

Law No. 68-23 of July 24, 1968, revising the Code of Criminal Procedure

In the name of the People

We, Habib Bourguiba, President of the Tunisian Republic, The National

Assembly having adopted,

Promulgate the following law:

Article 1 – The texts published below relating to criminal procedure are combined into a single body under the title "Code of Criminal Procedure."

Art. 2 – With the exception of Law No. 68-17 of July 2, 1968, all contrary provisions are repealed as of the entry into force of the said code, in particular the Decree of December 30, 1921, promulgating the Code of Criminal Procedure, as amended or supplemented by subsequent texts, Articles 17 and 18 of the Criminal Code, the Decree of August 3, 1908, establishing a pardons commission, Law No. 58-58 of May 23, 1958, relating to the exercise of the right of pardon, the Decree of June 30, 1955, relating to the status of juvenile offenders, and the Decree of March 13, 1957, regulating parole.

This law shall be published in the Official Journal of the Republic of Tunisia and enforced as a law of the State.

Done at Carthage, July 24, 1968.

The President of the Tunisian Republic Habib

Bourguiba

CODE OF CRIMINAL PROCEDURE

PRELIMINARY PROVISIONS – PUBLIC PROSECUTION AND CIVIL ACTION

Article 1 – Any offense gives rise to public action for the purpose of applying penalties and, if damage has been caused, to civil action for compensation for such damage.

Art. 2 – Public action is initiated and exercised by magistrates or by officials entrusted with it by law.

They may also be initiated by the injured party under the conditions determined by this Code.

Art. 3 – Except in cases provided for by law, public prosecution is not subject to the existence of a complaint and cannot be stopped or suspended by the withdrawal of the complaint or the waiver of civil action.

Art. 4 – Public prosecution shall be extinguished by:

- 1) the death of the defendant,
- 2) the statute of limitations,
- 3) amnesty,
- 4) the repeal of the criminal law,
- 5) res judicata,
- 6) settlement, where expressly provided for by law,
- 7) the withdrawal of a complaint, when this is a necessary condition for prosecution; the withdrawal of a complaint against one of the defendants benefits all the others.

Art. 5 – Unless otherwise provided by law, public prosecution for a felony is subject to a statute of limitations of ten years, for a misdemeanor three years, and for a minor offense one year, starting from the date on which the offense was committed, if no investigative or prosecutorial action has been taken during that period.

The statute of limitations shall be suspended by any legal or factual obstacle preventing the exercise of public prosecution, other than that resulting from the will of the defendant.

In the case provided for in Article 77, the statute of limitations shall run, during the suspension of proceedings on grounds of insanity, in favor of the defendant who is not in preventive detention.

Public prosecution relating to crimes of torture is not subject to any statute of limitations.

Art. 6 – If, during the limitation periods listed in the previous article, investigative or prosecutorial acts have been carried out but not followed by a judgment, the interrupted public prosecution shall only be time-barred from the date of the last act, even with regard to persons who were not involved in that investigative or prosecutorial act.

Art. 7 – Civil action may be brought by any person who has personally suffered damage caused directly by the offense.

It may be brought at the same time as the public prosecution, or separately before the civil court; in the latter case, judgment shall be stayed until a final decision has been made on the public prosecution, where such prosecution has been initiated.

¹ Art. 5 – 4^e new paragraph added by Decree-Law No. 2011-106 of October 22, 2011 is repealed and replaced by Organic Law No. 2013-43 of October 21, 2013, relating to the National Authority for the Prevention of Torture.

A party that has brought an action before the competent civil court may not bring it before the criminal court. The only exception to this rule is if the case has been referred to the criminal court by the public prosecutor before a judgment on the merits has been handed down by the civil court.

Art. 8 – Civil action shall be time-barred under the same conditions and within the same time limits as the public action resulting from the offense giving rise to it.

In all other respects, it is subject to the rules of civil law.

BOOK ONE – THE EXERCISE OF PUBLIC PROSECUTION AND INVESTIGATION CHAPTER ONE – THE JUDICIAL POLICE

Art. 9 – The judicial police are responsible for recording offenses, gathering evidence, investigating perpetrators, and bringing them to court, as long as no investigation has been opened.

Section I – Judicial police officers

Art. 10 – The judicial police shall operate under the authority of the Attorney General of the Republic and, in each Court of Appeal jurisdiction, the Advocates General, through:

- 1) the Public Prosecutors and their deputies;
- 2) district judges;
- 3) police commissioners, police officers, and police station chiefs;
- 4) officers, non-commissioned officers, and station chiefs of the National Guard;
- 5) sheikhs;
- 6) government officials who have been granted special powers by specific laws to investigate and record certain offenses in official reports;
- 7) investigating judges in the cases provided for in this code.

Art. 11 – The judicial police officers referred to in 2°, 3° and 4° of Article 10 are assistants to the public prosecutor. In cases of flagrant crimes or offenses, they have the same powers as the latter, whom they must notify without delay of their actions. Outside of these cases, they may not carry out any investigative acts unless they have received a letter rogatory to that effect.

Art. 12 – Cantonal judges may, within their jurisdictions, personally carry out or request other judicial police officers referred to in paragraphs 3 to 6 of Article 10, each within their respective areas of responsibility, to carry out all preliminary investigative measures. They may place suspects in provisional detention and bring them before the nearest court without delay.

In addition, they shall receive reports of crimes and offenses committed in the place where they exercise their functions.

They shall notify the public prosecutor of all crimes and offenses that come to their knowledge in the exercise of their duties; they shall forward to him all information, reports, and documents relating thereto.

Art. 13 – The judicial police officers referred to in 3° and 4° of Article 10 must:

- 1) notify the public prosecutor of any offense of which they become aware in the course of their duties and forward to him all information and reports relating thereto,
- 2) receive reports, denunciations, and complaints relating to these offenses,
- 3) record in reports, within the limits of their territorial jurisdiction, any offense of any kind.

Art. 13 bis (new) – Added by Law No. 2016-5 of February 16, 2016 – In cases where the investigation so requires, and except where otherwise provided for by a special law, the judicial police officers referred to in paragraphs 3 and 4 of Article 10, even in cases of flagrant crimes or offenses, and customs judicial police officers, within the scope of their powers under the Customs Code,

may only hold the suspect after authorization from the public prosecutor and for a period not exceeding forty-eight hours. Authorization shall be given by any means that leaves a written record.

In the case of flagrant offenses, the suspect may only be held in custody for the time necessary for questioning, not exceeding twenty-four hours, and only after authorization by the public prosecutor by any means leaving a written record.

At the end of the aforementioned period, the judicial police officers must submit the person in custody, together with the investigation file, to the public prosecutor, who is required to hear them immediately.

The public prosecutor may, by written decision, extend the period of police custody once only for a period of 24 hours in the case of misdemeanors and 48 hours in the case of crimes, by means of a reasoned decision setting out the legal and factual grounds justifying such extension.

During police custody, judicial police officers must inform the suspect, in a language he or she understands, of the measure taken against him or her, its cause, its duration, and the possibility that it may be extended in accordance with paragraph 4, and read to him or her the guarantees provided by law, in particular the possibility of requesting a medical examination and the right to appoint a lawyer to assist him or her.

The judicial police officer must immediately inform one of the suspect's ascendants or descendants, brothers or sisters, or spouse, or any other person designated by the suspect, and, where applicable, the diplomatic or consular authorities if the suspect is a foreign national, of the measure taken against him or her and of his or her request to appoint a lawyer by any means that leaves a written record.

The person in custody, their lawyer, or one of the persons referred to in the previous paragraph may ask the public prosecutor or the judicial police officers, during or at the end of the period of custody, for a medical examination to be carried out on the person in custody.

In this case, a doctor is appointed to immediately carry out the requested medical examination. The report drawn up by the judicial police officer must include the following information:

- s of the identity of the person in custody, their status, their profession according to their identity card or any other official document and, failing that, according to their statements,
- the nature of the offense for which they are being held in custody,
- notification of the suspect of the measure taken against them, its cause, its duration and any extension thereof and its duration,
- notification of the suspect of their right to appoint a lawyer to assist them, either themselves or through a family member or a person of their choice,
- reading the rights guaranteed by law to persons in police custody,
- whether or not the family of the suspect in police custody or the person designated by him has been notified,
- whether a request for a medical examination has been made by the suspect or his lawyer, or by one of the persons mentioned in the previous paragraph,
- whether a request to choose a lawyer has been made by the suspect or one of the persons mentioned in the previous paragraph,
- the request to appoint a lawyer, if the suspect has not chosen one in the case of a crime,
- the date and time of the start of police custody, as well as its end,
- the date and time of the start and end of the interrogation,
- the signature of the judicial police officer and the person in custody, and in the event of the latter's refusal or inability to do so, this shall be noted with an indication of the reason,
- the signature of the lawyer of the person in custody, if present.

Any acts contrary to the procedures mentioned in this article shall be null and void.

The judicial police officers designated in the first paragraph of this article must keep a special register at the police stations where police custody is carried out, which is numbered and signed by the public prosecutor or one of his deputies and must contain the following information:

- the identity of the person in custody in accordance with the information mentioned in the report,
- the nature of the offense for which they are being held in custody,
- the date and time of notification to the family or person designated by the person in custody,
- the request to undergo a medical examination, or the appointment of a lawyer by either the person in custody or a member of their family or the person they have designated, or the request to appoint a lawyer for them if they have not chosen a lawyer to defend them in the event of a crime.

The public prosecutor or one of his deputies shall regularly carry out the necessary checks on the aforementioned register, the conditions of police custody, and the condition of the person in custody.

Art. 13b – Added by Law No. 2016-5 of February 16, 2016 – The person in police custody, one of their ascendants, descendants, brothers, sisters, spouse, or a person of their choice, or, where applicable, the diplomatic or consular authorities if the person in custody is a foreign national, may request, during the period of police custody, the appointment of a lawyer to assist them during their interrogation or confrontation with others by judicial police officers.

In the absence of a choice, when the suspect is charged with a crime and requests that a lawyer be appointed, a lawyer must be appointed.

The president of the regional bar association or his representative shall appoint a lawyer from the list of lawyers on duty established for this purpose, and this shall be noted in the minutes.

If the person in custody or one of the persons mentioned in the first paragraph of this article appoints a lawyer to assist them during their interrogation, the lawyer shall be informed by the judicial police officer without delay, by any means leaving a written record, of the date of their client's interrogation and the nature of the offense with which they are charged, and in this case, the interrogation or confrontations may not proceed without the presence of the lawyer concerned, unless the person in custody expressly waives his choice or the lawyer fails to appear on the scheduled date despite having been duly summoned, in which case this shall be noted in the minutes.

In terrorism cases, and where necessary for the purposes of the investigation, the public prosecutor may, for a period not exceeding forty-eight hours from the date of police custody, prohibit the lawyer from visiting the suspect, speaking with them, attending the interrogation or confrontation with others, or consulting the case file.

Art. 13 quater – Added by Law No. 2016-5 of February 16, 2016 – The lawyer of the person in police custody has the right, if he so requests, to visit his client and speak with him individually once during the period of police custody for a period of half an hour.

In the event of an extension of the period of police custody, the person in custody or their lawyer may request a further meeting in accordance with the provisions of the preceding paragraph.

Art. 13 quinquies – Added by Law No. 2016-5 of February 16, 2016 – The lawyer may consult the investigation proceedings one hour before the date of the interrogation or confrontation, without making copies. However, he or she may take notes for future reference.

The lawyer shall attend the interrogation and confrontation of the person in police custody with others and shall record his observations in the minutes of the interrogation, its copies, and duplicates.

Art. 13 sexies – Added by Law No. 2016-5 of February 16, 2016 – At the end of the interrogation or confrontation by the judicial police officer, the lawyer of the person in police custody may, where appropriate, ask questions.

The lawyer representing the person in custody may, where appropriate, after meeting with his client or following his client's interrogation or confrontation with others, submit his written observations, which may include the results of the interrogation and confrontation, and add them to the investigation proceedings.

He may also, where applicable, submit his written observations together with supporting documents directly to the judicial police officer during police custody.

Art. 13 septies – Added by Law No. 2016-5 of February 16, 2016 – Suspects who are not in police custody by judicial police officers or injured parties, whether natural or legal persons, have the right to appoint a lawyer to assist them during questioning or confrontation with others.

In this case, the judicial police officer must inform the suspect, the injured party or their guardian or custodian of their right to appoint a lawyer to assist them before their interrogation or confrontation with others, and this shall be mentioned in the minutes.

In such cases, the lawyer may consult the investigation procedures, note his or her observations, and submit written requests accompanied by any supporting documents in his or her possession, where applicable.

Art. 14 – As a judicial police officer, the investigating judge may record any offense committed in his presence in the exercise of his duties or whose existence is revealed to him in the course of a regular investigation.

However, except in cases of flagrant crime, he does not have the right to take up the case and cannot investigate any facts without a request from the public prosecutor.

Art. 15 – Sheikhs are responsible for recording, within the limits of their territorial jurisdictions, any crimes and offenses that may have caused damage to rural property.

They record the circumstances of the offense in a report and gather evidence.

They shall follow the stolen items to the places where they have been transported and place them in custody.

However, they may not enter dwellings or outbuildings unless accompanied by one of the judicial police officers referred to in paragraphs 2, 3, and 4 of Article 10 and within the limits of the powers conferred on the latter in relation to house searches. The report drawn up shall be signed by the person in whose presence the search was carried out.

They shall arrest and bring before the court or one of the aforementioned judicial police officers any individual caught in the act of committing a flagrant offense or crime.

In addition, they shall report all offenses of which they become aware in the course of their duties.

Finally, in the event of transportation to the scene, they shall assist the magistrate or judicial police officer in uncovering the truth.

Art. 16 – When several judicial police officers are seized with the same case, the first to be seized shall continue to proceed.

Judicial police officers who have the right to request other judicial police officers under Article 12 also have the power to remove them from the case in their favor.

However, judicial police officers are always relieved of their duties as soon as the public prosecutor, his deputy, or the investigating judge takes charge of the case. They must immediately hand over the accused, as well as the reports and evidence.

Art. 17 – Judicial police officers have the right, each within the limits of their powers, to request the assistance of law enforcement officers.

Art. 18 – Complaints and voluntary reports may be made verbally before a judicial police officer, who must record them in a report signed by the complainant or the person making the report. If the latter is unwilling or unable to sign, this shall be noted.

Complaints may also be made in writing. In this case, they must be signed by the complainants, their agents, or their legal representatives.

They must indicate the facts likely to give rise to prosecution, as well as the evidence.

Art. 19 – Complaints, reports, and official reports shall be forwarded without delay by the judicial police officers who received them to the public prosecutors.

Section II – The Public Prosecutor's Office

Art. 20 – The public prosecutor initiates and conducts public proceedings. He or she requires the application of the law and ensures the enforcement of court decisions.

Art. 21 – The public prosecutor is required to submit written submissions in accordance with the instructions given to him under the conditions provided for in Article 23. He is free to make any oral observations he deems appropriate in the interests of justice.

Section III – Powers of the Attorney General of the Republic and the Solicitors General

Art. 22 – The Attorney General of the Republic² is responsible, under the authority of the Secretary of State for Justice, for ensuring the application of criminal law throughout the territory of the Republic.

He may personally represent the public prosecutor's office before the courts of appeal. He has authority over all magistrates of the public prosecutor's office.

In the exercise of his duties, he has the right to directly request the assistance of law enforcement.

In the event of incapacity, the duties of the Attorney General of the Republic shall be performed by an attorney general appointed by the Secretary of State for Justice.

Art. 23 – The Secretary of State for Justice may report any criminal offenses of which he or she is aware to the Attorney General of the Republic, instructing him or her to initiate or cause to be initiated proceedings or to refer such written requests as he or she deems appropriate to the competent court.

Art. 24 – The Attorney General represents the public prosecutor's office before the Court of Appeal, either in person or through his deputies.

He is responsible for ensuring the application of criminal law throughout the jurisdiction of the Court of

Appeal. He has authority over all public prosecutors within his jurisdiction.

In the exercise of his functions, he has the right to call directly upon the police.

Section IV – Powers of the Public Prosecutor

Art. 25 – The Public Prosecutor represents the Public Prosecutor's Office in person or through his deputies before the court of first instance.

Art. 26 – The Public Prosecutor is responsible for recording all offenses, receiving reports made to him by public officials or private individuals, and complaints from injured parties.

² The position of Attorney General of the Republic is abolished by Law No. 87-80 of December 29, 1987, which further provides that:

Article 1 – The position of Attorney General of the Republic is abolished. The judicial powers of the Attorney General of the Republic are devolved to the advocates general at the courts of appeal, who exercise them, each within the limits of their jurisdiction, under the direct authority of the Minister of State responsible for justice.

The Minister of State for Justice may report any offenses of which he or she is aware to the competent Advocate General, instructing him or her to initiate or cause to be initiated proceedings or to refer the matter to the competent court with such written requests as he or she deems appropriate.

Article 2 – All previous provisions contrary to this law are repealed, in particular Decree-Law No. 86-1 of August 18, 1986, as ratified by Law No. 86-98 of December 9, 1986, establishing the office of Attorney General of the Republic.

Except in cases of flagrant crime or offense, he may not conduct investigative proceedings. However, he may gather evidence for information purposes through preliminary investigations, conduct summary questioning of the accused, take statements, and draw up reports.

Even in cases of flagrant crimes or offenses, he may assign some of the acts falling within his jurisdiction to a judicial police officer.

Art. 27 – The public prosecutor of the place where the offense was committed, the place of residence of the accused, the place of his last residence, or the place where he was found shall have jurisdiction.

Art. 28 – In the case of a crime, the public prosecutor must immediately notify the Attorney General and the competent solicitor general, and without delay request a formal investigation from the investigating judge within his jurisdiction.

Art. 29 – All authorities and public officials are required to report to the public prosecutor any offenses that come to their attention in the course of their duties and to provide him with all relevant information, reports, and documents.

Under no circumstances may they be sued for slanderous denunciation or damages on account of the opinions they are required to give under this article, unless their bad faith can be established.

Art. 30 – The public prosecutor shall assess the action to be taken in response to complaints and reports that he receives or that are forwarded to him.

Art. 31 – In the event of a complaint that is insufficiently substantiated or justified, the public prosecutor may request the investigating judge to provisionally investigate persons unknown until such time as charges can be brought or, where applicable, new requests can be made against named persons.

Art. 32 – The complainant may, without being obliged to bring a civil action, claim the return of any items that have been taken from him or her.

Section V – Flagrant crimes and offenses

Art. 33 – A crime or flagrant offense is:

- 1) when the act is currently being committed or has just been committed;
- 2) when the accused is pursued by public outcry, or is found in possession of objects or presents traces or clues suggesting his guilt, provided that this is very close to the time of the action.

