

# Correcting Wrongful Convictions in France

## Has the Act of 2014 Opened the Door to Revision?

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### Abstract

The French 'Code de procédure pénale' provides the possibility to revise final criminal convictions. The Act of 2014 reformed the procedure for revision and introduced some important novelties. The first is that it reduced the different possible grounds for revision to one ground, which it intended to broaden. The remaining ground for revision is the existence of a new fact or an element unknown to the court at the time of the initial proceedings, of such a nature as to establish the convicted person's innocence or to give rise to doubt about his guilt. The legislature intended judges to no longer require 'serious doubt'. However, experts question whether judges will comply with this intention of the legislature. The second is the introduction of the possibility for the applicant to ask the public prosecutor to carry out the investigative measures that seem necessary to bring to light a new fact or an unknown element before filing a request for revision. The third is that the Act of 2014 created the 'Cour de révision et de réexamen', which is composed of eighteen judges of the different chambers of the 'Cour de cassation'. This 'Cour de révision et de réexamen' is divided into a 'commission d'instruction', which acts as a filter and examines the admissibility of the requests for revision, and a 'formation de jugement', which decides on the substance of the requests. Practice will have to show whether these novelties indeed improved the accessibility of the revision procedure.

**Keywords:** Final criminal conviction, revision procedure, grounds for revision, preparatory investigative measures, Cour de révision et de réexamen

## 1 Introduction

Like many states, France has been confronted with notorious cases in which the wrong person was convicted. The best known example is probably the case of Alfred Dreyfus, an officer who was wrongly convicted for treason and banned to Devil's Island. This conviction incited Émile Zola to publish his famous letter 'J'accuse' in the newspaper *L'Aurore* in 1898. In this letter, he accused many high-ranking officials of manipu-

lating the investigation and of trying to cover it up. Eventually, a new investigation was conducted and exposed the malpractices. After many years, Dreyfus was exonerated.

This and other cases demonstrate the importance of providing a possibility to re-examine final criminal convictions if there are strong indications that the conviction is erroneous. The French 'Code de procédure pénale' (Code of Criminal Procedure, hereinafter: CPP) provides for such a possibility in Article 622 *et seq.*<sup>1</sup> The procedure was fundamentally reformed in 2014, after the finding that the previous reform of 1989 had not achieved all its objectives, because few requests for revision were successful and had led to a new decision on the merits.<sup>2</sup> Both in the 'Assemblée nationale' and in the 'Sénat', there was broad support for the reform in 2014, resulting in the unanimous adoption of the (amended) legislative proposal.<sup>3</sup> Among other things, Act no 2014-640 of 20 June 2014<sup>4</sup> changed the grounds on which a request for revision could be based and defined more clearly the tasks of the different bodies considering the request (see *infra*).

At the same time, a proposal to provide the possibility to revise a final acquittal was on the table,<sup>5</sup> after new DNA evidence had turned up in a highly publicised murder case, creating a strong suspicion among the public that

1. There is a separate revision procedure for convictions for offending public decency by means of a book (Loi n° 46-2064 du 25 septembre 1946 ouvrant un recours en révision contre les condamnations prononcées pour outrages aux bonnes mœurs commis par la voie du livre). This specific revision procedure will not be discussed in this article.
2. Rapport d'information n° 1598 enregistré le 4 décembre 2013 sur la révision des condamnations pénales par MM. Alain Tourret et Georges Fenech, *Assemblée nationale* 2013-14, XIVe législature, at 15 (hereinafter: Rapport d'information n° 1598); Compte rendu intégral de la première séance du 27 février 2014, *Assemblée nationale* 2013-14, XIve législature, [www.assemblee-nationale.fr/14/cri/2013-2014/20140184.asp#P208536](http://www.assemblee-nationale.fr/14/cri/2013-2014/20140184.asp#P208536) (hereinafter: *Assemblée nationale* 27 février 2014); F. Fournié, 'Réviser la révision', 27 *La Semaine Juridique* 1326, at 1326 (2014) (hereinafter: Fournié); C. Ribeyre, 'La réforme des procédures de révision et de réexamen ou comment mieux corriger l'erreur judiciaire', 10 *Droit pénal étude* 17, at n. 1 (2014) (hereinafter: Ribeyre).
3. *Assemblée nationale* 27 février 2014, above n. 2; Compte rendu intégral de la deuxième séance du 11 juin 2014, *Assemblée nationale* 2013-14, XIVe législature, [www.assemblee-nationale.fr/14/cri/2013-2014/20140231.asp#P248399](http://www.assemblee-nationale.fr/14/cri/2013-2014/20140231.asp#P248399); Ribeyre, above n. 2, at n. 1.
4. Loi n° 2014-640 du 20 juin 2014 relative à la réforme des procédures de révision et de réexamen d'une condamnation pénale définitive.
5. In the form of an amendment to the legislative proposal that served as basis for the Act of 2014. Amendment n° 5 de 24 février 2014, *Assemblée nationale* 2013-14, XIVe législature, [www.assemblee-nationale.fr/14/amendements/1807/AN/5.asp](http://www.assemblee-nationale.fr/14/amendements/1807/AN/5.asp) (hereinafter: Amendment n° 5).

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the final acquittal of the main suspect was erroneous.<sup>6</sup> However, this proposal for a revision *in defavorem*<sup>7</sup> was not accepted.<sup>8</sup>

The aim of this article is twofold. First, it wishes to describe the revision procedure as it is in the books. Second, it intends to look at some aspects of the revision procedure in action. We will therefore first provide an overview of the legal framework of the revision procedure, highlighting some of the novelties introduced by the Act of 2014. We will then look at the revision procedure in practice, to answer the question whether, according to the initial findings, the reform of 2014 lives up to the expectations raised by the legislature.

## 2 Legal Framework of the Revision Procedure

### 2.1 The Start of the Revision Procedure

#### 2.1.1 Possible Applicants

In France, there are three categories of criminal offences. The first category, consisting of the most serious offences, is called ‘crime’ (felony, crime). The second is called ‘délit’ (ordinary offence, misdemeanour), and the third, comprising the least serious offences, is called ‘contravention’ (contravention) (Art. 111-1 Code pénal). Not all criminal decisions are eligible for revision. Only decisions in which someone is found guilty of one (or both) of the two more serious categories of offences (‘crime’ or ‘délit’) can be revised (Art. 622 CPP).<sup>9</sup> A simple finding of guilt is sufficient, so the imposition of a penalty is not required.<sup>10</sup> Moreover, the

