



Paris, 12 February 2021

PRESS RELEASE

Criminal proceedings during the health state of emergency: the urgent applications judge suspends the possibility of imposing video conferences

Lawyers' professional associations asked the Conseil d'État to suspend, as a matter of urgency, provisions that allowed video conferences to be imposed in the criminal courts under the health state of emergency. The urgent applications judge, having ruled that video conferences in the higher criminal courts were null and void, suspended them in other criminal courts on the basis that in their current state, they constituted a serious and manifestly unlawful breach of the rights of defence.

Under the health state of emergency declared to tackle the latest wave of the Covid-19 pandemic, a Government [order of 18 November 2020](#) adapted several criminal procedure rules in order, according to Article 1 of the order, “to allow the criminal courts to continue to operate, which is essential to the maintenance of public order.” Article 2 of the order extended the possibility of using video conferencing to all criminal courts, including the higher criminal courts once the preparatory stages of the hearing were over, and to presentations to the state prosecutor or public prosecutor, without needing to secure the consent of the parties.

This measure had already been suspended in respect of hearings in the higher criminal courts by an order of the urgent applications judge at the Conseil d'État, handed down on 25 November 2020 in response to an application by several associations, lawyers' organisations and a judges' union.¹

Today, the urgent applications judge at the Conseil d'État suspended the remainder of Article 2 of the order of 18 November 2020 in response to a further application by organisations representing lawyers.

Option to impose video conferencing in the higher criminal courts declared null and void

The urgent applications judge first noted that the bill to ratify the order at issue, which the Government was required to lay before Parliament within a time frame imposed by the act authorising it to legislate by regulation, and which had been submitted to the Managing Committee of the French Senate within that time, do not contain provisions on the higher criminal courts. Accordingly, and under Article 38 of the French Constitution, these provisions are null and void and therefore can no longer apply.

The option to impose video conferences without clear criteria is suspended

The urgent applications judge at the Conseil d'État then held that the provisions of Article 2 of the order of 18 November 2020, insofar as they authorised the use of video conferencing in the other criminal courts without the consent of the parties, and without making this option dependent on any statutory conditions or subject to any criteria, constitute a serious and manifestly unlawful breach of the rights of defence.

¹ [Press release](#)

The judge noted that the Constitutional Council² had found that similar previous provisions, set out in the order of 25 March 2020 adapting the rules of criminal procedure during the first health state of emergency, and which had provided for the possibility of using video conferencing in the lower criminal courts without the need to secure the parties' consent, were contrary to the French Constitution.

Press contacts

Lorraine Acquier – +33(0)1 72 60 58 42 – lorraine.acquier@conseil-etat.fr

Antoine Sourdril – +33(0)1 72 60 58 41 – antoine.sourdril@conseil-etat.fr

Find a decision: [ArianeWeb](#)

Follow the latest updates from the Conseil d'État on Twitter: [@Conseil_Etat](#)

² Decision no. 2020-872 QPC of 15 January 2021.