

# **THE BUSINESS CONTINUITY PLAN OF THE LAW COURTS DURING THE HEALTH CRISIS RELATED TO THE COVID-19 EPIDEMIC**

**Communication to the Assembly's Committee on finance, the général economy and budgetary Audit**

## **Abstract**

The health crisis related to the Covid-19 epidemic and the decisions taken to deal with it have had unprecedented effects on the functioning of the State and society. National lockdown measures have greatly disrupted the functioning of public services, which tried to continue to operate while many of their employees were confined to their home. The Ministry of Justice's action to ensure the business continuity of the courts, which is the subject of this report, falls within this context: a large number of the choices it made have naturally fallen within the framework of the national response to the crisis.

This enquiry has examined in detail the conditions under which the Ministry of Justice responded to the health crisis, taking into account the limited room for manoeuvre available to it. First of all, it emerges that the ministry was poorly prepared: its crisis management plans, currently in developpement, did not anticipate a crisis of such magnitude. This resulted in an interruption in the functioning of the courts during the first lockdown, with the exception of urgent litigation, an unprecedented situation in the history of justice. Business recovery was difficult, marked by a slowdown in activity, unequal depending on the location and categories of litigation, and an increase in case inventories. Lastly, while the health crisis was an indication of the ministry's long-standing management weaknesses, it was also a source of useful lessons that could accelerate the transformation of the ministry and improve its management.

### **The ministry was not prepared for a crisis of such magnitude**

The crisis preparation within the Ministry of Justice was embryonic before the health crisis, even though justice is, under the Defence Code, a "sector of vital importance", the activity of which must be maintained in times of crisis. On the eve of the crisis, the ministry had allocated additional resources to its "ministerial defence and security policy", but these were insufficient and the content of its crisis response was not finalized when the pandemic triggered. Under these conditions, at the beginning of the health crisis, the preparation for a possible crisis was limited, very little shared in the courts' network, with the exception of some of them, which, in particular, had experience of local crises attached to specific risks, or in Paris where a flood of the century of the Seine was anticipated.

The courts were therefore forced to draw up business continuity plans (BCPs) in a hurry, even though they had not mastered this tool. In order to support the courts in their response to the health crisis, the Directorate of Judicial Services sent on 2 March 2020 a standard BCP which defined a business framework for the courts, including a very limited list of essential tasks that should be maintained. Both this list, which omitted the commercial courts, and the terms and conditions for carrying out the tasks to be pursued were defined restrictively. This framework only partially addressed the operational challenges of business continuity during the crisis. In fact, the courts' BCPs were characterized by a diversity of procedures and content of activity.

The unprecedented nature of the crisis made it necessary to rapidly adopt, in the March 2020 orders, measures derogating from ordinary law. These numerous and hastily devised normative provisions have facilitated the functioning of the courts. However, some of them, such as the automatic extension of pre-trial detention, have caused legal uncertainty and challenges. If they are better defined and anticipated, they could be a useful crisis management tool for the ministry in the future.

However, the adaptation of the courts' activities to these exceptional circumstances had to take into account the fact that, before the health crisis, neither the courts nor the ministry had maintained the stock of protective equipment in operational condition. The centralisation of the supply of masks to the courts by the General Secretariat posed a logistical challenge. In the absence of sufficient equipment and a stabilised governmental doctrine on the need to wear masks, the ministry decided, on the recommendations of the High Council for Public Health (HCSP), to give priority to the prison administration and the judicial protection of young people. Given the supply difficulties encountered in France, the first masks could only be delivered to the courts in April.

On 15 March 2020, the Minister announced the closure of the courts in a message distributed to all courts. This was the most striking decision in the management of the crisis by the ministry, which in fact denied the status of a vitally important sector attached to the public service of justice, whereas the purpose of a business continuity plan is to guarantee, in the event of a serious crisis, operation as close as possible to normal conditions. The central administration was heavily involved in human resources issues and the priority issue of protecting the health of staff, and had only limited means at its disposal to support a network of courts in great difficulty and to guide their responses to the crisis.

The issue of the possible extension of activity of certain courts when local health security conditions would have allowed it, turned out to be delicate to manage for the ministry because of the divergent positions of the heads of court on this subject. In view of these differences, it was considered that the conditions for extending the activity were not met. However, the Court's analysis of the courts' activities shows different territorial approaches, with some courts having succeeded in extending the prescribed scope of activity. All in all, after a virtual suspension of their activities for more than two months, the courts gradually resumed their activities, which returned to their normal level in September 2020.