6. Amendement n° 5, above n. 5; Assemblée nationale 27 février 2014, above n. 2 (intervention of Mr Georges Fenech); L. Colcombet, ‘Meurtre de Nelly Haderer: le dernier espoir de connaître la vérité’, *Le Parisien* (6 December 2017), [www.leparisien.fr/faits-divers/meurtre-de-nelly-haderer-le-dernier-espoir-de-connaître-la-verité-06-12-2017-7437354.php](http://www.leparisien.fr/faits-divers/meurtre-de-nelly-haderer-le-dernier-espoir-de-connaître-la-verité-06-12-2017-7437354.php); M. Gay, ‘Affaire Haderer: La vérité judiciaire à l’épreuve de la science’, *Info du Jour* (13 October 2017) [infodujour.fr/societe/justice/10193-affaire-haderer-la-verite-judiciaire-a-lepreuve-de-la-science](http://infodujour.fr/societe/justice/10193-affaire-haderer-la-verite-judiciaire-a-lepreuve-de-la-science).
7. However, Art. 6 para. 2 CPP already allows in an exceptional circumstance criminal proceedings to resume after they were discontinued owing to, for example, the death of the defendant, prescription or amnesty: when the falsity of that decision on the discontinuance of the proceedings has been established. An example given in this context is that of a defendant pretending to be deceased to escape criminal prosecution (D. Caron, ‘Art. 6 – Fasc. 10: Action publique – Extinction – Décès, amnistie et autres causes’, in X., *JurisClasseur Procédure pénale* (2020) loose-leaf, at n. 72).
8. E. Daures, ‘Révision’, in M. Aydalot (ed.), *Répertoire de droit pénal et de procédure pénale* (2015) loose-leaf, at n. 11 (hereinafter: Daures); S. Guinchard and J. Buisson, *Procédure pénale* (2018), at 1352 (hereinafter: Guinchard and Buisson).
9. Rapport d’information n° 1598, above n. 2, at 20-21; F. Desportes and L. Lazerges-Cousquer, *Traité de Procédure Pénale* (2016), at 2308-2309 (hereinafter: Desportes a.o.); Fournié, above n. 2, at 1327; Guinchard and Buisson, above n. 8, at 1353-1354; Ribeyre, above n. 2, at n. 2; F. Saint-Pierre, *Pratique de défense pénale. Droit, histoire, stratégie* (2018), at 660 (hereinafter: Saint-Pierre).
10. Rapport d’information n° 1598, above n. 2, at 20-21; C. Ambroise-Castérot, J.-F. Renucci, J.-P. Céré & M. Léna, *Code de Procédure Pénale Annoté* (2018), at 983 (hereinafter: Ambroise-Castérot a.o.); Daures,

revision procedure concerns only criminal decisions that are final.<sup>11</sup> No other remedies may be available to challenge the criminal decision. Either the ordinary remedies have been exhausted or the term in which they can be exercised has expired.<sup>12</sup>

The convicted person can file a request for revision. In the event of incapacity, his legal representative can file the request for him. When the convicted person is deceased or declared missing, a request for revision can be filed by his spouse, partner in a civil union, cohabitee, parents, children, grand- or great-grandchildren, his universal legatee or part universal legatee (Art. 622-2 CPP).

The possibility for revision does not only serve the private interests of the convicted person. Correcting wrongful convictions is also in the public interest, as it restores people’s confidence in the justice system.<sup>13</sup> Therefore, revision can also be requested by the Minister for Justice, the attorney general at the ‘Cour de cassation’ (Supreme Court) and the attorneys general at the courts of appeal (Art. 622-2 CPP).

#### 2.1.2 The Grounds for Revision

##### 2.1.2.1 New Fact or Unknown Element Establishing Innocence or Giving Rise to Doubt

Since the Act of 2014, there is only one ground for revision left, unlike before, when there were four grounds (former Art. 622 CPP):

1. after a conviction for homicide, sufficient indications are presented that the alleged victim is still alive;
2. after a conviction, there is a new conviction finding another defendant guilty of the same fact, both convictions being irreconcilable, so that one of the convicted persons has to be innocent;
3. after a conviction, a witness that was heard is convicted for false testimony concerning the defendant;
4. after a conviction, a new fact or an element unknown to the court at the time of the proceedings comes to the surface and is of such a nature as to cast doubt on the convicted person’s guilt.

When preparing the Act of 2014, the legislature decided that the first three grounds were already included in the fourth ground, and that there was therefore no need to maintain the first three.<sup>14</sup> Since the Act of 2014, the

above n. 8, at n. 11 and 15; Ribeyre, above n. 2, at n. 2; Saint-Pierre, above n. 9, at 660.

11. Daures, above n. 8, at n. 19-22; Desportes a.o., above n. 9, at 2308; Fournié, above n. 2, at 1327; Guinchard and Buisson, above n. 8, at 1353; Saint-Pierre, above n. 9, at 660.
12. Rapport d’information n° 1598, above n. 2, at 20; Daures, above n. 8, at n. 20.  
Example of a case in which the term for exercising the ordinary remedies had not expired because it had not started yet: CRR 18 June 2015, ECLI:FR:CCASS:2015:C1E1043.
13. Assemblée nationale 27 février 2014, above n. 2; Fournié, above n. 2, at 1328.
14. Rapport n° 467 enregistré le 16 avril 2014 sur la proposition de loi, adoptée par l’Assemblée nationale, relative à la réforme des procédures de révision et de réexamen d’une condamnation pénale définitive par M. Nicolas Alfonsi, *Sénat* 2013-14, at 5, 21 and 40 (hereinafter: Rapport n° 467); Compte rendu intégral des débats de la séance du 29 avril

only ground<sup>15</sup> for revision is therefore the existence of a new fact or an element unknown to the court at the time of the initial proceedings, of such a nature as to establish the convicted person's innocence or to give rise to doubt about his guilt (Art. 622 CPP).<sup>16</sup> The newly presented element may not have been known by the court at the time of the initial proceedings. By contrast, it is no obstacle to revision if the convicted person already knew about the element.<sup>17</sup>

Not only did the legislature want to simplify the grounds for revision, but it also wanted to make the revision procedure more accessible on a substantive level. It therefore intended the scope of the remaining ground for revision to be broader. The 'Assemblée nationale' found that judges tended to interpret the former fourth ground for revision strictly. Although it was not stated as such in former Article 622 CPP, they gave a very narrow interpretation to the wording 'doubt', reading it as if 'serious doubt'<sup>18</sup> was required.<sup>19</sup>

The case law requiring serious doubt dates back to before the reform of 1989, when the legal provision spoke of facts or unknown pieces of such a nature as to establish the convicted person's innocence. It did not contain a reference to doubt. By stating that 'serious doubt' was sufficient, judges, in fact, mitigated the strict wording of the provision from before 1989.<sup>20</sup> However, in 1989, the legislature introduced in Article 622 CPP

the concept of doubt and deliberately did not qualify it. According to the 'Assemblée nationale', the legislature thus wanted to ensure that, in principle, the slightest doubt<sup>21</sup> could be sufficient to obtain a new examination of the merits of the case.<sup>22</sup> By still requiring serious doubt, judges did not comply with this intention of the legislature. Moreover, according to several experts, in some cases the requirement of serious doubt in fact required the applicant to establish his innocence by pointing out the real culprit or to establish that it was practically or legally impossible for him to commit the crime.<sup>23</sup> 'Simple' doubt, on the contrary, was not deemed sufficient to allow revision.<sup>24</sup>

The 'Assemblée nationale' criticised this case law for being too strict. It considered that, as is the case in the original procedure for the accused, doubt should benefit the convicted person and lead to a new examination of the merits of the case.<sup>25</sup> It thus wanted to urge judges to alter their case law by rephrasing the ground for revision. In order to make clear that, in principle, doubt in itself is sufficient for a request to be successful, it proposed to use the wording 'le moindre doute' (the slightest doubt) in the Act of 2014.

The 'Sénat', however, disagreed with this proposal for several reasons. First, the introduction of the concept 'serious doubt' was actually intended to allow judges to be more flexible at a time (before the reform in 1989) when the legal provision allowed revision only when the judge was convinced of the convicted person's innocence.<sup>26</sup> Second, judges' interpretation of the question of doubt varied according to whether or not it was possible to organise adversarial hearings, being more flexible when such hearings were still possible and more strict when the 'Cour de révision' decided in the last instance and could not refer the case.<sup>27</sup> Third, it was raised that it is artificial to qualify doubt; either there is doubt, or there is no doubt, but there are no levels in between. Adding the word 'moindre' (slightest) had no legal meaning and thus no added value.<sup>28</sup> Not qualifying the level of doubt leaves it to the judges to appreciate whether or not the new fact or unknown element calls into question the reasoning adopted in the original conviction and thus raises doubt.<sup>29</sup>

In order not to delay the adoption of the legislative proposal for the Act of 2014, the 'Assemblée nationale'

2014, *Sénat* 2013-14, [www.senat.fr/seances/s201404/s20140429/s20140429\\_mono.html#Niv1\\_SOM7](http://www.senat.fr/seances/s201404/s20140429/s20140429_mono.html#Niv1_SOM7) (intervention of Mr Nicolas Alfonsi) (hereinafter: Sénat 29 avril 2014); Daures, above n. 8, at n. 24; Desportes a.o., above n. 9, at 2310; Fournié, above n. 2, at 1327.

