

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE  
GOVERNMENT**

**DECREE-LAW No. 13/2005**

**OF**

**APPROVING THE CRIMINAL PROCEDURE CODE**

The collective commitment made by Timor-Leste to assert itself as an independent country has led to a claim for a legal system of its own in which criminal procedure solutions assume a special prominence.

Urgency in the preparation of a criminal procedure codification was also felt, given the national options that find themselves grounded in instruments as the Constitution and the draft Penal Code whose the law authorising its approval has also already be published, which necessarily affect the drafting of the Criminal Procedure Code.

Coupled with these options is also, obviously, the existence of an environment created by the rapid immersion of Timor-Leste into the international commitment it has been assuming, as well as by the options consolidated in relation to the legal system that has been espoused.

On the other hand, attention is paid to the genesis and importance of the panels established by the United Nations Transitional Administration in East Timor (UNTAET) with prosecutorial jurisdiction over cases relating to serious crimes committed between 1 January and 25 October 1999, which are still operational,

Thus:

Pursuant to the legislative authorisation granted under articles 1 and 2 of Law No. 15/2005, of 16 September, and under the terms provided in section 96 of the Constitution, the Government enacts the following that shall have the force of law:

**Article 1**

**Approval of the Criminal Procedure Code**

The Criminal Procedure Code published as an annex to this decree-law and as an integral part hereof is hereby approved.

**Article 2**

**Repeal**

1. The following legislative acts are repealed:

(a) UNTAET Regulation No. 2000/30, of 25 September, as amended by UNTAET Regulation No. 2001/25, of 14 September, on Transitional Rules of Criminal Procedure;

(b) Sub-article 6.1 and articles 1, 3, 4 and 16 of Decree-Law No. 16/2003, of 1 October.

2. Provisions contained in legislation sanctioning solutions that are contrary to those adopted by the Criminal Procedure Code, notably those of UNTAET Regulation No. 2000/11, of 6 March, as amended by UNTAET Regulations Nos. 2000/14, of 10 May, 2001/18, of 21 July, and 2001/25, of 14 September, is also repealed.

3. Exception is made to the provisions of article 3.

**Article 3**  
**Serious Crimes**

All provisions regulating cases related to serious crimes committed between 1 January and 25 October 1999 remain in force, notably those contained:

- (a) in sub-articles 9.1, 9.2 and 9.4 of UNTAET Regulation No. 2000/11, of 6 March, as it currently reads;
- (b) in UNTAET Regulation No. 2000/15, of 6 June.

**Article 4**  
**Misdemeanours**

Until such a time as there are misdemeanours in the Timorese legal system, the provisions of the Code approved by this decree-law shall, with the necessary adaptations and on a subsidiary basis, apply to cases relating to misdemeanours.

**Article 5**  
**Entry into Force**

This decree-law and the Criminal Procedure Code shall come into force on 1 January 2006.

The Prime Minister  
[Signed]  
(Mari Bim Amude Alkatiri)

The Minister of the Interior  
[Signed]  
(Rogério Tiago Lobato)

The Minister of Justice  
[Signed]  
(Domingos Maria Sarmento)

Promulgated on 22 November 2005

To be published.

The President of the Republic  
[Signed]  
(Kay Rala Xanana Gusmão)

**ANNEX**

## **CRIMINAL PROCEDURE CODE**

### **Preamble**

1. The normative framework presented by the Criminal Procedure Code is inspired by and fully consistent with the options enshrined in the Constitution in the area of individual rights, liberties and guarantees of the person, thus confirming the traditional doctrinal statement that the criminal procedure system is true “applied constitutional law”.

Hence, the normative solutions adopted in this Code are primarily aimed at consolidating and regulating what is safeguarded by the Constitution of the Republic on matters of criminal procedure guarantees and other individual rights, limiting the innovative activities of the legislator in order to ensure that “the extent and scope of the essential contents of the constitutional provisions” is not reduced.

2. On the other hand, without losing sight of the thought of a protective nature previously expressed, the criminal procedure legislator has sought to adopt the most adequate procedure mechanisms for an effective fight against the various forms of crime occurring in the Timorese social fabric, which is a sine qua non of the survival of a State based on the rule of law.

We are convinced that the practical concordance among the bare minimum of restrictions on constitutionally supportable individual liberties, but necessary as an essential guarantee of survival of a democratic society, has been reached in this Code in a balanced and proportional fashion.

3. An exhaustive characterisation of procedural participants has been done with regard to their regulation. A rigorous definition has been given of the circumstances and of the time when the perpetrator of a criminal offence assumes the procedural position of suspect, defendant or convict, respectively, as well as the respective procedural duties and rights.

The status of an aggrieved person has been adopted as a mere auxiliary to the public prosecutor in a criminal proceeding. The aggrieved person is represented by the public prosecutor, and civil compensation arising from the commission of a criminal offence may, at the discretion of the latter, be arbitrated in the criminal proceeding, except as otherwise stated by the aggrieved person.

The delimitation of general police powers and the enumeration of police measures and their respective prerequisites are also set out.

4. With respect to evidence, emphasis is placed on the provisions concerning the prohibition of evidence, absolute or relative, and its respective value, in addition to providing, as a general rule, for the obligation to produce or examine the evidence at the trial hearing in order that the formation of an opinion by the court can be sustained. Reference should also be made to the regulation of the means of evidence “searching a crime scene” as a tool of acknowledged importance during the course of the investigation.

5. In regard to the means of obtaining of evidence, nullities, and restrictive and property guarantee measures, a very exhaustive regulation has been effected in order to facilitate the application thereof by the various judicial operators.

6. A pattern of procedural steps as simplified as possible with the objective of favouring procedural expeditiousness as a tool capable of ensuring greater effectiveness in preventing crime. Consequently, there is only one form of ordinary proceeding and one form of expedited proceeding, the latter being intended to handle small and less serious crimes involving *flagrante delicto*.

In the form of ordinary proceeding, the investigation is done through an enquiry conducted by the public prosecutor, and police shall act under the functional purview of the Public Prosecution Service. It is incumbent upon the judge, still in this phase, to either practise or authorise acts that may limit fundamental rights and liberties of the citizen, namely, the judge has the obligation to conduct the first questioning of the detainee within seventy two hours of the time he or she was arrested.

7. Deadlines adequate to the Timorese judicial reality have been set for the duration of pre-trial detention and for conducting an enquiry, particularly where defendants have been placed under pre-trial detention or in particularly complex cases.

8. In relation to sentencing, there is an obligation to present the factual and legal basis for the sentence in an unequivocal manner. Therefore, in addition to the possibility of documenting the evidence obtained at the hearing, factual and legal knowledge during appeal proceedings is ensured, and, through the obligation to present the basis for the sentence, the “monitoring” by the community of the action taken by the organs responsible for the administration of justice is made possible.

9. Finally, jurisdictional competence during the penalty execution phase is assigned to the trial judge.

**CRIMINAL PROCEDURE CODE**  
**PART I**  
**ON THE GENERAL PART**  
**TITLE I**  
**PRELIMINARY AND GENERAL PROVISIONS**

**Article 1**  
**Legal definitions**

For the purposes of this Code:

- (a) “Crime” means a set of prerequisites upon which the imposition of a criminal penalty or security measure on the perpetrator depends;
- (b) “Judicial authority” means the judge and the public prosecutor, each one in relation to procedural acts falling under his or her respective competence;
- (c) “Clearly unfounded indictment” means an indictment that does not contain a statement of acts or indications conducive to identifying the defendant, fails to

indicate the applicable legal provisions or the evidence in which the indictment is grounded, or where the stated acts do not constitute a crime;

(d) “Social report” means a document prepared by technical services with competence to assist the courts, with the objective of assisting in the identification of the personality of the defendant, or of the victim, and the provision of elements regarding the living conditions of the latter.

## **Article 2**

### **Principle of legality**

The legal and criminal consequences arising out of the commission of a criminal offence may only be applied in accordance with the provisions of this Code.

## **Article 3**

### **Filling of lacunae**

In cases of omission, where the provisions of this Code may not apply by analogy, the provisions of the civil procedure, which are consistent with the criminal procedure, or, in the absence of the latter, the general principles of the criminal procedure, shall be complied with.

