
The Parliament in the time of coronavirus

France

The French Parliament in the time of Covid-19: Parliament on Life Support

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The French Parliament is bicameral. It is composed of the National Assembly, whose 577 deputies are elected by direct universal suffrage, and the Senate, whose 348 members are elected by indirect suffrage by local and national elected representatives, among whom the delegates of the municipal councils are the greatest in number². While the National Assembly is renewed in its entirety every five years, half of the Senate is renewed every three years. This bicameralism, while not totally egalitarian, is no longer as unequal as it was under the Fourth Republic. In principle, the law must be adopted according to the same terms by both assemblies but, after two readings in each assembly³, the Prime Minister or the Presidents of the Assemblies may call a meeting of a Joint Committee (CMP) responsible for finding a compromise on the provisions still under discussion. In the absence of agreement, a new reading takes place in each of the chambers and, if there is still disagreement, the Government may ask the National Assembly to rule alone on the text, in a final reading⁴. In terms of oversight of government action, the inequality between the two chambers lies mainly in the fact that only the National Assembly can challenge the government's responsibility, either by rejecting a vote of confidence put forward by the Prime Minister or by adopting a motion of censure⁵.

As far as the health situation is concerned, it seems that the first cases of Covid-19 appeared in France at the end of January 2020 and the first death on February 14. On March 12, the President of the Republic announced the closure of schools. On March 14, the Prime Minister announced the closure of establishments open to the public (bars, restaurants, museums, etc.) from midnight on, while maintaining the first round of municipal elections the following day. On 16 March, the

¹ The authors would like to thank Lucile Gonot and Olivia Richard for their help in their research.

² They represent about 95% of the senatorial electoral college. This is important to note as the municipal elections took place during the pandemic and the second round had to be postponed due to the lockdown, cf. *infra*.

³ Or only one in the event that the Government has initiated the accelerated procedure for voting on the law, which it does almost systematically with regard to the bills it initiates.

⁴ Article 45 of the Constitution.

⁵ Article 49 of the Constitution.

President of the Republic announced lockdown from 12 noon on March 17 and the postponement of the second round of elections, which was initially scheduled for March 22. Extended twice, the lockdown lasted until May 11. Although the first measures to combat the pandemic were based on the Public Health Code, it was soon necessary to establish the legislative powers of the executive branch. The French regulatory arsenal provided for three crisis situations: Article 16 of the Constitution, which confers exceptional powers on the President of the Republic in the event of an interruption in the regular functioning of the public authorities and a serious and immediate threat; the state of siege (Article 36 of the Constitution), which results in the transfer of police powers from the civil authorities to the military authorities in the event of imminent danger resulting from a foreign war or armed insurrection; and the state of emergency (law of April 3, 1955) which allows the policing powers of prefects and the Minister of the Interior to be widely extended in the event of imminent danger resulting from serious breaches of public order or in the event of a public calamity. Since none of these instruments was deemed relevant to deal with the situation, Parliament had to pass a special law to deal with the Covid-19 pandemic: this was the purpose of the Act of March 23, 2020 instituting a state of health emergency⁶.

A paradox appears here: whereas France was under lockdown, the Parliament had to meet to vote on the law instituting the state of health emergency. This paradox was all the greater because, traditionally, Parliament takes a recess during the week preceding the municipal elections and the week between the two rounds. However, the first round took place on March 15. The assemblies therefore ceased their work on March 9 and planned to resume this after the second round, scheduled for March 22. The situation no longer allowed them to adhere to this schedule, especially as a law was needed to postpone the second round, since the development of the epidemic made voting untenable on March 22. It was therefore necessary to recall the members of parliament and modify the provisional calendar for the session to cope with Covid-19. The paradoxical situation was further reinforced by the fact that the National Assembly had itself become an epidemic cluster: on March 5, two cases were recorded among staff and MPs; on March 9, seven cases; on March 12, sixteen cases; and on March 16, twenty-six cases⁷.