### **The functioning of the courts has deteriorated, but in an uneven manner**

The courts have encountered several obstacles that hampered the continuity of their business. The decision to implement BCPs was primarily driven by health conditions and the Government's desire to protect citizens from the virus by limiting interactions. Every employer was assigned this objective and the Ministry of Justice was no exception. The direct effect of the lockdown decisions was to send the vast majority of staff home.

As a result, during the first lockdown, the courts were only able to rely on voluntary staff. However, these were specialised in specific types of litigation or activity. It was not possible to overcome the lack of versatility among both judges and court registry staff. In order to avoid this pitfall, it is essential that versatility, which the ministry has long sought to develop, becomes a normal part of the organisation of work within the courts.

During the first lockdown, it was not possible to remedy the shortcomings of digital tools, particularly for the processing of civil cases, and to increase the possibilities for remote work by registry officers. However, some of the achievements of the ministry's digital transformation plan have prevented the institution from being paralysed: the capacity of the VPN network has been increased and videoconferences with the prison administration have been organised. Ambitious and promising, the digital criminal procedure, which has been tested since 2019 in the law courts of Blois and Amiens and whose deployment has been underway since September 2020, turns out to benefit a lot to business continuity. The digital maturity of the administrative courts and commercial courts is much more advanced and has made it possible to ensure better continuity of their activity and greater accessibility for citizens.

The way courts operated was very different between the first and second lockdown periods. The first led, almost automatically, to a sharp drop in new cases, as well as a significant reduction in recorded crimes. But this situation has had the effect of increasing the activity of certain departments, including those responsible for detention and enforcement of sentences.

Taking all litigation together, the drop in activity of the courts and courts of appeal for the month of April 2020 alone is between 70% and 80%. Almost all industrial tribunals ceased their activity on 16 March 2020 and some of them only resumed processing summary proceedings at the end of April. In criminal matters, the correctional courts have reduced during the lockdown period their trial capacity by 82% compared to 2019, and the juvenile courts by 97%. However, these national figures conceal regional disparities. For example, the law courts of Besançon and Carpentras were able to maintain an above-average capacity to try civil cases despite the lockdown.

Moreover, low-visibility civil and criminal court activity was also deployed thanks to the work carried out remotely by judges (drafting of judgments, rulings, final indictments or settlement orders). For the Paris public prosecutor's office, the lockdown period allowed to clear 80% of the stock of judicial information files. Finally, the upturn in activity (particularly in completed cases) observed in the law courts and courts of appeal in May, June and July was encouraged by the use of the no-hearing procedure, which was voluntarily implemented by many courts such as the courts of appeal of Paris, Toulouse, Reims and the Paris law court.

Thanks to a greater digital culture, some courts were able to maintain a certain level of activity during the lockdown. For example, thanks to their registries, the commercial courts were able to use a videoconferencing solution to hold remote hearings, particularly for insolvency proceedings. Nationally, 760 hearings were held by videoconference between the 2nd of April and the 15th of May, including 350 for the Paris commercial court alone. Similarly, the activity data for the Paris administrative court shows a 47% drop in incoming cases during the lockdown period, which is much less than that of the civil courts.

With a ministerial instruction to continue activity and the adoption of normative measures comparable to those of March 2020, the second lockdown had virtually no effect on the level of activity of the courts. The functioning of the ministry in times of crisis has improved, as more flexible lockdown arrangements have made it possible to organise the presence of staff in their place of work.

The health crisis has had consequences on the quality of the jurisdictional activity. People had difficulty accessing justice; the criminal response was less intense, due to redirections and an increase in the time taken to bring cases to trial. The closure of the courts may have led to an inadequate handling of sensitive groups, whether vulnerable persons or those subject to special monitoring, despite the notable efforts made to give priority to situations aggravated by the crisis, particularly domestic violence.

### **The judiciary can learn useful lessons from the crisis and accelerate its transformation**

The crisis has revealed the ministry's long-standing management weaknesses, such as the dispersion of the court network, which complicates its management, the insufficient progress of its digital transformation, and the limited versatility of its staff. The lessons learned from the health crisis will be better taken into account by the ministry if they are based on exhaustive and detailed feedback.