## **Article 4**

### **Application of the law over time**

1. The criminal procedure law shall be immediately applicable, without prejudice to acts practised during the time the previous law was in force.
2. The criminal procedure law shall not apply to proceedings initiated before its entry into force where from its immediate applicability may result.
  - (a) considerable aggravation, which can still be avoided, of the procedural situation of the defendant, namely a limitation on his or her right to counsel; or
  - (b) breach of harmony and unity of the various acts of the proceeding.

## **Article 5**

### **Territorial application of the law**

1. The criminal procedure law applies throughout the territory of Timor-Leste.
2. The criminal procedure law also applies in a foreign territory, under the terms defined in international law treaties, conventions, and rules.

## **Article 6**

### **Application to other offences**

With the necessary adaptations and on a subsidiary basis, the provisions of this Code apply to disciplinary and administrative proceedings.

**TITLE II**  
**ON THE COURTS**  
**CHAPTER I**  
**ON JURISDICTION**

**Article 7**

**On criminal jurisdiction**

1. Only the courts provided in the law on judicial organisation are competent to administer criminal justice.
2. In the exercise of this function, the courts owe obedience only to the law and the rule of law.

**Article 8**

**Cooperation between authorities**

1. Every public authority is obliged to cooperate with the courts in the administration of criminal justice, as and when requested.
2. The cooperation referred to in the preceding sub-article takes precedence over any other service.

**Article 9**

**Sufficiency of criminal jurisdiction**

1. Except as otherwise stated, every issue relevant to the decision of a case, regardless of its nature, is settled through the criminal procedure.
2. Once the indictment has been presented, at its own request or discretion, the court may suspend the proceeding in order that any issue of a non-criminal nature, essential to the disclosure of the truth, which cannot be properly settled in the criminal proceeding, may be decided in a competent court.
3. Suspension may not exceed the duration of one year and does not impede the carrying out of urgent search to establish evidence.
4. Where a lawsuit has not been filed within thirty (30) days from the date the decision on suspension was made, or once the time limit referred to in the preceding sub-article has expired without a decision on the prejudicial issue, the criminal proceeding shall proceed and the decision must be rendered therein.
5. In the case of suspension, the public prosecutor may intervene in the non-criminal proceeding to seek to expedite it and inform the criminal court.

**CHAPTER II**

**ON JURISDICTION**  
**SECTION I**  
**ON GENERAL PROVISIONS**  
**Article 10**  
**Determining the applicable penalty**

1. For the purposes of assessing jurisdiction, the circumstances increasing the legal maximum limit of the penalty that corresponds to the type of criminal offence shall be taken into account in determining the abstractly applicable penalty.
2. In the case of accumulation of criminal offences, the highest penalty, which is abstractly applicable to the most serious crime, shall be imposed.

**Article 11**  
**Subsidiary regime**

On matters of criminal competence, the laws on judicial organisation apply on a subsidiary basis.

**SECTION II**  
**ON SUBJECT MATTER AND FUNCTIONAL JURISDICTION**  
**SUBSECTION I**  
**JURISDICTION ON GROUNDS OF HIERARCHY**  
**Article 12**

**Jurisdiction of the Supreme Court of Justice**

1. On criminal matters, it is incumbent upon the full bench of the Supreme Court of Justice to:
  - (a) try the President of the Republic;
  - (b) adjudicate appeals against decisions that have been handed down, in first instance, by the criminal section of the Supreme Court of Justice;
  - (c) standardise the jurisprudence, under the terms established by article 321 and subsequent articles;
  - (d) exercise such other competencies as assigned by law.
2. On criminal matters, it is incumbent upon the criminal section of the Supreme Court of Justice to:
  - (a) adjudicate cases in connection with criminal offences committed by judges of the Supreme Court of Justice, the Prosecutor-General, and other public prosecutors posted to that court;
  - (b) adjudicate cases in connection with criminal offences committed by judges of first-instance courts or by public prosecutors;
  - (c) adjudicate appeals that are not provided for in sub-article 12.1;
  - (d) admit conflicts of competence between the courts referred to in paragraph 12.1(b);
  - (e) admit <<*habeas corpus*>> motions filed on grounds of unlawful imprisonment or detention;
  - (f) adjudicate judicial cases of extradition;
  - (g) adjudicate cases of review and confirmation of foreign criminal sentences;
  - (h) exercise such other competencies as assigned by law.

**Article 13**  
**Jurisdiction of District Courts**

It is incumbent upon district courts to:

- (a) adjudicate cases in connection with criminal offences the jurisdiction of which is not assigned by law to any other court;
- (b) adjudicate appeals lodged against decisions by administrative authorities in proceedings of an administrative nature;
- (c) exercise judicial competence in the sentence execution phase;
- (d) exercise jurisdictional competence in the enquiry phase;
- (e) decide all criminal issues, which are not expressly assigned to any other entity or court;
- (f) exercise such other competencies as assigned by law.

**SUBSECTION II**  
**JURISDICTION ON GROUNDS OF THE COMPOSITION OF THE COURT**  
**Article 14**

**Jurisdiction of courts with more than one judge**

Courts function collectively, on criminal matters, for the trial of cases in connection with criminal offences the maximum abstract penalty of which exceeds five years' imprisonment.

**Article 15**  
**Jurisdiction of one- judge courts**

It is incumbent upon one-judge courts, on criminal matters, to try cases in connection with criminal offences that cannot be tried by a court functioning collectively and to exercise such other competencies as set forth in article 13.

**SECTION III**  
**ON TERRITORIAL JURISDICTION**

**Article 16**  
**General rule**

1. The court of the jurisdiction where a criminal offence was consummated is the competent court to adjudicate the offence.
2. Where a criminal offence could not be consummated or was consummated through successive or reiterated acts, or through a permanent act, the competent court is the one in whose jurisdiction the last act was practised or where the offence was fully consummated.

**Article 17**



### **Criminal offence committed aboard a vessel or aircraft**

1. The court in whose jurisdiction the perpetrator disembarks is the competent court to adjudicate an offence practised aboard a vessel or aircraft.
2. Where the perpetrator does not disembark in Timorese territory, the court of the jurisdiction where the vessel or aircraft was registered is the competent court.

### **Article 18**

#### **Criminal offence committed overseas**

1. Where a criminal offence is committed overseas, the competent court is the court with jurisdiction over the area, within the territory of Timor-Leste, where the perpetrator was found.
2. Where the perpetrator was not found or he or she remains overseas, the competent court is the court with jurisdiction over the area of his or her last known residence in Timorese territory.

### **19**

#### **Subsidiary rule**

1. In case a criminal offence is related to places falling within the jurisdiction of more than one court and should there be any doubts as to the determination of territorial jurisdiction, or where the criminal offence was committed in an unknown place, the competent court is the court to which the offence was first reported.
2. In cases other than those foreseen in this section, the competent court is the court to which the criminal offence was first reported.

## **SECTION IV**

### **ON JURISDICTION ON GROUNDS OF RELATIONSHIP**

#### **Article 20**

##### **Full relationship**

1. A single case file is organised where:
  - (a) the same or different criminal offences have been jointly committed by several perpetrators;
  - (b) the same or different perpetrators have committed various criminal offences through the same conduct, or at the same time or place, or where some of such offences are the cause or effect of others, or where some are meant to carry on or hide others.
2. Where distinct cases have been initiated, all related files shall, at request or on a discretionary basis, be attached as a single file as soon as that relationship becomes known and the records are found to be at the same procedural stage.

#### **Article 21**

##### **Partial relationship**

1. Even with regard to cases not provided in article 20, case files for trial must be attached together where the same perpetrator is accused of committing several criminal offences.
2. Where the determining reason for relationship becomes known after the trial was held, case files shall be attached together if there is an accumulation of offences.

## **Articles 22**

### **Limitations on relationship**

A jurisdictional relationship becomes ineffective between cases that fall under the jurisdictions of:

- (a) juvenile courts;
- (b) the Supreme Court of Justice functioning as a first-instance court where any of the accused should not be tried in that court.