15. The rapport d'information n° 4302 of 2016 that evaluates the Act of 2014 proposes to add another ground for revision: the existence of a fundamental procedural irregularity affecting the reliability of evidence, for example confessions obtained by torture (Rapport d'information n° 4302 enregistré le 14 décembre 2016 sur l'évaluation de la loi n° 2014-640 du 20 juin 2014 relative à la réforme des procédures de révision et de réexamen d'une condamnation pénale définitive par MM. Georges Fenech et Alain Tourret, *Assemblée nationale* 2016, XIVe législature, at 18 and 33 (hereinafter: Rapport d'information n° 4302)). That proposal has not been implemented in the CPP thus far. A case that demonstrated the possible need for this ground for revision is CRR (Commission d'instruction) 16 March 2015, 13REV037.
16. Art. 622 CPP: 'La révision d'une décision pénale définitive peut être demandée au bénéfice de toute personne reconnue coupable d'un crime ou d'un délit lorsque, après une condamnation, vient à se produire un fait nouveau ou à se révéler un élément inconnu de la juridiction au jour du procès de nature à établir l'innocence du condamné ou à faire naître un doute sur sa culpabilité.'
17. Rapport d'information n° 1598, above n. 2, at 26; H. Angevin and M. Lafourcade, 'Art. 622 à 626-1 – Fasc. 20: Demandes en révision', in LexisNexis (ed.), *JurisClasseur Procédure pénale* (2018) loose-leaf, at n. 56 (hereinafter: Angevin a.o.).
18. In some cases the wording 'reasonable doubt' is used. However, the rapporteurs appointed by the 'Assemblée nationale' find that this 'reasonable doubt' in fact amounts to 'serious doubt' (Rapport d'information n° 1598, above n. 2, at 27-28).
19. Rapport d'information n° 1598, above n. 2, at 25-34; Proposition de loi n° 1700 relative à la réforme des procédures de révision et de réexamen d'une condamnation pénale définitive, *Assemblée nationale* 2013-14, XIVe législature, at 5 (hereinafter: Proposition de loi n° 1700); *Assemblée nationale* 27 février 2014, above n. 2; D. Goetz, 'La révision en matière pénale', Doctoral thesis at the Université de Strasbourg (2015), [www.theses.fr/2015STRAA036](http://www.theses.fr/2015STRAA036), at 101-102 and 234 (hereinafter: Goetz).
20. Rapport d'information n° 1598, above n. 2, at 24; Goetz, above n. 19, at 95.

21. Others argue that 'doubt' in the sense of former Art. 622 CPP requires a certain intensity and does not include all types of doubt. According to them, it concerns 'insurmountable and rational doubt', which corresponds with doubt that benefits the accused in the original procedure (*in dubio pro reo*). What counts is whether in a specific case doubt is rational, regardless of whether it is phrased as 'simple' or 'serious' doubt (Goetz, above n. 19, at 99-100).
22. Rapport d'information n° 1598, above n. 2, at 24 and 98.
23. *Ibid.*, at 28-30 and 98-99; Goetz, above n. 19, at 101-2.
24. Rapport d'information n° 1598, above n. 2, at 30-3 and 99.
25. *Ibid.*, at 34; Goetz, above n. 19, at 97-8.
26. Rapport n° 467, above n. 14, at 21 and 40.
27. *Ibid.*, at 21 and 41.
28. *Ibid.*; Sénat 29 avril 2014, above n. 14; Fournié, above n. 2, at 1327; Ribeyre, above n. 2, at n. 3.
29. Rapport n° 467, above n. 14, at 21; Sénat 29 avril 2014, above n. 14 (intervention of Mr Nicolas Alfonsi).

agreed to leave out the word ‘moindre’ in the text that was finally adopted. However, both in the parliamentary report and during the parliamentary debate, the ‘Assemblée nationale’ stressed its intention to urge judges to relax their interpretation and to no longer require ‘serious doubt’.<sup>30</sup> It expressed its confidence in the members of the newly composed ‘Cour de révision et de réexamen’ not to interpret the provision contrary to the intention of the legislature.<sup>31</sup>

Whether a fact or an element can be successfully invoked in a request for revision thus depends a lot on the facts of the case. A confession of the actual perpetrator, a new declaration of the victim or a witness, new DNA evidence ... can be considered a new fact or an unknown element<sup>32</sup> but will lead to a revision only if they cast doubt on the applicant’s guilt.<sup>33</sup> Sometimes that is quite clear, for example elements proving the hospitalisation of the convicted person at the time of the offence in a hospital that was far removed from the crime scene, or elements proving that the convicted person was completely paralysed at the time of the offence.<sup>34</sup> Sometimes, however, the question of doubt is less clear. For example, new testimonies of accomplices clearing the applicant can be considered a new fact, but if they are contradictory and implausible, they might not cast doubt on the applicant’s guilt and therefore not lead to a revision.<sup>35</sup>

### 2.1.2.2 Conviction by the European Court of Human Rights

In order to further simplify the procedure, the legislature decided to join together before the same court the revision procedure and the procedure of reopening a criminal conviction after the finding of a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights (Art. 622-1 CPP). Both procedures are alike in the sense that they can both lead to a new assessment of a case after a criminal conviction had already become final.<sup>36</sup> Yet, as the French legislature also acknowledges, they are also different: the revision

procedure concerns factual errors and the reopening procedure legal, procedural errors.<sup>37</sup> For this reason, the possibility to reopen a case after a conviction by the European Court of Human Rights will not be dealt with in this article.

#### 2.1.3 The Possibility to Seek Investigative Measures

Before filing a request for revision, the applicant<sup>38</sup> has the possibility to ask the public prosecutor to carry out the investigative measures that seem necessary to bring to light a new fact or an element that was unknown at the time of the initial proceedings (Art. 626 CPP).<sup>39</sup> To this end, he has to file a written and motivated request, in which he clearly indicates the investigative measures he wishes to see performed and, in case of a hearing, clarifies the identity of the person he wishes to be heard. The public prosecutor has to render a motivated decision on the request within two months from its reception. If he rejects the request, the applicant can appeal to the attorney general, who has to decide within a month.

This provision, introducing the possibility for the applicant to seek investigative measures before filing a request for revision, aims to make the revision procedure more accessible on a procedural level.<sup>40</sup> Convicted persons with inadequate resources to take on a lawyer and to carry out a private investigation or convicted persons who are not supported by the media do not need to wait for a new fact or an unknown element to pop up but can instigate an investigation into the existence of such a fact or element.<sup>41</sup> This should also prevent allegations of manipulation of evidence by the applicant or his lawyer.<sup>42</sup> An example given in this context is that of a lawyer meeting with a possible new witness, after which the testimony of the witness can be discredited by allegations of corruption.<sup>43</sup> Moreover, by establishing before a request for revision is filed that there is little indication for the existence of a new fact or an unknown element, this provision also aims to discourage requests for revision that have no prospect of success.<sup>44</sup>

## 2.2 Examination of the Request

### 2.2.1 Cour de révision et de réexamen

The applicant has to file a request for revision at the ‘Cour de révision et de réexamen’ (Court for revision and reopening, hereinafter: CRR) (Art. 623 CPP). This

30. Rapport n° 1957 enregistré le 21 mai 2014 sur la proposition de loi (n° 1900), modifiée par le Sénat, relative à la réforme des procédures de révision et de réexamen d’une condamnation pénale définitive par M. Alain Tourret, *Assemblée nationale* 2013-14, XIV<sup>e</sup> législature, at 19-20 and 27-8 (hereinafter: Rapport n° 1957); Fournié, above n. 2, at 1327; Goetz, above n. 19, at 234.