But although actors in parliament, parliamentarians and assembly officials, were affected physically by the coronavirus, the parliamentary institution was also affected: as in other parliamentary democracies or in certain war situations in the past, the following consequences occurred⁸, and there was a relative dormancy of assemblies as well as the prevalence of government decisions to deal with the urgency of the situation. In a way, one wonders whether Covid-19 has not exacerbated a deep-rooted tendency of the Fifth Republic by accentuating its features that are least favourable to Parliament.

⁶ Law n°2020-290 March 23, 2020 emergency response to the Covid epidemic-19 (22 articles).

⁷ See the press releases from the Presidency of the National Assembly of March 5, 9, 12 and 16 .

⁸ See the first part of: Daugeron B., « [Le contrôle parlementaire de la guerre](#) », *Jus Politicum*, n°15.

Although the assemblies managed to avoid a deep coma, they only managed to maintain a light state of breathing and after making considerable sacrifices. Moreover, this breathless murmur seems to have been quite artificial if we focus our attention on parliamentary oversight.

I. Maintaining a breath of life

Although the French Parliament was able to maintain a modest amount of legislative activity during the first months of the Covid-19 pandemic, this was so weak and so strictly framed by new constraints that, under such conditions, one can legitimately question the reality of parliamentary power.

A. A barely audible murmur

It cannot be said that legislative activity of the French Parliament during the pandemic was inexistent. First of all, it was necessary to vote in the law instituting the state of health emergency⁹ then renew its application in view of the duration of the pandemic¹⁰. But it was also necessary to implement, economic and social measures to support companies and employees during the lockdown and then do the same in view of ending lockdown. Two Amending Finance Acts¹¹ and a law supplementing the mechanism¹² provide for this. Finally, it was necessary to adapt the deadlines regarding certain jurisdictional or electoral procedures; for the former, this was the purpose of the organic law of March 30¹³ and for the latter of the law dated June 22¹⁴ bearing in mind that the postponement of the second round of the municipal elections was covered by the law of March 23 and by the decree of March 17¹⁵. The entire legislative process concerning these laws, from tabling to adoption, was conducted during the Covid-19 pandemic.

However, if we look at the legislative output of the French Parliament during the period from March 15 to June 30, 2020, we see that it has also concluded that¹⁶ the procedure concerning three other laws whose object was totally distinct from the pandemic: a law on support for families who have experienced the tragedy of the death of a child¹⁷, another regarding information on agricultural

⁹ Law n°2020-290.

¹⁰ Law n°2020-546 May 11, 2020 extending the state of health emergency and supplementing its provisions (13 articles).

¹¹ Law n°2020-289 March 23, 2020 of amending finance acts for 2020 (7 articles) and Law n° 2020-473 April 25, 2020 of amending finance acts for 2020 (27 articles).

¹² Law n°2020-734, June 17, 2020 regarding various measures linked to the health crisis, to other urgent measures as well as the UK's withdrawal from the EU (61 articles).

¹³ Organic Law n°2020-365 March 30, 2020 emergency response to the Covid-19 epidemic (1 article).

¹⁴ Law n°2020-760 June 22, 2020 to secure the organisation of the second round of municipal and community elections in June 2020 and to postpone the consular elections (19 articles).

¹⁵ Decree. n°2020-267 March 17, 2020.

¹⁶ Other bills or proposals for legislation were also discussed in the assemblies during this period, but they did not result in a standard.

¹⁷ Law n°2020-692 June 8, 2020 aimed at improving workers' rights and support for families after the death of a child (9 articles).

and food products¹⁸ and finally a law targeting hate content on the internet¹⁹.

With this, the French Parliament seems to have maintained normal legislative activity both qualitatively, since the subject matter of the laws passed did not only concern Covid-19, but also quantitatively, since from March 15 to June 30, 2020 there were ten laws passed by Parliament. Over the same period, in 2019, Parliament passed fifteen laws (but six of them enabled the ratification of treaties) and seventeen laws in 2018 (seven of which enabled the ratification of treaties).