Any crime or offense which, even if not committed in the circumstances provided for in the preceding paragraph, has been committed in a house whose owner requests a judicial police officer to record it, shall be treated as a flagrant crime or offense.

Art. 34 – In all cases of flagrant crime or misdemeanor, the public prosecutor shall combine the right of prosecution with all the powers of the investigating judge.

Art. 35 – In the case of a flagrant crime, the investigating judge may, within his jurisdiction, directly and personally perform all acts assigned to public prosecutors by law, while retaining his own powers; he must notify the public prosecutor without delay.

In particular, he may hear witnesses without prior summons, arrest the accused on a simple verbal order, and execute his orders himself.

He then forwards his reports to the public prosecutor, who takes the action he deems appropriate.

Section VI – Civil action

Art. 36 – The dismissal of the case by the public prosecutor does not preclude the injured party from bringing public proceedings on its own behalf. In this case, it may, by bringing a civil action, either request the opening of an investigation or directly summon the defendant to appear before the court.

Art. 37 – Civil action brought at the same time as public action in accordance with Article 7 of this Code may be exercised either before the investigating judge during the investigation or before the court hearing the case. Associations may bring a civil action in respect of acts falling within the scope of their objects and purposes as set out in their ^{statutes}.

Art. 38 – The court hearing the case or the investigating judge shall assess the admissibility of the civil action and, if necessary, declare it inadmissible.

Inadmissibility may be raised by the public prosecutor, the defendant, the civilly liable party, or another civil party.

The court hearing the case shall join the incidental issue to the main issue and rule on both in a single judgment. However, where the civil party is acting in a principal capacity, the court hearing the case shall rule immediately on the incidental issue.

The investigating judge shall rule by order after communicating the file to the public prosecutor; this order may be appealed before the indictment division within four days of its communication to the public prosecutor and its notification to the other parties.

Art. 39 – A civil party shall be constituted by means of a written request signed by the complainant or his representative and submitted, as the case may be, to the public prosecutor, the investigating judge or the court hearing the case.

No deposit of costs is required. However, in the case of Article 36, the complainant must, on pain of inadmissibility of his complaint, deposit the amount presumed necessary for the costs of the proceedings. This amount shall be fixed, as the case may be, by the President of the court hearing the case or the investigating judge.

Art. 40 – The civil party must elect domicile at the seat of the court hearing the case. Failing this, they may not object to the failure to serve documents that should have been served on them under the terms of the law.

Art. 41 – A civil party who expressly withdraws within forty-eight hours of joining the proceedings shall not be liable for costs from the time of withdrawal. After withdrawal, the civil action may only be brought before the civil court.

Art. 42 – The injured party may not bring a civil action for the first time before the court of appeal.

Art. 43 – A person who has brought a civil action may no longer be heard as a witness.

Art. 44 – It is prohibited to publish, prior to any judicial decision, any information relating to civil actions brought pursuant to Article 36, under penalty of a fine of one hundred dinars.

Art. 45 – When, after an investigation has been opened on the basis of a civil action, a decision to dismiss the case has been rendered, the accused may seek compensation for the damage caused by the initiation of public proceedings, without prejudice to criminal proceedings for false accusation, if applicable.

The action for damages shall be brought, within three months of the date on which the dismissal order became final, before the court of first instance ruling on criminal matters. The court where the case was heard shall have jurisdiction.

³ **Art. 37 paragraph 2** – Added by Law No. 2016-16 of February 16, 2016.

The court shall rule in chambers, after hearing the parties or their counsel and the public prosecutor. The judgment shall be delivered in open court. In the event of a conviction, the court may order the publication of its judgment in full or in extract form in one or more newspapers of its choice, at the expense of the convicted person. It shall set the cost of the insertions in the judgment.

Any opposition, if applicable, and any appeal shall be subject to the forms and time limits of ordinary law in criminal matters.

The appeal shall be brought before the court of appeal, which shall rule in the same manner as the court of first instance.

The judgment of the court of appeal may be referred to the Court of Cassation as in criminal matters.

Art. 46 – In the event of acquittal, the court may impose a fine of fifty dinars on the civil party who directly summoned the defendant, without prejudice to criminal proceedings for false accusation, if applicable.

CHAPTER II – INVESTIGATION

Section I – Investigating judges

Art. 47 – Preliminary investigations are mandatory in criminal cases; unless otherwise specified, they are optional in cases involving misdemeanors and minor offenses.

Art. 48 – The duties of investigating judge are entrusted to a magistrate appointed by decree. If necessary, a magistrate may be appointed by order to temporarily perform the duties of investigating judge or to investigate specific cases.

In the event of absence or temporary incapacity, the incumbent shall be replaced, for urgent cases, by a judge appointed by the president of the court.

Art. 49 – Where there are several investigating judges in a court, the public prosecutor shall appoint the judge who will be responsible for each investigation.

Art. 50 – The investigating judge shall be responsible for conducting criminal proceedings, diligently seeking the truth, and establishing all the facts that will be used by the trial court to base its decision.

He may not participate in the judgment of cases with which he has been involved in his capacity as an investigating judge.

Art. 51 – The investigating judge is irrevocably seized of the case by the indictment.

He shall be required to investigate the facts referred to therein. He may only investigate those facts, unless the new facts revealed by the investigation constitute aggravating circumstances of the offense referred to him.

Art. 52 – The case may be referred to the investigating judge of the place where the offense was committed, the place of residence of the accused, the place of his last residence, or the place where he was found.

If the offense falls within the jurisdiction of a special court, the investigating judge shall carry out the urgent investigative measures and declare himself incompetent immediately thereafter.

Art. 53 – Assisted by his clerk, the investigating judge hears witnesses, questions defendants, and conducts on-site investigations, searches of premises, and seizures of evidence.

He orders expert reports and performs all acts tending to reveal evidence for or against the accused.

The investigating judge's reports shall be signed on each page by the judge, the clerk, and the person appearing.

No interlineations may be made; deletions and references are approved and signed by the investigating judge, the clerk, and the person appearing.

Unapproved deletions and references, as well as interlineations, shall be deemed null and void.

Art. 54 – The investigating judge may conduct or have conducted, by the judicial police officers referred to in 3° and 4° of Article 10, an investigation into the personality of the accused and their material, family, or social situation.

He may also have a medical and psychological examination of the accused carried out.

A medical and psychological examination is mandatory if the accused commits an offense before ten years have elapsed since the first sentence was served, remitted, or prescribed, and if both offenses carry a prison sentence of ten ^{years} or more.

Art. 55 – In his opening statement, and at any stage of the investigation by supplementary indictment, the public prosecutor may request the investigating judge to take any action he deems necessary to establish the truth.

To this end, he may request that the proceedings be communicated to him, on condition that he return them within forty-eight hours.

If the investigating judge does not believe that the requested measures should be taken, he must issue a reasoned order within three days of the Public Prosecutor's request. This order may be appealed before the indictment division within four days of its communication.

Art. 56 – The investigating judge shall, either on his own initiative or at the request of the public prosecutor, visit the scene of the offense, the home of the accused, or any other place where evidence relevant to the case is likely to be found.

If he goes of his own accord, he must notify the public prosecutor and, notwithstanding the latter's absence, may proceed with the necessary operations.

The accused shall be transferred to the place where the transport is taking place if his presence appears necessary.

Art. 57 (new) – Added by Law No. 2016-5 of February 16, 2016 – If he is unable to carry out certain investigative acts himself, the investigating judge may request the investigating judges of other districts or the judicial police officers of his district or other districts, each in his own area of responsibility, to carry out the acts of his office, with the exception of judicial warrants. To this end, he shall issue an order which he shall communicate to the public prosecutor for execution.

The investigating judge may only issue letters rogatory to judicial police officers after questioning the suspect, except in cases of flagrante delicto, in which judicial police officers are authorized to question the suspect and carry out other acts specified in the letter rogatory. They must comply with the provisions of Articles 13 bis, 13 ter, 13 quater, 13 quinquies, and 13 sexies.

The provisions of Articles 13 bis, 13 ter, 13 quinquies, and 13 sexies apply in cases where the execution of the letter rogatory requires the interrogation of the suspect who has been released, subject to the following:

⁴ Art. 54 – Paragraph 3 newly added by Law No. 2005-93 of October 3, 2005.

If the charge is for a felony and the defendant has not chosen a lawyer and requests that one be appointed, the appointment shall be made by the president of the regional bar association or his representative from the list of lawyers on duty established for this purpose, and this shall be noted in the minutes.

The lawyer may submit his written observations, together with any supporting documents, directly to the investigating judge during the period of police custody or upon its expiry.

This does not exempt the investigating judge from applying the provisions of Article 69 of this Code if he or she has not done so previously.

In terrorism cases and where the investigation so requires, the investigating judge may not allow the lawyer to visit the suspect, talk to them, attend their interrogation or confrontation, or consult the case file before the judge appointed by letter rogatory for a period not exceeding forty-eight hours from the date of police custody, unless this decision to prohibit such visits has been taken previously by the public prosecutor.

The cantonal judge may not assign to other judicial police officers the tasks entrusted to him under a letter of request unless he is expressly authorized to do so by the investigating judge.

The provisions of Article 13 septies shall apply where the execution of the letter rogatory requires the questioning of the injured party.

Art. 58 – If the requirements of the investigation so demand, the investigating judge may travel with his clerk to the jurisdictions of the courts bordering on the one in which he exercises his functions, for the purpose of carrying out all investigative acts, provided that he first notifies the public prosecutor of the jurisdiction of the court to which he is traveling. He shall state the reasons for his travel in his report.

He must notify the public prosecutor of his court of this travel and, notwithstanding the latter's absence, he may proceed with the necessary operations.

Section II – Hearing of witnesses

Art. 59 – The investigating judge has the right to hear any person whose testimony he considers useful.

Art. 60 – Witnesses shall be summoned by administrative means or by a bailiff.

Witnesses who appear voluntarily may be heard without prior summons. This shall be noted in the minutes.

Art. 61 – Any person summoned as a witness is required to appear, take an oath, and testify, subject to the provisions of the Criminal Code relating to professional secrecy.

If the witness summoned fails to appear, the investigating judge may, at the request of the public prosecutor, impose a fine of ten to twenty dinars. If the witness appears at a later date, he or she may, upon presentation of an apology and justification, be exempted from this penalty by the investigating judge at the request of the public prosecutor.

If, after being summoned a second time, he fails to appear, a warrant may be issued for his arrest.

A fine of ten to twenty dinars may, at the request of the public prosecutor, be imposed on a witness who, despite appearing, refuses to take the oath or give evidence.

The conviction of the witness under the preceding paragraphs is not subject to appeal.

Art. 62 – Where the witness is unable to respond to the summons, his statement shall be taken at his residence.

Art. 63 – The following may be heard without taking an oath and for information purposes by the investigating judge:

- 1) the civil party;
- 2) persons whose testimony is not admissible under the Code of Civil and Commercial Procedure;
- 3) persons who are prohibited by law or court order from testifying in court;
- 4) persons who have voluntarily reported the offense and the offender when the report is rewarded financially, and who were not required to do so by law because of their duties.

Art. 64 – Before being heard, witnesses must swear to tell the truth, the whole truth, and nothing but the truth. They are also warned that if they give false testimony, they may be prosecuted in accordance with the provisions of the Criminal Code.

If it appears to the judge that the witness has altered the truth, he or she shall draw up a report and forward it to the public prosecutor.

Art. 65 – Witnesses shall be heard separately and without the defendant being present; they shall testify without the aid of any written documents. At the beginning of their testimony, they shall be asked to state their identity and to indicate whether there is any reason for them to be recused in relation to any of the parties.

Once the testimony has been completed, the judge may question them, confront them with each other or with the defendant, and carry out any procedures necessary to establish the truth with their assistance.

The statements and confrontations are recorded in the minutes, which are read to the persons appearing and then signed by them, the judge, and the clerk.

If a witness is unwilling or unable to sign, this shall be noted.

Art. 66 – In cases where the defendant or witnesses do not speak Arabic, an interpreter shall be appointed by the investigating judge.

If the witness or defendant is deaf or mute, questions and answers are given in writing.

If they cannot write, they shall be provided with an interpreter who is able to converse with them or who is accustomed to doing so.

If the interpreter is not sworn in, they shall take an oath to translate the testimony faithfully. The minutes shall mention the surname, first name, age, profession, and address of this interpreter, who shall sign as a witness.

Art. 67 – Witnesses who request compensation shall be assessed by the public prosecutor.

Section III – The accused

Art. 68 – If the accused is at liberty, he shall be summoned in writing to be questioned. The summons shall be issued by administrative means or by a bailiff or notary. It shall indicate:

- 1) The surname, first name, occupation, and address of the accused;
- 2) the place, date, and time of the appearance;
- 3) the nature of the charge.

Art. 69 – At the first appearance, the investigating judge shall verify the identity of the accused, inform him of the charges against him and the provisions of the law applicable to those charges, and take his statement, after informing him of his right to answer only in the presence of counsel of his choice. This warning shall be recorded in the minutes.

If the accused refuses to choose counsel or if counsel, having been duly summoned, fails to appear, the investigating judge shall proceed regardless.

In the absence of a choice, when the defendant is charged with a crime and requests that a defense counsel be appointed, a counsel must be appointed ex officio.

The appointment shall be made by the President of the court. This formality shall be recorded in the minutes.

Notwithstanding the terms of the preceding paragraphs, the investigating judge may proceed with immediate questioning and confrontations if the urgency results either from the condition of a witness in danger of death or from the existence of evidence that is about to disappear, or if he has gone to the scene in the event of a flagrant offense.

The interrogation must provide the accused with the opportunity to exonerate himself or confess.

If the defendant invokes evidence in his defense, it shall be verified as soon as possible.

The defendant's confession does not exempt the investigating judge from seeking further evidence.

Art. 70 – A defendant in custody is entitled to communicate with his counsel at any time, immediately after the first appearance.

The investigating judge may, by reasoned order not subject to appeal, prohibit communication for a period of ten days. This prohibition may be renewed, but only for a further period of ten days.

Under no circumstances shall the prohibition on communication apply to the accused's counsel.

Art. 71 – The accused shall be examined by the forensic identification service in order to verify their identity and investigate their background.

Art. 72 – The judge shall first hear the accused separately, then confront them with each other or with witnesses, if necessary. The judge shall record the questions and answers, as well as any incidents that arose during the interrogation, in minutes drawn up during the hearing. The interrogation shall be read to the accused, numbered and initialed on each page, and signed by the judge, the clerk, the person appearing, and, where applicable, the lawyer and the interpreter.

If the accused refuses or is unable to sign, this shall be noted, stating the reason.

Unless the accused expressly waives this right, he or she shall only be questioned in the presence of his or her counsel, who shall be duly summoned at least twenty-four hours in advance.

The proceedings shall be made available to the counsel on the eve of each interrogation to which the accused is to be subjected.

Counsel may only speak after being authorized to do so by the investigating judge. In the event of refusal, the incident shall be noted in the minutes. The statements made by counsel shall also be noted.

The judge shall assess the appropriateness of the additional investigative measures requested of him or her for the manifestation of the truth.

Art. 73 – The public prosecutor may attend the questioning and confrontations of the accused.

He may only speak after being authorized to do so by the investigating judge. In the event of refusal, mention of the incident shall be made in the minutes.

Art. 74 – If the accused refuses to answer or feigns infirmities that would prevent him from doing so, the judge shall warn him that he will be disregarded in the investigation of the case and shall make mention of this warning in the minutes.

Art. 75 – If the public prosecutor, the accused, the civilly liable party, or the civil party raises the issue of the investigating judge's lack of jurisdiction, the latter must rule on the matter. The order of dismissal may be appealed before the indictment division within four days of its communication to the public prosecutor and its notification to the other parties.

The appeal shall not suspend the investigation proceedings.

Art. 76 – The investigating judge shall present the evidence to the defendant so that he may state whether he recognizes it and make any observations he deems useful.

Art. 77 – In the event of the accused becoming insane after the offense, the trial or judgment shall be postponed.

The accused may be held in custody or placed under a committal order.

Section IV – Court orders

Art. 78 – Where the accused has failed to appear or is in one of the situations provided for in Article 85, the investigating judge may issue a warrant for his or her arrest. The warrant shall be dated, signed, and sealed. The accused shall be identified as clearly as possible. The warrant shall indicate the subject matter of the charge, the applicable laws, and shall contain an order to any law enforcement officer to arrest the accused and bring him before the investigating judge.

If the accused cannot be found, the warrant is shown to the district chief or sheikh of the place of residence, who affixes his visa to it.

If the arrest warrant requires the judicial police officer to take the suspect into custody, he must bring him before the investigating judge without delay, and at the latest within 48 hours.

In this case, the judicial police officer may not carry out any preliminary investigation, except for drawing up a report mentioning the identity of the person against whom the arrest warrant has been issued, while complying with the provisions of Article 13 bis of this Code concerning medical examination, the recording of their identity in the medical register, and the provisions of Article 13 quater concerning visits by ^{a lawyer}.

Art. 79 – After the arrest warrant has been executed, the investigating judge shall question the accused within three days of his admission to the detention center.

At the end of this period, the accused shall be brought automatically, by the chief guard, before the public prosecutor, who shall request the investigating judge to question him immediately.

In the event of refusal or impossibility, the questioning shall be carried out by the President of the court or by the judge designated by him, failing which the public prosecutor shall order the immediate release of the accused.

Art. 80 – After questioning the accused, the investigating judge may, on the recommendation of the public prosecutor, issue a committal order if the offense carries a prison sentence or a more severe penalty.

If the investigating judge's decision is not in accordance with the indictment, his order may be appealed before the indictment division by the public prosecutor within four days of the communication, which must be made without delay, of the said order.

Art. 81 – The warrant of committal shall be drawn up, dated, signed, and sealed by the investigating judge. It shall clearly indicate the name and position of that judge, the name, presumed age, occupation, and place of birth of the accused,

⁵ **Art. 78** – Paragraph 3 (new) added by Law No. 2016-5 of February 16, 2016.

place of residence, the subject of the charge with reference to the applicable law. It shall contain the order given by the judge to the chief prison officer to receive and detain the accused.

It shall be notified to the accused and immediately executed. The bearer of the warrant shall have the right to:

- 1) request the assistance of law enforcement;
- 2) to search, in accordance with the provisions of the law, for the accused wherever he or she is likely to be found. A report of the search shall be drawn up.

Art. 82 – The officer responsible for executing the warrant shall hand over the accused to the chief prison officer, who shall issue a discharge and, within twenty-four hours, return the receipt for the warrant to the investigating judge after dating and signing it.

Art. 83 (new) – Amended by Law No. 87-70 of November 26, 1987 – Failure to comply with the formalities prescribed for the issuance of judicial warrants shall not render them null and void, but shall give rise to disciplinary sanctions and damages, if applicable.

The courts shall have exclusive jurisdiction to rule on any dispute concerning the warrant and the extent of its infringement of individual liberty.