31. Rapport n° 1957, above n. 30, at 19-20 and 27-8.

32. Rapport d’information n° 1598, above n. 2, at 25; Ambroise-Castérot a.o., above n. 10, at 985-87; Daures, above n. 8, at n. 28, 33, 37, 42, 46 and 49-51; Desportes a.o., above n. 9, at 2311-2312.

33. For example CRR 25 October 2018, ECLI:FR:CCASS:2018:C1E1087, in which the new testimonies cast doubt on the convicted person’s guilt. An example of a case in which the revocation by the victim of its initial allegations was not sufficient to cast doubt on the convicted person’s guilt is CRR 18 June 2015, ECLI:FR:CCASS:2015:C1EV144.

34. Rapport d’information n° 1598, above n. 2, at 25; Ambroise-Castérot a.o., above n. 10, at 985; Daures, above n. 8, at n. 27 and 29; Desportes a.o., above n. 9, at 2312.

35. Ambroise-Castérot a.o., above n. 10, at 987; Daures, above n. 8, at n. 52.

36. Proposition de loi n° 1700, above n. 19, at 4; Desportes a.o., above n. 9, at 2322; Fournié, above n. 2, at 1326.

37. Assemblée nationale 27 février 2014, above n. 2; Rapport n° 467, above n. 14, at 20; Desportes a.o., above n. 9, at 2322; Fournié, above n. 2, at 1326; Ribeyre, above n. 2, at n. 6.

38. The convicted person or, in case of incapacity, his legal representative. If the convicted person is deceased or declared missing, his spouse, partner in a civil union, cohabitee, parents, children, grand- or great-grandchildren, his universal legatee or part universal legatee can request investigative measures before filing a request for revision (Art. 626 CPP).

39. Daures, above n. 8, at n. 74-75; Fournié, above n. 2, at 1329; Guinchard and Buisson, above n. 8, at 1354; Ribeyre, above n. 2, at n. 4.

40. Assemblée nationale 27 février 2014, above n. 2.

41. Rapport d’information n° 1598, above n. 2, at 86.

42. *Ibid.*, at 87; Saint-Pierre, above n. 9, at 666.

43. Rapport d’information n° 1598, above n. 2, at 87.

44. *Ibid.*

court is composed of eighteen judges of the ‘Cour de cassation’, including the president of the criminal chamber, who presides over the CRR. The other members are representatives of the different chambers of the ‘Cour de cassation’<sup>45</sup> and are appointed by its general assembly for three years, one time renewable.<sup>46</sup> Eighteen supplementary members are also appointed. Before the CRR, the attorney general’s office at the ‘Cour de cassation’ acts as prosecution service (Art. 623-1 CPP).<sup>47</sup> To ensure the impartiality of the CRR, judges and attorneys general that had been involved in the initial investigation or the initial decision(s) on the merits of the case that is now brought before the CRR have to abstain from the examination of the request for revision.<sup>48</sup> They may sit on neither division of the CRR nor act as member of the attorney general’s office in this case (Art. 623-1 CPP).

The CRR is divided in a ‘commission d’instruction’ (investigating commission) and a ‘formation de jugement’ (adjudicating formation) (Art. 623-1 CPP). The former is composed of five members of the CRR and serves as a filter, by examining the admissibility of the requests (see *infra*). The latter consists of the remaining thirteen members and decides on the substance of the requests for revision (see *infra*).

The composition of the CRR is one of the novelties of the Act of 2014. Before this Act, requests were filtered by a ‘commission de révision’, which was composed of five judges of the ‘Cour de cassation’ and was not part of the ‘Cour de révision’.<sup>49</sup> The latter, the ‘Cour de révision’, consisted solely of members of the criminal chamber of the ‘Cour de cassation’, and the number of judges examining requests was undetermined and varied from case to case.<sup>50</sup> Also, the division of tasks between the two bodies and their different roles were not very clearly defined.<sup>51</sup> This created an appearance of arbitrariness and prejudice.<sup>52</sup> To avoid these negative appearances, the legislature in the Act of 2014 laid down the composition of the new CRR and made sure all chambers of the ‘Cour de cassation’ are represented herein, to ensure more diverse perspectives on and a more neutral appreciation of the requests for revision.<sup>53</sup> It also delineated

more clearly the tasks of the ‘commission d’instruction’ and the ‘formation de jugement’.<sup>54</sup>

By involving only members of the judicial branch in the examination of (the admissibility of) a request for revision, the French legislature made a choice different from that of some of its surrounding states, such as Belgium and the Netherlands. Those states deemed it necessary to involve non-judges in the revision procedure (in an advisory role at the least) to avoid an appearance of prejudice (judges deciding on alleged errors of other judges) and to ensure that other, more scientific and technical expertise is available when assessing the existence of a new or unknown element. The French legislature, in contrast, decided to counter an appearance of prejudice by including judges working in different fields of law, not merely penalists, but did not include non-legal experts. The revision of a final criminal conviction harms legal certainty and the authority of *res iudicata* and should therefore be exceptional. For that reason, the French legislature deemed members of the most supreme court, the ‘Cour de cassation’, best placed to decide on requests for revision.<sup>55</sup> However, both the ‘commission d’instruction’ and the ‘formation de jugement’ have investigative powers, so they can appoint an expert when technical or scientific expertise is needed (see *infra*).

### 2.2.2 Commission d’instruction

Five members of the CRR are appointed for three years (one time renewable) to form the ‘commission d’instruction’, an investigating commission that filters the requests for revision by dismissing the ones that are inadmissible (Arts. 623-1 and 624 CPP). The president of the commission can dismiss requests that are manifestly inadmissible without further ado in a motivated decision.<sup>56</sup> If the request does not appear inadmissible at first sight, the commission proceeds with the examination of the request and can carry out investigative measures. After having received the (written or oral) comments of the applicant and his lawyer, the attorney general and, if he intervened, the civil party or his lawyer the last word, the commission decides on the admissibility in a motivated decision. If it deems the request admissible, it refers the case to the ‘formation de jugement’. There is no appeal possible against the decisions of the commission and its president on the request for revision (Art. 624 CPP).

When the applicant invokes a new fact or an unknown element, the commission has to verify whether it indeed exists and is new or was previously unknown to the court.<sup>57</sup> According to the ‘Sénat’ and the commission

45. The criminal chamber; the first, second and third civil chambers; the commercial, financial and economic chamber and the social chamber (Rapport n° 467, above n. 14, at 31).

46. Daures, above n. 8, at n. 77; Desportes a.o., above n. 9, at 2313; Fournié, above n. 2, at 1328; Guinchard and Buisson, above n. 8, at 129; Ribeyre, above n. 2, at n. 9.

47. Daures, above n. 8, at n. 80; Fournié, above n. 2, at 1328; Guinchard and Buisson, above n. 8, at 182.

48. Daures, above n. 8, at n. 81; Desportes a.o., above n. 9, at 2314; Fournié, above n. 2, at 1328; Ribeyre, above n. 2, at n. 9.