## **Article 23**

### **Determining jurisdiction on grounds of relationship**

1. Where related proceedings must be under the jurisdiction of courts of a different hierarchy or with a different mode of operation, the court of the highest hierarchy or the court hearing cases of the highest gravity shall be the competent court.
2. Where related proceedings must be under the jurisdiction of various courts, on territorial grounds, the competent court to adjudicate all the proceedings is the one to which corresponds the criminal offence carrying the heaviest penalty, within its maximum limit, or the court to which any of the criminal offences was first reported, in the case of equal maximum limit of the applicable penalties.

## **Article 24**

### **Extending jurisdiction**

A jurisdiction determined on the grounds of relationship is retained even where:

- (a) the separation of proceedings is ordered under the terms of article 25;
- (b) the court pronounces a decision of acquittal in relation to any of the criminal offences;
- (c) the extinguishment of criminal liability occurs in relation to any of the criminal offences;

## **Article 25**

### **Separation of proceedings**

Exceptionally, separation of proceedings is permitted, either at request or on a discretionary basis, where:

- (a) there is a reasonable and agreeable interest of any defendant in separation, particularly in reducing the duration of pre-trial detention;
- (b) relationship may pose a serious risk to the punitive intention of the state or to the interests of the aggrieved persons or
- (c) relationship may result in significant delays in the proceedings.

## **SECTION V**

### **ON DECLARATION OF LACK OF JURISDICTION**

## **Article 26**

### **General rule**

Lack of jurisdiction of a court and the Public Prosecution Service is, respectively, assessed and declared by the latter, either at request or on a discretionary basis.

## **Article 27**

### **Lack of jurisdiction of a court**

Lack of jurisdiction of a court may be required and declared until such a time as a final decision is rendered, except in the case of lack of territorial jurisdiction, in which case it must be declared until trial hearings start.

### **Article 28**

#### **Lack of jurisdiction of the Public Prosecution Service**

Lack of jurisdiction on the part of the Public Prosecution Service may be declared until such a time as the indictment is presented.

### **Article 29**

#### **Effects of declaration of lack of jurisdiction**

1. A declaration of lack of jurisdiction implies referring the records to the competent entity forthwith.
2. A declaration of lack of jurisdiction on the part of Timorese courts to adjudicate a criminal offence implies dismissing the proceeding, once a final decision thereon has been rendered.

### **Article 30**

#### **Urgent acts**

A court or Public Prosecution Service agent, who makes a declaration of lack of jurisdiction, shall perform, however, those procedural acts that are urgent in nature.

### **Article 31**

#### **Validity of prior acts**

Evidence adduced, restrictive measures imposed, and all other procedural acts performed before a declaration of lack of jurisdiction is made, retain their validity, except where the competent court deems them unnecessary.

## **SECTION VI ON CONFLICTS OF JURISDICTION**

### **Article 32**

#### **Concept of conflict**

There is a conflict of jurisdiction, either positive or negative, where various judicial entities consider themselves, respectively, competent or incompetent to adjudicate the same criminal offence or to perform the same procedural act.

### **Article 33**

#### **Disclosure of conflict**

The last judicial entity to declare itself either competent or incompetent reports the situation of conflict immediately to the presiding judge of the higher court or to a superior with competence to settle such a conflict, as the case may be.

#### **Article 34**

##### **Competence to settle conflicts**

1. Where a conflict arises between courts, the competence to settle the conflict rests with the presiding judge of the higher court.
2. Where a conflict arises between public prosecutors, the competence to settle the conflict rests with a superior common to both of those public prosecutors.

#### **Article 35**

##### **Investigating and handling incidents**

1. A conflict may arise, either on a discretionary basis or at request, and the report disclosing the conflict must be accompanied by all the elements necessary to the settlement thereof.
2. Once the report disclosing the conflict has been received, the judicial entities which are the parties to the conflict and all other procedural subjects concerned are notified to issue, if they so wish, a pronouncement within five days.
3. Once the deadline set in the preceding sub-article has elapsed, and after the information and evidence necessary to its settlement have been collected, a decision is passed.
4. The decision is communicated to the judicial entities that are the parties to the conflict and to all other procedural subjects.

#### **Article 36**

##### **Urgent acts and prior acts**

Articles 30 and 31 are correspondingly applicable.

### **TITLE III**

#### **ON PROCEDURAL PARTICIPANTS**

##### **CHAPTER I**

##### **GENERAL PROVISION**

#### **Article 37**

##### **Subsidiary norms**

In addition to the provisions of this Code, the norms relating to judicial organisation and the various statutory laws concerning the various procedural participants, shall, on a subsidiary basis, apply to the matters regulated in this title.

##### **CHAPTER II**

##### **ON JUDGES**

#### **Article 38**

##### **General rule for intervention of judges**

The competent judge in a given criminal proceeding shall stop intervening therein if there are any grounds for disqualification or suspicion.

#### **Article 39**

### **Grounds for disqualification**

The grounds for disqualification are as follows:

- (a) to be, or to have been, a spouse, legal representative, or related by blood or affinity up to the third degree to the victim or to the perpetrator of the criminal offence, or to cohabit, or to have cohabited, with either of the latter in a relationship similar to that of spouses;
- (b) to have intervened in the proceeding as a public prosecutor, police officer, judicial agent, public defender, or as an expert;
- (c) to have a spouse or anyone related by blood or affinity up to the third degree, or a person with whom the judge cohabits or has cohabited in a relationship similar to that of spouses, taking part in the proceeding, in any capacity;
- (d) to be, or ought to be, a witness in the proceeding.

### **Article 40**

#### **Grounds for suspicion**

A judge raises suspicion where there are strong reasons to call into question his or her impartiality, namely, having expressed opinions revealing a pre-judgement in relation to the object of the proceeding.

### **Article 41**

#### **Reporting an incident**

1. Until such a time as a final decision is rendered, as soon as the existence of any grounds likely to legitimise the suspicion or the disqualification is perceived, shall the judge declare it at his or her own discretion.
2. A declaration of disqualification or refusal on grounds of suspicion may be requested by the public prosecutor, the victim or the defendant, within eight days from the date on which the act in which the declaration or refusal is grounded became known.
3. The decision on a declaration of disqualification may only be appealed against if the judge fails to acknowledge himself or herself disqualified.
4. A decision on suspicion falls, at all times, under the competence of a court at the next higher level than that of the court in which the judge is serving or of the full bench of the Supreme Court of Justice, if the judge is posted to the criminal section.

### **Article 42**

#### **Handling an incident of suspicion**

1. Where suspicion is raised by the judge, the latter states in the order the grounds and all other elements deemed necessary for the review of the case, and immediately notifies the public prosecutor, the victim and the defendant to make a pronouncement within five days, if they so wish.
2. Where the incident is raised by way of a petition, the petition shall contain the grounds for suspicion and all other elements relevant to the case, and the judge shall then act as stated in the second part of the preceding sub-article and shall, within the same time limit, made a pronouncement on the petition.
3. Once the procedures set out in the preceding sub-articles have been complied with, the case is referred to the competent court for a decision to be pronounced within three days.

### **Article 43**

#### **Validity of performed acts**

1. Acts performed before the incident is raised are valid, except where they prove to cause damage to the fairness of the decision.
2. Acts performed after the incident is raised are valid only if they cannot be repeated and cause no damage to the fairness of the decision.

### **Article 44**

#### **Referring a case**

A definitive decision on disqualification or suspicion implies referring the case to the competent court forthwith, in conformity with the laws on judicial organisation.

### **Article 45**

#### **Bad faith**

1. Where the public prosecutor, the defendant or the victim reports an incident of disqualification or of suspicion after more than eight days have elapsed since he or she became acquainted with the existence of grounds substantiating the incident, the petition is refused and the defendant or the aggrieved person is declared a bad-faith litigant.
2. Refusal of the petition on the grounds of a blatantly baseless allegation also amounts to declaring the petitioner to be a bad-faith litigant.
3. A person declared to be a bad-faith litigant is penalised with a fine to be determined under the terms of the Code of Court Costs.

### **Article 46**

#### **Extent of the regime**

The provisions of this chapter apply to experts, interpreters and court clerks, with the necessary adaptations.

