

Pre-trial detention: The health crisis does not in itself justify the release from prison

The conditions of detention, already well deteriorated due to the overcrowding that has been a constant feature of places of deprivation of liberty for several years, are necessarily and unfortunately adversely affected by the health situation created by the COVID-19 pandemic. How to implement social distancing, and more broadly, so-called “barrier gestures” (i.e. preventative measures that each individual should take to protect himself/herself and others against COVID-19) in places where the daily life is marked by the proximity between fellow inmates? It is impossible to do so.

Consequently, many requests for release from pretrial detention have been filed with the Liberty and Custody Judge. However, these requests for release have been dismissed. Following the upholding of a dismissal order, one inmate appealed to the *Cour de Cassation* (French Supreme Court). On August 19, 2020, the Criminal Chamber of the *Cour de Cassation* issued a ruling^[1] that confirmed the dismissal of the request for release.

On March 19, 2020, an inmate applied to the investigating judge for release. This request was denied pursuant to an order of the Liberty and Custody Judge issued on March 24, 2020. An appeal was lodged with the investigation chamber which handed down a judgment that confirmed the dismissal of the request.

The inmate then appealed to the *Cour de Cassation* and invoked *inter alia* the right to life, as the Liberty and

Custody Judge has the obligation to ensure that pretrial detention is carried out in dignified conditions under all circumstances, and in particular that the deprivation of liberty does not entail inhuman and degrading treatment.

As a result, according to the plaintiff inmate, the pre-trial detention in the midst of a health crisis created by the COVID-19 pandemic in a prison overcrowded to the extent of 124.6% *“resulting in a great promiscuity and where it is not possible in particular to benefit from or respect social distancing and “barrier gestures” imposed by the authorities”*, exposed him to a very high health risk and constituted inhuman and degrading treatment.

The plaintiff contended that the challenged judgment failed to take into consideration his personal conditions of detention, which were particularly undignified and constituted ill-treatment because of a high risk to his health and safety during a pandemic crisis.

The *Cour de Cassation* purely and simply dismissed the appeal. It held that it was not the responsibility of the investigation chamber to check the inmate’s conditions of detention, as the latter did not provide sufficiently credible, accurate and current evidence of his conditions of detention.

In other words, the *Cour de Cassation* found that the health situation created by the pandemic, which affects all French citizens, *“cannot transform, in itself, a security measure and in particular pre-trial detention decided in accordance with internal texts and conventions binding France into inhuman and degrading treatment or a violation of the right to life as referred to in Articles 2 and 3 of the European Convention on Human Rights.”*

Furthermore, the Criminal Chamber denied the endangering of life alleged by the plaintiff, as he had not demonstrated that his life was exposed to a real and imminent risk because of his personal conditions of detention in the context of the COVID-19 pandemic.

While one understands that the health crisis in itself cannot entail the release of inmates, the issue at stake is much deeper and systemic.

[1] Criminal Chamber of the *Cour de Cassation*, August 19, 2020, n°20-82.171

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