2 - My rights during the investigation of a crime

What is the purpose of the criminal inquiry and investigation?

The *enquête judiciaire* (criminal inquiry) includes all the investigations by the CID, under the supervision of a judge, in respect of the commission of an offence.

The criminal inquiry can be conducted independently of the pre-trial investigation and consists of establishing the offence, gathering evidence and seeking the perpetrators.

A distinction is made between the *enquête de flagrance* (urgent inquiry) and the *enquête préliminaire* (preliminary inquiry). The former is undertaken when a crime is being or has just been committed and grants the police strong powers of coercion. The latter is conducted in other cases. Its originally less coercive arrangements have become much closer to those of the *enquête de flagrance* as a result of recent legislation.

In more complicated cases, an inquiry may also be undertaken as part of the pre-trial investigation and then consists of carrying out the instructions of the examining judge. The pre-trial investigation has the more specific purpose of determining whether there is sufficient evidence to commit the perpetrator of an offence for trial and, if necessary, to prepare the case for judgment.

It is only compulsory in criminal matters.

What are the stages in the inquiry and pre-trial investigation?

An *enquête de flagrance* can commence when an offence is being or has just been committed, or where a person is suspected of involvement in an offence. This inquiry lasts eight days and may be extended by the public prosecutor, under certain conditions, for a maximum period of eight days.

During the *enquête de flagrance*, the CID officer may, in particular, travel to the scene of the offence, make findings of fact, seize any objects or proof serving to establish the truth, search the homes of people who appear to have been involved in the offence or who hold documents or information relating to the events, question anyone likely to provide information on the facts, or take anyone suspected of involvement in the offence into police custody.

In the *enquête préliminaire*, the CID officer advises the public prosecutor as soon as the likely perpetrator of the offence has been identified.

In the pre-trial investigation, the judge investigates the case for and against and does everything he considers useful to establish the truth. He may take action ex officio, or at the request of the public prosecutor or the parties (e.g. attendance at the scene, hearings, searches, etc.). The judge must give reasons for refusing requests and it is possible to appeal against his decision.

In the case of letters rogatory, the examining judge can delegate CID officers to carry out these tasks.

When he considers the pre-trial investigation complete, the examining judge notifies the parties and their lawyers simultaneously. The public prosecutor and the parties then have a period of one month if the person is charged or three months otherwise to send comments or reasoned requests to the examining judge.

After that period, the prosecution has 10 days (if the person who has been charged is in custody) or one month (otherwise) to send its arguments or additional comments to the examining judge in respect of the information

received.

The examining judge will then order:

- either non-suit if he considers that the facts referred to him do not constitute a crime, *délit* (lesser offence not classed as a "crime" under French law) or petty offence or if the perpetrator is unknown or if there is not sufficient evidence against that person; or
- committal for trial (in the case of *délits* and petty offences) or indictment (in criminal matters) when there is sufficient evidence to charge the accused with an offence.

My rights during the inquiry and pre-trial investigation

My rights in police custody (1)

If you are suspected of involvement in committing an offence, the CID officer may take you into police custody. He must immediately inform the public prosecutor or examining judge, as applicable.

For a common law offence, you cannot be detained for more than 24 hours, a period that can be extended once for a further period of 24 hours by the public prosecutor in connection with the inquiry, or by the examining judge in connection with the pre-trial investigation.

There are, however, exceptions to these police custody arrangements. In the case of delinquency or organised crime, drug trafficking or terrorism, detention periods are longer. Moreover, generally speaking, the conditions for placing a person in police custody and the possibility of extending this measure are more strictly controlled in the case of minors.

Failure to comply with the time limit on police custody can result in annulment of the measure and all subsequent acts for which it forms the necessary basis.

What will I be told about the terms of police custody?

The rights of someone held in police custody are basic rights. You must be informed immediately of the nature of the offence to which the investigations refer, the duration of the period of police custody and your rights. This information must be given to you in a language you understand. You may therefore receive the services of an interpreter free of charge.

Records will be kept of the notification and exercise of these rights.

