

Overview of the French Criminal Procedure

European Lawyers Foundation

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Thomas Lapierre

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1. General Introduction

French criminal procedure is inquisitorial

The Prosecutor or the Judge has a proactive role both during the investigation (fact-finding process) and at trial as he conducts proceedings.

Written procedure

Any act taken by the authorities must be reported in the criminal file by authorities and reported to be discussed at a later stage by the parties. There is, in principle, no 'off the record' investigative acts.

Investigations include exculpatory evidence

Authorities must include and investigate all exculpatory evidence that is available against the suspect.

2. The parties to the investigation

Parquet (prosecutor)
and/or Juge d'instruction
(Investigating judge)

The Prosecutor and/or the Investigating judge oversee the actions of the investigators (police) and direct them in their work. At trial, the Prosecutor represents the interest of society and leads the prosecution of individuals.

Target/defendant/Assisted
witness

The defendant has a vast array of rights. He may gain access to the content of the investigation as it is unfolding (in cases where an Investigating Judge is appointed), or ask for certain investigative acts to be conducted. Can be placed in pre-trial custody during the course of the investigation.

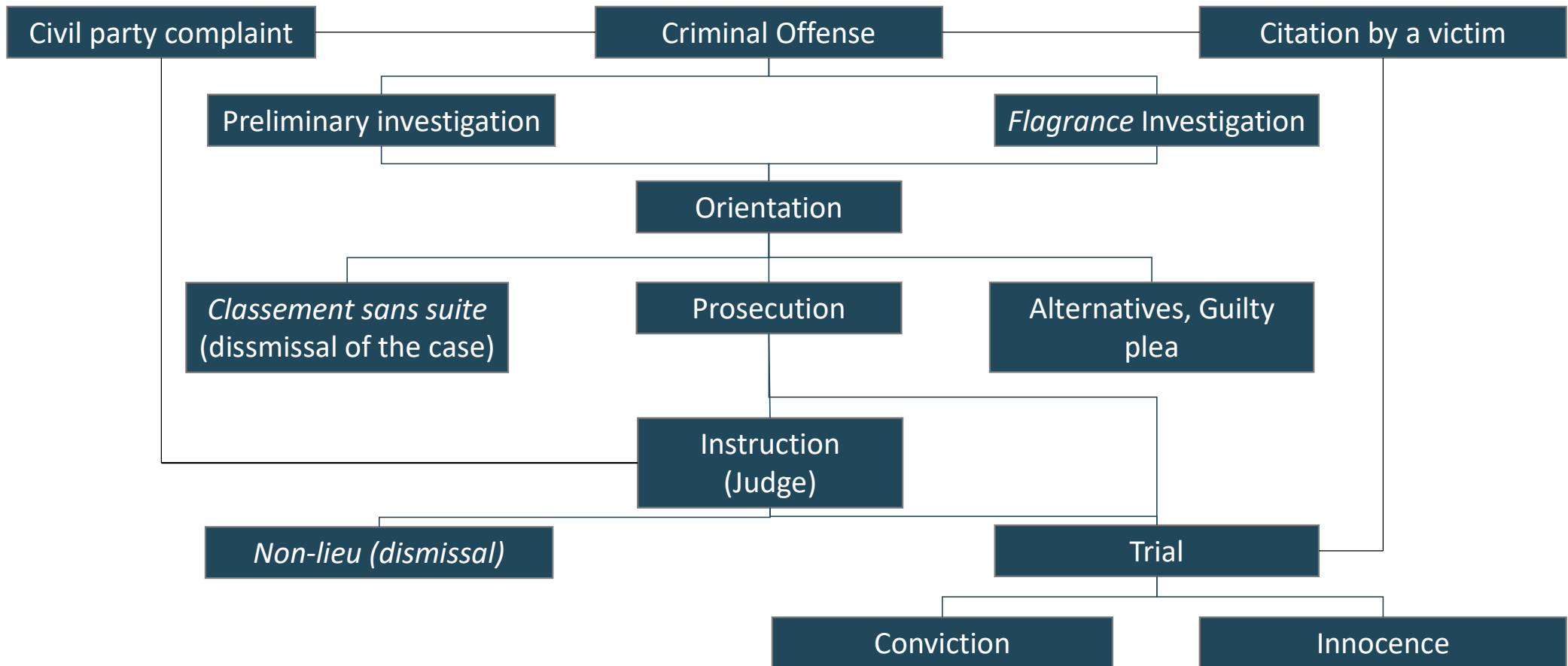
Partie civile

No victim is required for the proceedings to go forward, but it can still take an active part in the criminal proceedings. Once the victim becomes a party to the proceedings it is a civil party. It may request for certain investigative acts to be carried out. May make damages claim before criminal courts.