An interesting peculiarity of the legislative procedures adopted during the Covid-19 pandemic was the easy agreement reached between the two chambers even though they had different majorities. To fight the pandemic, national unity was called for and a consensus was formed despite political differences. This consensus was observed at two levels. Firstly, at the adoption stage: the laws whose procedure was fully followed during the pandemic were adopted either on first reading, or on second reading (two laws²⁰), either after agreement in a Joint Committee (five laws²¹); none gave rise to a vote on final reading²². Moreover, this consensus can be seen in the pattern of votes cast: of the ten laws adopted during this period, seven were the subject of such a consensus (37 votes against at most); only the laws extending the health emergency (167 votes against in the National Assembly), completing the mechanism related to the health crisis (174 votes against in the National Assembly) and combating hate content on the Internet (150 votes against in the National Assembly) were challenged. In the Senate, the only law that was the subject of a public ballot showing opposition was the law extending the health emergency, with 87 votes against (252 in favour) in reading after the CMP.

In addition, these laws were passed by adapting the voting procedure to respect the very strict limit on the number of members of parliament allowed in hemicycles. In fact, on March 17, the National Assembly decided to restrict the presence of MPs to three MPs per group (including the president) and it was not until April 27 that 75 MPs, chosen according to the proportionality of the groups, were admitted to the hemicycle, then 150 from May 11, 151 from 27 May and it was only from June 22 that all the MPs, wearing masks, were able to be present²³. In the Senate it was decided to limit the presence in the Chamber to 18 Senators (three for the largest groups, two for the others) as of March 24, before opening, as of April 20, to 48 Senators, chosen according to the proportional representation of the groups, plus their chairmen and the chairman of the sitting, then to 77 Senators plus the chairmen of the groups as of June 2, and finally to raise the level to half of

¹⁸ Law n°2020-699 June 10, 2020 on transparency of information on agricultural and food products (12 articles).

¹⁹ Law n°2020-766 June 24, 2020 on the fight to counter hate content on the internet (19 articles).

²⁰ Law. n°2020-289 and the Organic Law n°2020-365.

²¹ Laws n°2020-290, 2020-473, 2020-546, 2020-734 and 2020-760.

²² Only the Law on Hate Content on the Internet (2020-766) was adopted on final reading but its procedure was not fully conducted during the pandemic. The other two Laws in this case were adopted in reading after the CMP. (n° 2020-692 et 2020-699).

²³ This limitation on the number of members of parliament who may participate physically in the work of the assemblies was decided by the Conferences of Speakers of the Assemblies, see the Conclusions of March 17, April 27, May 5 and 26 and June 16. However, its applicability to members of parliament was essentially a matter of political consensus. Indeed, the Constitutional Council maintained that the freedom of members of parliament in the exercise of their mandate should enable them to participate in the work of the assemblies to which they belonged, suggesting that if members of parliament had been genuinely prevented from carrying out their duties by this restriction on the number of participants, the legislative procedure would have been flawed (Constitutional Council, 2020-800 DC, May 11, 2020, § 6).

the Chamber, i.e. 189, as of June 22. However, the Constitution requires personal voting and allows only one delegation per member of parliament (Art. 27). It was thus agreed that each group chairman would carry the votes of his or her group, of which he or she would be able to express the nuances (all members would therefore not have to vote in the same way). Moreover, each member of parliament could transmit to the services the exact meaning of his vote, even after it had taken place²⁴. It is therefore by interpreting the possibilities for delegating the vote²⁵ that the fiction of a Parliament at work during the pandemic has been maintained despite the lockdown and control over the number of members of parliament. But the reality is more complex.

B. An almost inanimate Parliament

Whatever the importance of the texts voted during this period, they are fairly short laws. In total, the ten laws voted during this period comprise 190 articles. Admittedly, during the same period, the ten laws voted in 2018 (excluding laws authorising the ratification of treaties) only contain 173 articles; but in 2019, the nine laws voted contain 372 articles.