## **CHAPTER III ON JURISDICTONAL COMPETENCE**

### **Article 47**

#### **Jurisdictional competence**

1. The competence to conduct a trial in a criminal case is exclusive to a judge appointed by a court composed of one or more judges.
2. In the inquiry and sentence execution phases, the judge exercises such competencies as conferred upon him or her by law as a single judge.

## **CHAPTER IV ON THE PUBLIC PROSECUTION SERVICE**

### **Article 48**

#### **Responsibilities of the Public Prosecution Service**

1. The Public Prosecution Service is the holder of the criminal action and it is incumbent upon it to cooperate with the court in disclosing the truth and in applying the rule of law by complying, in every procedural intervention, with strict criteria of legality and objectivity.
2. It is specifically incumbent upon the Public Prosecution Service to:

- (a) receive claims, complaints and reports and order the initiation of criminal proceedings, once the requirements for legitimacy have been met;
- (b) conduct the enquiry and take over the procedures it deems advisable to conduct directly in this phase;
- (c) request the intervention of the judge in performing jurisdictional acts during the enquiry;
- (d) present the indictment and sustain it in court;
- (e) lodge appeals;
- (f) promote the execution of court decisions;
- (g) perform such other acts the law considers to be under its competencies.

**Article 49**  
**Legitimacy**

1. The Public Prosecution Service is legally competent to initiate criminal proceedings, with the limitations contained in the sub-article 49.2.
2. Where a criminal proceeding depends on the lodgement of a complaint, by either the victim or other persons, these persons are required to report the fact to the Public Prosecution Service in order that the latter may initiate the proceeding.
3. A complaint is valid, whether filed with the Public Prosecution Service or the police authorities, who shall report it to the former.

**Article 50**  
**Claims**

A claim against a decision issued by the Public Prosecution Service, during the enquiry, may only be filed with a superior where expressly stated in the law.

**Article 51**  
**Disqualifications and suspicions**

1. The provisions concerning disqualifications and suspicions in respect of judges are applicable to public prosecutors, with the necessary adaptations.
2. A claim against a decision in which the public prosecutor fails to acknowledge himself or herself disqualified or in excusatory circumstances arising from suspicion may be filed with his or her superior.

**CHAPTER V**  
**ON POLICE**

**Article 52**  
**General police powers**

1. It is incumbent upon police officers, even on their own initiative, to prevent criminal offences from being committed, gather reports thereof, track down their perpetrators, and take the necessary and urgent precautionary acts in order to secure evidence.
2. It is also incumbent upon the police to assist, upon request, judicial authorities in achieving the objectives of the proceeding, particularly the Public Prosecution Service during the enquiry.

**Article 53**

### **Identifying a suspect**

1. A police officer may request the identity of any person where there is suspicion that such a person is preparing to commit, or has either committed or taken part in, a criminal offence.
2. Where the person is not able to identify himself or herself, or refuses to do so, such a person shall be taken, with urbanity, to the nearest police station where the person shall be furnished with the available means required to render his or her identification possible.
3. Where required, the person may be obliged to subject himself or herself to tests to adequately establish his or her full identification, which do not offend human dignity, notably fingerprint, picture taking or body check.
4. Before twelve hours have elapsed; the person must be restored to full liberty, regardless of the success of the action taken, provided there is no ground for detention.
5. Acts performed in compliance with the preceding sub-articles are put to writing in the form of a report to be conveyed to the Public Prosecution Service forthwith.

### **Article 54**

#### **Frequenting suspected places**

Article 53 is correspondingly applicable to a person found at a place open to public access, which is habitually frequented by criminals.

### **Article 55**

#### **Collecting information**

1. It is incumbent upon the police to collect information from persons who might facilitate the discovery of the perpetrator of the criminal offence and his or her identification.
2. The information referred to in the previous sub-article is forthwith attached to the case file or conveyed to the Public Prosecution Service where a criminal case has not yet been initiated.

### **Article 56**

#### **Urgent searches, checks and seizures**

1. The police may conduct searches, checks or seizures without a court order:
  - (a) In the case of *flagrante delicto* in connection with a criminal offence that carries imprisonment; or
  - (b) where there is strong suspicion that items relating to a criminal offence are hidden and a delay in securing permission to retrieve them might lead to the modification, removal or destruction of such items or pose a danger to the safety of persons and goods.
2. A report of occurrence of any of the acts referred to in the preceding sub-article is prepared and either incorporated into the respective criminal case or conveyed to the Public Prosecution Service where the respective criminal proceeding is not initiated immediately, and the competent judicial authority shall assess the validity of the act.
3. Sub-article 56.2 does not apply to searches or checks in which no items relating to a criminal offence have been found.
4. Sub-article 56.1 does not apply to home searches.



## **Article 57**

### **Authorities with competence to conduct enquiries**

1. The competence to conduct and carry out enquiries rests with the Public Prosecution Service.
2. The Public Prosecution Service may grant the police or court staff competence to carry out inquiries or to perform any acts relating to an inquiry.
3. The provisions concerning disqualifications and suspicions are applicable to police officers and court staff carrying out an enquiry, with the necessary adaptations.

## **CHAPTER VI ON SUSPECTS, DEFENDANTS AND CONVICTS**

### **Article 58**

#### **Suspects**

A suspect is considered as every person in regard to whom there are indications that he or she has committed, has taken part in, or is preparing to take part in, a criminal offence.

### **Article 59**

#### **Being declared a defendant**

1. The status of defendant is granted to every person against whom an indictment is presented in a criminal proceeding
2. Subject to sub-article 59.1, the status of defendant must be declared as soon as:
  - (a) an investigation is commenced against a particular person and the latter makes a statement before any judicial authority or police entity;
  - (b) a restrictive or property-guarantee measure has to be imposed on any person;
  - (c) a suspect is arrested; or
  - (d) a report stating that a person has committed a crime is prepared, and the person is notified of such a report.
3. The status of defendant is granted through notice, oral or in writing, served to the person concerned by a judicial authority or police entity, informing that that person must consider himself or herself a defendant in a criminal proceeding; the notice shall contain an indication and, if necessary, explanation of that person's procedural rights and duties as a defendant, and identify the case file and the defender, if appointed.
4. Omission or breach of the procedures laid down in sub-articles 59.2 and 59.3 implies that the statements made by the person concerned shall not be used as evidence against him or her.
5. The status of defendant lasts for the duration of the entire proceeding.

### **Article 60**

#### **Rights of the defendant**

In addition to other rights enshrined in the law, the defendant enjoys the following rights:

- (a) when under arrest, to be presented to the judge for the first questioning within seventy two hours from the arrest;
- (b) to be informed of the acts being imputed to him or her and of the rights to which he or she is entitled, whenever asked to make statements;
- (c) to freely decide to make or not to make statements and to do it, even at his or her own request, at any stage of the investigation or of the trial hearing, except as provided in paragraph 61(a);

- (d) to be assisted by a defender, where the law determines compulsory assistance or where he or she so requires;
- (e) a defender appointed by the court, in the cases referred to in paragraph 68, if he or she has not done so;
- (f) to freely communicate with the defender, even where the defendant is under arrest or detention;
- (g) to have his or her designated family member informed, when arrested or detained;
- (h) to provide evidence and request any action deemed necessary for his or her defence;
- (i) to appeal, under the terms of the law, against any decision that is unfavourable to him or her.

### **Article 61**

#### **Duties of the defendant**

In addition to those duties provided in the law, the defendant is subject to the following duties:

- (a) to provide the identification particulars required, when questioned, and, outside the trial, inform about his or her criminal background in a full and truthful manner;
- (b) to appear before the competent authorities, when summoned regularly;
- (c) to subject himself or herself to any search for evidence required for the investigation and trial, to the extent that such a search is not prohibited by law;
- (d) to provide proof of identity and residence as soon as he or she assumes the status of defendant ;
- (e) to subject himself or herself to other restrictive and property-guarantee measures.