Section V – Preventive detention

Art. 84 – Preventive detention is an exceptional measure. When it is ordered, the following rules must be observed.

Art. 85 (new) – Amended by Law No. 93-114 of November 22, 1993 – The accused may be placed in preventive detention in cases of flagrant crimes or offenses and whenever, due to the existence of serious presumptions, detention appears necessary as a security measure to prevent further offenses, as a guarantee of the execution of the sentence, or as a means of ensuring the security of information.

Preventive detention may not exceed six months in the cases referred to in the preceding paragraph. The decision to place a person in preventive detention must be reasoned and must include the factual and legal grounds justifying it.⁶

If the interests of the investigation so warrant, the investigating judge may, after consulting the public prosecutor and by means of a reasoned order, decide to extend the detention, once in the case of a misdemeanor, for a period not exceeding three months, and twice in the case of a felony, with each period not exceeding four months.

The renewal order is subject to appeal.

Release with or without bail is a right, five days after questioning, for defendants who have a fixed residence in Tunisia and have not been sentenced to more than three months' imprisonment, when the maximum sentence provided for by law does not exceed one year's imprisonment.

The decision of the acquisition chamber to carry out certain acts necessary to bring the case to trial may not result in the maximum period of preventive detention of the accused being exceeded. the investigating judges or the indictment division, as the case may be, must order his provisional release, without this preventing the prescription of the measures necessary to ensure his ^{appearance}.

⁶ The end of paragraph 2^o was added by Act No. 2008-21 of March 4, 2008.

⁷ Art. 85 – Paragraph 6 (new) added by Law No. 2008-75 of December 11, 2008.

Release with or without bail is a right, five days after questioning, for defendants who have a fixed residence in Tunisia and have not previously been sentenced to more than six months' imprisonment, when the maximum sentence provided for by law does not exceed two years' imprisonment, with the exception of the offenses provided for in Articles 68, 70, and 217 of the ^{Penal} Code.

Section VI – Provisional release

Art. 86 (new) – Amended by Law No. 87-70 of November 26, 1987 – The investigating judge may, in all cases except those provided for in Article 85 where release is mandatory, order the provisional release of the accused with or without bail, after consulting the public prosecutor.

Provisional release may be ordered in any case by the investigating judge, at the request of the public prosecutor, or at the request of the accused or his counsel, taking into account the obligations provided for in the preceding paragraph.

Provisional release of the accused may only be granted on condition that the latter undertakes, before the investigating judge, to comply with the measures prescribed by the judge, in whole or in part, which are as follows:

- 1) election of a domicile within the jurisdiction of the court;
- 2) prohibition from leaving the territorial limits defined by the judge except under specific conditions;
- 3) prohibition on appearing in specific places;
- 4) informing the investigating judge of his movements to specific locations;
- 5) undertaking to appear before him whenever he so requests and to respond to summonses issued to him by the authorities in connection with the proceedings brought against him.

A decision on the request for provisional release shall be made within four days of the date on which it ^{is filed}.

After questioning and keeping the suspect in custody or after his provisional release, the investigating judge may take one of the ^{following} measures against him:

1. Placement under electronic surveillance for a non-renewable period not exceeding six months, with the investigating judge responsible for monitoring the implementation of this measure with the assistance of the probation office under his authority, in accordance with the provisions and procedures laid down in this code.
2. Election of domicile within the court's jurisdiction,
3. Prohibition from leaving the territorial limits defined by the judge except under specific conditions,
4. Prohibition on appearing in specific places,
5. Notification of the investigating judge of any travel to specific locations,
6. Undertaking to appear before the judge whenever requested and to respond to summonses issued by the authorities in relation to the proceedings against the suspect,

The suspect may only be released on bail after he has undertaken to the investigating judge to comply with all or part of the measures imposed on him.

⁸ Art. 85 – Last new paragraph amended by Law No. 2008-75 of December 11, 2008.

⁹ Art. 86, new third paragraph amended by [Decree-Law No. 2020-29 of June 10, 2020](#)

¹⁰ Art. 86, new fourth paragraph amended by [Decree-Law No. 2020-29 of June 10, 2020](#)

Art. 87 (new) – Amended by Law No. 93-114 of November 22, 1993 – The order of the investigating judge granting or refusing provisional release, or the order modifying or terminating the measure, may be appealed by the public prosecutor and the accused or his counsel before the indictment division, within four days of notification for the public prosecutor and within four days of notification for the others. An appeal by the Attorney General shall be admissible within ten days of the order being issued.

An appeal by the public prosecutor suspends the execution of the release order or the order prescribing the measure.

The appeal by the Attorney General does not suspend the execution of the order.

In the event of an appeal, the investigating judge shall immediately forward the case file to the indictment division.

The indictment division shall rule on the appeal within a maximum of eight days of receiving the file.

If the investigating judge fails to rule on the request for release within the time limit set in Article 86, the accused or his counsel or the public prosecutor may refer the matter directly to the indictment division.

The public prosecutor is required to request the transfer of the file and to submit written and reasoned submissions within eight days.

The indictment division must rule within eight days of receiving the case file.

The request for provisional release submitted by the accused or his counsel may, in any event, only be renewed after a period of one month from the date of rejection of the previous request, unless new grounds arise.

Art. 88 – The order for the provisional release of the accused does not prevent the investigating judge or the court hearing the case from issuing a new committal order if this measure is made necessary by the fact that the accused, having been summoned, fails to appear or as a result of new and serious circumstances.

However, if provisional release had been granted by the indictment division overturning the investigating judge's order, the latter may only issue a new warrant with the consent of that division, after hearing the public prosecutor.

Art. 89 – Bail consists either in the deposit of a sum of money, certified checks, or government-guaranteed securities, or in a commitment by a person of sufficient solvency to ensure that the accused appears at all stages of the proceedings or, failing that, to pay the sum determined by the judge to the treasury.

The order for provisional release shall determine the nature and, where applicable, the amount of the bail to be provided.

Art. 90 – The bond guarantees:

- 1) the representation of the accused in all proceedings and for the enforcement of the judgment;
- 2) payment in the following order:
 - a) costs advanced by the Treasury;
 - b) those advanced by the civil party;
 - c) fines.

The order for provisional release shall determine the amount allocated to each of the two parts of the bail.

Art. 91 – If the defendant fails to appear, without legitimate excuse, at all stages of the proceedings and for the enforcement of the judgment, the first part of the bond shall be forfeited to the State.

However, in the event of dismissal or acquittal, the decision may order its return to the defendant or to a third party.

In the event of conviction, the second part of the confiscated bail shall be allocated to the costs and fine in the order set out in the previous article; the surplus shall be returned.

Art. 92 – Provisional release may be requested in any case from the court hearing the case.

In all other cases, the request may be addressed to the indictment division.

A decision shall be made upon simple request, in chambers, after hearing the public prosecutor.

Section VII – Searches

Art. 93 – Searches shall be carried out in all places where objects may be found whose discovery would be useful in establishing the truth.

Art. 94 – House searches shall be carried out exclusively by the investigating judge. However, house searches may also be carried out by:

- 1) judicial police officers in the case of a flagrant crime or offense, under the conditions set out in this Code;
- 2) judicial police officers referred to in paragraphs 2 to 4 of Article 10 delegated by the investigating judge;
- 3) civil servants and agents of the Administration authorized to do so by a special text.

Art. 95 – No search may be carried out before 6 a.m. or after 8 p.m. in dwellings and outbuildings, except in cases of flagrant crime or offense, or when it is necessary to enter, even without the consent of the owner of the house, in order to seize the accused or arrest an escaped prisoner.

Art. 96 – The investigating judge or judicial police officer conducting a house search must, if necessary, be assisted by a woman of trust.

If the presence of the accused during the search is not deemed possible or useful, the judge shall have two witnesses from among the people of the house or, failing that, neighbors who sign the report, assist in the operation.

Section VIII – Seizure

Art. 97 – The investigating judge must search for and seize any documents or effects that may be useful in establishing the truth.

An inventory shall be made, as far as possible in the presence of the accused or the third party in whose possession the seized items were found. A report of the seizure shall be drawn up.

Seized items shall be sealed and placed, as appropriate, in an envelope, sealed package, or label bearing the date of seizure and the case number.

Except in cases of flagrant crime or offense, judicial police officers shall have the same powers as if there were imminent danger.

Art. 98 – Where the seized item is subject to deterioration or costly preservation, the judge may, after consulting the public prosecutor and notifying the seized party, have it sold at public auction.

as soon as the needs of the investigation permit. In this case, the owner's right shall be exercised within the time limit specified in Article 100.

Art. 99 – The investigating judge may order the seizure of any object, correspondence, or other items if he or she deems it useful for the discovery of the truth.

Even in cases other than flagrant crimes or offenses, the public prosecutor shall always have the power to search for and seize, by requisition, correspondence addressed to or from the accused. He shall not read it unless there is danger in delay.

Art. 100 – Any person who claims to have a right to objects in the hands of the courts may request their return from the investigating judge and, if refused, from the indictment division, which shall rule on the matter upon simple request.

Any seized item that is not claimed by the owner within three years of the dismissal order or judgment shall be acquired by the State.

Section IX – Expert reports

Art. 101 – The investigating judge may, when circumstances appear to require it, appoint one or more experts to carry out technical checks that he specifies.

Except in urgent cases, notification shall be given to the public prosecutor, the civil party, and the accused, who may, within four days, raise grounds for challenging the choice of expert. The judge shall assess the grounds and rule without appeal by order.

Within 48 hours of notification, the defendant's counsel may request access to the case file.

Art. 102 – Any order appointing experts must set a deadline for them to complete their task.

If special reasons so require, this time limit may be extended at the request of the experts and by reasoned order of the investigating judge who appointed them.

Experts who fail to submit their report within the time limit set for them may be immediately replaced and must report on the investigations they have carried out. They must also return within 48 hours any objects, items, and documents entrusted to them for the purpose of carrying out their assignment. They may also be required, by an order that is not subject to appeal and is enforceable in accordance with the provisions of the Code of Civil and Commercial Procedure, to return all or part of the advance payment made to them. They may also be subject to disciplinary measures.

The experts must carry out their duties in conjunction with the investigating judge; they must keep him informed of the progress of their operations and enable him to take any necessary measures at any time.

Art. 103 – When the expert operations have been completed, the experts shall draw up a report containing a description of said operations and their conclusions. The experts must certify that they have personally carried out the operations entrusted to them and sign their report.

If they have differing opinions or reservations about the joint conclusions, each of them shall state their opinion or reservations, giving reasons.

Section X – Closing of the investigation

Art. 104 – When the proceedings are completed, the investigating judge shall communicate them to the public prosecutor, who shall, within eight days at the latest, submit his written submissions requesting that the case be referred

to the competent court, dismissal of the case, further investigation, or transfer to another court due to lack of jurisdiction.

As soon as the public prosecutor has filed his or her submissions, the investigating judge shall rule, by order, on all the defendants and on the charges brought against them, as well as on all the conclusions of the public prosecutor's indictment.

The order contains the surname, first name, age, place of birth, domicile, and profession of the accused, a summary and legal classification of the facts, the reasons why there is or is not sufficient evidence, and the decision of the investigating judge.

Art. 104 (bis) – Added by Law No. 2008-75 of December 11, 2008 – Except in cases where the joinder of proceedings is mandatory pursuant to Article 131 of this Code and Article 55 of the Criminal Code, the investigating judge may, when the proceedings have been completed in respect of the accused whose alleged acts constitute a misdemeanor or a minor offense, separate the case file and forward it to the public prosecutor for the filing of written submissions, without this preventing the continuation of proceedings against other accused persons whose alleged acts constitute a crime under the law.

Even when dealing with acts classified as crimes by law for all the accused, the investigating judge may separate the case in order to rule quickly on the fate of those who are in custody, without this preventing the continuation of proceedings against the other accused for reasons relating to the requirements of the investigation.

As soon as the public prosecutor has filed his or her submissions, the investigating judge shall rule, by separate order, on all the defendants who are the subject of the proceedings and shall remain seized of the investigation for the other defendants until he or she issues a separate order in their regard.

Art. 105 – If the investigating judge finds that he or she lacks jurisdiction, he or she must issue an order to transfer the case; the public prosecutor then forwards the file with the evidence to the competent court and keeps the defendant at his or her disposal in the same condition.

Art. 106 (new) – Amended by Law No. 93-114 of November 22, 1993 – If the investigating judge considers that the public action is not admissible, that the facts do not constitute an offense, or that there is insufficient evidence against the accused, he shall declare, by order, that there are no grounds for prosecution and order the release of the accused if he is in preventive detention. He shall rule on the seized items.

The investigating judge remains competent after the decision not to prosecute to rule on the fate of the seized items.

If the investigating judge considers that the facts constitute an offense not punishable by imprisonment or a misdemeanor, he or she shall refer the accused to the competent judge and order his or her release if he or she is in preventive detention.

If he considers that the facts constitute an offense punishable by imprisonment, he shall refer the accused, as appropriate, to the district judge or the criminal court.

The referral order terminates preventive detention or the prescribed measure.

However, the investigating judge may, by a separate and reasoned order, keep the accused in preventive detention or under the effect of the order prescribing the measure until the date of his appearance before the court, unless the court decides otherwise.

Art. 107 (new) – Amended by Law No. 93-114 of November 22, 1993 – If the investigating judge considers that the facts constitute a crime, he shall order the referral of the accused to the indictment division with a detailed statement of the proceedings and a list of the seized documents.

The warrant for the accused's arrest shall remain in effect, as shall the order prescribing the measure, until the indictment division has ruled on the matter, unless the investigating judge "decides otherwise.

Art. 108 – The public prosecutor shall ensure that the orders issued by the investigating judge are carried out.

Art. 109 – The orders of the investigating judge shall be immediately communicated to the public prosecutor, who may, in all cases, lodge an appeal within four days of the date of the order.

They shall also be notified within 48 hours to the civil party, who may appeal within four days of notification against those that prejudice his or her civil interests.

The order for referral to the indictment division shall be notified to the accused, who may lodge an appeal within the same period.

Art. 110 – The appeal shall be lodged by written or oral declaration; it shall be received by the clerk of the court. If the appellant is in custody, the appeal shall be received by the chief supervisor, who shall forward it without delay to the clerk of the court.

The appeal shall be examined by the indictment division.

In the event of an appeal by the public prosecutor, the accused who is in custody shall remain in prison until a decision has been made on the appeal and, in all cases, until the expiry of the appeal period, unless the public prosecutor consents to immediate release.

The indictment division shall rule on the subject matter of the appeal. Its decisions shall be immediately enforceable.

Art. 111 (new) – Amended by Law No. 93-114 of November 22, 1993¹¹– In cases referred either to the district judge or to the criminal court, the public prosecutor is required to send all the investigation and conviction documents to the clerk of the competent court within four days at the latest.

He shall be required to summon the accused to the next available hearing.

CHAPTER III – THE INDICTMENT CHAMBER

Art. 112 – Each Court of Appeal shall have at least one indictment division. The indictment division shall consist of a division president and two judges. If the president is unable to attend, he or she may be replaced by a judge of the Court of Appeal, and the judges may be replaced by magistrates of the court of first instance.

The indictment division shall meet whenever necessary and at the request of the Attorney General.

Art. 113 – The functions of the public prosecutor's office in the indictment division are exercised by the Attorney General or one of his deputies.

Art. 114 – The Attorney General at the Court of Appeal, acting under the conditions prescribed in Article 107, paragraph 2, must forward the file with his submissions within ten days to the indictment division, which shall rule within eight days, after hearing the Public Prosecutor's Office, without the parties being present.

¹¹ Art. 111 – Last paragraph repealed by Law No. 93-114 of November 22, 1993.

The counsel for the accused and the civil party may examine the case files and submit briefs.

Art. 115 – The provisions of the preceding article shall apply to cases referred to the indictment division following an appeal or referral from another court.

Art. 116 – If the indictment division considers that the act does not constitute an offense, or that there is insufficient evidence against the defendant, it shall declare that there are no grounds for proceeding, order the release of the defendant in custody, and rule on the return of any seized items. It shall remain competent to rule on such restitution at a later date, after the dismissal of the case.

If there is sufficient evidence of guilt, it shall refer the accused to the competent court, ruling on each of the charges brought against the accused referred to it.

The chamber may also order, if necessary, additional information to be provided by one of its lawyers or by the investigating judge.

It may even, after hearing the public prosecutor, order new proceedings, investigate or have investigated facts that have not yet been the subject of an investigation.

Art. 117 – The indictment division may always issue a committal order against the defendant. It may also, after hearing the public prosecutor, order the release of the defendant in custody.

Art. 118 – If the indictment division considers that the facts constitute a misdemeanor or a minor offense, it shall refer the case to the criminal court or the district court.

Art. 119 – If the facts alleged against the defendants constitute an offense classified as a crime by law, the indictment division shall issue an indictment before the criminal court.

The indictment shall contain, on pain of nullity, a statement and legal classification of the facts that are the subject of the indictment.

This decision shall be communicated to the parties together with the procedural documents.

Art. 120 – The decisions of the indictment division shall be communicated or notified in accordance with the provisions of Article 109.

They may be appealed to the Court of Cassation under the conditions provided for in Articles 258 et seq. of this Code.

CHAPTER IV – RESUMPTION OF THE INVESTIGATION ON NEW CHARGES

Art. 121 – A defendant against whom the investigating judge or the indictment division has ruled that there are no grounds for prosecution may no longer be prosecuted for the same offense, unless new charges arise.

New charges are considered to be witness statements, documents, and reports which, although they could not be submitted for examination by the investigating judge or the indictment division, are nevertheless such as to either strengthen charges that would have been deemed too weak or to provide new developments in the facts that are useful for establishing the truth.

It is solely up to the public prosecutor or the attorney general to decide whether to request the reopening of the investigation on the basis of new charges.

BOOK II – COURTS OF JURISDICTION CHAPTER I –

JURISDICTION

Art. 122 (new) – Amended by Law No. 89-23 of February 27, 1989 – For the purposes of this code, crimes are offenses punishable by death or imprisonment for more than five years. Offenses punishable by imprisonment for a term of more than fifteen days and not exceeding five years or by a fine of more than sixty dinars shall be classified as misdemeanors.

Offenses punishable by imprisonment for a term not exceeding fifteen days or a fine not exceeding sixty dinars are classified as misdemeanors.

Art. 123 (new) – Amended by Law No. 80-15 of April 3, 1980 – The district judge has final jurisdiction over misdemeanors. He has jurisdiction in the first instance over:

- 1) offenses punishable by imprisonment not exceeding one year or a fine not exceeding one thousand dinars. However, the court of first instance shall remain exceptionally competent in cases of unintentional injury and arson.
- 2) offenses for which jurisdiction is assigned to it by a special law.