Moreover, these laws organise the temporary dispossession of Parliament, through the quasi-systematic delegation of the legislative power they operate. Between March 15 and June 30, 2020, 62 [decrees](#) were signed by the President of the Republic²⁶. The law of March 23 alone, to deal with the Covid-19 epidemic, empowers the government to act by means of decrees under article 38 of the Constitution.

Although the condition of the emergency justifying the use of decrees has evidently been met²⁷, this constitutes almost generalised empowerment in all areas of administrative activity. Admittedly, the jurisprudence of the Constitutional Council only requires the Government to indicate precisely to Parliament the purpose of the measures envisaged and authorises empowerment only for a limited period of time²⁸, with all conditions fulfilled here. However, generalised empowerment such as this in a number of matters falling within the competence of the legislator raises questions as to the very usefulness of Parliament. To paraphrase André Chandernagor, “what is the point of having a parliament if it delegates its entire legislative power to the government²⁹?”

Moreover, in cases where it has retained its legislative power, the procedures have been speeded up to the extreme. With regard to the seven laws for which the entire procedure took place during the pandemic period, discussion and voting was particularly rapid. On average, it took only 12 days to pass a law after it had been considered by both chambers, when on average 149 days are needed to

²⁴ See the Summary of the Conclusions of the Conference of Presidents of the National Assembly of March 18, 2020.

²⁵ What the Constitutional Council had already admitted, 2010-624 DC, January 20, 2011, § 9.

²⁶ This figure includes only *ordonnances* related to the management of the epidemic; over the period, there were 11 other *ordonnances* signed by the President.

²⁷ Constitutional Council, 99-421 DC, December 16, 1999, § 13.

²⁸ Constitutional Council, 86-207 DC, June 26, 1986, § 13.

²⁹ Chandernagor André, *Un Parlement pour quoi faire ?*, Gallimard, coll. Idées, 1967.

pass a law³⁰. This average is also misleading since the last two laws adopted were so after a much longer period of time (twenty-two days for law n°2020-760; thirty-five days for law n°2020-734). The first five laws voted in during this pandemic period were thus adopted in less than 6 days, on average. The rectifying finance bill n°2758 was tabled on March 18 in the National Assembly; it was discussed and voted on March 19 and the Senate discussed and voted on March 20. Even the organic law did not withstand this dictatorship of urgency. The Constitution does, however, provide for a fifteen-day time reserve between the tabling of a draft organic law and its examination in public session in the first assembly to which it is referred, thus allowing members of parliament to reflect on a sensitive subject. Despite this, the organic law of March 30, 2020 was adopted in only four days. The Constitutional Council, obligatorily notified of such a law, considered that "*in view of the particular circumstances of the case, there is no reason to judge that this organic law was adopted in violation of the rules of procedure provided for in Article 46 of the Constitution.*"³¹

Although the situation obviously required the urgent adoption of laws, in the end it led to the parliamentary debate being reduced to almost nothing, both in terms of its duration and the number of deputies who could take part in it³². Parliament was therefore virtually at a standstill from the point of view of its legislative function. But the procedural conditions imposed on Parliament were not the only cause: the broad consensus among members of parliament to give the Government the means to act quickly to combat the invisible enemy represented by the virus also contributed to this. That is why the parliament's oversight function of government action was hardly more valiant than that of the government.

II. Parliamentary oversight on life support

Since parliamentary oversight does not necessarily require the physical presence of members of parliament, as evidenced by the written question procedure, one might have thought that Covid-19 would have little impact on this essential mission of parliament. The reality was quite different. The means of oversight were adapted, but the way in which they ultimately functioned revealed the artificiality that they proved to be, whether in terms of questions or monitoring missions.

A. Parliamentary questions in artificial survival mode

En In France, the combined logic of rationalised parliamentarianism, majority rule and the "monarchical leanings", which lead to any criticism from within the presidential majority being considered a *lèse-majesté* crime, have not allowed parliamentary oversight to develop to the extent

³⁰Bartolone Claude, and Winock Michel, [Refaire la démocratie](#), Report n°3100, 2012, p.90.