49. Rapport d’information n° 1598, above n. 2, at 35; Rapport n° 467, above n. 14, at 29.

50. Rapport d’information n° 1598, above n. 2, at 40; Rapport n° 467, above n. 14, at 30.

51. Rapport d’information n° 1598, above n. 2, at 38-9; Rapport n° 467, above n. 14, at 32.

52. Rapport d’information n° 1598, above n. 2, at 40; Rapport n° 467, above n. 14, at 30.

53. Rapport d’information n° 1598, above n. 2, at 62-6; Rapport n° 467, above n. 14, at 20 and 30-1; Rapport d’information n° 4302, above n. 15, at 9; Fournié, above n. 2, at 1328.

54. Rapport d’information n° 1598, above n. 2, at 67-70; Rapport n° 467, above n. 14, at 32-6; Fournié, above n. 2, at 1328-1329.

55. Rapport d’information n° 1598, above n. 2, at 62.

56. Daures, above n. 8, at n. 86; Desportes a.o., above n. 9, at 2314; Fournié, above n. 2, at 1329; Guinchard and Buisson, above n. 8, at 1355; Ribeyre, above n. 2, at n. 9; Saint-Pierre, above n. 9, at 664.

57. Rapport d’information n° 1598, above n. 2, at 68-9; Rapport n° 467, above n. 14, at 15; Daures, above n. 8, at n. 90; Fournié, above n. 2, at 1329.

itself, this also requires it to assess whether the fact or element is linked to the case at hand and to the question of guilt.<sup>58</sup> The commission may not, however, assess the impact of the invoked fact or element on the convicted person's guilt, since that would go beyond its task as a filter.<sup>59</sup> The latter assessment is for the 'formation de jugement' to carry out. When performing its task as a filter, the commission may also involve in the assessment facts and elements that were invoked in previous requests for revision.<sup>60</sup>

To fulfil its task, the commission has the same investigative powers as an investigating judge.<sup>61</sup> It can, for example, hear witnesses, appoint an expert, organise a reconstruction and seize assets.<sup>62</sup> It cannot, however, when there are strong indications that a third person is the actual perpetrator, hear this person and take him into custody (Art. 624 CPP).<sup>63</sup> If such suspicions towards a third person exist, the commission has to inform the public prosecutor's office, which will conduct the necessary investigations (Art. 624-2 CPP). The applicant<sup>64</sup> can ask the commission to carry out investigative measures by a written and motivated request (Art. 624-5 CPP).<sup>65</sup> The commission has to decide on this request within three months from its reception. There is no appeal possible against this decision of the commission.

Not only for the examination of the admissibility of the request, but also to enable revision in general, it is necessary that evidence is stored long enough.<sup>66</sup> In France, evidence can, in general,<sup>67</sup> be destroyed six months after the conviction (Art. 41-4 CPP).<sup>68</sup> This proved to be an impediment to the revision of criminal convictions. For that reason, the Act of 2014 introduces the obligation for the public prosecutor and the attorney general who intend to destroy confiscated goods or to transfer them

to the agency responsible for the administration of seized and confiscated assets to first give notice to the convicted person (Art. 41-6 CPP).<sup>69</sup> The convicted person then has two months to oppose this decision. If the public prosecutor or attorney general still wants to proceed with the destruction or transfer, the matter can be brought before the 'chambre d'instruction' (indictments chamber),<sup>70</sup> who decides within a month. Every five years, the public prosecutor or attorney general can reassess the need for a transfer or destruction. If he thinks them advisable, he will again have to notify the convicted person, in accordance with Article 41-6 CPP.<sup>71</sup> To limit the extra costs of the storage, this provision only applies to evidence in criminal cases, in which there is a final conviction rendered by a 'cour d'assises'.<sup>72, 73</sup>

### 2.2.3 Formation de jugement

The thirteen remaining members of the CRR form the 'formation de jugement', which is presided over by the president of the criminal chamber of the 'Cour de cassation' (Art. 623-1 CPP). The formation examines the substance of the request and decides whether or not to allow a revision. To ensure impartiality, the legislature wanted to maintain a strict separation between the function of investigating a request and that of judging one. It therefore assigned the latter function to the 'formation de jugement' and stipulated that members of the 'commission d'instruction' may not be part of the formation.<sup>74</sup>

The formation examines the substance of the request and holds a public hearing during which it receives the (written or oral) comments of the applicant and his lawyer, the attorney general and, if he intervened, the civil party or his lawyer (Art. 624-3 CPP). The president of the formation can also decide to hear every person that can contribute to the examination of the request. The applicant or his lawyer is the last to speak before closing the hearing.<sup>75</sup>

If the formation, however, finds that the case is not ready to be heard yet, it can, before organising the hearing, order an additional investigation.<sup>76</sup> That investigation is to be executed by one or more of its members, either directly or by rogatory commission. The formation has the same investigative powers as the 'commission d'instruction' (Art. 624-3 CPP) (see *supra*).

58. Rapport n° 467, above n. 14, at 33-4; Rapport d'information n° 4302, above n. 15, at 10.  
 59. Rapport n° 467, above n. 14, at 33; Rapport d'information n° 4302, above n. 15, at 10; Daures, above n. 8, at n. 90.  
 60. Angevin a.o., above n. 17, at 148 and 151.  
 61. Rapport n° 467, above n. 14, at 16.  
 62. *Ibid.*, at 22 and 34. As it did, for example, in CRR 25 October 2018, ECLI:FR:CCASS:2018:C1E1087.  
 63. Rapport n° 467, above n. 14, at 22 and 34-5; Daures, above n. 8, at n. 90; Desportes a.o., above n. 9, at 2314-2315; Fournié, above n. 2, at 1329.  
 64. Art. 624-4 CPP states that during the procedure, the applicant is represented by a lawyer. According to the CRR, this implies that the request for investigative measures on the basis of Art. 624-5 CPP has to be filed by the applicant's lawyer. If not, it is inadmissible. CRR 24 November 2014, ECLI:FR:CCASS:2014:C1EV155.  
 65. Rapport n° 467, above n. 14, at 16; Daures, above n. 8, at n. 90; Desportes a.o., above n. 9, at 2314; Fournié, above n. 2, at 1329; Guinchard and Buisson, above n. 8, at 1356; Ribeyre, above n. 2, at n. 9.  
 66. Rapport d'information n° 1598, above n. 2, at 81-6; S. Cormier, 'Le procès en révision avec la loi du 20 juin 2014', 9 *Cahiers Droit, Sciences & Technologies* 65, at n. 29 (2019) (hereinafter: Cormier); J. Danet, 'De la rumeur à la révision ou les leçons de l'erreur', *RSC* 601 (2013).  
 67. There are exceptions, for example five years for the recordings of a hearing of a minor that was the victim of one of the listed offences (Art. 706-52 CPP) and forty years for evidence on which an unknown DNA profile was found (Art. R.53-20 *jo.* Art. R.53-10 CPP). (Rapport d'information n° 1598, above n. 2, at 84.)  
 68. Rapport d'information n° 1598, above n. 2, at 83-5; Rapport n° 467, above n. 14, at 18 and 25-7.

69. Rapport d'information n° 1598, above n. 2, at 85-6; Daures, above n. 8, at n. 68; Fournié, above n. 2, at 1328; Ribeyre, above n. 2, at n. 8.  
 70. Or, since 2019, before its president (Art. 41-6 CPP).  
 71. Rapport d'information n° 1598, above n. 2, at 86; Fournié, above n. 2, at 1328.  
 72. A court that judges the most serious offences and is characterised by the involvement of a lay jury and the oral character of its proceedings (Art. 240 CPP).  
 73. Rapport d'information n° 1598, above n. 2, at 85-6.  
 74. *Ibid.*, at 67; Rapport n° 467, above n. 14, at 31; Daures, above n. 8, at n. 78; Fournié, above n. 2, at 1328; Ribeyre, above n. 2, at n. 9.  
 75. Desportes a.o., above n. 9, at 2316; Guinchard and Buisson, above n. 8, at 1357.  
 76. Daures, above n. 8, at n. 92; Desportes a.o., above n. 9, at 2316; Fournié, above n. 2, at 1329; Guinchard and Buisson, above n. 8, at 1357.