- Right to inform someone close to you

You have the right to have someone close informed (a person with whom you habitually live, a blood relative, one of your brothers or sisters, or your employer), who will be contacted by telephone by the CID officer within three hours of your being taken into police custody.

- Right to see a doctor

You have the right to request a medical examination during each 24-hour period of police custody. The doctor will be chosen by the CID officer or public prosecutor.

- Right to ask to consult a lawyer

You may ask to consult a lawyer for a period not exceeding 30 minutes. This conversation is confidential. The lawyer may make written comments that will be entered in the case file.

You may choose a lawyer if you know one or you may ask for one to be appointed for you ex officio by the president of the Bar Association (a "court-appointed" lawyer).

If taken into police custody for a common law offence, you can consult your lawyer as soon as the period of police custody starts and, if it is extended, at the start of the extended period.

However, you will not be able to consult a lawyer until the 48th or 72nd hour if you are taken into police custody for an offence relating to delinquency or organised crime, drug trafficking or terrorist activity.

The CID officer is considered to have met his obligation when he has made every effort to contact the lawyer.

- Right to remain silent

You will not be notified of this right by the CID officer, but you are nevertheless free to remain silent and not to incriminate yourself.

- Right to ask for the consulate of the State of which you are a national to be informed of your arrest

What happens if I do not agree with the way my statements have been transcribed?

You may refuse to sign the record in which they have been transcribed.

What can happen at the end of the period of police custody?

The public prosecutor or examining judge, as applicable, can terminate the period of police custody at any time. You may be set free or, if you have been taken into police custody in the course of an inquiry, be brought before an examining judge with a view to opening a pre-trial investigation, or before the *tribunal correctionnel* (court dealing with *délits*).

If a pre-trial investigation is opened, a first appearance hearing will be held and you may then be charged or granted the status of *témoin assisté* (legally-represented witness, i.e. not simply a witness but to some extent a suspect, meaning that you have rights not afforded to ordinary witnesses). If you are charged, you may be released subject to legal restrictions or remanded in custody.

If you are brought before a *tribunal correctionnel*, that court may either judge the case immediately if it is in a position to do so, or grant you a period to prepare your defence if you so request. In that case, a decision will be taken on whether to place you on remand or release you subject to legal restrictions.

Will I be asked to provide fingerprints, DNA samples or other body fluids? What are my rights?

If you are a witness or suspect in criminal proceedings, you may be subjected, with authorisation from the public prosecutor, to external sample taking (e.g. saliva samples for the purpose of analysing your genetic fingerprint) and identification procedures (e.g. taking your fingerprints, palm prints or photographs).

You may refuse but, when the aforesaid operations are carried out under legal conditions, refusal to submit to them can, under certain circumstances, constitute an offence punishable by one year's imprisonment and a €15,000 fine.

Can I be subjected to a body search?

In general, a CID officer will carry out a security check (patting down over clothing) designed to ascertain that you are not carrying any object posing a danger to yourself or anyone else.

For security reasons or the needs of the investigation, the CID officer may order a body search involving total or partial undressing. Only a doctor is permitted to perform an internal search on you.

These operations may only be carried out by a CID officer of the same sex as yourself.

All personal effects will be recorded and returned to you at the end of the period of police custody if you are released.

Can my home, office, car, etc. be searched?

A search can only be conducted between 6 a.m. and 9 p.m. However, a search that begins before 9 p.m. may be continued into the night.

Exceptions are permitted in cases of organised crime, terrorism, pimping and drug trafficking, under the control of a judge.

A search can be carried out at any domicile where objects whose discovery might help to establish the truth might be found.

This could be your home or that of another person likely to contain objects connected with the offence.

Domicile means the place where an individual has his or her main establishment but also the place, whether or not he or she lives there, which that individual is entitled to call home.

Consequently, various places of residence (e.g. hotel rooms) and their outbuildings are considered as domiciles.

It is up to the judge to assess the notion of a domicile. This means that while a vehicle is not, in principle, considered as a domicile, this does not apply if it is lived in.

Can I lodge an appeal?