### **Article 62**

#### **General rules for questioning**

1. Even if the defendant is under arrest or detention, he or she shall be released during questioning, exception being made to the strictly necessary precautionary measures to avoid the danger of escape or the practice of any acts of violence;
2. Methods and techniques, which might restrict or impair the freedom of will or of decision, or the ability to recall and reason, shall not be employed, even with the consent of the defendant.
3. Questioning starts with the reading and explanation of the rights and duties of the defendant, with the express warning that failure to comply with paragraph 61(a) may cause him or her to incur criminal liability.
4. The defendant is subsequently informed, in a clear and precise fashion, of the acts being imputed to him or her and, where this might not impact negatively the investigation, of the evidence against him or her; questioning shall then be conducted, should the defendant wish to make any statements, the latter being advised that silence shall not be detrimental to him or her.

### **Article 63**

#### **Persons to conduct and attend the first questioning of the defendant under arrest**

1. The police authority who arrests a person in flagrante delicto must present that person for the first judicial questioning as soon as possible, but under no circumstances shall they do so after seventy two hours from the arrest.
2. The judge has exclusive competence to conduct the first questioning after the defendant has been arrested, this questioning aiming, above all, to apply the adversarial principle in relation to the prerequisites for the arrest and the conditions for the execution thereof.
3. The questioning is attended by the person conducting it, the public prosecutor, the defender, the interpreter and the official tasked with taking precautionary security measures, when required, in addition to the official entrusted with putting the statements to writing.

#### **Article 64**

##### **Further questioning**

1. Any further questioning is undertaken by the entity with competence to conduct the procedural phase in which it occurs, or by a person with delegated competence to undertake it.
2. Questioning at the trial hearing shall be in compliance with article 62, in addition to specific provisions on trial hearings.

#### **Article 65**

##### **Status of convict**

1. The status of convict is assumed by any person against whom a final convicting decision has been pronounced by a court.
2. A convict enjoys the same rights and is subject to the same duties as those of a defendant, except to the extent that they are inconsistent with the fact that he or she has been definitively convicted.

### **CHAPTER VII ON DEFENDERS**

#### **Article 66**

##### **The defender**

1. A defendant has the right to retain counsel or to have a defender appointed, whether on a discretionary basis or at request.
2. The competence to appoint a defender rests with the judicial authority conducting the respective procedural phase.
3. Should there be no public defender available, the defender shall preferably be appointed from among lawyers or law graduates.
3. The replacement of a defender, on the initiative of the defendant or of the defender himself or herself, by invoking reasoned grounds, is permitted.

#### **Article 67**

##### **Responsibilities of the defender**

1. The defender assists technically the defendant and exercises the defendant's rights as recognised by law, except those rights that must be exercised by the defendant personally.
2. The defendant may render invalid any act performed by the defender on his or her behalf, provided that the defendant does so in writing before a decision on such an act has been pronounced, through a statement for entry in the minutes or in the records.

**Article 68**  
**Compulsory assistance**

Assistance by a defender is compulsory:

- (a) in the first questioning of a defendant held under arrest or detention;
- (b) from the time the indictment is presented until such a time as a decision is rendered final, particularly in lodging an appeal;
- (c) in filing claims;
- (d) in such other cases as stated in the law.

**Article 69**  
**Assistance to various defendants**

1. Where there is more than one defendant in the same case, each one may have his or her own defender or have a common defender, if this does not thwart the work to be carried out by the counsel for the defence;
2. The court may appoint a defender for those defendants who have not retained counsel, from among the counsels retained by the other defendants.

**Article 70**  
**Duties of the defender**

1. In addition to complying with the provisions regulating this matter, the defender shall at all times act with due respect for the court in any allegations and/or petitions he or she makes.
2. A conduct that runs counter to sub-article 70.1 shall be sanctioned with a warning and, should the defender persists in such a misdemeanour, he or she shall be ordered to remain silent or replaced by another defender.

**CHAPTER VIII**  
**ON THE AGGRIEVED PARTY**

**Article 71**  
**Legitimacy of the aggrieved party**

In addition to persons upon whom specific laws confer that right, the aggrieved party in a criminal case is considered to be:

- (a) the victim, construed as meaning the holder of any interests that the law specifically envisaged to protect with the incrimination;
- (b) a person on whose complaint criminal action is dependant;
- (c) any person in a criminal offence involving corruption, embezzlement or abuse of office by a public authority.

**Article 72**

### **Procedural positions**

1. An aggrieved party is, on criminal matters, a mere assistant to the public prosecutor and assigns all his or her procedural activity to the latter in relation to the presentation of evidence or request for any action relevant to the disclosure of the truth, regardless of the nature of the criminal offence.
2. With respect to civil compensation for damage arising from the commission of a criminal offence, the aggrieved party shall, as soon as the latter becomes known, be informed, even if by way of a public notice, of the rights to which he or she is entitled and, particularly:
  - (a) that he or she may file a civil request separately, if he or she expressly declares his or her intention to do so;
  - (b) that compensation is discretionarily arbitrated in the criminal proceeding where the aggrieved party fails to make a pronouncement on the issue within eight days;
  - (c) that he or she is represented by the public prosecutor in the criminal proceeding.
3. Where the aggrieved party becomes known before the investigation comes to a close, the public prosecutor shall, acting on behalf of the former, include in the indictment the elements required for determining civil liability.
4. The court may, on a discretionary basis or at request, refer the civil compensation case to a civil court for a decision where the issues raised therein render impossible a rigorous decision or are likely to generate incidents that would excessively delay the criminal proceeding.

## **TITLE IV ON PROCEDURAL ACTS CHAPTER I ON GENERAL PROVISIONS Article 73**

### **Maintaining order in procedural acts**

1. It is incumbent upon the person conducting the procedural act, and the official taking part therein, to take action necessary to maintain order.
2. To that effect, a public force, who shall act under the direction of the person conducting the procedural act, may be called in to assist.

### **Article 74**

#### **In-camera proceedings**

1. Every procedural participant and any person who, in whatever capacity, come into contact with the proceeding and become acquainted, in entire or in part, with the content thereof, are not allowed to make it public.
2. Persons are prohibited from attending a proceeding in regard to which he or she has not the right or duty to attend, or otherwise from becoming acquainted with the content of the procedural act.

### **Article 75**

#### **Public character of proceedings**

1. A criminal proceeding is open to the public from the time the indictment is presented.
2. The public character of a proceeding entails the right of:
  - (a) the media and the general public to attend the proceedings;
  - (b) a detailed account of the content of the proceedings by the media;
  - (c) access to and extraction of copies, abstracts and certificates of any portion of the records under the terms of sub-article 77.1;
3. The reproduction of briefs or of documents attached to the records, and the making of audio and/or video recordings in relation to proceedings, require prior authorisation from the court.

#### **Article 76**

##### **Limitations on the public character of proceedings**

1. Exceptionally, the court may, in entire or in part, restrict the public character of a proceeding, provided that the specific circumstances surrounding the case so advise, as a way of preserving other values, notably public morals and human dignity.
2. A limitation on the public character of a proceeding shall never cover the reading of a sentence or the decision on an appeal.
3. A decision by the court to bar some people from attending a proceeding, in entire or in part, namely as a way of sanctioning incorrect behaviours or of guaranteeing the security of the venue of the proceeding and/or of the people taking part therein, shall not be taken to be a restriction on the public character of the proceeding.
4. The court may also bar any person aged less than 18 years from attending the proceeding, and this is not to be construed as a restriction on the public character of the proceeding.
5. In the case of a proceeding in connection with a sexual criminal offence against a person aged less than 18 years, the proceeding shall, as a rule of thumb, be devoid of its public character.

#### **Article 77**

##### **Access to the records and extraction of certificates**

1. Subject to the preceding articles, the public prosecutor, the suspect, the defendant and the aggrieved person may have access to the records and obtain a certificate or copy there from.
2. Where it becomes evident that that request may not be attended to from a legal perspective, the performance of such acts shall be dependent upon prior authorisation from the judicial authority conducting the ongoing procedural phase.
3. Subject to the previous articles, access to, and the obtaining of a certificate or copy from, the records by other persons shall require the due demonstration of a legitimate interest and prior authorisation from the judicial authority conducting the ongoing procedural phase.