After the hearing, the formation renders a motivated<sup>77</sup> decision on the request for revision.<sup>78</sup> There is no appeal possible against this decision (Art. 624-3 CPP). The formation can decide that the request is unfounded and dismiss it. If it decides that the request is founded, it nullifies the original conviction (Art. 624-7 CPP). If it is still possible to organise adversarial hearings, the formation transfers the case to a court of the same order and degree as the one that rendered the nullified conviction but that is not that particular court (Art. 624-7 CPP). The assigned court will deliver a new decision on the merits of the case but cannot impose a more severe penalty than the initial one.<sup>79</sup> If, however, after the nullification it is clear that there is nothing left that can be classified as an offence, the formation does not transfer the case (Art. 624-7 CPP).<sup>80</sup>

Sometimes it is no longer possible to hold adversarial hearings, owing, for instance, to the death of the convicted person or the prescription of the criminal proceedings.<sup>81</sup> Then the formation does not transfer the case to another court either and delivers a new decision on the merits of the case itself (Art. 624-7 CPP).<sup>82</sup>

### 3 Practice and Challenges Concerning the Revision Procedure

#### 3.1 First Evaluations of the Act of 2014

The Act of 2014 aimed to make the revision procedure more accessible, both on a substantive and on a procedural level: on a substantive level by changing the wording of the ground for revision in an attempt to broaden its scope and on a procedural level by expanding the list of possible applicants, by giving applicants the possibility to ask for investigative measures before filing a request for revision, by delineating more clearly the task

of the ‘commission d’instruction’, *etc.* In general, the Act of 2014 could count on the approval of many experts.<sup>83</sup> However, they also identified several aspects that were still unclear or possibly problematic.

In 2015 a doctoral thesis was finished that included an analysis of the revision procedure of 2014.<sup>84</sup> It identifies several improvements, such as the enlargement of the list of possible applicants, the possibility to seek investigative measures before filing a request for revision and the clarification of the investigative powers of the ‘commission d’instruction’ and the ‘formation de jugement’.<sup>85</sup> However, although it indicates that it was too early to draw conclusions, it fears that the Act of 2014 cannot live up to the expectations the legislature raised.<sup>86</sup>

The author regrets that the new provision on the destruction or transfer of evidence, which requires the public prosecutor and the attorney general to first notify the convicted person, who can then oppose that decision (see *supra*), applies only to criminal cases.<sup>87</sup> Most requests for revision concern ‘délits’,<sup>88</sup> while to those cases, this provision does not apply, so the possible difficulties for revision caused by the destruction of evidence remain.<sup>89</sup> Moreover, a prolongation of the term in which evidence is stored is only useful and will only enhance people’s confidence in the justice system if the storage is done in the right circumstances (for example moisture-proof and secured), which requires the authorities to invest in the courthouses or other places used for storage.<sup>90</sup>

With the Act of 2014, the legislature wanted to clearly define the tasks of and differ between the ‘commission d’instruction’ and the ‘formation de jugement’. It wanted to ensure that the commission would only examine the admissibility of the request and would not assess the impact of the invoked fact or element on the question of guilt (see *supra*). The commission thus has to examine whether the fact is indeed new and the element was indeed unknown by the court at the time of the initial proceedings.<sup>91</sup> However, it also has to examine its solidity and relevance.<sup>92</sup> The boundary between examining the solidity and relevance, on the one hand, and assessing the impact on the convicted person’s guilt is not that clear-cut and might tempt the commission to have a look at the implications of the invoked fact or element already, as was the case under the former revision procedure.<sup>93</sup>

77. In the rapport d’information n° 4302, it is raised that, although in practice all decisions of the CRR rendered since the Act of 2014 were motivated, Art. 624-7 CPP does not contain a formal obligation for the CRR to motivate its decisions, whether it finds the request founded or unfounded. Since adding a motivation serves the rights of the applicant, the report thus proposes to introduce a provision in Art. 624-7 CPP containing a clear obligation for the CRR to motivate its decisions (Rapport d’information n° 4302, above n. 15, at 12). Yet Art. 624-3 CPP states the following: ‘(...) Lorsque l’affaire est en état, la formation de jugement de la cour l’examine au fond et statue, *par un arrêt motivé* non susceptible de recours, à l’issue d’une audience publique (...)’ (emphasis added). The CPP thus already contains an obligation for the CRR to motivate its decisions.

78. Angevin a.o., above n. 17, at 166; Daures, above n. 8, at n. 93; Desportes a.o., above n. 9, at 2316; Fournié, above n. 2, at 1329; Guinchard and Buisson, above n. 8, at 1357; Ribeyre, above n. 2, at n. 10.

79. Daures, above n. 8, at n. 103; Guinchard and Buisson, above n. 8, at 1357.

80. Daures, above n. 8, at n. 111-112; Desportes a.o., above n. 9, at 2316-2317.

81. Daures, above n. 8, at n. 105; Desportes a.o., above n. 9, at 2316-2317; Fournié, above n. 2, at 1329; Guinchard and Buisson, above n. 8, at 1357.

82. As was the case, for example, in CRR 25 October 2018, ECLI:FR:CCASS:2018:C1E1087.

83. Rapport d’information n° 4302, above n. 15, at 8; Goetz, above n. 19, at 251.

84. Goetz, above n. 19.

85. *Ibid.*, at 226 and 251.

86. *Ibid.*, at 251 and 317.

87. *Ibid.*, at 278-84.

88. See, for example, Rapport annuel Cour de cassation 2016, at 397 and Rapport annuel Cour de cassation 2017, at 347.

89. Goetz, above n. 19, at 278-84.

90. *Ibid.*, at 284-5.

91. *Ibid.*, at 254.

92. *Ibid.*, at 255.

93. *Ibid.*, at 255-6.

The legislature wanted to broaden the scope of the remaining ground for revision, by urging judges to no longer require ‘serious doubt’ (see *supra*). This aspect of the reform is decisive for the actual improvement of the accessibility of the revision procedure, since it determines its scope.<sup>94</sup> However, although the wording of the ground for revision was changed, it still mentions ‘doubt’, as did the former provision.<sup>95</sup> In 1989, when the former provision was introduced, the legislature already intended for doubt in itself to be sufficient. However, despite that clear intention of the legislature, judges in their case law interpreted it as requiring ‘serious doubt’. The author thus questions whether, after the Act of 2014, judges will adjust their case law.<sup>96</sup> Since requests for revision concern final decisions and due to the authority of *res iudicata*, judges might still be reluctant to find that there is doubt.<sup>97</sup> For those and for other reasons,<sup>98</sup> the author fears that the Act of 2014 is not as large a reform as it claims to be.<sup>99</sup>

The ‘Assemblée nationale’ requested an evaluation of the Act of 2014. Several parties involved in the revision procedure were heard, and the report was presented to the ‘Assemblée nationale’ in December 2016.<sup>100</sup> In general, the reform has been positively received.<sup>101</sup> The members of the CRR find that its composition, which now includes members of the different chambers of the ‘Cour de cassation’, is an enrichment for its deliberations.<sup>102</sup> The Act of 2014 also more clearly embeds the rights of the parties involved, such as the possibility for a contradictory debate, access to the case file, legal assistance and the possibility to seek investigative measures before filing a request,<sup>103</sup> and enlarges the list of possible applicants. Both developments are also warmly welcomed.<sup>104</sup>