Witness

Possibility to be called as a witness during the proceedings. Has a duty to testify and can be prosecuted in cases of perjury.

3. Overview of the procedure



4. Prosecutor-led investigation

Main measures

Garde à vue: Interview of a suspect for up to 24 hours (may be longer). Defendant has array of rights (attorney, doctor, can remain silent). Prosecutor must be notified when somebody is interviewed by the Police.

Perquisition (Search and seizure): on-spot investigation, including on private property. May require a warrant granted by a Judge

Surveillance measures: telephone tapping, data interception. Requires a warrant

Other interviews: victim, witnesses etc..

Distinctive features

Led by the police: Police investigate the allegations and report back to the prosecutor, who will give general instructions

Secret: Like any criminal investigation, it is a criminal offense to disclose any element to any third party

Non contradictory: No access to the file is granted to the defendant or its lawyer. No access for the victim either

Usual procedure: vast majority of cases are handled through this procedure.

5. Investigation by an investigating judge (instruction)

The Investigating Judge

- **The *juge d'instruction*:** the Investigating Judge is appointed by the Prosecutor who defines the scope of the investigation.
- **Extensive powers :** Can order search and seizures, wiretapping, order arrest warrants etc. Supervises the work that is done by police investigators.
- **Prosecutor :** still present as a party to the proceedings but has a minor role. The appointment of a Judge takes the investigation out of its hands.
- **Use :** Most serious crimes and complex cases.

New rights granted to the defendant

- **Contradictory :** Once the defendant becomes an official target of the investigation, he gains access to the content of the investigation as it is progressing. The victim (civil party) also gains access to the criminal file.
- **Active role in the investigation :** The parties have the right to a lawyer, has access to the file and may request from the Judge to carry out investigative acts. Can challenge the decision of the Judge before the Court of appeal (*Chambre de l'instruction*).
- **End of proceedings:** The defendant, the civil party and the prosecutor at the end of the investigation make written submissions as to what the Investigating Judge should do. The Judge may either dismiss the case or send it to trial if he finds that there is sufficient evidence that warrant a trial.

6. Trial phase

Main jurisdictions

depending on the seriousness of the offense

- *Tribunal de police: contraventions (misdemeanors) – no jail sentences*
- *Tribunal correctionnel: délit, maximum 10 year sentence*
- *Cour d'assises: jury trial, crime punished by a minimum of 10 years*
- *Cour Criminelle Départementale: no jury trial, 15 years – 20 years sentences (law not fully implemented)*
- *Juvenile courts: Tribunal pour enfants, Cour d'Assise des mineurs...*

Proceedings

- Criminal file: the evidence presented is what was gathered during the investigation phase.
- The defendant, has of course right to remain silent and/or answer questions as well as produce exhibits.
- The Judge has an active role in fact-finding process and legal issues. Possibility to call witnesses. The civil party takes part in the criminal trial and can lodge civil claims.
- The decision is appealable both on questions of facts and law before the Court of appeal.

7. Notable trends of French Criminal Procedure

Criminal liability of corporate entities	Possibility to convict companies to important penalties, recent extension to merged firms
Development of compliance	Corruption and financial crimes (Loi Sapin II)
Specialized authorities	Parquet National Financier, Parquet National Anti-terroriste, Agence Française Anticorruption, EPPO
Increase in negotiated justice mechanisms	Convention Judiciaire d'intérêt Public, Comparution sur Reconnaissance Préalable de culpabilité ...



Thomas Lapierre

tlapierre@navacellelaw.com