Failure to observe the above formalities entails a breach of the rights to defence and can be the subject of an action to annul the search and seizures.

The preliminary investigation: My rights during first appearance questioning (2)

At the first appearance hearing, you will be questioned about the accusations against you.

After checking your identity, the examining judge will remind you of the actions referred to him and their legal classification.

The examining judge will inform you of your rights:

- You are entitled to a sworn interpreter,
- You are entitled to the assistance of a lawyer (chosen by you or court-appointed).

You may attend this hearing with your lawyer and you will then be questioned immediately. Otherwise, the examining judge is obliged to inform you again of your right to legal assistance, if necessary from a court-appointed lawyer.

If you choose to be assisted by a lawyer, the latter can consult the case file and report to you under certain conditions.

You have the right to remain silent.

If the actions in respect of which proceedings are being brought against you constitute a crime, you will undergo audiovisual cross-examination.

Can I plead guilty before the trial to all or some of the charges?

You may acknowledge the accusations or just some of them. This is a matter of strategy that should be discussed with your lawyer.

Can the charges/indictment be amended before the trial?

During the pre-trial investigation of the evidence for or against, the classification of the actions referred to the examining judge can be changed (reclassifying a "*crime*" as a "*délit*" or vice versa).

If, during the pre-trial investigation, new offences are discovered, the judge may investigate the new developments at the request of the public prosecutor.

Can I be accused of an offence for which proceedings have already been brought against me in another Member State?

If proceedings have been brought against you in another Member State but you have not been judged, you can be questioned on French territory in that regard.

Conversely, if you have been judged in those proceedings in another Member State, you may not, by virtue of the *non bis in idem* principle (you cannot be judged twice for the same offence), be prosecuted or judged in France.

Will I be told about the witnesses making statements against me and the existing evidence against me?

By virtue of the principles of due hearing of the parties, you will be notified of all elements of proof (witness statements, material evidence) so that you can best prepare your defence and make your comments.

These elements will appear in the case file, copies of which you can obtain through your lawyer following authorisation from the judge.

You and your lawyer must refrain from passing these documents to third parties at the risk of violating the secrecy of the pre-trial investigation.

Will information be requested on any criminal record I may have?

A summary of your past convictions or a statement to the effect that you do not have any must necessarily appear in the pre-trial investigation file.

I am a national of another country. Must I be present during the pre-trial investigation?

By virtue of the obligations that may be established if you are released subject to legal restrictions, you will not be able to leave French territory during the pre-trial investigation procedure.

Being charged and *témoin assisté* (legally-represented witness) status (3)

Following the first appearance hearing, the examining judge will either notify you that you are being charged or afford you the status of *témoin assisté* (legally-represented witness).

Being charged means that there is serious or concordant evidence against you allowing a presumption that you have been involved in committing an offence. You are an actual party to the criminal proceedings, which does not apply in the case of legally-represented witnesses.

Conversely, legally-represented witness status means that there is some evidence but this is not sufficiently definite for you to be charged. In this regard, although not party to the criminal proceedings, legally-represented witnesses do have access to the case file, enjoy rights to defence and may ask the examining judge to carry out a certain number of actions.

The two situations have different consequences. Only someone who has been charged can, by justified decision of a judge, be released subject to legal restrictions, known as being placed under *contrôle judiciaire*, (and thus be forbidden from leaving French territory) or on remand and only such a person can be brought before a court.

You may then apply for conditional release.

If you have legally-represented witness status, you may ask to be charged at any time during the proceedings.

What are the terms of*contrôle judiciaire*?

You may be released subject to legal restrictions if you are facing a prison sentence or more serious penalty.

Legal restrictions are justified by the needs of the pre-trial investigation (e.g. to prevent you from fleeing abroad)

or as a security measure (e.g. ban on meeting the victim). Most of the measures adopted in connection with *contrôle judiciaire* are designed to prevent the offender from absconding.

This measure may be terminated at any time by decision of the examining judge, by order of the public prosecutor or at your request.

If you make such a request, the examining judge must give his decision within five days.

If you seek to avoid the legal restrictions, you run the risk of being placed on remand.