³¹ Constitutional Council, 2020-799 DC, March 26, 2020, § 3. On this decision, cf. Jean-Philippe Derosier, "Identification d'un mouvement jurisprudentiel de crise sanitaire. Chronique de droits fondamentaux et libertés publiques (January 2020 - June 2020)", Title VII [online], to be published in October 2020, No. 5.

³² Elina Lemaire sees this as a negation of parliamentary deliberation: « [Une assemblée parlementaire peut-elle fonctionner en comité restreint ?](#) », *Jus Politicum Blog*, April 2, 2020.

that it has in other parliamentary democracies. Oversight mechanisms, which are constantly being renewed in an attempt to improve their effectiveness, often fail because of the behaviour of the members of parliament themselves. As MP Paul Lambin wrote as early as 1939: "[Parliament] *can do much, it can do everything. But it must be willing to do so.*"³³ This feature, typical of the Fifth Republic, was compounded tenfold during the Covid-19 pandemic, as seen in the case of questions to the Government, but less so in the case of written questions, for which the statistics show no decrease, which is quite logical.

The former are undoubtedly the highlight of the parliamentary week, although it is often more of a spectacle than a substantive review. Imposed by the Constitution to take place once a week (Article 48, § 5), it is one of the rare moments in parliamentary activity that attracts the media's attention. But they require the presence of the members of parliament to ask questions and the presence of ministers to answer them. As of March 17, the National Assembly decided to limit the number of questions, which in turn would enable the limitation of the number of ministers present to provide answers. Communicated the evening before, the questions were quantitatively limited to two questions per group and one for the non-attached members. Thus, at the sitting of March 19, seventeen questions were asked, compared with the usual 30, and only eight ministers were present. From March 30 onwards, this arrangement was changed in favour of four questions for the two largest groups and two for each of the other eight groups. On this date, the Senate also undertook to reduce the time allocated for topical questions to the Government: 40 minutes per week (two questions for the three largest groups, one for each of the other groups).

The initial adjustments should have ensured the upkeep of the essential role of these question sessions. However, the National Assembly then decided that as of March 31, only one deputy per group would be present ask questions on behalf of the members of the group of the few ministers present who were concerned by the subject matter of the questions in hand³⁴. This solution was a parody of parliamentary control. However, this situation lasted for almost a month, since it was not until April 20, that the authors of the questions to the Government were able to return to the Assembly to ask their questions themselves. The deserted hemicycle shows the extent to which questions to the Government were on artificial life support; they were no longer the high point of French parliamentary democracy; they were no longer the moment of connection between members of parliament and citizens.

B. Lifeless fact-finding missions

³³ Wording contained in Motion for Resolution No. 5948 of June 23, 1939 tabled in the Chamber of Deputies. Wording taken by him in 1972, this time in relation to the Parliament of the Fifth Republic. Quoted by Lambin P., *Pour une réforme profonde du Parlement et une démocratie réelle, La pensée universelle*, 1972, p. 96.

³⁴ Moreover, it is not certain that this arrangement could have been adopted in the rules of procedure of the National Assembly, since the Constitutional Council has repeatedly pointed out that the principle of governmental solidarity did not allow the presence of ministers to be limited to those whose portfolios were concerned with the issues (Constitutional Council, 2014-705 DC, December 11, 2014, § 13)

The assemblies quickly decided to review the management and consequences of the Covid-19 crisis by means other than questions. As early as March 17, the Conference of Presidents of the National Assembly decided to set up a fact-finding mission, giving priority to a general and cross-cutting mandate in which the various parliamentary groups and committees would be represented. The President of the National Assembly, Richard Ferrand, was appointed chairman and general rapporteur. The Prime Minister and the Minister of Health were heard on April 1, and then, in the following weeks, other members of the Government or, for example, the Director General of Health or the Chairman of the Scientific Council.