Art. 124 (new) – Amended by Law No. 2000-43 of April 17, 2000 – The court of first instance has jurisdiction in the first instance over all offenses except those falling within the jurisdiction of the cantonal judge.

It shall have final jurisdiction as an appellate court for judgments of the cantonal courts within its jurisdiction.

The court of first instance located at the seat of a court of appeals also hears criminal cases in the first instance.

Art. 125 – Increased penalties in all cases of recidivism do not alter jurisdiction.

Art. 126(new) – Amended by Law No. 2000-43 of April 17, 2000 – The court of appeal hears appeals in the final instance on offenses tried by the court of first instance and crimes tried by the court of first instance located at the seat of a court of appeal.

Art. 127 – Repealed by Law No. 2000-43 of April 17, 2000.

Art. 128 – Repealed by Law No. 2000-43 of April 17, 2000.

Art. 129 (new) – Amended by Law No. 2005-85 of August 15, 2005 – The court of the place where the offense was committed, the court of the defendant's domicile, the court of his last residence, or the court of the place where he was found shall have jurisdiction to hear the case.

The court first seized of the prosecution shall rule on the matter.

If the offense was committed on board or against a ship or aircraft registered in Tunisia or chartered without crew to an operator whose principal place of business or permanent residence is in Tunisia, the competent court shall be that of the place of landing or docking.

This court shall also have jurisdiction, even if one of the two conditions mentioned in the previous paragraph is not met, if the aircraft landed or the ship docked in Tunisia with the defendant on board.

Art. 130 – The following offenses are related:

- 1) committed at the same time by several persons acting together, even if they do not have a common purpose;
- 2) committed by different persons, even at different times and in different places, following a prior agreement between them;
- 3) even when there is no plurality of offenders, in order to obtain the means to commit other crimes, to facilitate or carry out their execution, or to ensure impunity.

Art. 131 – In the case of related offenses, under the terms of the previous article or in other similar cases where circumstances necessitate joint prosecution, the joinder of proceedings may be ordered.

If the related acts fall, either because of the nature of the offense or because of the status of their perpetrators, within the jurisdiction of courts of different levels, the court of the highest level shall hear the case.

If, on the other hand, the facts belong to the same class of offenses, the court with jurisdiction to hear one of them shall have jurisdiction to hear the others, notwithstanding the provisions of Article 129.

The joinder of proceedings is mandatory in the cases provided for in Article 55 of the Criminal Code.

Art. 132 – Courts may rule, in accordance with the rules of civil law, on preliminary objections of a civil nature raised during criminal proceedings, provided that they have jurisdiction to hear the same matters in civil proceedings. Otherwise, unless otherwise provided by law, they must stay proceedings until after a final judgment has been rendered on the preliminary objection.

The preliminary objection shall only be admissible if it does not appear to be a mere delaying tactic and if it may have a special and direct influence on the proceedings. A time limit shall be set for the civil party or the defendant to bring the matter before the competent court. Failing this, it shall be disregarded.

The court shall not stay proceedings if the charge relates to acts of violence or rebellion.

Art. 132 bis – Added by Law No. 93-114 of November 22, 1993 – No person who has been acquitted may be prosecuted again for the same acts, even under a different classification.

CHAPTER II – COMMON PROVISIONS

Art. 133 – The provisions of this chapter are common to all jurisdictions.

Section I – Summonses

Art. 134 – Unless otherwise provided by law, summonses shall be served either by administrative means or by a bailiff.

Art. 135 – The summons shall be issued at the request of the public prosecutor, the civil party, or any legally authorized administration.

The summons shall state the offense being prosecuted and refer to the text of the law that punishes it.

It shall indicate the court hearing the case, the place, time, and date of the hearing, and specify the status of the person summoned as defendant, civilly liable party, or witness.

If issued at the request of the civil party, it shall state the latter's surname, first name, occupation, and actual or elected domicile.

The summons issued to a witness must also state that failure to appear, refusal to testify, and perjury are punishable by law.

Art. 136 – The period between the date on which the summons is issued and the date set for the hearing shall be at least three days.

If the summoned party remains outside the territory of the Republic, this period shall be extended to thirty days.

Art. 137 – The summons of a detained defendant shall be issued through the chief prison guard.

Art. 138 – If the hearing is postponed to a fixed date, no new summons shall be issued.

Art. 139 – The summons must be delivered to the person concerned, their representative, their servant, or any person living with them, provided that the latter is capable of discernment.

If the person responsible for delivering the summons finds no one at the address or if the person found refuses to receive the summons, it shall be delivered to the district chief, the sheikh, or the police station or National Guard station in the district where the person concerned resides.

Art. 140 – The original, copy, or stub of the summons shall indicate the name and capacity of the person responsible for delivering the summons to the person concerned, as well as the date of delivery.

They shall bear the signature of the person summoned and, if the latter is unwilling or unable to sign, this shall be noted. They shall also bear the signature of the person who delivered them. They shall be returned without delay to the clerk of the court hearing the case and shall then be attached to the case file by the clerk.

Section II – Appearance of offenders and hearings

Art. 141 – Defendants charged with a crime or misdemeanor punishable by imprisonment are required to appear in person.

For misdemeanors not punishable by imprisonment and in all cases where the defendant has been summoned directly by the civil party, the defendant may be represented by a lawyer. The court may still, if it deems it necessary, order the defendant to appear in person.

Where the defendant, having been duly summoned, fails to appear or, in the cases provided for in the second paragraph above, is not represented, the court may proceed without hearing the case and rule by default if the defendant is not personally affected by the summons, or render a decision deemed to be adversarial if he is personally affected.

The civil party may be represented by a lawyer in all cases, unless the court orders them to appear in person.

The civilly liable party may be represented by a lawyer in all cases.

The assistance of a lawyer is mandatory before the court of first instance located at the seat of a court of appeal, when it rules on criminal matters, and also before the criminal court located at the seat of the court of appeal. If the accused does not choose a lawyer, the president shall appoint one for them ^{ex officio}.

Art. 141 bis – Added by Decree-Law No. 2020-12 of April 27, 2020, issued by the Head of Government – The court may, on its own initiative, at the request of the public prosecutor or the defendant, decide to have the defendant appear in person at the hearings and the pronouncement of the judgment, using secure audiovisual means of communication to ensure communication between the courtroom in which the court is sitting and the prison facility equipped for this purpose, after consulting the public prosecutor and obtaining the defendant's consent.

¹² Art. 141 – Paragraph 3 (new) amended by Law No. 2000-43 of April 17, 2000.

In the event of imminent danger or with a view to preventing the spread of a communicable disease, the court may decide to implement this procedure without obtaining the consent of the defendant in custody. The decision to adopt audiovisual means of communication shall be made by the court in writing, shall be reasoned, and shall not be subject to appeal.

The decision shall be brought to the attention of the prison director concerned, the defendant, and, where applicable, his or her lawyer, by any means leaving a written record, at least five (5) days before the date of the hearing. In this case, the lawyer has the choice of defending his or her client in the courtroom or in the prison where his or her client is being held.

The prison space reserved and equipped for audiovisual communication between the court and the defendant, and where applicable, his or her lawyer, is considered an extension of the courtroom, in which the same rules governing the conduct of the hearing, courtroom etiquette, and the suppression of any disturbance of order apply, in accordance with the legislation in force.

In all cases, the incarcerated defendant who is being tried by means of audiovisual communications enjoys all the guarantees of a fair trial. The same procedures governing the case of a defendant who is physically present in the courtroom apply to his trial, and the trial as such has the same legal effects.

Where the lawyer chooses to appear alongside his client in the prison area reserved for audiovisual communication with the court, he is able to plead on behalf of his client and present his observations and requests in accordance with the law, provided that the written submissions and supporting documents are sent to the court at least one day before the date of the hearing.

In the event of technical malfunction or interruption of the audiovisual connection and transmission, the presiding judge may suspend the hearing for a period not exceeding two hours, or postpone it to a later date after consulting the representative of the public prosecutor's office.

In the event of a suspension of the hearing, it shall resume where it left off.

Art. 142 (new) – Amended by Law No. 87-70 of November 26, 1987 – If the accused flees to avoid prosecution, the court may issue a warrant for his arrest or committal and, in addition, order the seizure of his property upon the recommendation of the public prosecutor. This measure shall be published in the Official Journal of the Republic of Tunisia and posted at the headquarters of the governorate of the defendant's residence.

Any acts by which the accused disposes of his property after the seizure has been made public shall be null and void.

The seizure shall be lifted by a judgment of the court that ordered it. In this case, the lifting of the seizure shall be published in the same manner as prescribed in paragraph 1.

If the accused appears pursuant to a warrant of arrest, the court shall immediately proceed with his interrogation, either directly or through one of its members; if this is not possible, the interrogation shall take place within three days of the date of his detention.

At the end of this period, the prison director shall automatically bring the accused before the public prosecutor, who shall request the court to take a decision on the matter; failing this, he shall order the accused to be released immediately.

In the event of failure to execute the warrant, the accused is tried in absentia.

Where the warrant requires the judicial police officer to take the suspect into custody, he must bring him before the competent court without delay, and at the latest within forty-eight hours. In this case, the provisions of paragraph 3 of Article ⁷⁸¹³ shall apply.

¹³ **Art. 142** – paragraph 5 added by Law No. 2016-5 of February 16, 2016.

Art. 143 – The president shall preside over the proceedings and maintain order in the courtroom.

The proceedings are public and take place in the presence of the representative of the public prosecutor and the parties, unless the court decides to hold the proceedings in camera, either on its own initiative or at the request of the public prosecutor, in order to safeguard public order or morality.

This is noted in the minutes of the hearing.

The complainant, if present and not a civil party, is heard first. He is then given access to the case file.

Witnesses or experts shall be called and, after the charges have been proposed and judged, heard, if necessary. The defendant and the civilly liable party shall be questioned. Evidence for the prosecution or the defense shall be presented, if necessary, to the witnesses and the parties.

The parties and their counsel may only ask questions through the presiding judge. All relevant cross-examinations shall be conducted.

The civil party shall present its conclusions either in person or through its lawyer.

The representative of the public prosecutor shall ask questions through the presiding judge and then present his conclusions.

The defendant and the civilly liable party may reply.

The floor shall then be given to the lawyers for the defendant and the civilly liable party.

The presiding judge shall close the proceedings when the court considers that it has sufficient information.

The court may appoint one of its members to carry out further investigations. In this case, the proceedings are adjourned until a fixed date.

Art. 144 – The court shall hear witnesses whom it deems useful to hear.

The representative of the public prosecutor's office, the civil party, and the defendant may request that witnesses be heard; they must indicate the identity of these witnesses and the purpose of their testimony.

The court shall decide on the appropriateness of the request. In the event of refusal, a reasoned decision shall be given.

Art. 145 – After responding to the call of their names, witnesses and experts shall be taken to a reserved room from which they shall only leave successively to testify before the court in the presence of the parties; their testimony shall be received in the manner prescribed by Articles 64 to 66 of this Code, except as provided for the preparation of the minutes.

Unless specially authorized, they must remain in the courtroom after giving their testimony until the public proceedings have been closed.

They may be required or ordered to withdraw during the testimony of another witness.

Art. 146 – In all cases where it appears necessary to hear a detainee, the court hearing the case may issue a letter rogatory to the president of the court of first instance closest to the place of detention.

This magistrate may delegate one of the judges of the court to hear the prisoner and record the proceedings.

Art. 147 – A defendant who disrupts the proceedings by his or her behavior may be removed from the hearing. The proceedings shall continue in his or her absence and the judgment, which shall be deemed to be adversarial, shall be brought to his or her attention by the clerk.

Art. 148 – If the defendant refuses to answer, the proceedings shall be continued without him and the judgment shall be deemed to be adversarial in his regard.

Art. 149 – The clerk shall draft a summary of the proceedings during the hearing. The summary shall specifically mention the composition of the court and its decision. This summary shall be submitted within twenty-four hours for communication and approval to the presiding judge and the representative of the public prosecutor's office. It shall then be appended to the case file.

Section III – The administration of evidence

Art. 150 – Except where otherwise provided by law, offenses may be established by any means of evidence, and the judge shall decide according to his or her innermost conviction.

If the evidence is not adduced, the judge shall dismiss the defendant from the proceedings.

Art. 151 – The judge may only base his decision on evidence presented at the hearing and discussed orally and adversarially before him.

Art. 152 – Confessions, like any other evidence, are left to the discretion of the judges.

Art. 153 – If the existence of the offense is subject to a private right, the judge shall observe the rules of evidence in this matter.

Art. 154 – Except in cases where the law provides otherwise, the reports or statements drawn up by judicial police officers or civil servants or agents to whom the law has conferred the power to record offenses and contraventions shall be deemed authentic until proven otherwise.

Such evidence must be provided in writing or by witnesses.

Art. 155 – The report shall only have probative value if it is in the proper form and if its author, acting in the exercise of his or her duties, reports on a matter within his or her competence what he or she has personally seen or heard.

Confessions and statements made by the accused or declarations made by witnesses shall be deemed null and void if it is established that they were obtained under torture or ^{duress}.

Art. 156 – Matters giving rise to official reports that are deemed authentic until proven false are governed by special laws. Unless otherwise provided, the procedure for proving falsification is governed by Articles 284 et seq.

Art. 157 – If the court considers that an expert opinion is necessary, the procedure shall be carried out in accordance with Articles 101 et seq.

Art. 158 – Witnesses shall be summoned as provided for in Articles 134 et seq.

Art. 159 – The provisions of Articles 61 and 67 shall apply before the trial courts.

¹⁴ Art. 155 — New second paragraph added by Decree-Law No. 2011-106 of October 22, 2011.

Art. 160 – The persons referred to in Article 63 may be heard at the hearing without taking an oath and for information purposes, unless the public prosecutor or the defendant objects.

Art. 161 — If it appears during the proceedings that a witness has knowingly made a statement contrary to the truth, the President shall draw up a report of the incident. The witness shall be placed under arrest, the public prosecutor shall be heard, and the witness may be tried immediately.

Section IV – Judgment

Art. 162 (new) – Amended by Article 3 of Law No. 89-23 of February 27, 1989 – Judgments shall be rendered by a majority vote.

However, sentences of death or life imprisonment shall be decided by at least four votes.

Art. 163 – The president shall collect the opinions, beginning with the least senior judge; he shall give his opinion last.

If more than two opinions are formed, the least senior judge or judges shall be required to align themselves with one of the opinions expressed.

Art. 164 – The court shall deliver its judgment after deliberating in accordance with the law once the proceedings have been closed. However, in criminal matters, it may postpone the delivery of the judgment to a later hearing, the date of which it shall set.

In criminal matters, the judgment must be read in full at a public hearing.

Art. 165 – Deliberations shall be secret. No written record shall remain. Only judges who have attended the proceedings may participate. Once a majority has been reached, a draft judgment shall be drawn up, signed by the judges who have deliberated.

This draft shall only become final after it has been pronounced in open court, in the presence of all the judges who signed it.

If one of the judges who participated in the deliberations and signed the draft judgment is prevented from attending the hearing at which the judgment is to be handed down for serious health reasons, the hearing shall take place in the presence of the other judges.

However, if the magistrate who is unable to attend has not signed the draft judgment, or if the reason for their inability to attend is the loss of their status, the deliberations must be suspended and the proceedings reopened.

Art. 166 – Judgments delivered after deliberation at the hearing or subsequently must be recorded in writing, in accordance with the provisions of Article 168, as soon as possible and in any event within ten days of the judgment being delivered.

They must be signed by the judges who rendered them. When one of the judges who participated in these judgments is unable to sign them after they have been pronounced, these judgments shall be signed by the other two judges and mention shall be made of this circumstance.

Article 167 – The same judgment shall rule on:

- 1) restitution;
- 2) claims for damages brought by the civil party for compensation for the harm caused by the offense.
If the court is unable to rule on the claim for damages at that stage, it may grant the civil party a provisional payment by enforceable judgment, notwithstanding any opposition or appeal.

- 3) On claims for damages brought by the acquitted defendant against the civil party for compensation for damage caused by the prosecution.

Art. 168 – All judgments shall indicate:

- 1) the court that ruled, the names of the judges, the representative of the public prosecutor's office, and the clerk who presided, and the date of the decision;
- 2) the surnames, first names, professions, places of residence, and criminal records of the defendants;
- 3) the subject matter of the indictment;
- 4) the factual and legal grounds for the decision, even in the event of acquittal;
- 5) the operative part of the judgment convicting or acquitting the defendant and an

indication of the provisions of the criminal law that have been applied; 6) the settlement of

costs.

Art. 169 – If the matter falls within the jurisdiction of another court, the court shall declare itself incompetent and refer the case file to the public prosecutor.

It may, where appropriate, issue a warrant for the defendant's detention or order their provisional release, with or without bail.

Art. 170 – If the court finds that the act does not constitute a criminal offense, or that the act has not been proven, or that it is not attributable to the defendant, it shall dismiss the case against the defendant.

If there is a civil party involved, the court shall declare that it has no jurisdiction to rule on the civil action, shall settle the costs and shall charge them to the civil party.

If the court finds that the act constitutes an offense, it shall impose the penalty.

Art. 171 – If the criminal court, to which an act classified as a crime by law has been duly referred, considers, as a result of the proceedings, that the act constitutes only a misdemeanor or a minor offense, it shall impose the penalty and rule, where applicable, on the civil action.

If the criminal court, to which a matter classified as a crime by law has been duly referred, finds, after hearing the arguments, that the matter constitutes only a misdemeanor, it shall impose the penalty and, where applicable, rule on the civil action.

Art. 172 – If the act is a misdemeanor related to a crime, the court shall rule on the whole case in a single judgment subject to appeal.

Art. 173 – In cases where the defendant is free, if he is sentenced to imprisonment, or to imprisonment and a fine, the court may order the provisional enforcement of the prison sentence, notwithstanding any opposition or appeal.

In the event of acquittal or conviction, either to a suspended prison sentence or a fine, the defendant in custody shall be released immediately, notwithstanding any appeal.

Article 174 – When the individual guilty of an offense remains unknown, the confiscation, restitution, destruction, or decommissioning of objects seized as evidence shall be ordered by the competent court according to the nature of the offense.

Section V – Default judgments and appeals

Art. 175 – If the defendant fails to appear in person on the date set for the hearing, the court shall proceed and render a decision that is deemed to be adversarial.

If the defendant who fails to appear has been duly summoned, even if not personally served, he shall be judged in absentia. The judgment in absentia shall be served by the clerk of the court that rendered the judgment.

The opposition to the default judgment shall be filed by the opposing party in person or by their representative at the clerk's office of the court that rendered the decision within ten days of the service of the judgment.

If the opponent remains outside the territory of the Republic, the time limit shall be extended to thirty days.

If the opponent is in custody, the opposition shall be received by the chief prison officer, who shall forward it without delay to the clerk of the court.