The health crisis led the ministry to test its crisis management system. The management of the second phase of the health crisis in autumn 2020 confirms that the ministry can improve its level of preparation for the various risks that could interrupt the activity of the courts. In accordance with the provisions of the defence code, the role of the senior defence and security official (HFDS) in crisis management must be strengthened vis-à-vis other directorates of the ministry and operational preparation for crises must be better shared within the judiciary system. The diversity of the functioning of the courts during the first lockdown shows the responsiveness of many heads of court and their departments at local level, while raising questions about the principle of equal access to justice as set out in the code of judicial organisation.

In the crisis management, the central administration probably lacked a prior doctrine based on an in-depth analysis of the priority needs of users of the public justice service in order to define the scope of the courts' business continuity. In light of the health crisis, the ministry is in a position to carry out this analysis, in order to better define the essential function of justice in times of crisis.

The health crisis was not an opportunity for the judiciary to appropriate the BCP tool.

The crisis illustrated the relevance of the objectives set out in the ministry's digital transformation plan, namely the need to have robust systems for a more efficient, more readable and more accessible justice system. It has also shown that facilitating digital access to justice for the public, one of the major thrusts of the plan, was not sufficient to achieve these objectives. The resources made available to judges and court registrars must also provide the guarantees of permanence, security and access that enable the public service to function in all circumstances.

The health crisis, combined with the lawyers' strike at the beginning of 2020, has increased the volume of their case inventories, exacerbating some of the difficulties encountered by the courts in absorbing their activity. Under these conditions, it is important for the directorate of judicial services to have a qualitative view of the courts' case inventories, in order to allocate resources where they are most needed. Lastly, the health crisis has brought back the issue of assessing magistrates' workloads, which is a necessary condition for allocating resources fairly between courts. Although real progress has been made, the case assessment and weighting process must be given fresh impetus in the context of the crisis.

By increasing access to remote working tools, the health crisis has accelerated the digital use from magistrates and court registrars, which was lacking during the initial lockdown. While at the beginning of the crisis, almost no registry officer had an ultraportable computer, the Ministry reported a 50% equipment rate at the beginning of January 2021. The health crisis will have contributed to a better organisation of the work of court registrars by opening up to them the benefit of remote work, which until now has been reserved for magistrates.

In the courts, the health crisis has also been a period of innovation in the organisation and operation of judicial activity. This progress must be identified through an inventory and circulation of the good practices that the ministry has begun to implement.

Beyond these various aspects, the main lesson to be learned from the health crisis of the functioning of justice is that an interruption of judicial activity is no longer conceivable. As part of the necessary feedback from the health crisis, the ministry must be able to develop a stable doctrine, informed by experience, on the business continuity expected of the judiciary system and to make the texts and its material and human resources consistent with this requirement. The basis of this doctrine should be the vital importance that the law assigns to the activity of the public service of justice, and that the health crisis has confirmed beyond the vicissitudes of the response provided by the Ministry of Justice.

## Recommendations

1. Establish a normative tool for business continuity bringing together the legislative and regulatory provisions that may be adopted and implemented in times of crisis to facilitate the operation of law courts (SG, DACS, DACG).
2. Adopt an integrated approach to risk management and crisis management by bringing together the work on feedback from the crisis to be carried out by the ministry's senior defence and security official (HFDS) with the work on controlling the ministry's strategic risks at both central and regional level (SG).
3. With a view to a renewed judicial map, provide appropriate resources to strengthen the level of the regional courts of appeal so that they can fulfil the roles assigned to them by the ministerial defence and security policy (SG).
4. Define a doctrine for the business continuity of law courts and harmonise the provisions of the defence code, the code of judicial organisation and the ministerial defence and security policy (SG, DSJ).
5. Strengthen the position of the ministry's senior defence and security official in risk and crisis management by increasing the resources allocated to the HFDS unit and by reworking, under its authority, the business continuity plans of the law courts in accordance with a renewed methodology, while ensuring, by means of support and training, that heads of court adopt this crisis management tool (SG).
6. Encourage the versatility of court staff by including in business continuity plans the creation of teams of magistrates and registrars who can be mobilised for other cases and services in the event of a crisis (SG, DSJ).
7. From 2021, start an experiment to assess the workload of magistrates in the enforcement and prosecution departments and accompany this work with a study of the digital tools required (DSJ).
8. In 2021, conduct a feedback exercise on the health crisis, including a review of the best practices developed by the courts (DSJ).