However, the report also identifies some shortcomings and makes suggestions for possible amendments, although it immediately stresses that it is still too early to draw clear conclusions. A first suggestion is that in

order to fully reinforce the rights of the parties, the revision procedure should contain a clear obligation for the CRR to motivate<sup>105</sup> its decisions.<sup>106</sup> Another suggestion is to amend the provision on the possibility to seek investigative measures before filing a request so that the term in which the public prosecutor has to respond (two months) is one time renewable, the investigative measures have to be performed within a reasonable term and the applicant is informed of the performed measures by the public prosecutor in writing. In case the public prosecutor is inactive, the applicant would then be able to appeal to the attorney general.<sup>107</sup> The report also contains an amendment on the public prosecutor’s office that performs the requested investigative measures, and it suggests that the convicted person’s lawyer be notified of the public prosecutor’s or attorney general’s intention to destroy or transfer evidence.<sup>108</sup> Finally, the report also suggests the addition of a new ground for revision: the existence of a fundamental procedural irregularity affecting the reliability of evidence (see *supra*).<sup>109</sup> An example is confessions obtained by torture.

One of the parties that was heard in the evaluation signals that the CRR still seems to require ‘serious doubt’ before finding a request for revision founded.<sup>110</sup> However, the report immediately adds the reservation that it is too early and that there is not enough data available to assess whether the case law has evolved or not.<sup>111</sup>

### 3.2 Current State of Affairs<sup>112</sup>

The doctoral thesis expects the ‘commission d’instruction’ to still involve the implications of the invoked fact or element for the question of guilt when examining the admissibility of a request for revision.<sup>113</sup> Unfortunately, there is little case law to turn to in order to verify this expectation, since up to now only a few decisions of the CRR have been published. However, the decision of the commission of 14 December 2015<sup>114</sup> seems to indicate that the author of the doctoral thesis might be right. Although it states that

Attendu qu’il résulte des articles 622, 624 et 624-2 du code de procédure pénale que, s’il n’appartient qu’à la formation de jugement de la Cour de révision et de réexamen de déterminer si le fait nouveau ou l’élément inconnu de la juridiction au jour du jugement est de nature à établir l’innocence du condamné ou à faire naître un doute sur sa culpabilité, il incombe à la

94. *Ibid.*, at 232.

95. *Ibid.*, at 290.

96. *Ibid.*, at 235. As question Angevin a.o., above n. 17, at n. 57-58.

97. Goetz, above n. 19, at 235 and 292-5.

98. In this article, we discussed only some of the criticisms voiced in the doctoral thesis. The author also suggests amendments on, among other aspects, the inclusion in the ground for revision of elements that were already present in the case file but not discussed in the initial proceedings, the composition of the ‘commission d’instruction’, which currently does not necessarily include (former) investigating judges, and the position of the victim in the procedure for revision and in the procedure to suspend the execution of the conviction while the request for revision is being examined (Goetz, above n. 19, at 240-3, 275-7 and 311-14).

99. Goetz, above n. 19, at 317.

100. Rapport d’information n° 4302, above n. 15.

101. *Ibid.*, at 8.

102. *Ibid.*, at 9.

103. Although this novelty from the Act of 2014 was welcomed as a guarantee that convicted persons with a sincere claim but insufficient resources would have access to the revision procedure too, and thus as an improvement of the rights of the applicant, the first findings are that applicants make little use of this possibility. However, experts believe that it is only a matter of time until convicted persons learn of this possibility and will use it. (Rapport d’information n° 4302, above n. 15, at 20-1; Cormier, above n. 66, at n. 27.)

104. Rapport d’information n° 4302, above n. 15, at 11-12, 15 and 20-1.

105. The CPP already seems to contain this obligation in Art. 624-3 (see *supra* footnote 64).

106. Rapport d’information n° 4302, above n. 15, at 12.

107. *Ibid.*, at 20-2.

108. *Ibid.*, at 22 and 24.

109. *Ibid.*, at 17-18.

110. *Ibid.*, at 15-16.

111. *Ibid.*, at 16.

112. Unfortunately, we have been unable to obtain sufficient decisions of the ‘commission d’instruction’ and the ‘formation de jugement’ to make clear statements on the interpretation of the provisions on the revision procedure by the CRR. The conclusions in this paragraph are therefore cautious.

113. Goetz, above n. 19, at 255-6. As do Angevin a.o., above n. 17, at 149.

114. CRR (Commission d’instruction) 14 December 2015, 15REV040.



commission d'instruction de se prononcer sur la recevabilité de la demande de révision en appréciant, notamment, la réalité du fait nouveau ou de l'élément inconnu allégué par le demandeur, et son rapport avec la question de la culpabilité; (...)<sup>115</sup>

it also contains the following considerations:

Attendu qu'aucune des pièces produites à l'appui de la demande n'est de nature à remettre en cause les témoignages ou le contenu des rapports figurant au dossier de la procédure, lesquels font ressortir l'existence d'une rébellion commise contre la force armée par au moins huit militaires armés; (...)<sup>116</sup>

and

Attendu que la participation personnelle d'Antoine X ... à ces actes de rébellion, ses refus d'obéissance et ses outrages ont été retenus à partir des témoignages de l'aspirant Y ..., du capitaine K ..., du lieutenant Jules Z ... et de l'adjudant L ..., recueillis par l'officier de police judiciaire chargé de l'information, les trois premiers témoins ayant, en outre, été entendus par le tribunal militaire permanent; que la commission d'instruction, qui n'a pas à se prononcer sur la suffisance de ces témoignages, ne peut que constater qu'aucune des pièces produites à l'appui de la demande en révision n'est de nature à les remettre en cause; (...)<sup>117</sup>

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In these considerations, the commission seems to go beyond its task of examining whether the invoked facts or elements exist, are indeed new or unknown and are linked to the question of guilt. It already seems to make an assessment of their impact on the convicted person's guilt, of whether they can raise doubt, by verifying whether the facts or elements call into question the wit-

115. Own translation: 'Whereas it follows from Arts. 622, 624 and 624-2 CPP that it is only for the 'formation de jugement' of the CRR to determine whether the new fact or element unknown to the court at the time of the initial proceedings is of such a nature as to establish the convicted person's innocence or to give rise to doubt about his guilt, it is for the 'commission d'instruction' to rule on the admissibility of the request for revision by assessing the existence of the new fact or unknown element that is put forward by the applicant, and its relation with the question of guilt.' CRR (Commission d'instruction) 14 December 2015, 15REV040.

116. Own translation: 'Given that none of the pieces brought forward to support the request are of such a nature as to call into question the testimonies or the content of the reports in the file of the proceedings, which bring to light the existence of a rebellion against the armed force by at least eight armed soldiers; (...)' CRR (Commission d'instruction) 14 December 2015, 15REV040.

117. Own translation: 'Given that the personal involvement of Antoine X ... in the acts of rebellion, his refusal to obey and his insults are deduced from the testimonies of aspirant Y ..., of captain K ..., of lieutenant Jules Z ... and of adjudant L ..., collected by the judicial police officer charged with the investigation, the first three witnesses, in addition, having been heard by the permanent military tribunal; that the 'commission d'instruction', who is not to decide on the conclusiveness of these testimonies, can only come to the conclusion that none of the pieces brought forward to support the request are of such a nature as to call them into question; (...)' CRR (Commission d'instruction) 14 December 2015, 15REV040.

ness statements that were gathered in the initial proceedings. However, one decision is insufficient to draw conclusions from.