The appeal shall be made either by verbal statement, which shall be recorded immediately, or by written statement. The appellant must sign, and if he is unwilling or unable to sign, this shall be noted.

The clerk shall immediately set the date of the hearing and notify the opponent thereof; in all cases, this hearing must take place within a maximum of one month from the date of the opposition.

The opponent or his representative shall give notice of the opposition and summon the interested parties, with the exception of the representative of the public prosecutor, by bailiff, at least three days before the date of the hearing, failing which the opposition shall be dismissed.

The civil party shall only be summoned if the opposition seeks to refer the civil action back to the judge.

Art. 176 – If service has not been made in person or if it does not appear from the documents relating to the enforcement of the judgment that the defendant was aware of it, the opposition shall be admissible until the expiry of the limitation period for the sentence.

Art. 177 – The costs of the proceedings and of the judgment by default may be borne by the acquitted opponent.

Art. 178 – The provisions of Articles 175, 176, and 177 above shall apply to the civilly liable party and the civil party.

Art. 179 – The civil party shall only have the right to oppose the judgment in respect of the damages and fine provided for in Article 46.

Art. 180 (new) – Amended by Law No. 2000-43 of April 17, 2000 – The appeal shall have suspensive effect.

When the sentence imposed is capital punishment, the defendant shall be imprisoned and the sentence may not be carried out until the judgment is final.

Art. 181 – Decisions deemed contradictory are not subject to appeal.

Art. 182 – If the appellant appears and if his appeal is admissible in form, the default judgment is set aside on the criminal or civil grounds to which the appeal relates, and the case is retried, without, however, any obligation to summon the witnesses already heard at the default hearing.

The appeal shall only benefit the appellant.

Art. 183 – The opposition shall be null and void and the merits shall not be examined if the opponent does not appear; the judgment thus rendered on opposition may not be challenged by the opponent except by way of appeal.

Section VI – Restitution

Art. 184 – The defendant, the civil party, or the person civilly liable may request the court hearing the case to return items placed under judicial control.

The court may order such restitution of its own motion.

Art. 185 – Any person other than the defendant, the civil party, or the person civilly liable who claims to have a right to objects placed in the hands of the court may also request their return from the court hearing the case.

Only the reports relating to the seizure may be communicated to them. The court shall rule by separate judgment, after hearing the parties.

Art. 186 – If the court grants restitution, it may take all protective measures to ensure, until a final decision on the merits, the representation of the returned items.

Art. 187 – If the court considers that the items placed under judicial authority are useful for establishing the truth or are liable to confiscation, it shall stay proceedings until it has ruled on the merits of the case.

In this case, the judgment shall not be subject to appeal.

Art. 188 – A judgment rejecting a request for restitution may be appealed by the person who made the request.

A judgment granting restitution may be appealed by the public prosecutor, the defendant, the person civilly liable, or the civil party who would be adversely affected by the decision.

The court may only be seized after the tribunal has ruled on the merits.

Art. 189 – The court that heard the case remains competent to order the restitution of items placed under judicial control if no appeal has been lodged against the judgment on the merits.

It shall rule on the request of any person who claims to have a right to the object or at the request of the public prosecutor.

Its decision may be referred to the court of appeal, in accordance with the provisions of Article 188.

Art. 190 – When the Court of Appeal is seized of the merits of the case, it shall have jurisdiction to rule on restitution under the conditions provided for in Articles 184 and 187.

It shall remain competent, even after a final decision on the merits, to order restitution under the conditions provided for in paragraphs 1 and 2 of Article 189.

Section VII – Costs

Art. 191 – The costs of the proceedings shall be borne by the convicted person.

Where several defendants are convicted of the same offense or related offenses, they shall be jointly and severally liable for the costs.

If it has not been possible to settle the costs at the time of the judgment, the clerk of the court is authorized to issue an enforceable order for costs, on the basis of the president's tax, without the need for further proceedings.

Art. 192 – The civil party shall always be ordered to pay the costs of the proceedings to the State, unless an appeal is lodged against the person entitled to do so.

Section VIII – Disclosure of procedural documents and issuance of copies thereof

Art. 193 – The parties' counsel shall have the right to obtain, upon referral or summons before the trial court, communication of procedural documents.

The file, the documents of which must be numbered and initialled, may be consulted at the court registry.

Art. 194 – The following may be issued to the parties at their expense:

- 1) upon request, copies or certified copies of the complaint or report, final orders, rulings, and judgments;
- 2) with the authorization of the public prosecutor, copies or transmissions of other procedural documents.

If the request is made by a third party, the authorization of the public prosecutor is required, regardless of the document for which a copy or transmission is requested.

If the documents are part of a file filed with the clerk of a court of appeal, authorization must be obtained from the Attorney General.

Any refusal to grant authorization must be justified and notified in administrative form. It may only be appealed to a higher authority.

Criminal proceedings may be communicated and sent to the courts and tribunals that have issued a decision to that effect, as well as to the Secretary of State for Justice. An inventory drawn up by the clerk shall then be attached to the shipment.

Section IX – Reconstruction of destroyed or lost judicial proceedings or decisions

Art. 195 – Where the original of a judicial decision that has not yet been enforced has been destroyed, removed, or misplaced, the following procedure shall be followed.

Art. 196 – If a certified copy or a copy of the decision can be found, it shall serve as the original and shall be filed as such with the clerk's office.

To this end, any public or private custodian of a certified copy or transcript of the decision shall, upon the order of the president of the court, deliver it to the court clerk's office. If it is not voluntarily delivered, searches or seizures may be carried out in accordance with the provisions of Articles 93 to 100.

The depository of the certified copy or transcript may, upon delivering it to the court clerk's office, obtain another copy free of charge.

Art. 197 – If no certified copy or transcript of the decision can be found, the case shall be retried after, where applicable, the proceedings have been reconstructed in accordance with Article 198 below.

Art. 198 – Where the file of proceedings that have not yet been finally decided has been destroyed, removed, or misplaced, it shall be reconstructed from the point at which the documents are missing.

Section X – Nullities

Art. 199 – Any acts or decisions contrary to public policy, fundamental rules of procedure, and the legitimate interests of the defense shall be annulled.

The ruling declaring the nullity shall determine its scope.

CHAPTER III – THE DISTRICT JUDGE

Section I – Referral to the cantonal judge in matters of minor offenses

Art. 200 – The cantonal judge shall hear cases involving minor offenses:

- 1) by direct summons, either by the public prosecutor, or by the financial authorities and agencies when the law authorizes them to bring public proceedings directly, or by the injured party;
- 2) by referral from the investigating judge or another court;
- 3) by the immediate transfer of the defendant to the bar by the public prosecutor.

In the cases provided for in Article 202. However, in cases of flagrante delicto, the judge may take up the case on his own initiative.

Section II – Proceedings before the district judge ruling on misdemeanors

Art. 201 – The defendant shall appear in open court, in person, through a lawyer, or through a special proxy.

However, if the judge considers it necessary for the defendant to appear in person, the case shall be rescheduled for a hearing on a date set by the judge.

If the defendant thus summoned fails to appear on the date set, the judge shall proceed and render a decision deemed to be adversarial.

Art. 202 – The judge may remand the defendant in custody if he is intoxicated, unable to prove his identity, has no fixed abode, or if there is reason to fear disorderly conduct.

Under no circumstances shall the defendant be held for more than eight days.

Art. 203 (new) – Amended by Law No. 93-113 of November 22, 1993 – Claims for damages exceeding the threshold of his jurisdiction when ruling in civil matters may not be brought before the cantonal judge ruling on misdemeanors.

Section III – Proceedings before the cantonal judge ruling on misdemeanors

Art. 204 – In matters of misdemeanors, the cantonal judge shall hear cases under the conditions provided for in Article 206 of this Code.

Claims for damages exceeding the amount that may be awarded in the first instance by the cantonal judge ruling on civil matters may not be brought before the cantonal judge ruling on misdemeanors.

CHAPTER IV – THE COURT OF FIRST INSTANCE

Section I – Composition of the court of first instance

Art. 205 (new) – Amended by Law No. 93-114 of November 22, 1993 – The court of first instance, ruling on misdemeanors, shall be composed of a presiding judge and two judges. In the event of incapacity, the presiding judge may be replaced by a ^{judge}.

¹⁵ Art. 205 – First paragraph (new) amended by Law No. 2000-43 of April 17, 2000.

However, for trials involving lengthy proceedings, the president of the court may decide to add two additional judges to the court. The additional judge or judges sit in on the hearings and only take part in the deliberations if the two regular judges are unable to do so.

The functions of the public prosecutor's office are exercised by the public prosecutor or one of his deputies, and those of the court registry by a court clerk.

However, the said court is composed of a single judge when it has to hear the following offenses:

- 1) offenses relating to bad checks,
- 2) offenses relating to unauthorized construction, as provided for by Law No. 76-34 of February 4, 1976,
- 3) economic offenses provided for in Chapter I of Title 4 of Law No. 91-64 of July 29, 1991, on competition and prices.

Section II – Referral to the court of first instance

Art. 206 – The court of first instance shall hear cases:

1. by direct summons from the public prosecutor when the latter considers that there is no need for a preliminary investigation, from the financial authorities and agencies in cases where the law authorizes them to bring public proceedings directly, or from the injured party when the public prosecutor refuses to prosecute ex officio.

In such cases, the prosecuting party shall summon the other parties.

2. by referral from the investigating judge or another court.

In this case, the public prosecutor shall summon the defendant and the civil parties or parties liable in civil law to the next available hearing.

3. by the immediate transfer of the defendant to the dock by the public prosecutor, after a simple interrogation in cases of flagrante delicto, if there is no hearing on the same day, the public prosecutor may, by warrant, have the accused imprisoned in the detention center. In this case, he must have him brought to the next hearing.

If the case is not ready for judgment, the court shall order its referral for further information to one of the next hearings, confirm the warrant, or, if necessary, provisionally release the accused with or without bail. It may also dismiss the prosecution and refer the public prosecutor to appeal as it sees fit.

CHAPTER V – APPEAL JURISDICTION

Section I – Exercise of the right of appeal

Art. 207 (new) – Amended by Law No. 2000-43 of April 17, 2000 – Judgments rendered in criminal and correctional matters may be appealed.

Appeals against judgments rendered by courts of first instance in criminal matters and those rendered by courts of first instance located at the seat of a court of appeal in criminal matters shall be brought before the court of appeal.

Appeals against judgments handed down by cantonal judges shall be brought before the court of first instance.

Art. 208 (new) – Amended by Law No. 93-114 of November 22, 1993 – Each court of appeal shall have at least one criminal appeals chamber composed of a chamber president and two judges.

In the event of incapacity, the president may be replaced by an associate judge of the court of appeal and the associate judges by judges of the court of first instance.

The functions of the public prosecutor shall be exercised by the Attorney General or one of his deputies, and those of the clerk's office by a clerk of the court of appeal.

However, for trials involving lengthy debates, the chief justice of the court of appeals may decide to add one or two additional judges to the panel. The additional judge or judges shall sit in on the hearings and shall only take part in the deliberations if the regular judge or judges are unable to do so.

Art. 209 (new) – Amended by Law No. 2000-43 of April 17, 2000 – Only judgments rendered at first instance by the cantonal judge or by the court of first instance in matters of jurisdiction or on the merits of a misdemeanor, as well as judgments rendered by the court of first instance for crimes, are subject to appeal.

Other decisions may only be appealed together with judgments rendered on the merits.

Art. 210 (new) – Amended by Law No. 2000-43 of April 17, 2000 – The right of appeal belongs to:

- 1) the defendant convicted of a felony or misdemeanor and the civilly liable party,
- 2) the civil party with regard to their civil interests only;
- 3) the public prosecutor;
- 4) the financial administrations and authorities acting as public prosecutors in cases where the law authorizes them to bring public proceedings directly;
- 5) to the attorneys general at the courts of appeal.

Art. 211 – An appeal may only be lodged by the interested party or their representative.

Art. 212 – The appeal shall be lodged with the clerk of the court that rendered the judgment, either by verbal declaration, which shall be recorded immediately, or by written declaration.

The appellant must sign, and if he does not wish to or is unable to sign, this shall be noted.

If the appellant is in custody, the appeal shall be received by the chief prison officer, who shall forward it without delay to the clerk of the court.

Art. 213 – Appeals shall no longer be admissible, except in cases of force majeure, if they are not lodged within ten days of the pronouncement of the judgment, after service of the judgment within the meaning of the first paragraph of Article 175, after the expiry of the time limit for opposition if the judgment was rendered by default, or after service of the judgment rendered by repeated default:

For the Attorney General of the Republic and the Advocates General at the courts of appeal, the time limit for appeal is sixty days from the date of the judgment. They must also, on pain of forfeiture, notify the defendant and the persons civilly liable of their appeals within that time limit.

Art. 214 – During the appeal period and proceedings, the execution of the judgment is suspended. Nevertheless, the committal order remains in effect until the expiration of the sentence handed down at first instance and, if the appeal has been lodged by the Public Prosecutor's Office, until the decision of the appellate court.

A late appeal shall not suspend the enforcement of the judgment.

Art. 215 – The appeal and the procedural documents shall be forwarded without delay to the representative of the public prosecutor's office at the court of appeal, by the district attorney or the cantonal judge, as the case may be.

If the appellant is in custody, he shall be immediately transferred, by order of the public prosecutor or the cantonal judge, to the detention center of the seat of the court of appeal.

The parties shall be summoned in accordance with Articles 134 et seq. The civil party shall only be summoned if the appeal is intended to bring the civil action before the court of appeal.

Section II – Proceedings before the appellate court

Art. 216 – The court of appeal may, on appeal by the public prosecutor, either uphold the judgment or overturn it in whole or in part in a manner favorable or unfavorable to the defendant.

It may not, on the sole appeal of the defendant or the civilly liable party, aggravate the fate of the appellant. It may not, on the sole appeal of the civil party, modify the judgment to the detriment of the latter.

Art. 217 – The appellants, with the exception of the public prosecutor, may withdraw their appeal. Such withdrawal must be express and may not be revoked.

Art. 218 – In the event of a judgment on the merits, if the appellate court considers that the proceedings are invalid, it shall regularize them and rule on the merits.

If the judgment is subject to annulment, the appellate court shall refer the case and rule on the merits.

Art. 219 – If the contested judgment is a judgment of lack of jurisdiction and the appellate court considers that it should be reversed, it shall overturn it, refer the case and rule on the merits.

Art. 220 – If the judgment under appeal is a judgment of jurisdiction and the appellate court considers that it should be reversed, it shall overturn it and refer the parties and the public prosecutor to take such action as they deem appropriate.

CHAPTER VI – THE CRIMINAL COURT

Art. 221 (new) – Amended by Law No. 2000-43 of April 17, 2000 – Each court of first instance located at the seat of a court of appeals shall include at least one criminal division ruling in the first instance on crimes, composed of:

- a third-grade president acting as chamber president at the court of appeal.
- four ^{second-grade} magistrates.

In the event of incapacity, the president may be replaced by a vice-president and the judges by two magistrates from the same court of first instance.

In the event of a trial requiring lengthy deliberations, the president of the court may decide to add one or more additional magistrates to the court. The additional magistrate(s) shall attend the hearing and shall only participate in the deliberations if the presiding magistrate(s) is/are unable to do so.

The functions of the public prosecutor are exercised in the criminal division of the court of first instance by the public prosecutor or his or her deputy. The function of clerk is performed by a clerk of the court of first instance.

Each court of appeal shall have at least one criminal appeal chamber composed of:

- a third-grade president acting as president of a chamber at the Court of Cassation,

¹⁶ Art. 221 – Paragraph one (new) amended by Law No. 2006-34 of June 12, 2006.

- two third-grade magistrates,
- two ^{second-grade} magistrates.

In the event of incapacity, the president may be replaced by one of the chamber presidents at the court of appeal, and the two third-grade magistrates by two second-grade magistrates, and the two second-grade magistrates by two other ^{magistrates}.

The functions of the public prosecutor are exercised by the Attorney General at the Court of Appeal or his deputy. The function of clerk is performed by a clerk of the Court of Appeal.

In cases requiring lengthy deliberations, the chief justice of the court of appeals may decide to add one or more additional judges to the panel. The additional judge or judges shall attend the hearing and shall participate in the deliberations only if the regular judge or judges are unable to do so.

Art. 221 (new) – Amended by Law No. 2000-43 of April 17, 2000 – The criminal division of the court of first instance located at the seat of a court of appeal shall be seized of the case by referral from the indictment division. The case in which a defendant is detained must be set for hearing within a maximum of three months from the date of receipt of the file by the court.

Art. 223 (new) – Amended by Law No. 2000-43 of April 17, 2000 – In the event of a death sentence, the case file shall be forwarded immediately to the Attorney General at the Court of Appeal, if the sentence is handed down at first instance, and to the Attorney General at the Court of Cassation if the judgment is handed down on appeal.

CHAPTER VII – CHILDREN'S COURTS

Articles 224 to 257 are repealed by Law No. 95-92 of November 9, 1995, relating to the publication of the Child Protection Code.

BOOK III – EXTRAORDINARY REMEDIES CHAPTER I – APPEALS TO THE COURT OF CASSATION

Section I – Decisions that may be challenged by way of appeal to the Court of Cassation

Article 258 – The following may appeal to the Court of Cassation against decisions rendered on the merits and in the final instance, even if they have been enforced, on the grounds of lack of jurisdiction, abuse of power, violation or misapplication of the law:

- 1) the convicted person;
- 2) the civilly liable party;
- 3) the civil party, solely with regard to their civil interests;
- 4) the public prosecutor;
- 5) the Attorney General and the Advocates General at the courts of appeal;
- 6) the Attorney General at the Court of Cassation, acting on the orders of the Secretary of State for Justice.

The Court of Cassation shall rule on the appeal.

Appeals against decisions imposing the death penalty shall be heard as a matter of urgency.

¹⁷ Art. 221 – Paragraph 5 (new) amended by Law No. 2006-34 of June 12, 2006.

¹⁸ Art. 221 – Paragraph 6 (new) amended by Law No. 2006-34 of June 12, 2006.

Art. 259 – The decision of the indictment division to refer the defendant to the criminal court or the district judge may only be challenged before the Court of Cassation when it rules, either ex officio or at the request of the parties, on jurisdiction, or when it contains final provisions that the court hearing the case does not have the power to modify.

Art. 260 – The civil party may only appeal to the Court of Cassation against judgments of the indictment division if the public prosecutor has appealed.

However, its appeal alone is admissible in the following cases:

- 1) when the judgment of the indictment division has ruled that there are no grounds for investigation;
- 2) when the ruling has declared the civil party's action inadmissible;
- 3) when the judgment declared the public action time-barred;
- 4) when the judgment, either ex officio or at the request of the parties, declared that the court hearing the case lacked jurisdiction;
- 5) when the judgment failed to rule on a charge.

