private lawyer) from the point of their arrival in custody at the police station, throughout the trial, and after conviction/sentence. For certain offences, the first meeting with the lawyer may be delayed, e.g. any person arrested for 'organised crime' may only have access to legal representation 48 hours after arrest; for acts of terrorism, access is permitted 72 hours after arrest.

A lawyer should follow all pre-trial investigation of the case and have complete access to a defendant's file, statements of the investigators and other relevant documents. He is present during the trial, can ask questions to experts, witnesses and other parties, and can assist the defendant when he is brought before the court.

If the defendant is given a prison sentence, the lawyer can continue to provide assistance and can be present in meetings regarding parole or disciplinary matters. He can also help with a prisoner transfer application, or bring a complaint before a Court if the prisoner's rights have been breached.

4.4 Legal aid

If the person has limited financial means, he can request a legal aid lawyer whose services will be paid for by the State. EU citizens can apply for legal aid by asking to the Clerk of the prison or writing to the *Président du Tribunal de Grande Instance*, or the chairman of the local Bar Association (*Bâtonnier, L'Ordre des Avocats, Palais de Justice*). A person eligible for legal aid can ask to have a legal aid lawyer nominated or can ask a private lawyer to be paid as a legal aid lawyer.

Although lawyers paid by the State are paid less than private lawyers, overall there is nothing to suggest that clients can expect a lesser service from a legal aid lawyer.

If a detainee is dissatisfied with the service provided by their lawyer they may instruct a new legal representative. However, if they have opted to use a legal aid lawyer and then decide to replace him with another lawyer, they will have to pay the original lawyer for the work that has already been carried out.

5 How is the case investigated?

The public prosecutor decides whether or not to pursue the case and if an investigation is necessary. The EM takes charge of the investigation, collecting evidence that proves the innocence or guilt of the accused.

5.1 *Is investigation compulsory?*

For *crime*, for some *délit* and for offences committed by a minor, investigation is compulsory. In practice, the public prosecutor has to request an investigation when the case is complicated or if it is difficult to determine the perpetrator(s).

5.2 *What happens during the investigation?*

Some cross-examination takes place with the EM who will ask the defendant questions relating to the case. The EM must inform the lawyer of the date of examination five days before it takes place. The lawyer can visit the defendant at the prison to help him prepare. In most cases, the EM does not let the defendant or his lawyer know in advance what will be discussed during the cross-examination or what questions he will ask. The lawyer can ask questions during the examination but the EM can refuse to answer them. The EM can also request a *confrontation* which is a court hearing attended by the accused and any witnesses or victims, at which the people attending have to give their version of the facts to the EM.

It is helpful for the defendant to remember the precise contents of the statement that he originally made to the police; if he decides to change the statement, he will have to explain any discrepancies/changes, which is why it is very important to prepare for the examination in advance.

The lawyer can ask the EM to proceed with certain investigations which are necessary to the case. The EM is entitled to refuse the request, but he has a one month deadline to notify and explain his refusal. If the judge refuses to proceed to those investigations or, if at the deadline he does not respond to the request, it is possible to refer it to the president of the *Chambre de l'Instruction*.

5.3 *What happens when the investigation is finished?*

When the EM thinks that the investigation is finished, he has to inform the parties who then have 20 days to request further investigation. When the investigation is closed at the end of this period, the EM will either take the decision to refer the case to the Court which will judge the person *ordonnance de renvoi* or take the decision to close the case *ordonnance de non lieu*.

If the person has been placed on remand and the EM takes a decision to close the file because of lack of evidence, the person is entitled to ask for compensation due to the hardship (e.g. emotional distress and/or loss of earnings) he has endured. The compensation cannot be given to: a person who has been found not guilty on grounds of diminished responsibility (e.g. the person was mentally ill when the crime was committed), a person who has benefited from a presidential pardon, or a person

who admits to having committed a crime in order to let the real perpetrator escape from being prosecuted. The *Président de Cour d'Appel* (where the decision to close the case has been taken) takes the decision to allow the person to obtain compensation. A lawyer can help to bring the case to this judge and to prove hardship.

5.4 What about the European arrest warrant?

This new process has been created recently to simplify and to assist arrest and prosecution within Europe. For instance, if the French authorities are looking for a British person in connection with criminal charges (to bring them to trial or to sentence them), a French judge has to take a decision to ask the British authorities to arrest and to bring the person back to France.