Praiseworthy in principle, the modalities of this oversight show their shortcomings and demonstrate that it had no other objective than to prevent the Government and the majority from getting into difficulties, as was the case in 2018 in the *Benalla case*.³⁵ On the one hand, entrusting the President of the National Assembly, an eminent member of the majority, with the task of reporting on the work of this mission does not guarantee precise and uncompromising oversight of the Government's action. On the other hand, the National Assembly fell far short of what it had implemented when the state of emergency was declared following the terrorist attacks of 2015. Indeed, at the time, the Assembly's Laws Committee had given itself the powers of a committee of enquiry³⁶, which provided it with much greater investigative capacity. However, it was not until 3 June that the fact-finding team was given these powers and that, at the same time, the duties of rapporteur were entrusted to Eric Ciotti, an opposition MP.

Finally, the hearings were, initially at least, organised by videoconference: the person auditioned was physically present alongside the Chairman and the mission's rapporteur, but the other members participated only by means of screens, having to cut off the microphone and camera after they had spoken. Once again, this was only a mockery of oversight because being heard by 30 or 40 members of parliament who were physically present, and surrounding the person being heard produced a form of "pressure" on the latter and made his or her hearing less comfortable for him or her. Moreover, it is easier for members of parliament to respond to what is said, as it is well known that speaking in a videoconference is much more problematic. In short, the conditions of these hearings could not provide the interaction necessary for rigorous scrutiny³⁷.

The Senate adopted a different organisation to oversee the measures taken to combat the epidemic. The various standing committees have set up monitoring missions and held the necessary hearings. Consequently, if the modalities of the hearings are similar to those of the National Assembly, this sectorised control by committee made it more in-depth, more specialised, and therefore slightly more effective, especially since the Senate is in opposition to the Government. Then, on 30 June, the Senate decided to set up a committee of enquiry to assess France's state of preparedness on the eve of the outbreak of the epidemic, the management of the health crisis by

³⁵ The Committee of Inquiry in the National Assembly was unable to conclude its work due to a deep disagreement between the majority and the opposition.

³⁶ Meeting of the Laws Committee of the National Assembly, December 2, 2015.

³⁷ On April 23, Eric Coquerel, a far-left-wing MP, questioned Jérôme Salomon, director general of health, from his car while driving. The Huffington Post then wrote: "[Will the parliamentarians debate from their camper vans in July?](#) ».

political and administrative leaders and the choices made by France compared to those of other European States.

The French Parliament's state of health during the health crisis was therefore quite alarming. It was especially so because the rules adapted to operate had fragile legal bases (decisions of the President or the Conference of Presidents). One might even wonder whether the condition for the interruption of the regular functioning of the public authorities, necessary for the activation of Article 16 of the Constitution, was not met, which could have provided other, perhaps better, guarantees, such as the systematic consultation of the Constitutional Council. It was because members of parliament were unanimous that the assemblies were able to function in this way. As Sylvain Waserman, Chairman of the National Assembly's working group responsible for anticipating how parliamentary work would function in times of (future) crises, points out: "[It is important to ask ourselves what would have happened in the absence of unanimity](#)". Consideration is therefore being given to anticipating new crisis situations and how to respond to them, which should undoubtedly lead to a more satisfactory functioning of the Parliament than has been the case to date.

However, from now on the French assemblies could "compensate" for this apathy by breathing new life into parliamentary work. To do so, they would have to examine and vote in a serious manner on the bills for the ratification of the decrees taken concerning its empowerment during the crisis; it would also be necessary for the Senate's committee of enquiry and the Assembly's information mission to carry out a review, albeit in reverse, but precise control of the action of the Government and the administrative authorities before and during this crisis. At a time when fears of a resurgence of the epidemic are growing, the very survival of the French Parliament is at stake. Therefore, democracy is at stake³⁸.

³⁸ The English version of this essay has not been already reviewed by the authors.