## **CHAPTER II ON THE TIME SCHEDULE, FORM AND DOCUMENTATION OF**

## **PROCEEDINGS**

### **Article 78**

#### **Time schedule for proceedings**

1. Procedural acts are performed on workdays, during office hours of the justice services and outside the period of judicial recess.
2. Excepted from the preceding sub-article are:
  - (a) procedural acts involving persons under arrest or detention, or which are indispensable for guaranteeing the liberty of the persons;
  - (b) investigative and hearing acts, where the initiation, conduct or completion of such acts without such restrictions proves to be a clear advantage.
3. Except in an act following arrest or detention, the questioning of a defendant may not take place from 00:00 to 6:00 a.m., under penalty of irreparable nullity.

### **Article 79**

#### **General rule for time limits**

1. Except as otherwise stated in the law, five days is the time limit for carrying out any procedural act.
2. Two days is the time limit for recording the proceeding and for issuing warrants, except where this time limit encroaches upon the duration of the deprivation of liberty, in which case such acts must be performed immediately.

### **Article 80**

#### **Acts relating to persons under arrest or detention**

1. The performance of procedural acts relating to cases involving persons under arrest or detention shall take precedence over any other service.
2. Holidays are credited toward the time limits regarding the cases referred to in the previous sub-article.

### **Article 81**

#### **Crediting time limits**

1. Time limits for proceedings shall be determined in hours, days, months or years, in accordance with the ordinary calendar.
2. A time limit ending on a holiday, Saturday or Sunday, is extended until the following workday; the same applies in relation to judicial recess where an act is to take place in court.
3. A time limit determined in days runs uninterruptedly.
4. A time limit determined in weeks, months or years, starting from a given date, ends at 24:00 hours of the day that corresponds, within the last week, month or year, to that date; but where there is not a corresponding day in the last month, the time limit ends on the last day of that month.
5. Except as otherwise stated in the law, where the time limit is determined in hours, the day or time at which the event has occurred, and from which the time limit starts to run, is not credited toward any time limit.
6. The time limit for making a statement, filing a document or performing any other act at the court registry is considered to have expired by the time that office closes to the public.

7. In the event that there is not a corresponding day in the last month to which reference is made in sub-article 81.4, the time limit expires on the last day of that month.

## **Article 82**

### **The language to be used in the acts**

1. Under penalty of nullity, procedural acts shall be performed using an official language of Timor-Leste.

## **Article 83**

### **Appointing an interpreter**

1. An interpreter shall be appointed where a person, who does not either know or master the official language in use, is to make a statement.

2. In addition to the situation referred to in the preceding article, the appointment of an interpreter is compulsory:

(a) if it is necessary to translate a document written in a language other than one of the official languages of Timor-Leste or if such a document is not accompanied by a certified translation;

(b) if a hearing-impaired person who cannot read, a speaking-impaired person who cannot write, or a hearing- and speaking-impaired person who cannot either read or write, is to make a statement.

2. The appointed interpreter takes the following oath :<< *I undertake, on my honour, to faithfully fulfil the role that has been entrusted to me* >>

## **Article 84**

### **Written procedural acts**

1. Except as otherwise provided in the law, procedural acts shall be in the written form.

2. Namely, the following are performed in the written form:

(a) decisions by a judge or public prosecutor other than the ones mentioned in Sub-article 85.3;

(b) acts to be performed by court staff in the course of a proceeding;

(c) petitions other than those provided in sub-article 85.3, briefs and expositions.

3. Paragraphs 87.2 (a) and (c) and sub-article 87.3 are correspondingly applicable.

## **Article 85**

### **Acts in the oral form**

1. Statements in a criminal proceeding are made orally and without recourse to previously written documents.

2. The person conducting the act may, exceptionally, authorise the person making a statement to resort to written notes as a reminder, and shall make mention of that fact in the records and, if need be, order that the notes used be attached to the file.

3. Petitions and decisions in a proceeding conducted in the oral form shall also be made orally.

4. Police and disciplinary acts in procedural acts shall be performed orally and need not be entered in the records.



5. Excepted from sub-article 85.1 are the cases in which the law permits one to read out, at the hearing, statements made at an earlier stage and the cases to which reference is made in paragraph 84.2(b).

### **Article 86**

#### **Documenting oral acts**

1. Except as otherwise stated in the law, procedural acts in the oral form are documented in a record.
2. The record shall be prepared by the court clerk or by the police officer during the investigation, under the direction of the person conducting the act.
3. It is incumbent upon the person conducting the act to ensure that the record faithfully reflects what has come up and the content of the statements made, and may dictate or permit the procedural participant to dictate his or her own statements.
4. Any inconsistency between the content of the dictation and what has come up must be challenged forthwith or before the record is finalised, after its final reading; the person conducting the act shall make a decision after consultation with the parties concerned and, if need be, write down in the record the position of each of the parties concerned before the decision is made.
5. Either a typewriter or a word processor may be used for preparing the record and the use of previously-printed sample forms or stamps to be completed with the definitive text is also permitted.

### **Article 87**

#### **Elements required for a record**

1. The record is a tool for the purpose of attesting to the terms under which the procedural acts it documents have been performed and to make a written note of statements, defence and prosecutorial motions, and oral decisions.
2. The elements required for a record are as follows:
  - (a) indication of the time, day, month and year in which the act was performed;
  - (b) place where the act was performed;
  - (c) identification of the persons taking part in the act;
  - (d) grounds, if known, for the absence of any persons who were required to be in attendance and the indication of the sanctions imposed or other action taken;
  - (e) detailed description of the operations carried out, of the intervention by each of the procedural participant, of the statements made, of the manner in which the statements have been made, and of the circumstances in which the statements have been made, of the documents filed or received, and of the outcomes achieved, in order to guarantee a genuine expression of the occurrence;
  - (f) any other circumstance relevant to the assessment of the evidence or the regularity of the act.
3. The record shall be drafted in a readable fashion, free from blank spaces, erasures, interlineations or amendments that are yet to be crossed out or corrected;

### **Article 88**

### **Certifying an act**

1. At the end of each procedural act, the record prepared shall, even if the procedural act is to be continued on another occasion, be personally signed by the person conducting the act, by the persons whose statements have been documented therein, and by the official that has drafted it.
2. If any of the persons referred to in sub-article 88.1 is unable to sign the record or refuses to do so, mention of this disability or refusal and of the grounds invoked shall be made in the record.

### **Article 89**

#### **Decisions**

1. Decisions made by judges shall take on the form of:
  - (a) sentences, when they constitute the final result of the proceeding;
  - (b) orders, they refer to an interlocutory matter or where they bring the proceeding to a close in a manner distinct from the one provided in paragraph (a);
  - (c) rulings, where they refer to a decision made by a collegial court.
2. Decisions made by public prosecutors shall take on the form of orders.
3. The decisions referred to in sub-articles 89.1 and 89.2 meet the formal requirements for written or oral acts, as the case may be.
4. Decisions shall at all times be well-founded, specifying the factual and legal grounds for every decision.

### **Article 90**

#### **Absence from a procedural act**

1. At the beginning of any act, the person conducting it shall justify any absences or shall, failing to do so, punish the absentee with a fine, under the terms of the civil procedure law, in addition to any other sanctions of a procedural nature as specifically provided by law.
2. The absence of a counsel shall be reported to the person who has retained that counsel and the absence of the public defender shall be reported to the agency to which the latter is disciplinarily answerable.
3. The absence of the public prosecutor shall be reported to his or her superior.
4. Except in the cases referred to in sub-articles 90.2 and 90.3, the judge may order the arrest of the absentee for the duration strictly necessary to ensure the presence of the person concerned in the procedural act from which he or she has been unjustifiably absent.

## **CHAPTER III ON NOTIFICATIONS**

## **Article 91**

### **Notices**

1. A summons to appear or to take part in a procedural act and the conveyance of the contents of the act performed or of the decision pronounced is made through a notice.
2. In the case of an urgent need to summon a person to a procedural act, the notice may be replaced by a summons served by telephone, telegraphy or by any other means of communication, and a written observation shall be made in the records.
3. A notice is served by a court clerk, police officer or any other law-enforcement agent upon whom the law confers competence to do so and may be either preceded by a decision or ordered at the discretion of the court registry.
4. Summons or communications to any persons present in a procedural act, made by the person conducting the act with the intent of notifying the former, shall be equated with notices, provided that the summons or communications are documented in the records.