This procedure is applied to someone who is facing a prison sentence of at least one year (if proven guilty), or who has already been sentenced to at least four months in prison. From the time of arrest, the British authorities have three months to transfer the person to France.

6 Where will the case be heard?

The French criminal procedural laws are set out in a code of regulations known as the *Code de Procedure Pénale*. The classification of the offence determines both the court which will have to hear the case and the length of sentence. There are three separate courts to which cases are allocated depending on the seriousness of the offence involved: *crimes* are heard by the *Cour d'Assises*, *délits* by the *Tribunal Correctionnel* and petty offences by the *Tribunal de Police*.

Tribunal de Police

All petty offences, such as driving without licence, petty assault or petty theft are brought before this Court. These offences incur a fine and sometimes a restriction of certain rights, but custodial (prison) sentences cannot be issued in the Police Court. Only one judge will be present.

Tribunal Correctionnel

Délits (such as fraud, theft, lesser drug offences) are brought before this Court. The length of the sentence given by the *Tribunal Correctionnel* cannot be longer than ten years except for a small number of charges such as drug trafficking. During the hearing, up to three judges can be present. This is compulsory if the defendant has been placed on remand or if it is one of the more serious offences in this category. However, the case can be heard by only one judge if the defendant is facing a sentence of a maximum of five years or if he is accused of having committed certain types of offences such as theft or an assault on other persons, causing incapacity to work for less than eight days.

Cour d'Assises

The most serious offences (*crimes*) are brought before the *Cour d'Assises*. This includes murder, rape... The court is composed of three professional judges and a jury (9 citizens). For very serious crimes such as acts of terrorism or drug trafficking in an organised gang, there is no jury, only professional judges. Under the Criminal Code, these serious offences can incur a life sentence or a prison sentence which can vary between 10 and 30 years.

A *période de sûreté* (safety period) can be added to some sentences. The court sets a period of time as part of the sentence during which the detainee will not be able to benefit from certain measures such as conditional release, permission to leave the prison, or remission. This is automatically added to the sentence if two conditions are fulfilled:

1. the person has committed certain kinds of offence (such as murder); and
2. the sentence is at least ten years in prison.

If those two conditions are not fulfilled, the Judge can still decide to add a *période de sûreté*, but only if the sentence is at least five years. The length of this safety period is usually half the total sentence, but in some cases the court can decide to reduce or lengthen the period. If the person has been sentenced to life, the length of the period is 18 years.

7 What happens at the trial?

7.1 Tribunal Correctionnel

Preliminary investigations are not compulsory before bringing a case before the *Tribunal Correctionnel*. Defendants can be summoned to appear by the Public Prosecutor or be sent straight to court. The latter is called a *comparution immédiate* (accelerated procedure). In some circumstances the person does not necessarily have time to organise his defence.

7.1.1 What will happen during the trial if there is no investigation?

If there is no investigation, the court uses only the statements of the police and of the Public Prosecutor. There is no enquiry into the person's character. The defendant is entitled to ask witnesses to be present at the court, to ask for expert's reports and for the verification of information. However, if the defendant wants to delay his trial to prepare a defence, it is possible that the judge will decide to place him into custody during this time.

7.1.2 What is a comparution immédiate?

If the offence incurs a prison sentence, either of between six months and ten years (in the case that the offender has been caught by the police while committing the offence), or of between two and ten years (if there is a preliminary investigation which is a quick investigation leads by the police), an "accelerated procedure" might take place. This means that the person will come to trial within a few days of his arrest. If this happens, the defendant will remain in police cells until trial instead of being sent to a remand prison, and there is no possibility of applying for bail. It is possible to request more time to prepare the defence, but this may cause further delays to the trial and the judge may decide to place the defendant on remand during the whole period. If this is the case, the remand period cannot be more to four months.

7.1.3 What is the plaidier-coupable (guilty plea)?

The *plaidier-coupable* is a procedure where the defendant acknowledges his guilt in return for a lighter sentence. In order to implement this procedure, the person has to be accused of having committed an offence for which he is facing a maximum of five years imprisonment. This procedure cannot be applied for some offences (for instance, manslaughter). The Public Prosecutor can suggest this procedure or the

defendant and his lawyer can request that the Public Prosecutor implement this procedure (however, note that the Public Prosecutor is entitled to refuse).