Finally, you may challenge the order placing you under *contrôle judiciaire* by appealing to the *Chambre de l'instruction* (examining chamber, a second-degree jurisdiction).

What are the terms of remand?

To be placed on remand, you must be facing a penalty exceeding a certain level of seriousness, i.e. a prison sentence of three years or more.

Remand can only be ordered if it is the only way of: preserving the proof or material evidence needed to establish the truth; preventing pressure on witnesses or victims and their families; preventing improper consultation between the person who has been charged and the other perpetrators or accomplices; protecting the person who has been charged; ensuring that the person remains at the disposal of the justice system; putting an end to the offence or preventing re-offending; and, in criminal matters, putting an end to an exceptional, persistent breach of public order caused by the seriousness of the offence.

You may challenge the order remanding you in custody within 10 days from notification, by statement made to the head of the penal institution where you are held or the clerk's office of the court which handed down the decision.

Completion of the pre-trial investigation (4)

The pre-trial investigation may end with various kinds of judge's order:

Non-suit

The judge may order non-suit because he has not gathered enough evidence against you. This may be total or partial.

In the event of partial non-suit, the investigating judge will order committal for trial or indictment for the remaining accusations.

If a total non-suit is ordered and you were on remand, you will be released and the seized objects will be returned to you.

You will be able to bring proceedings for compensation.

Remember, however, that the civil claimant can lodge an appeal against this order within 10 days from notification at the clerk's office of the court which pronounced the decision.

Committal for trial

If the judge considers that he has sufficient evidence against you, he may decide to send you for trial.

If you were free subject to legal restrictions or on remand, this order terminates those arrangements.

However, the judge may decide, by means of a further order, giving specific reasons, to maintain those arrangements for a period of no longer than two months. If, at the end of this period, you have not appeared before the competent court, you will be released.

The judge may, by issuing an order explaining why it is impossible to judge the case within two months, order two extensions of two months each, but only "on an exceptional basis". If a judgment has not been handed down at the

end of the six-month period you will be released.

You do not have any remedy at law against this order, except where you consider that the actions referred to the *tribunal correctionnel* constitute a crime (rather than a *délit*) which should have been the subject of an indictment before the *cour d'assise*. This remedy at law is also open to the civil claimant.

Indictment

This order can be made by the examining judge in respect of crimes.

If you are free subject to legal restrictions when the judge makes the order, that measure will be maintained.

In your capacity as an indicted person, you have the right to appeal against this order.

The European arrest warrant (5)

The European arrest warrant is a procedure intended to replace the extradition procedure between the Member States.

It is a judicial decision issued by a Member State of the European Union with a view to the arrest and surrender by another Member State of a person wanted in connection with criminal proceedings or to serve a sentence or preventive detention measure.

Any Member State may adopt necessary and proportionate coercive measures against a wanted person.

When the wanted person is arrested, he or she is entitled to be informed of the content of the warrant and to receive the services of a lawyer and an interpreter.

In all cases, the executing authority is entitled to decide to keep the person in custody or release him or her subject to certain conditions.

Pending a decision, the executing authority hears the person concerned. The executing judicial authority must take a final decision on enforcement of the European arrest warrant no later than sixty days after the arrest. It must then immediately notify the issuing authority of its decision. However, if the information provided is insufficient, the executing authority may ask the issuing authority for additional information.

Any period of detention relating to the European arrest warrant must be deducted from the total period of deprivation of liberty imposed.

Preparation of the case by the defence (6)

Your relationship with your lawyer is based on mutual trust; he or she is your confidant. In this respect, your lawyer is bound by professional secrecy.

You should therefore be sure to ask all the questions of concern to you and seek all necessary explanations to avoid misunderstandings.

At your first meeting, hand the lawyer all the documents and information related to your case so that he or she can prepare your defence in the best possible way.

Discuss all the questions you have, especially concerning the course of proceedings, the strategy to adopt regarding the choice of procedure or the kind of questions that the judges dealing with your case are likely to ask.

Be sure to ask questions about the outcome of the proceedings, the penalties you face and the sentencing options available.

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