## **Article 92**

### **Forms of notification**

1. A notice may be hand-delivered to the person concerned wherever that person is found, served by registered mail or by publication when expressly permitted by law.
2. Except as otherwise stated in the law, a notice of indictment or of dismissal of a case, an order indicating a date for the trial or imposing a restrictive or property-guarantee measure is hand-delivered both to the aggrieved person and the defendant.
3. All other notices may be served through the defender or counsel, respectively, to the defendant or aggrieved person, or through a person residing in the court area, designated by the person concerned for that purpose, and such notices may be in the form of mail.
4. Notices to public prosecutors, defenders and counsels are served by an entry into the records, by an electronic means or by mail.
5. Where the person to be notified is under arrest, the director of the prison institution is requested to notify the person concerned through a hand-delivered notice.
6. Where the person to be notified is a civil servant, the superior of the person concerned is requested to notify the latter, and failure to comply with such a request carries criminal liability.
7. Where the person to be notified is aged less than 14 years or suffers from a mental disorder, the notice shall be served through his or her legal representative.

## **Article 93**

### **Nullity of notice**

A notice is null and void where:

- (a) the notice is drafted in an incomplete fashion, namely fails to indicate the court or the case file to which it refers, fails to indicate the person to be notified or the purpose of the notice or any other element deemed essential from the perspective of the procedural position of the person to be notified;
- (b) a public notice is used in a case other than the ones authorised by law;
- (c) the person notified fails to sign the notice or the mention referred to in sub-article 88.2 is not made;
- (d) in the case of a public notice, the notice is neither posted in public places nor published as required;

(e) the notice is in contravention of article 92.

#### **Article 94**

##### **Subsidiary provisions**

The provisions of the Civil Procedure Code shall apply to a criminal case on a subsidiary basis and with the necessary adaptations.

### **CHAPTER IV ON CRIMINAL RECORDS**

#### **Article 95**

##### **Purpose**

1. Criminal identification is intended to collect and keep, in an orderly fashion, extracts of criminal decisions pronounced by Timorese courts against all individuals indicted therein and of all facts affecting such individuals in other than the criminal background of these persons can be known.
2. Extracts of decisions of the same nature pronounced against Timorese citizens by foreign courts are also collected.

#### **Article 96**

##### **Elements of a criminal record**

The following decisions are subject to entry into a criminal record:

- (a) convicting decisions;
- (b) decisions cancelling the suspension of sentences;
- (c) decisions granting or cancelling parole;
- (d) decisions granting amnesty, pardon or clemency, or commuting sentences;
- (e) extraordinary decisions authorising the review of previous decisions;
- (f) decisions imposing security measures or reviewing, suspending, or cancelling the suspension of, those or other measures in regard to persons immune from criminal culpability;
- (g) decisions regarding the death of convicted defendants;
- (h) decisions cancelling sentences or security measures;
- (i) decisions to not enter certain convictions in a criminal record certificate.
- (j) decisions refusing to grant extradition requests;
- (k) decisions reviewing and confirming convicting decisions by foreign courts.

#### **Article 97**

##### **Criminal record forms**

1. A criminal record form, also known as CRF, shall contain:
  - (a) the identification of the defendant, the remitting court, and of the case file;
  - (a) a summarised description of the fact to be recorded and of the contents of the decision;
  - (c) the date, name, signature and rank of the staff responsible for its completion;
  - (d) express mention of the impossibility of completing the form in its entirety, where applicable;
2. The identification of the defendant covers his or her name, and the names of his or her parents, nickname, birth of place, sub-district, district, nationality, date of birth, marital

status, occupation, residence, identification number and, where possible, being the defendant present at the trial, his or her fingerprints.

3. The decision shall be annotated with an indication of the date on which it was made and the designation of the crime or contravention committed, and with an indication of the provisions breached, of the penalty imposed, or of the duration of the internment determined.

4. Non-compliance or faulty compliance with the requirements set out in sub-article 97.1 results in the return of the form to the remitting court for due completion.

#### **Article 98**

##### **Transmission of forms**

1. Criminal record forms are transmitted to the competent services within five days of the date on which a final decision was rendered, of the date on which the fact subject to registration became known, or of the date on which the records were remitted back to the first-instance court.

#### **Article 99**

##### **Cancelling a registration**

1. The cancellation of a registration is compulsory where:

- (a) conviction to a penalty is declared null and void;
- (b) the time limit for rehabilitation has lapsed;
- (c) a decision is declared null and void by virtue of a legal provision.

2. Any facts or decisions that are a consequence of any decision that must be omitted under the terms of sub-article 99.1 shall also be deleted from the record.

#### **Article 100**

##### **Decisions not to be entered in a certificate**

A court that passes a sentence of up to one year's imprisonment or a non-custodial sentence may determine, in either the sentence or in a subsequent order, where no danger of occurrence of further criminal offences can be inferred from the circumstances that have surrounded the criminal offence and where the person concerned is a first offender, that the respective sentence be not entered into a certificate that is not meant to prepare a criminal case.

#### **Article 101**

##### **Complementary legislation**

In addition to the provisions of this chapter, criminal records are regulated by Decree-Law No. 16/2003, of 1 October.

## **CHAPTER V ON NULLITIES**

## **Article 102**

### **The principle of legality**

1. Defects in procedural acts breaching any of the criminal procedure provisions shall generate nullity of the act only where expressly determined by law.
2. In all other cases, an unlawful act generates irregularity.

## **Article 103**

### **Irreparable nullities**

1. In addition to the cases specifically stated in the law, irreparable nullities include:
  - (a) lack or insufficient number of judges to constitute the court, or breach of any of the legal rules for determining the composition thereof;
  - (b) failure by the public prosecutor to prosecute the case or to attend any of the acts in which he or she is required to attend by law;
  - (c) failure to appoint a defender or absence of the latter from any of the acts where he or she is required to attend;
  - (d) absence of the defendant or convict where he or she is required to attend by law;
  - (e) breach of any of the rules on court jurisdiction, subject to the second part of article 27;
  - (f) The use of an expedited proceeding where an ordinary proceeding was to be employed.
2. Subject to the second part of article 27, irreparable nullities are discretionarily established in any phase of the proceeding until such a time as a final decision is rendered.

## **Article 104**

### **Reparable nullities**

1. Reparable nullities are all those that are not expressly stated in the law as irreparable, namely:
  - (a) the use of an ordinary proceeding where an expedited proceeding was to be employed;
  - (b) absence of the aggrieved person from any of the acts due to lack of notification, where he or she is required to attend by law;
  - (c) lack of an interpreter where the appointment thereof is required by law;
  - (d) insufficient inquiry or failure to take any action, during the trial phase, deemed essential for the disclosure of the truth.
2. Reparable nullities may be established only if challenged by procedural participants, within the time limit determined by law, other than the ones who have originated such nullities.

## **Article 105**

### **Time limit for challenging a nullity**

1. The nullities referred to in article 104 must be challenged before the act is finished if the party concerned is attending it or within five days following the date on which the defect affecting the act becomes known if the latter was not attended by the party concerned.

2. A person is presumed to have become acquainted with the defect by the time when he or she is notified of any step in the proceeding, consults the record or intervenes in any act practised in the proceeding.

**Article 106**  
**Remedy of defect**

1. A defect that is likely to result in the nullity of the act is considered repaired if the parties concerned let elapse the time limits referred to in article 105 without challenging the nullities, expressly waive their challenge to the act, or capitalise on the advantage deriving from the defective act.
2. Failure to notify or to summon to a procedural act, or defective notification or summon thereto, is also considered repaired where the parties concerned either refuse to attend the act or attend on it.
3. Excepted from the final part of sub-article 106.2 are the cases in which the parties concerned attend the act with the sole intent of challenging its nullity.

**Article 107**  
**Irregularities**

1. Irregular acts shall be declared invalid only where the defect might affect the value of the act practised, in such a way as to undermine the disclosure of the truth, and the time limits set in article 105 have been observed.
2. A decision to repair an irregularity may be made on a discretionary basis as soon as such an irregularity becomes known, provided that the requirements laid down in sub-article 107.1 are met.