Section II – Procedure

Art. 261 – An appeal to the Court of Cassation shall be lodged by means of a written application submitted, either in person or through a lawyer, to the registry of the court which handed down the judgment or ruling ^{under} appeal.

If the appellant is in custody, the appeal shall be received by the chief prison officer, who shall forward it without delay to the clerk of the said court.

The clerk who receives the petition shall endorse it, indicate the date of receipt, and immediately enter it in a special register kept for that purpose. He shall issue a receipt bearing the date of receipt and shall immediately notify the registry of the Court of Cassation by any means leaving a written record. He shall then inform the defendant and send the case file to the registry of the Court of Cassation, together with the appeal and a copy of the ^{contested} judgment or decision.

The clerk of the court that issued the contested judgment must summon the author of the power of attorney or their lawyer, as the case may be, through administrative channels and issue them with a copy of the contested judgment against receipt bearing the date of delivery of the said copy, which they shall attach to the ^{case} file.

If the author of the power of attorney or his lawyer does not appear within one month of the date of his summons by any means leaving a written record, to receive a copy of the contested judgment, and if his lawyer does not present the grounds for cassation, the power of attorney shall be ^{forfeited}.

Art. 262 – An appeal in cassation shall be inadmissible, except in cases of force majeure, if it has not been filed with the clerk of the court that rendered the contested decision within ten days of the date of the adversarial judgment, or of the service of the judgment deemed adversarial within the meaning of the first paragraph of Article 175, or the expiry of the time limit for opposition if the judgment is rendered by default, or the service of the judgment rendered by repeated ^{default}.

For the Attorney General at the Court of Cassation, acting under the conditions provided for in Article 258, the time limit is sixty days from the date of the decision. In addition, under penalty of forfeiture, he must notify the defendant and the persons civilly liable of his appeal within that time limit.

In the event of a death sentence, the time limit is only five days.

¹⁹ Art. 261 – Paragraph 1 (new) amended by Law No. 2007-26 of May 7, 2007.

²⁰ Art. 261 – Paragraph 3 (new) amended by Law No. 2007-26 of May 7, 2007.

²¹ Art. 261 – Paragraph 4 (new) added by Law No. 2008-75 of December 11, 2008.

²² Art. 261 – Paragraph 5 (new) added by Law No. 2008-75 of December 11, 2008.

²³ Art. 262 – Paragraph 1 (new) amended by Law No. 2007-26 of May 7, 2007.

An appeal against judgments of the indictment division shall be lodged within four days of the date on which the appellant received notification thereof or became aware thereof.

Art. 263 – The clerk shall only accept the application if it is accompanied by the receipt for the deposit with the registry of the fine to which the applicant would be sentenced if his application were rejected, as well as any fees whose deposit is provided for by law.

The amount of the fine is set by decree.

The public prosecutor and those sentenced to death or hard labor for life are exempt from this deposit.

If the plaintiff withdraws the case, the court may decide not to impose the deposit and order its return.

Art. 263 bis – Added by Law No. 2008-75 of December 11, 2008 – With the exception of the public prosecutor, the lawyer representing the appellant must, on pain of forfeiture, submit the following to the registry of the Court of Cassation within a maximum of thirty days from the date on which a copy of the contested judgment was delivered to him by the registry of the court that handed it down:

- a brief setting out the grounds for the appeal and specifying the complaints against the contested decision,
- a copy of the bailiff's report of service of the brief on the defendants, with the exception of the public prosecutor.

When the defendant decides to respond to the appeal brief, he must, within a maximum period of thirty days from the date of service, submit a brief to the clerk of the Court of Cassation.

In criminal matters, the procedures set out in the preceding paragraphs must be carried out by a lawyer.

Art. 264 (new) – Amended by Law No. 2007-26 of May 7, 2007 – The clerk of the Court of Cassation must forward the case file to the public prosecutor at the Court of Cassation, who shall submit his written conclusions either personally or through one of the advocates general at the said court. He shall not raise any grounds not invoked by the parties unless they are grounds of public policy. He shall then forward these conclusions together with the case file to the first president of the Court of Cassation.

Art. 265 – An appeal to the Court of Cassation shall suspend the enforcement of the contested decision only in the case of a death sentence, or where the decision orders the destruction of a document alleged to be false or the annulment of its effects, or where the decision declares a marriage null and void.

Art. 266 – An appeal against an appeal shall not be valid, even if the time limit is still open or if the appeal has been rejected only on procedural grounds.

Section III – Decisions rendered by the Court of Cassation

Art. 267 – The Court of Cassation sits and rules in chambers.

Lawyers may be authorized to appear at the hearing to plead their case, provided they have requested this in writing. They may only plead on the grounds presented in writing.

The court shall rule after deliberation.

The original copy of the judgment shall be signed by all the judges who rendered it.

Art. 268 – The Court of Cassation ruling on criminal matters shall consist of a president and two judges and shall sit in the presence of the public prosecutor, assisted by a clerk.

If necessary, the chief justice may appoint the most senior judge to preside over the hearing.

Any judge who has heard a case at first instance or on appeal, or who has expressed an opinion in that case as a public prosecutor, may not hear the appeal in cassation against the decision rendered.

Art. 269 – The Court of Cassation shall rule within the limits of the grounds raised, unless the subject matter of the conviction is indivisible. Where appropriate, it shall raise public policy grounds of its own motion. If the appeal is upheld, the court shall quash the contested decision in whole or in part and refer the case back to the court of first instance for a new hearing within the limits of the provisions quashed.

However, it may quash without referral when the removal of the quashed provision dispenses with a new examination or when the quashing leaves nothing to be judged.

Art. 270 – When the appeal in cassation is brought by a party other than the public prosecutor, the decision shall be overturned only with regard to that party, unless the grounds for cassation affect the other parties. In that case, the decision shall also be overturned with regard to the latter, even if they have not lodged an appeal in cassation.

Art. 271 – Where the sentence imposed is the same as that prescribed by the law applicable to the offense committed, no one may request the cassation of the decision on the grounds that there is an error in the classification used in that decision or in the legal provisions it refers to.

Art. 272 – When the court quashes with referral, it refers the case back for re-examination to the court that handed down the quashed decision, with a different composition.

It may also, where circumstances warrant, refer the case to a court of the same level.

Art. 273 – The cassation judgment returns the case to the state it was in before the overturned decision, within the limits of the grounds admitted.

If, after cassation with referral, the referring court does not comply with the decision of the Court of Cassation and if a second appeal raising the same grounds is lodged, the Court of Cassation, sitting in full session, shall settle the dispute between it and the referring court. The judgment handed down by the full court shall be binding on the court of second referral.

Art. 274 – The chambers sitting together in criminal matters shall be composed of the first president, the presidents of the chambers, and the most senior judge of each chamber, and shall sit in the presence of the public prosecutor. In the event of a tie, the first president shall have the casting vote.

The joint chambers shall meet at the initiative of the first president.

Art. 275 – The joint chambers shall also sit whenever it is necessary to ensure the uniformity of case law between the different chambers.

Section IV – Appeals in the interest of the law

Art. 276 – The Attorney General at the Court of Cassation may, notwithstanding the expiry of the time limit for cassation, appeal in the interest of the law if the contested decision was rendered in violation of the law and none of the parties has lodged an appeal within the time limit.

The judgment allowing the appeal shall be limited to correcting the error of law, without referral, and shall not affect the rights acquired by the parties and third parties under the contested decision.

CHAPTER II – APPLICATIONS FOR REVIEW

Art. 277 – Revision is only available for the correction of an error of fact committed to the detriment of a person convicted of a crime or misdemeanor.

Such review may be requested, regardless of the court that ruled and the sentence that was imposed:

- 1) when, after a conviction for homicide, documents or evidence are produced that provide sufficient evidence of the existence of the alleged victim of the homicide;
- 2) when, after a conviction, a new decision convicts another defendant or accused person for the same offense and the two convictions cannot be reconciled, their contradiction establishes proof of the innocence of one or both of the convicted persons;
- 3) when one of the witnesses heard has, after the conviction, been prosecuted and convicted for perjury against the accused or defendant; the witness thus convicted may not be heard in the new proceedings;
- 4) when, after conviction, a fact comes to light or is revealed, or when evidence unknown at the time of the proceedings is presented and is such as to establish the innocence of the convicted person or to show that the offense committed was less serious than that for which he or she was convicted.

Art. 278 – The right to request a review belongs, in the first three cases:

- 1) the Secretary of State for Justice;
- 2) to the convicted person, or in the event of incapacity, to their legal representative;
- 3) after the death or declared absence of the convicted person, to his or her spouse, children, and heirs.

In the fourth case, the right to request a review belongs solely to the Secretary of State for Justice, after consultation with two attorneys general at the chancellery and two advisors to the Court of Cassation appointed by the first president of that court.

Art. 279 – Applications for review shall in all cases be submitted to the Secretary of State for Justice, who shall forward them, where appropriate, to the public prosecutor, who shall refer them to the court that handed down the contested decision.

This court may be composed of the same judges who participated in the contested judgment.

Art. 280 – If the conviction has not been enforced, enforcement shall be suspended automatically from the moment the request is forwarded by the Secretary of State for Justice to the public prosecutor.

If the convicted person is in custody, the execution may be suspended on the order of the Secretary of State for Justice until the court has ruled and then, if necessary, by the judgment of that court ruling on admissibility.

Art. 281 – The court hearing the application for review, sitting in open court, shall first rule on the admissibility of the application. It shall then set another hearing, without a new summons, to hear the merits of the case. It may also rule on both form and substance in a single decision if all parties have exhausted their remedies.

Art. 282 – The costs of the review proceedings shall be advanced by the applicant until the admissibility ruling; for costs incurred after that ruling, the advance shall be made by the Treasury.

If the final review decision or judgment imposes a penalty, it shall require the convicted person to reimburse the costs to the State and to the applicants for review, if applicable.

The applicant for review who loses the case shall be liable for all costs.

If the applicant so requests, the judgment or decision on the review establishing the innocence of a convicted person shall be posted in the town where the conviction was handed down, in the locality where the crime or offense was committed

committed, in the locality of the applicants' domicile and the last domicile of the victim of the miscarriage of justice if he or she is deceased; under the same conditions, it shall be ordered to be inserted in the Official Journal of the Republic of Tunisia and published in extract form in two newspapers of the applicant's choice.

The costs of the above publicity shall be borne by the Treasury.

Art. 283 – The application for review shall be subject to the rules of procedure applicable before the court hearing the case.

BOOK IV – CERTAIN SPECIAL PROCEDURES CHAPTER I – FORGERY

Art. 284 – In all cases of forgery, the document alleged to be false shall, upon its production, be filed with the court clerk, signed on each page by the clerk, who shall draw up a detailed report on the physical condition of the document, and by the person who filed it. If the latter is unwilling or unable to sign, this shall be noted.

If the document alleged to be forged is taken from a public repository, the official who releases it shall also sign it as described above.

The document alleged to be false is also signed by the judicial police officer, the investigating judge, the civil party if they are present, and the defendant at the time of their appearance.

If the defendant or the civil party is unwilling or unable to sign, this shall be noted in the minutes.

Art. 285 – Any public or private custodian of documents alleged to be false or documents that may be used for comparison is required to hand them over on the order of the investigating judge.

This order and the deed of deposit shall serve as a discharge vis-à-vis all interested parties.

In the absence of voluntary surrender, any searches or seizures may be carried out in accordance with the provisions of Articles 93 to 100.

Article 286 – Documents provided for comparison purposes shall be signed as specified in Article 284 for documents alleged to be forgeries.

Art. 287 – If, during a hearing before a court or tribunal, a procedural document or a document produced is alleged to be false, the court shall decide, after hearing the observations of the public prosecutor and the parties, whether it is appropriate to stay proceedings until the competent court has ruled on the falsification.

If the public action is extinguished or cannot be exercised on the grounds of forgery, and if it does not appear that the person who produced the document knowingly used a forgery, the court or tribunal hearing the main action shall rule incidentally on the nature of the document alleged to be forged.

CHAPTER II – THE MANNER IN WHICH THE TESTIMONY OF MEMBERS OF THE GOVERNMENT AND REPRESENTATIVES OF FOREIGN POWERS IS RECEIVED

Art. 288 – Members of the government shall be heard in their homes or offices. They shall not be summoned to appear in court unless absolutely necessary.

Art. 289 – In cases of absolute necessity, members of the government may appear as witnesses after authorization by the President of the Republic.

When the appearance takes place pursuant to the authorization provided for in the preceding paragraph, the testimony shall be received in the ordinary manner.

Art. 290 – The testimony of a representative of a foreign power shall be requested through the Secretary of State for Foreign Affairs. If the request is granted, the testimony shall be taken at the representative's residence or office.

CHAPTER III – RULES OF JUDGES

Art. 291 – A ruling by judges is required when two courts have declared themselves competent or incompetent to hear the same offense, or when a court, on referral from the investigating judge or the indictment division, has declared itself incompetent and this has resulted in a conflict of jurisdiction interrupting the course of justice and arising from the fact that the conflicting decisions rendered in the same case have become final.

Art. 292 – It shall be settled by the judges of the Court of Cassation, which shall be seized by the Attorney General of that court.

The Court of Cassation shall decide to refer the case to the court it considers to have jurisdiction and shall annul the acts performed by the court that has declined jurisdiction.

When the conflict arises from the fact that two courts have declared themselves incompetent, the case must be referred to another court.

Art. 293 – The decision shall be notified by the clerk of the Court of Cassation to the representative of the public prosecutor's office at the court to which the case was referred and the court that declined jurisdiction, as well as to the parties.

CHAPTER IV – REFERRAL FROM ONE COURT TO ANOTHER

Art. 294 – In criminal, misdemeanor, and minor offense cases, the Court of Cassation may, at the request of the Attorney General of that court, refer the case to any investigating or trial court and transfer jurisdiction to another court of the same order for reasons of public safety or legitimate suspicion.

CHAPTER V – JUDGMENT OF OFFENSES COMMITTED IN COURT

Art. 295 (new) – Amended by Law No. 2000-43 of April 17, 2000 – If a misdemeanor or offense is committed during the hearing, the cantonal judge, or the president of the criminal court, or the court of first instance for criminal matters, or the president of the criminal court of appeal, shall draw up a report of the incident, hear the defendant and witnesses, and apply the penalties provided for by law, by means of an enforceable decision notwithstanding any appeal.

If the offense, committed during the cantonal court hearing, falls within the jurisdiction of the criminal court, the cantonal judge shall draw up a report and forward it without delay to the public prosecutor.

If the act committed is a crime, the cantonal judge, or the president of the criminal court of first instance or of the criminal court of appeal, shall immediately forward the reports of the act, the interrogation of the defendant, and the hearing of witnesses to the public prosecutor, who shall request the opening of an investigation. The criminal court may, however, proceed with the trial immediately.

BOOK IV – CERTAIN SPECIAL PROCEDURES CHAPTER I –

CHALLENGING MAGISTRATES

Art. 296 – The accused, the civil party, or any party to the proceedings who, for one of the reasons set out in the Code of Civil and Commercial Procedure, wishes to challenge a magistrate, must submit a request to that effect to the first president of the court of appeal.

The request, signed by the applicant and accompanied by all relevant supporting documents, shall specify the facts that may justify the recusal.

Art. 297 – Members of the public prosecutor's office may not be challenged.

Art. 298 – A party may no longer challenge a judge when, knowing the grounds for challenge, it has, without raising the issue, performed a procedural act or submitted conclusions before that judge.

Art. 299 – The chief judge shall notify the president of the court to which the judge belongs of the request submitted to him in the appropriate administrative form.

The submission of the request for recusal does not remove the magistrate whose recusal is proposed from the case. However, the chief judge may, after consulting the attorney general, order that either the continuation of the investigation or the proceedings, or the pronouncement of the judgment, be suspended.

Art. 300 – The first president shall, where appropriate, hear the explanations of the applicant and those of the magistrate whose recusal is requested, shall seek the opinion of the advocate general, and shall rule on the request.

Art. 301 – The order ruling on the challenge is not subject to appeal. It takes effect immediately.

Art. 302 – Any request for recusal concerning the chief justice of a court of appeal, a chamber president, or a judge of the Court of Cassation must be submitted in the form of a petition addressed to the chief justice of the Court of Cassation, who, after consulting with the attorney general of said court, shall rule by order, which shall not be subject to appeal.

The provisions of Article 299 shall apply.

Art. 303 – An applicant for recusal who is unsuccessful shall be liable to a fine of between twenty and one hundred dinars.

Art. 304 – No judge may recuse himself ex officio without the authorization of the chief justice of the court of appeals, whose decision, rendered after consultation with the solicitor general, is not subject to appeal.

The presidents of chambers and judges of the Court of Cassation may not recuse themselves ex officio without the authorization of the first president of that court, after consultation with the Attorney General.

CHAPTER II – CRIMES AND OFFENSES COMMITTED ABROAD

Art. 305 (new) – Amended by Law No. 93-113 of November 22, 1993 – Any Tunisian citizen who, outside the territory of the Republic, is guilty of a crime or offense punishable under Tunisian law may be prosecuted and tried by Tunisian courts, unless it is recognized that foreign law does not punish the offense or the accused proves that he has been finally judged abroad and, in the event of conviction, that he has served or completed his sentence or obtained a pardon.

The provisions of the preceding paragraph shall apply to the perpetrator of the act who acquired Tunisian citizenship only after the act for which he or she is charged.

The third paragraph was repealed by Article 103 of Law No. 2003-75 of December 10, 2003, on support for international efforts to combat terrorism and the suppression of money laundering.

Art. 306 – No proceedings may be brought against a foreign national for a crime or offense committed on the territory of the Republic if the accused can prove that he or she has been finally judged abroad and, in the event of conviction, that he or she has served or completed his or her sentence or obtained a pardon.

Art. 307 – Any foreigner who, outside the territory of the Republic, is guilty either as the perpetrator or as an accomplice, of a crime or offense against the security of the State or of counterfeiting the seal of the State or national currency in circulation, may be prosecuted and tried in accordance with the provisions of Tunisian law if he is arrested in Tunisia or if the government obtains his extradition.

Art. 307 (bis) – Added by Law No. 93-113 of November 22, 1993 – Any person outside Tunisian territory who is guilty, either as the principal perpetrator or as an accomplice, of a crime or offense may be prosecuted and tried when the victim is of Tunisian nationality.

Prosecution may only be initiated at the request of the public prosecutor, upon complaint by the injured party or their heirs.

No prosecution may be brought if the accused provides evidence that he or she has been definitively tried abroad and, in the event of a conviction, that the sentence has been served, that it is time-barred, or that he or she has been granted a pardon or amnesty.

CHAPTER III – EXTRADITION OF FOREIGNERS

Section I – Conditions for extradition

Art. 308 – Unless otherwise provided in treaties, the conditions, procedure, and effects of extradition shall be governed by this chapter.