After admitting guilt, the defendant and the Public Prosecutor have to reach an agreement to determine what the length of the custodial (prison) sentence will be and, if there is a fine, how much it will be. The presence of a lawyer is mandatory for this procedure.

After the meeting between the defendant, his lawyer and the Public Prosecutor takes place, the defendant has ten days to agree or disagree with the decision. If they agree with the decision, a hearing before the President of the *Tribunal de Grande Instance* takes place. The *Président du Tribunal de Grande Instance* has to approve the agreement after having checked that the person has not been forced to take the decision, that the sentence is fair, etc. If the *Président du Tribunal de Grande Instance* refuses to approve the agreement or if after ten days the defendant rejects the proposal made by the Public Prosecutor regarding the sentence, the case will be sent to the *Tribunal Correctionnel*.

7.2 The Cour d'Assises

A private interview between the defendant and the *Président of the Cour d'Assises* (who is a Judge) takes place at least five days before the trial. The judge does not ask the defendant any questions about the offence; he just inquires about the character of the defendant and his background. The defendant's lawyer is not present during this meeting, but non-French speakers are entitled to have a translator.

The hearing before the *Cour d'Assises* is public. There is a jury consisting of nine citizens. The defendant has the right to challenge five members of the jury, but the sole information he has on those people is their sex, age and profession.

The help of a lawyer is compulsory at the *Cour d'Assises*.

The *Président* of the Court coordinates the trial. He first asks the defendant questions about the offence, and about his character. The Public Prosecutor, the lawyer of the complainant (if there is one) and the lawyer of the defendant can then ask further questions. The Court then hears the witnesses and the experts. The jurors are entitled to ask questions with the President's permission during the trial.

The President has a discretionary power; he is entitled to take further measures to establish the facts of the case. For instance, he can designate an expert to clarify any element of the procedure.

The defendant and his lawyer can, during the trial, ask the President to implement an act to take note of irregularities or of a breach of the defendants' rights. This act is called *conclusions*. If the rights of the defendant (which are the rights of the accused person and his lawyer) have not been respected during the trial, this can lead to the dismissal of the trial by the Supreme Court of Appeal. Examples of those rights which can be breached are: the right of the defendant to communicate in private with his lawyer, the impartiality of the judge, the assistance of a free translator if the person does not speak French.

Final speeches are made at the end of the session in the following order: the summing up by the Public Prosecutor, then by the complainant's lawyer and finally by the defendant's lawyer.

The Judges (*Président of the Cour d'Assises*, his assessors and the jurors) then retire to make their decision. Their discussion is secret, and they may take hours before reaching a decision.

After the President announces the verdict, the Court can decide whether or not the defendant has to pay compensation for civil claims.

8 Appeal

8.1 *How can the decisions taken by Tribunal Correctionnel or Cour d'Assises be appealed?*

The appeal against decisions taken by the *Cour d'Assises* takes place before another *Cour d'Assises* which is designated by the *Cour de Cassation* (Supreme Court of Appeal). The appeal against decisions taken by the *Tribunal Correctionnel* takes place before the *Cour d'Appel* (Court of Appeal).

The length of time allowed for appealing either decision is ten days. The defendant has to make his request to the prison director or prison clerk (*greffe*) who passes it on to the Court concerned. The prosecution can also put forward an appeal if they are not satisfied with the original decision at the trial.

During that time, the person is still treated as a remand prisoner whilst awaiting appeal (e.g. in terms of visits, or *graces*/presidential pardon).

Finally, sentences can be reduced or increased on appeal, even beyond what the prosecution has asked for; it is true that some courts of appeal have the reputation to be more severe than lower courts. Anyone thinking of placing an appeal should consult their lawyer.

8.2 *When can the defendant appeal before the Cour de Cassation?*

After appealing the decision (for a correctional or a criminal case), the case can be brought before the *Cour de Cassation*. The length of time allowed to appeal is five days. This Court does not reconsider the facts of the case, it only checks if the Court of Appeal has correctly applied the criminal law and procedure. That is why it is necessary to ask the advice of a lawyer (*avocat*) before appealing before the *Cour de Cassation*. This process of appeal may take a long time, possibly in excess of two years.

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