Both the author of the doctoral thesis and an expert heard by the 'Assemblée nationale' fear that judges will still require 'serious doubt' and that, because of this, the accessibility of the revision procedure will not really improve, by lack of accessibility on a substantive level.<sup>118</sup> There is, unfortunately, currently too little case law publicly accessible to make statements in this article on how the judges of the CRR interpret the question of doubt. By contrast, it is possible to draw some – albeit cautious – conclusions on the accessibility of the revision procedure, based on the initial findings in the report of the 'Assemblée nationale'<sup>119</sup> and on the figures in the annual reports of the 'Cour de cassation', available on its website<sup>120</sup>.

The report of the 'Assemblée nationale' finds that in 2015 the number of requests for revision had increased. Moreover, the number of requests referred by the commission to the formation had also grown.<sup>121</sup> This is confirmed in the annual report of the 'Cour de cassation' of 2015.<sup>122</sup> The commission deemed 145 requests for revision inadmissible (including the decisions by the president of the commission) and referred eight requests to the formation. In that same year, the formation decided on seven requests and nullified one conviction.<sup>123</sup>

The annual reports of the 'Cour de cassation' contain information up to the year 2019 (see *infra* Figure 1 'Decisions of inadmissibility' and Figure 2 'Number of referrals and nullifications'). In 2016, there was again an increase in the number of requests. One hundred and thirty were considered inadmissible by the commission or its president, and two were referred to the formation. The formation decided on thirteen requests for revision and nullified the original conviction in two cases.<sup>124</sup> In 2017, the commission or its president found 139 requests inadmissible and referred seven requests to the formation. In that same year, the formation rendered no decision.<sup>125</sup> The next year, in 2018, there was again an increase in the number of requests. 118 requests were found inadmissible, either by the commission or by its president. Five requests were referred to the formation, which decided on eight requests for revision that year and nullified four convictions.<sup>126</sup> The most recent figures of 2019 show again an increase in the number of requests. One hundred and thirty-eight requests were deemed inadmissible by the commission or its president, and four requests were referred to the formation. The

118. Rapport d'information n° 4302, above n. 15, at 15-16; Goetz, above n. 19, at 235.

119. Rapport d'information n° 4302, above n. 15, at 13.

120. Which is [www.courdecassation.fr/publications\\_26/rapport\\_annuel\\_36/](http://www.courdecassation.fr/publications_26/rapport_annuel_36/).

121. Rapport d'information n° 4302, above n. 15, at 13.

122. Rapport annuel Cour de cassation 2015, at 328-30.

123. *Ibid.*

124. Rapport annuel Cour de cassation 2016, at 397-8.

125. Rapport annuel Cour de cassation 2017, at 347-8.

126. Rapport annuel Cour de cassation 2018, at 301-2.

Figure 1 Decisions of inadmissibility

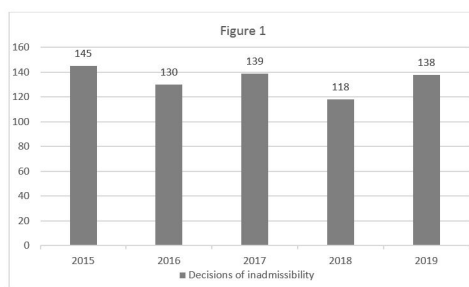
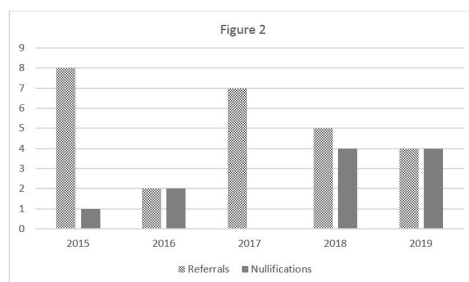


Figure 2 Number of referrals and nullifications



formation decided on seven requests for revision and nullified four convictions.<sup>127</sup>

The figures on the period before the Act of 2014, from 1989 until 2013, show that, in this period, 3,358 requests were sent to the ‘commission de révision’, which took 3,171 decisions and referred eighty-four requests to the ‘Cour de révision’. In that same period the ‘Cour de révision’ decided on eighty-four requests and nullified fifty-one decisions.<sup>128</sup> Compared with the aforesaid more recent figures from the annual reports, there seems to be a slight augmentation in the number of cases referred by the commission to the formation. Nevertheless, the commission still finds the majority of requests inadmissible, mainly because of the absence of a new fact or unknown element:

Ces irrecevabilités sont le plus souvent motivées par l’absence de fait nouveau ou d’élément inconnu de la juridiction de jugement au jour du procès.<sup>129</sup>

The overall success rate of requests for revision, however, has not improved significantly, although there seems to be a slight improvement in the last two years. Unfortunately, not enough case law has been published yet to thoroughly examine whether those findings are linked to the way in which the commission and the formation perceive the division of tasks between them and

interpret the question of doubt, as still requiring ‘serious doubt’ or not.

## 4 Conclusion

The Act of 2014 reformed the revision procedure. Many aspects of the procedure were changed for the better, such as the enlargement of the list of possible applicants, the possibility to seek investigative measures before filing a request for revision, the new provision on the storage of evidence and the reinforcement of the rights of the applicant.

For other changes, however, it is still unclear whether they are successful. The legislature intended to clearly define the different tasks of the ‘commission d’instruction’, on the one hand, and the ‘formation de jugement’, on the other. The commission would have to examine only the admissibility of the requests for revision, while the formation would decide on the substance of the requests. It would thus be the task of the formation only to assess the impact of the invoked fact or element on the convicted person’s guilt. Some experts, however, question whether it is possible for the commission to merely examine the existence, the new or unknown character and the solidity and relevance of the invoked fact or element without involving the implications of that fact or element for the question of guilt.

Moreover, the legislature wanted to broaden the single remaining ground for revision. It intended the slightest doubt to be sufficient to obtain a new examination of the merits of the case, but, after finding that it was artificial to qualify doubt, decided to maintain the wording ‘doute’ and not replace it by ‘moindre doute’. However, the legislature expressed its confidence in the judiciary not to interpret the provision contrary to the intention of the legislature and thus to no longer require ‘serious

127. Rapport annuel Cour de cassation 2019, at 270-1.

128. Rapport d’information n° 1598, above n. 2, at 15.

129. Own translation: ‘These inadmissibilities are mostly motivated by the absence of a new fact or element that was unknown to the court at the time of the initial proceedings.’ Rapport annuel Cour de cassation 2016, at 397. Also see Rapport annuel Cour de cassation 2015, at 329; Rapport annuel Cour de cassation 2017, at 347; Rapport annuel Cour de cassation 2018, at 301; Rapport annuel Cour de cassation 2019, at 270.

doubt'. Yet experts question whether stating that intention explicitly in the parliamentary debate is sufficient to urge judges to change their interpretation. History has shown that, owing to a strong commitment to the authority of *res iudicata*, they are rather reluctant to find that there is doubt, despite the clear intention of the legislature not to require 'serious doubt'.

In the introduction we posed the question whether the Act of 2014 lives up to the expectations raised by the legislature. The proclaimed aim of this reform was to improve the accessibility of the revision procedure both on a procedural and on a substantive level. Practice will have to show whether it succeeded. On the basis of the first findings, however, there seems to be no significant augmentation in the success rate of requests for revision in the period from 2015 until 2019, although the commission seems to refer more cases to the formation. Unfortunately, there is currently still too little case law published to verify whether these findings are linked to the way in which the commission and the formation perceive their different tasks and to the interpretation of the ground for revision. Not enough case law is publicly available to assess whether the ground has indeed broadened.