Art. 309 – No person may be surrendered to a foreign State unless he or she is being prosecuted or has been convicted of an offense provided for in this chapter.

Art. 310 – The government may surrender to the governments of foreign countries, upon their request, any non-Tunisian person who, being the subject of proceedings brought on behalf of the requesting State or of a conviction handed down by the courts of that State, is found on the territory of the Republic of Tunisia.

However, extradition shall only be granted if the offense giving rise to the request was committed:

- either on the territory of the requesting State by a national of that State or by a foreigner, — or outside its territory by a national of that State,
, either outside its territory by a foreigner to that State, when the offense is one of those which Tunisian law authorizes to be prosecuted in Tunisia, even though they were committed by a foreigner abroad.

Art. 311 – Extradition shall be granted:

- 1) when the offense giving rise to the request is punishable under Tunisian law by a criminal or correctional penalty.
- 2) When the penalty incurred, under the law of the requesting State, is a custodial sentence of six months or more for all the offenses covered by the request.

In the event of conviction, the penalty imposed by the court of the requesting State must be a custodial sentence of two months or more.

Attempts and complicity are subject to the above rules, provided that they are punishable under the law of the requesting State and under Tunisian law.

Art. 312 – Extradition shall not be granted:

- 1) when the person sought is a Tunisian citizen, this status being assessed at the time of the decision on extradition;
- 2) when the crimes or offenses were committed in Tunisia;
- 3) when the crimes or offenses, although committed outside Tunisia, have been prosecuted and finally judged there;

- 4) when the public prosecution or the penalty is time-barred under Tunisian law or the law of the requesting State.

Art. 313 (new) – Amended by Law No. 93-113 of November 22, 1993 – Extradition shall also not be granted:

- 1) When the crime or offense is political in nature or when circumstances indicate that extradition is being requested for political purposes. An attempt on the life of a head of state, a member of his or her family, or a member of the government is not considered a ^{political} offense.
- 2) When the offense that is the subject of the request consists of a violation of a military obligation.
- 3) When the person subject to the extradition request is likely to be exposed to ^{torture}.

Art. 314 – If, for a single offense, extradition is requested concurrently by several States, it shall be granted preferably to the State against whose interests the offense was directed, or to the State in whose territory it was committed.

If the competing requests relate to different offenses, all factual circumstances shall be taken into account in determining priority, including the relative seriousness and location of the offenses, and the respective dates of the requests.

Art. 315 – Where a foreign national is being prosecuted or has been convicted in Tunisia and his extradition is requested from the Tunisian government on the basis of a different offense, surrender shall only take place after the prosecution has been completed and, in the event of conviction, after the sentence has been served.

However, this provision shall not prevent the foreign national from being sent temporarily to appear before the courts of the requesting State, on the express condition that he shall be returned as soon as the foreign court has given its ruling.

Section II – Extradition procedure

Art. 316 – All extradition requests shall be addressed to the Tunisian government through diplomatic channels and accompanied by the original or authenticated copy of either a conviction, an arrest warrant, or any other document having the same force and issued in the manner prescribed by the law of the requesting State.

The circumstances of the acts for which extradition is requested, the date and place where they were committed, the legal classification and references to the applicable legal provisions shall be indicated as accurately as possible.

A copy of the legal provisions applicable to the offense shall also be attached.

Art. 317 – After verification of the documents transmitted with the file by the Secretary of State for Foreign Affairs, the extradition request shall be forwarded to the Secretary of State for Justice, who shall ensure that the request is in order and take the appropriate action.

Art. 318 – When the Secretary of State for Justice considers that the extradition request should be granted, he shall forward to the Attorney General of the Republic the warrant of arrest or a copy of the judgment or ruling, together with the description and documents communicated to him by the Secretary of State for Foreign Affairs.

The Attorney General of the Republic shall immediately take the necessary measures to effect the arrest.

²⁴ The second paragraph was repealed by Article 103 of Law No. 2003-75 of December 10, 2003, on support for international efforts to combat terrorism and the suppression of money laundering.

²⁵ Art. 313 – 3^e new paragraph added by Decree-Law No. 2011-106 of October 22, 2011.

Art. 319 – Once the arrest has been made, the foreign national shall be immediately brought before the public prosecutor of the court within whose jurisdiction the arrest took place.

This magistrate shall immediately proceed to question the person concerned as to their identity, notify them of the grounds on which the arrest was made, and draw up a report of the proceedings.

Art. 320 – The foreign national shall be transferred to Tunis as soon as possible and imprisoned in the civil prison.

Art. 321 – The examination of extradition requests falls within the jurisdiction of the indictment division of the Tunis Court of Appeal.

The foreign national shall appear before it within a maximum of 15 days from the date of notification of the arrest warrant. An interrogation shall then be conducted and a report drawn up.

The public prosecutor and the person concerned shall be heard. The latter may be assisted by a lawyer. He may be released on bail at any stage of the proceedings, in accordance with the provisions of this Code.

Art. 322 – If, during his appearance, the foreign national declares that he waives the provisions of this chapter and formally consents to be surrendered to the authorities of the requesting State, the indictment division shall record this declaration.

A copy of this decision shall be forwarded without delay by the Attorney General of the Republic to the Secretary of State for Justice, who shall take such decision as he deems appropriate.

Art. 323 – Otherwise, the indictment division, ruling without appeal, shall give its reasoned opinion on the extradition request.

If the indictment division considers that the legal conditions are not met, or that there has been a clear error, it shall issue an unfavorable opinion. This opinion shall be final and extradition may not be granted.

Art. 324 – When the opinion is favorable, the government is free to grant or refuse extradition. If extradition is decided, the Secretary of State for Justice shall submit a decree authorizing extradition to the President of the Republic for signature.

If, within one month of notification of this act, the extradited person is not received by the agents of the requesting State, he or she shall be released and may no longer be claimed for the same cause.

Art. 325 – In urgent cases and at the direct request of the judicial authorities of the requesting State, public prosecutors may, on simple notice, sent either by post or by any faster means of transmission leaving a written record of the existence of one of the documents indicated in Article 316, order the provisional arrest of the foreign national. Regular notification of the request must be sent at the same time, through diplomatic channels, to the Secretary of State for Foreign Affairs.

Public prosecutors must notify the Attorney General of the Republic of this arrest.

Art. 326 – An individual provisionally arrested under the conditions provided for in the preceding article may, if he is staying in Tunisia, be released if, within one month of his arrest, when it has been carried out at the request of the foreign State, the Tunisian government does not receive one of the documents mentioned in Article 316.

Release shall be granted upon simple request addressed to the indictment division, which shall rule without appeal within eight days, after hearing the public prosecutor's submissions. If the aforementioned documents subsequently reach the Tunisian government, the procedure shall be resumed in accordance with Articles 317 et seq.

Art. 327 – The transit through Tunisian territory of an individual surrendered by another government shall be authorized upon simple request addressed through diplomatic channels, supported by the necessary documents to establish that the offense is not political or purely military in nature.

The transit of a Tunisian citizen cannot be granted.

Transport shall be carried out under the supervision of Tunisian agents and at the expense of the

requesting government. In the event that air transport is used, the following provisions shall apply:

- a) when no landing is planned, the requesting State shall notify the Tunisian government and shall certify the existence of one of the documents referred to in Article 316. In the event of an unscheduled landing, this declaration shall have the effect of a request for provisional arrest referred to in Article 325, and the requesting State shall submit a formal request for transit;
- b) when a landing is planned, the requesting State shall submit a request in accordance with the provisions of the first paragraph.

Art. 328 – The indictment division shall decide whether or not to transfer all or part of the securities, valuables, money, or other items seized to the requesting government.

This transfer may take place even if extradition cannot be carried out due to the escape or death of the individual sought.

The indictment division shall order the return of the documents and other items listed above that are not related to the offense with which the foreign national is charged. It shall rule, where appropriate, on claims by third-party holders and other entitled parties.

The decisions provided for in this article are not subject to appeal.

Section III – Effects of extradition

Art. 329 – The extradited person may not be prosecuted or convicted for an offense committed prior to surrender, other than that for which extradition was granted. This shall not apply in the event of special consent given by the Tunisian government.

In such cases, the opinion of the indictment division may be formulated solely on the basis of the documents submitted in support of the new request. The individual's defense brief may be prepared by a lawyer of his or her choice.

Art. 330 – The individual surrendered who has had the opportunity to leave the territory of the requesting State within thirty days of his final release shall be considered to be subject without reservation to the application of the laws of that State in respect of any act prior to extradition and other than the offense for which extradition was granted.

Section IV – Certain ancillary procedures.

Art. 331 – In the event of criminal proceedings of a non-political nature in a foreign country, letters rogatory issued by the foreign authority shall be received through diplomatic channels and forwarded to the Secretary of State for Justice in the manner provided for in Article 317. Letters rogatory shall be executed, where applicable, in accordance with Tunisian law.

In urgent cases, they may be communicated directly between the judicial authorities of the two States, in the manner provided for in Article 325.

Art. 332 – In the event of criminal proceedings brought abroad, where a foreign government deems it necessary to serve a procedural document or judgment on an individual residing in Tunisian territory, the document shall be transmitted in accordance with the procedures laid down in Articles 316 and 317, accompanied, where applicable, by a translation into Arabic.

a translation into Arabic. Service shall be effected at the request of the Public Prosecutor. The document certifying service shall be returned by the same means to the requesting Government.

Art. 333 – Where, in a criminal case being investigated abroad, the foreign government deems it necessary to communicate evidence or documents in the possession of the Tunisian authorities, the request shall be made through diplomatic channels. It shall be complied with, unless there are special considerations to the contrary, and with the obligation to return the evidence and documents as soon as possible.

Art. 334 – If, in a criminal case, the personal appearance of a witness residing in Tunisia is deemed necessary by a foreign government, the Tunisian government, having received the summons through diplomatic channels, shall require the witness to comply with the invitation addressed to him or her.

However, the summons shall only be received and served on condition that the witness cannot be prosecuted or detained for acts or convictions prior to his appearance.

Art. 335 – The transfer of detained individuals for the purpose of confrontation must be requested through diplomatic channels. The request shall be complied with, unless there are special considerations to the contrary, and on condition that the said detainees are returned as soon as possible.

CHAPTER IV – SETTLEMENT THROUGH MEDIATION IN CRIMINAL MATTERS²⁶

Art. 335 bis – Settlement through mediation in criminal matters aims to guarantee compensation for the damage caused to the victim of the acts attributed to the defendant, to revive the defendant's sense of responsibility, and to preserve his or her integration into society.

Art. 335 ter – Before initiating public proceedings, the public prosecutor may, either on his own initiative or at the request of the defendant or the victim or at the request of the lawyer of either of them, propose to the parties a settlement through mediation in criminal matters, in cases of misdemeanors and in cases of offenses provided for in paragraph 1 of Article 218 and Articles 220, 225, 226bis, 247, 248, 255, 256, 277, 280, 282, 286, 293 and 296, as well as paragraph 1 of Article 297, Articles 298, 304 and 309 of the Criminal Code and the offense provided for by Law No. 62-22 of May 24, 1962, relating to the failure to present a child in custody.

If the circumstances of the offense being prosecuted so require, the public prosecutor may alone propose a settlement through mediation for the offense referred to in Article 264 of the Criminal Code, provided that the defendant is not a repeat offender and that the prosecutor considers that the defendant does not have a criminal tendency, based on a social inquiry conducted by the social services into his family, material, and ^{moral} situation.

Art. 335 Quater – The public prosecutor shall take the initiative to summon both parties by administrative means. He or she may order one of the parties to summon the other parties by bailiff.

The defendant is required to attend the scheduled hearing in person. He or she may be assisted by a lawyer.

The victim may be represented by a lawyer. However, if the victim does not appear in person, the settlement may only be established upon presentation of a special power of attorney for that purpose.

Art. 335 Quinques – When calling the parties to the settlement, the public prosecutor shall take their interests into consideration and record the agreements reached between the parties in a numbered report in which he shall inform them of the obligations and consequences arising from the settlement. He shall remind them of the provisions of the law and set a deadline for the performance of all obligations arising from the settlement, which shall not exceed six months from the date of its signature.

²⁶ Chapter added by Law No. 2002-93 of October 29, 2002.

²⁷ Art. 335b – Second paragraph added by Law No. 2009-68 of August 12, 2009.

The public prosecutor may, exceptionally and in cases of absolute necessity, extend this three-month period once only by reasoned decision.

The minutes must be read to the parties, who must sign each page. They must also be signed by the public prosecutor, the clerk of the court and, where applicable, the lawyer and the interpreter.

Art. 335 Sexies – A settlement reached through mediation in criminal matters may not be revoked, even with the consent of the parties, except in cases where new evidence comes to light that changes the classification of the offense in such a way as to render the settlement prohibited by law.

The settlement shall only benefit the parties and shall only have effect in relation to their successors or assigns. Its content shall not be enforceable against third parties.

No claim may be made on the basis of statements made by the parties to the public prosecutor during the criminal mediation settlement. Such statements cannot be used as an admission of guilt.

Art. 335 Septies – If it has been impossible to reach a settlement or if the settlement has not been fully implemented within the specified time limit, the public prosecutor shall decide on the action to be taken in response to the complaint.

Full execution of the settlement within the specified time limit or non-execution due to the victim's actions shall result in the termination of public proceedings against the defendant.

The limitation periods for public prosecution shall be suspended during the course of the mediation settlement procedure in criminal matters and during the period allowed for its execution.

BOOK V – ENFORCEMENT PROCEDURES CHAPTER I –

ENFORCEMENT OF CRIMINAL SENTENCES

Art. 336 (new) – Amended by Law No. 99-90 of August 2, 1999, and Law No. 2002-93 of October 29, 2002
– The public prosecutor and the parties shall pursue the enforcement of the sentence, each insofar as it concerns them.

The judge responsible for the enforcement of sentences in the place of residence of the convicted person, or the judge of the court of first instance in whose jurisdiction the judgment was handed down if the convicted person has no place of residence in Tunisia, shall monitor the enforcement of the community service sentence, with the assistance of the prison services.

The judge responsible for the enforcement of sentences shall perform the following acts:

Subjects the convicted person to a medical examination in accordance with the provisions of Article 18 bis of the Criminal Code, determines the institution in which the community service sentence will be carried out by referring to the list drawn up in accordance with the provisions of Article 17 of the Criminal Code, ensures that adequate protective measures are in place against accidents at work and medical coverage in the event of occupational illness, informs the convicted person of the content of the provisions of Articles 336 bis and 344 of this Code, determines the work to be performed by the convicted person, their schedule, and its duration. They then submit these to the public prosecutor for approval.

The judge responsible for the enforcement of sentences shall monitor the convicted person's performance of community service at the establishment concerned and shall be kept informed, in writing, of any incidents that may occur during the performance of the sentence. He shall draw up a report on the outcome of the enforcement, which he shall forward to the public prosecutor.

The sentencing judge may, if necessary, modify the measures taken in accordance with the provisions of paragraph 3 of Article 336 of this Code, after approval by the public prosecutor.

The sentence enforcement judge may, after approval by the public prosecutor, suspend the enforcement of the community service sentence on the grounds provided for in Articles 336 bis and 346 bis of the

this code. In this case, the convicted person must inform the judge responsible for the enforcement of sentences of any change of address.

Art. 336 bis – Added by Law No. 99-90 of August 2, 1999 – If the convicted person refuses to perform community service or interrupts the performance of such service for the third time without legitimate reason, they shall then serve the entire prison sentence imposed without any reduction.

The period of absence must not exceed one day the first time and two days the second time.

Each day of absence is replaced by double the number of days.

The community service sentence shall be suspended on health, family, or professional grounds when the convicted person is imprisoned for an offense or for performing national service.

The new period shall be calculated from the date on which the impediment or cause ceases to exist.

Art. 336 ter – Added by Law No. 2009-68 of August 12, 2009 – The representative of the public prosecutor's office shall pursue the enforcement of the criminal compensation order.

The period for enforcement of the criminal compensation penalty shall take effect from the date of expiry of the appeal period for the criminal judgment rendered at first instance or from the date of the final judgment.

A document with a definite date proving the enforcement of the sentence or the deposit of the amount of criminal compensation must be presented to the representative of the public prosecutor's office at the court that handed down the judgment imposing the criminal compensation sentence within the time limit provided for in Article 15 quater of the Criminal Code.

If no evidence of the execution of the criminal compensation sentence is presented within the time limit provided for in Article 15 quater of the Criminal Code, the representative of the public prosecutor's office shall continue the proceedings for the execution of the prison sentence already imposed.

If the convicted person is detained under an arrest warrant, the public prosecutor shall inform the prison administration of the order to release the accused if it is established that the judgment has not been appealed and that the provisions of the judgment imposing the criminal compensation penalty have been enforced within the legally prescribed time limit.

Art. 336 quater - Added by Decree-Law No. 2020-29 of June 10, 2020 - The judge responsible for the enforcement of sentences in the place of residence of the convicted person, or that of the court of first instance within whose jurisdiction the judgment was handed down if the convicted person has no place of residence in Tunisia, shall monitor the enforcement of the sentence of electronic monitoring, with the assistance of the prison services and probation offices.

The organization of probation offices is determined by government decree. The

judge responsible for enforcing sentences shall perform the following acts:

- Determine the location of the supervision chosen by the convicted person. If this location is not owned by the convicted person or if the convicted person does not have access to this location, this measure may only be implemented with the written consent of the owner of the location or the person who has access to it.
- Determine the places and times of the convicted person's movements.
- Set the obligations that the judge responsible for enforcing sentences considers appropriate to impose on the convicted person.

Art. 336 quinquies - Added by Decree-Law No. 2020-29 of June 10, 2020 - If electronic monitoring operations reveal that the convicted person has knowingly violated one of the obligations imposed on them, that they have fled or that they have disposed of or attempted to dispose of the device or tools used in electronic monitoring by any means whatsoever, the judge responsible for the enforcement of sentences

shall draw up a report which must be forwarded without delay to the public prosecutor, on the basis of a written report drawn up for this purpose by the competent probation office or the sentence enforcement judge in whose jurisdiction the convicted person's place of residence is located, or by the authorities competent to establish the offenses in accordance with the legislation in force.

- In this case, the calculation of the period to be completed and the continuation of the sentence is based on the prison sentence imposed by the court after deduction of the period of electronic monitoring.

In the event of escape or if the convicted person disposes of or attempts to dispose of the device or tools used in electronic monitoring, the enforcement of the prison sentence imposed by the court shall not preclude prosecution of the convicted person for the offense referred to in Article 147 of the Criminal Code.

Art. 336 *sexies* - The judge responsible for the enforcement of sentences may, on his own initiative or at the request of the convicted person, his lawyer or on the proposal of the prison director or the probation office, after consulting the public prosecutor, modify the conditions of electronic monitoring and the obligations incumbent on the convicted person, either by tightening or relaxing them, by means of a reasoned decision.

Art. 337– In serious and exceptional cases, the Attorney General of the Republic may grant convicted persons who are at liberty a stay of execution of their sentence. Notice of the stay shall be given without delay to the Secretary of State for Justice.

Art. 338 – Enforcement shall take place once the decision has become final.

However, the time limit for appeal granted to the Attorney General of the Republic and to the Advocates General at the Courts of Appeal by Article 213 shall not prevent the sentence from being enforced.

Art. 339 – The Attorney General of the Republic, the Advocates General at the Courts of Appeal, and the Public Prosecutors of the Republic shall have the right to request the assistance of law enforcement authorities for the purpose of ensuring such enforcement.

Art. 340 – All disputes relating to enforcement shall be brought before the court that handed down the sentence.

This court may also correct purely clerical errors contained in its decisions.

Art. 341 – At the request of the Public Prosecutor or the interested party, the court or tribunal shall rule in chambers after hearing the Public Prosecutor, the party's counsel if requested, and, where applicable, the party itself, subject to the provisions of Article 146.

The execution of the decision in dispute shall be suspended if the court or tribunal so orders. The judgment on the incidental issue shall be notified by the Public Prosecutor to the interested parties.

Art. 342 – Where the sentence imposed is death, the Attorney General of the Republic, as soon as the conviction has become final, shall bring it to the attention of the Secretary of State for Justice, who shall submit it to the President of the Republic for the exercise of his right of pardon.

The sentence may only be carried out once the pardon has been refused.

Art. 342 bis – Added by Law No. 2000-77 of July 31, 2000, and amended by Law No. 2002-92 of October 29, 2002 – The judge responsible for the enforcement of sentences shall monitor the conditions of enforcement of custodial sentences served in prisons within his jurisdiction.

The judge responsible for the enforcement of sentences may propose that certain prisoners be granted conditional release under the conditions provided for in Articles 353, 354, and 355 of this Code.

The sentence enforcement judge may, after consulting the public prosecutor, grant conditional release to a convicted person who has been sentenced to no more than eight months' imprisonment for committing a misdemeanor and who meets the conditions set out in Articles 353 and 355 of this Code.

Parole may only be granted to first-time offenders after they have served half of their sentence. In the case of repeat offenders, parole may only be granted after they have served two-thirds of their sentence. The judge responsible for the enforcement of sentences grants parole either on his own initiative or at the request of the convicted person or one of his ascendants or descendants or his spouse or legal guardian, or on the recommendation of the prison director.

When the judge responsible for the enforcement of sentences rules on parole, he or she shall compile a file on the convicted person, which shall mainly contain a record of all the information that may be taken into consideration when making the decision, in particular information relating to his or her behavior, their physical and psychological health, and their ability to integrate into society, as well as a copy of the judgment containing the sentence that the convicted person is serving, and the reports that the judge responsible for the enforcement of sentences has received from the prison.

This file is submitted to the public prosecutor, who gives his opinion within four days.

The judge responsible for the enforcement of sentences shall rule on conditional release after receiving the file from the public prosecutor.

The decision of the judge responsible for the enforcement of sentences may be appealed before the indictment division by the public prosecutor within four days of the date on which he becomes aware of it. This appeal suspends the enforcement of the decision.

The indictment division shall rule on the appeal without the presence of the convicted person within a period not exceeding eight days from the date of receipt of the file, and its decision shall not be subject to appeal.

In the event of a new conviction or a breach of the conditions set out in the conditional release decision by the beneficiary of the conditional release, the judge responsible for the enforcement of sentences may revoke the release by decision, at the request of the public prosecutor.

In urgent cases, the public prosecutor may order the provisional detention of the person concerned, subject to immediate referral to the judge responsible for the enforcement of sentences who granted the conditional release.

The public prosecutor shall enforce the decisions rendered by the judge responsible for the enforcement of sentences.

The provisions of Chapter IV of Book V of this Code shall apply insofar as they are not contrary to this article.

Art. 342-3 – Added by Law No. 2000-77 of July 31, 2000 – The judge responsible for the enforcement of sentences shall visit the prison at least once every two months to ascertain the conditions in which prisoners are serving their sentences. He shall inform the family judge of the conditions of children accompanying their imprisoned mothers.

The judge responsible for the enforcement of sentences shall receive prisoners in an office, either at their request or those whom he himself wishes to hear, and may consult the special disciplinary register.

He may also request the prison administration to carry out certain acts necessary for the social assistance of the prisoner.

The sentence enforcement judge is authorized to grant prisoners permission to leave prison.

He may grant such permission to visit a spouse or one of the ascendants or descendants who is seriously ill, or to attend the funeral of one of the following relatives:

- the spouse or one of the descendants or ascendants,
- siblings, paternal or maternal uncles or first-degree relatives,
- the legal guardian.

Permits to leave prison are issued in accordance with the regulations in force.

Permits to leave for defendants in preventive detention are granted by the judge hearing the case.

Art. 342-4 – Added by Law No. 2000-77 of July 31, 2000 – The prison doctor informs the judge responsible for the enforcement of sentences in writing of any serious cases he has observed. The prison administration provides him with an annual report on his social activities.

The judge responsible for the enforcement of sentences shall draw up an annual report containing his observations, conclusions, and suggestions, which he shall submit to the Minister of Justice.

Art. 342-5 – Added by Law No. 2000-77 of July 31, 2000 – The function of sentence enforcement judge shall be exercised within the court of first instance by a second-grade magistrate who may be replaced in the event of absence or incapacity by a magistrate from the same court appointed by its president.

CHAPTER II – IMPRISONMENT FOR NON-PAYMENT

Art. 343 (new) – Amended by Law No. 99-90 of August 2, 1999 – The fine and costs shall be recovered for the benefit of the Treasury from the convicted person's assets and, if necessary, by means of imprisonment for debt or community service at the request of the person concerned made to the public prosecutor.

Art. 344 (new) – Amended by Law No. 99-90 of August 2, 1999 – Imprisonment shall be enforced at the rate of one day of imprisonment for every three dinars or fraction thereof, without exceeding a maximum term of two years.

Community service shall be carried out at a rate of two hours of work for each day of imprisonment, provided that the maximum period of work may not exceed six hundred ^{hours}.

Art. 345 (new) – Amended by Law No. 99-90 of August 2, 1999 – Imprisonment for debt or community service may not be imposed on the following persons:

- The civilly liable party
- The civil party
- Convicts under the age of eighteen at the time of the acts giving rise to the prosecution.
- Convicts who have reached the age of seventy.

Husband and wife simultaneously, even for the recovery of sums relating to different convictions.

Art. 346 (new) – Amended by Law No. 99-90 of August 2, 1999 – The duration of the restriction shall be reduced by half and may, at the request of the convicted person, be replaced by community service for a period not exceeding one ^{year}, in the following cases:

²⁸ The words "three hundred hours" were replaced by "six hundred hours" by Law No. 2009-68 of August 12, 2009.

²⁹ The term "six months" was replaced by "one year" by Law No. 2009-68 of August 12, 2009.

- If the convicted person proves their insolvency by means of a certificate of indigence issued by the governor of their usual place of residence.
- If the convicted person has reached the age of 60.

These two causes cannot be combined.

Art. 346 bis – Added by Law No. 99-90 of August 2, 1999 – If the convicted person refuses to perform community service or breaks it off without legitimate reason, proceedings for imprisonment for debt will then be pursued.

Enforcement shall be suspended on health or family grounds or when the convicted person is imprisoned for another offense or for performing national service.

The new period shall be calculated from the date on which the impediment or cause for suspension ceases to exist.

Art. 347 – When imprisonment for debt has ended for any reason, it may not be imposed again for the same debt or for convictions prior to its enforcement, unless the total amount of these convictions results in a longer period of imprisonment than that already served, in which case the first period of imprisonment must always be deducted from the new period.

Art. 348 (new) – Amended by Law No. 99-90 of August 2, 1999 – A convicted person who has undergone imprisonment for debt or community service is not released from the amount of the sums to which he was sentenced.

CHAPTER III – EXTINCTION OF SENTENCES

Art. 349 – Sentences imposed for crimes shall be subject to a statute of limitations of twenty years. However, if the statute of limitations has expired, the convicted person shall be prohibited from residing in the district of the Governorate where the offense was committed, unless authorized by the Governor. In the event of a violation of this measure, the convicted person shall be liable to the penalties prescribed by the Penal Code for violation of the prohibition on residence.

Penalties imposed for misdemeanors are subject to a statute of limitations of five years.

Sentences imposed for misdemeanors are subject to a statute of limitations of two years.

The limitation period shall run from the date on which the conviction became final. It shall run from the date of notification of the judgment by default if such notification was not made in person and if it does not appear from the enforcement of the judgment that the convicted person was aware of it.

Art. 350 – The statute of limitations is suspended by any legal or factual obstacle preventing the enforcement of the sentence, other than that resulting from the will of the convicted person.

It is interrupted by the arrest of the convicted person in the case of a custodial sentence, or by any action taken by the competent authority with a view to enforcement in the case of a financial penalty.

Under no circumstances may the limitation period be extended beyond twice its original length.

Art. 350 bis – Added by Law No. 2009-68 of August 12, 2009 – The enforcement of the criminal compensation penalty, within the time limit provided for in Article 15 quater of the Criminal Code, shall result in the extinction of the prison sentence imposed by the court and, where applicable, the release of the convicted person.

Art. 351 – Civil convictions handed down by judgments or rulings in criminal, correctional, and misdemeanor cases that have become final shall lapse in accordance with the rules established by the Code of Civil and Commercial Procedure.

Art. 352 – The death of the convicted person extinguishes all principal and additional penalties, but has no effect on special or general confiscation or on the closure of establishments.

CHAPTER IV – CONDITIONAL RELEASE

Art. 353 – Any convicted person serving one or more custodial sentences who has demonstrated their rehabilitation through their conduct in detention, or whose release is deemed to be in the public interest, may be granted conditional release.

Art. 354 – Parole may only be granted to convicts who have already served a portion of their sentence or sentences equal to or greater than half the length of the sentence or sentences for first-time offenders. However, the sentence served by the convicted person must not be less than three months; two-thirds of the sentence or sentences for convicted persons with a criminal record. However, the sentence served by the convicted person must not be less than six months.

The probation period is fifteen years for those sentenced to life imprisonment.

Art. 355– However, exceptions may be made to the provisions of Articles 353 and 354 above:

- if the convicted person is over sixty years of age on the date of his or her conditional release;
- if he has not yet reached the age of 20 on the same date;
- if he or she suffers from a serious disability or incurable disease.

Art. 356 (new) – Parole shall be granted by order of the Minister of Justice on the recommendation of the parole board.

The judge responsible for the enforcement of sentences shall grant parole under the conditions and in accordance with the procedures ^{reserved} for him by law.

Art. 357 – The order may require the beneficiary of parole to:

- either to house arrest, if he or she has not been sentenced to the additional penalty of prohibition of residence or administrative supervision;
- or to compulsory placement in a public service or private institution;
- or both of the above measures.

The duration of house arrest or placement may not exceed the duration of the part of the sentence not served at the time of release.

Art. 358 – The enforcement of additional penalties imposed on prisoners who are to be released shall commence on the date of their conditional release.

Art. 359 (new) – Amended by Law No. 2001-73 of July 11, 2001 – In the event of a new conviction of the beneficiary of conditional release or a breach of the conditions set out in the conditional release order, the Minister of Justice may, by order, revoke this decision after consulting the conditional release commission.

In urgent cases, the public prosecutor may order the provisional arrest of the person concerned, subject to immediate referral to the parole board.

Art. 360 (new) – Amended by Law No. 2001-73 of July 11, 2001 – After revocation, the convicted person must serve, in accordance with the provisions of the revocation order, all or part of the sentence remaining at the time of his or her parole, cumulatively, if applicable, with any

³⁰ Art. 356 – New paragraph added by Law No. 2002-92 of October 29, 2002.

new sentence he would have incurred; however, the time he spent in provisional detention counts toward the execution of his sentence.

If the revocation did not occur before the end of the sentence remaining to be served at the time of his conditional release, the release is final. In this case, the sentence is deemed to have been served from the date of conditional release.

CHAPTER V – CRIMINAL RECORD

Art. 361 – Court clerks are required to record in a special register the surnames, first names, occupations, ages, and places of residence of all individuals convicted of crimes or offenses, with a summary of the case and the sentence, and then to send a copy of these registers to the service responsible for maintaining criminal records on a weekly basis, within a maximum of eight days.

They are also required to record in a special, non-public alphabetical register all decisions concerning minors, including those relating to incidents involving supervised release, modification of placement or custody, and transfer of custody, and then to send a copy of the decisions handed down in respect of minors over the age of 13 to the said service within the same time limits.

Art. 362 – The judicial identity service is responsible for centralizing bulletin no. 1 and issuing statements or extracts known as bulletin no. 2 or bulletin no. 3 under the conditions set out in the following articles.

Art. 363 – Bulletin No. 1 records:

- all convictions, whether contested or by default and not subject to appeal, handed down for crimes or offenses by any court;
- decisions handed down in respect of minors over the age of thirteen;
- disciplinary decisions handed down by the judicial authority or by an administrative authority, when they result in or impose incapacities;
- residence bans or administrative supervision orders;
- expulsion orders issued against foreign nationals;
- judgments declaring bankruptcy.

Bulletin No. 1 shall mention pardons, commutations or reductions of sentences, decisions on conditional release or rehabilitation, and decisions revoking expulsion orders, residence bans or administrative supervision orders, as well as the date of expiry of the sentence and payment of the fine.

Bulletins No. 1 relating to convictions that have been expunged by an amnesty or reformed by a corrective judgment of the criminal record are removed from the criminal record.

Art. 364 – Where, following a measure taken pursuant to Articles 225, 234, 235, 241, and 254, the minor has given clear signs of reform, the juvenile court judge may, after a period of three years from the date on which the measure ended, decide, at the request of the minor, the public prosecutor, or on his own initiative, to remove bulletin no. 1 relating to the measure in question.

The juvenile court judge shall rule in the final instance.

Once the removal of bulletin no. 1 has been ordered, the initial measure shall no longer appear on the minor's criminal record. Bulletin no. 1 relating to the measure shall be destroyed.

The judge of the initial proceedings, the judge of the minor's current place of residence, or the judge of the minor's place of birth shall have jurisdiction to hear the request.

Art. 365 – The complete record of bulletin no. 1s applicable to the same person is entered on a bulletin no. 2, which is only issued at the express request of the judicial authority.

Except in this case, a bulletin No. 3 shall be issued, under the conditions provided for in the administrative regulations, which shall only record convictions referred to in Article 363(1) that have not been expunged by rehabilitation or for which the judge has not ordered a stay of execution of the sentence, unless, in the latter case, a new conviction has deprived the person concerned of the benefit of this measure.

Bulletin No. 3 does not record convictions for imprisonment not exceeding six months or fines not exceeding one thousand dinars, unless the judgment has stipulated otherwise or unless prosecution followed by a conviction has taken place within the ^{following} five years.

Under no circumstances may these extracts be issued to individuals other than the persons to whom they relate.

Judgments imposing community service or criminal compensation are not recorded in bulletin no. 3 of the ^{criminal} record.

Art. 366 – Any request for correction of the criminal record shall be decided in chambers, after hearing the public prosecutor, by the court that imposed the sentence.

CHAPTER VI – REHABILITATION

Art. 367 – Rehabilitation may be granted by the pardons board to any person convicted of a felony or misdemeanor if they meet the following conditions:

1. A period of two years or six months, depending on whether they were convicted of a felony or misdemeanor, must have elapsed since the sentence was served, expired, or remitted.
Where the convicted person is a repeat offender or has previously been rehabilitated, the period shall be ^{doubled}.
2. The civil damages awarded in the sentence have been paid, waived, or time-barred, or the convicted person can prove that they were unable to pay them.
3. It must be established, both by the records of the places of detention and by an investigation into the conduct of the convicted person after his release, that he has effectively reformed.

Art. 368 – Rehabilitation may only be requested by the convicted person or, if he or she is incapacitated, by his or her legal representative.

In the event of the convicted person's death, the request may be made by his or her spouse, ascendants, or descendants within one year of the death.

The request shall be examined by the Secretary of State for Justice.

Art. 369 – If the request is rejected by the pardons board, a new request may not be made until one year has elapsed.

Art. 369 bis – Added by Law No. 93-114 of November 22 and amended by Law No. 2008-75 of December 11, 2008 – A convicted person who has not been convicted of any new crime or offense within the following periods shall be automatically rehabilitated:

- For a conviction resulting in a fine, after a period of three years from the date of payment of the fine, the expiry of the period of imprisonment for non-payment, or the expiry of the limitation period;
- For a sentence of imprisonment for a misdemeanor, after a period of five years from the date of execution of the sentence or the statute of limitations;

³¹ Art. 365 – New paragraph added by Law No. 2008-75 of December 11, 2008.

³² Art. 365 – New paragraph added by Law No. 2009-68 of August 12, 2009.

³³ Art. 366 – Number 1 (new) amended by Law No. 2008-75 of December 11, 2008.

- For a prison sentence for a felony, after a period of ten years from the date of execution of the sentence or the statute of limitations.
- For a conviction resulting in a fine, after a period of one year from the date of payment of the fine, the expiry of the period of imprisonment for non-payment, or the statute of limitations.
- For a conviction for a misdemeanor, after a period of two years from the date of completion of the sentence or its expiry.
- For a prison sentence for a felony, after a period of five years from the date of execution of the sentence or its expiry.

The total or partial remission of a sentence by way of pardon is equivalent to its total or partial execution.

Art. 370 – Rehabilitation erases for the future any convictions and incapacities that may have resulted from them. This shall be noted in the criminal record. Extracts issued to the parties shall no longer mention the convictions.

CHAPTER VII – PARDON

Art. 371 – A pardon consists of the remission of the sentence, the reduction of its duration, or its substitution with a lesser sentence provided for by law.

Art. 372 – The right of pardon is exercised by the President of the Republic on the recommendation of the Secretary of State for Justice, after consultation with the pardons board.

Art. 373 – Pardons are personal.

It may or may not be conditional and may only apply to final convictions.

Art. 374 – Pardons may not extend to legal costs, even if they have not been recovered. Fines paid to the State shall not be refunded.

Art. 375 – Convictions remitted by pardon shall continue to be part of the criminal record.

CHAPTER VII – AMNESTY

Art. 376 – Amnesty is granted by law. It erases both the offense and the conviction.

Art. 377 – Acts covered by amnesty are deemed never to have occurred.

However, amnesty may be subject to the convicted person fulfilling a specific condition.

Amnesty does not prejudice the rights of third parties, in particular the civil party. It does not apply to legal costs, even if they have not been recovered, to general or special confiscations, insofar as they have already been executed, or to fines that have already been collected.