**Article 108**  
**Declaration of nullity or of irregularity**

1. Depending on the procedural phase or the competence to perform the act, only the judge or the public prosecutor may declare the nullity or irregularity of a procedural act.
2. Nullities or irregularities result not only in the invalidity of the defective act but also of any subsequent acts that may have been affected.
3. A declaration of nullity or irregularity determines what acts are to be considered invalid and orders, where necessary and possible, that such acts be performed again, the expenses pertaining thereto being borne by the person who has maliciously caused the defect.

**CHAPTER I**  
**GENERAL PROVISIONS**

**Article 109**

**Elements of proof**

Elements of proof comprise any facts that are legally relevant to the existence or nonexistence of a criminal offence, the punishability or unpunishability of the defendant, and the determination of the sentence, or security measure, or of any civil liability that may arise from the case.

**Article 110**

**Absolute prohibition of evidence**

1. Proof obtained through torture or duress in general or by offences against the physical or moral integrity of a person is absolutely prohibited.
2. Offensive to the physical or moral integrity of a person is any proof obtained, even with the consent of the person concerned, by:
  - (a) impairing the free will or the freedom of decision through mistreatment, bodily harm, the employment of methods of any nature, hypnosis or the use of cruel or misleading means;
  - (b) impairing, by any means, the ability to recall or to reason;
  - (c) the use of force in cases other than the ones, and beyond the limits, permitted by law;
  - (d) threatening with a legally inadmissible measure, including refusing or restricting the a benefit contemplated in the law;
  - (e) promising a legally inadmissible advantage.

**Article 111**

**Relative prohibition of proof**

Except in the cases provided in the law or where there is the express consent of the respective holder, proof obtained through intrusion into one's private life, domicile, mail or into any other forms of communication is also prohibited.

**Article 112**

**Value of prohibited proof**

1. Proof obtained in breach of the previous articles or of any other provision prohibitive of proof is invalid from a procedural standpoint and may only be used for criminally or disciplinarily prosecuting those committing the breach.
2. Removal of any prohibited proof from the records is compulsory, under penalty of irreparable nullity.

**Article 113**

**Free assessment of proof**

1. Except as otherwise stated in the law, proof is assessed according to the free conviction of the competent entity, which shall be formed on the basis of rules of experience and logical criteria.

**Article 114**



### **Discretionary investigation**

1. There is no burden of proof on the defendant in a criminal case.
2. It is incumbent upon the public prosecutor to sustain the indictment in trial and the court may order, either on a discretionary basis or at request, that any evidence the knowledge of which is deemed necessary to uncover the truth and to make a proper decision on the case be produced, namely in respect of civil liability.

### **Article 115 Subsidiary regime**

On matters of evidence, civil procedure provisions shall apply to a criminal case, with the necessary adaptations, except in fields they prove to be inconsistent.

## **CHAPTER II ON EVIDENCE SECTION I GENERAL PROVISION**

### **Article 116 Admissibility of evidence**

1. Any evidence that is not prohibited by law is admissible in a criminal case.
2. Evidence in a criminal case include, namely:
  - (a) statements made by the accused;
  - (b) statements made by the aggrieved party;
  - (c) witness testimonies;
  - (d) identification;
  - (e) expert evidence;
  - (d) documentary evidence;
  - (g) confrontation of witnesses;
  - (h) inspection of the crime scene;
  - (i) reconstruction of the facts.

## **SECTION II ON STATEMENTS BY THE DEFENDANT**

### **Article 117 General rule**

1. Statements by the defendant shall constitute evidence only where, after the latter is advised that he or she may refrain from doing so, the defendant decides to make such statements, which can be made at all times until the closure of the trial hearing.
2. If the defendant decides to make statements, he or she does not take an oath and may, without any justification, refuse to answer some of the questions only.
3. Articles 62 to 64 are correspondingly applicable.
4. Statements by the defendant are assessed at the court's discretion.

## **SECTION III ON STATEMENTS BY THE AGGRIEVED PERSON**

**Article 118**  
**General rule**

1. The aggrieved person takes an oath and he or she is subject to the duty to truth and the ensuing criminal liability for the breach thereof.
2. Provisions related to the regulation of witness testimony are correspondingly applicable.
3. Statements by the aggrieved person are assessed at the court's discretion.

**SECTION IV**  
**WITNESS TESTIMONY**

**Articles 119**

**Purpose and limits of depositions**

A witness may be questioned about the facts of which he or she may be directly aware and constitute elements of proof.

**Article 120**

**Indirect deposition**

1. Where a deposition results from something heard being said to a certain person, the judge may call such a person to give testimony.
2. If the judge fails to call the person referred to in sub-article 120.1 to give testimony, the deposition that has been actually produced may not, to that extent, serve as evidence, except where the investigation of that person is not feasible on grounds of death, mental disorder or special vulnerability, particularly in the case of a sexual criminal offence, or where that person cannot be found.
3. Sub-article 120.2 applies to cases where the deposition results from reading a document written by a person other than the witness.
4. Under no circumstances shall the deposition by a person who refuses or is not in a position to indicate the person or the source whereby he or she has become acquainted with the facts serve as evidence.

**Article 121**

**Public voices and personal convictions**

1. The repetition of public opinions or rumours is not admissible as a deposition.
2. The manifestation of mere personal convictions on facts or the interpretation thereof is admissible only in the following cases and to the strict extent indicated therein:
  - (a) where it is not possible to distinguish it from a deposition on concrete facts;
  - (b) where it occurs by means of any science, technique or art;
  - (c) in regard to a subscribing witness.

**Article 122**

**Eligibility and duty to witness**

1. Any person who is not impeded to do on grounds of a mental disorder is eligible to serve as a witness and may only refuse to do so in the cases stated in the law.
2. The court checks the physical or mental fitness of any person to give testimony, where this is necessary to appraise his or her credibility and can be done without preventing the proceeding from running smoothly.
3. The check mentioned in sub-article 122.2, to be ordered prior to the deposition, does not impede the latter from being given.

### **Article 123**

#### **General duties of a witness**

1. Except as otherwise stated in the law, a witness is required to fulfil the following duties:
  - (a) to appear, on the set date, time and venue, before the court, if lawfully summoned or notified, and to remain at the disposal of the court until such a time as the latter exonerates him or her from that obligation;
  - (b) to take an oath, when being heard by a judicial authority;
  - (c) to act upon the instructions given to him or her as to the way in which he or she is to give the deposition.
2. A witness is not obligated to answer any questions where he or she alleges that such answers might cause him or her to incur criminal liability.

### **Article 124**

#### **Disqualifications**

A defendant or aggrieved person is disqualified from deposing as a witness in a case to which he or she is a party.

### **Article 125**

#### **Lawful refusal to give a deposition**

1. The persons below may refuse to give a deposition as witnesses:
  - (a) progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, and the spouse of the defendant;
  - (b) a person who has been married to the defendant or who cohabits, or has cohabited, with the latter in a relationship similar to that of spouses, in relation to facts that have occurred during marriage or cohabitation.
2. The authority competent to take the deposition shall, under penalty of nullity, advise the persons referred to in sub-article 125.1 that they are allowed to refuse to give a deposition.

### **Article 126**

#### **Professional secrecy**

1. Church or religious ministers, lawyers, medical doctors, journalists, members of credit institutions and other persons allowed or required by law to maintain professional secrecy may refuse to give a deposition on facts covered by that secrecy.
2. In the case of reasonable doubts about the lawfulness of the refusal to give a deposition, the judicial authority before which the incident has been raised carries out the necessary investigations; and if, once such investigations have been completed, the

refusal is considered to be unlawful, the judicial authority orders or requests the court to order that the deposition be given.

3. A court higher than that where the incident has been raised, or its full bench, if the incident has been raised before the Supreme Court of Justice, may decide that a deposition be given by breaking professional secrecy where this proves to be justifiable in the face of the applicable provisions and principles of the criminal law, particularly in view of the principle of prevalence of the predominant interest; and the intervention is initiated by the judge, on a discretionary basis or at request.

4. Sub-article 126.3 does not apply to religious secrecy.

5. In the cases provided in sub-articles 126.2 and 126.3, a decision is made by the court or the Supreme Court of Justice after the agency representative of the profession related to the professional secrecy in question has been heard, under the terms of, and with the effects provided in, legislation applicable to that agency.

### **Article 127**

#### **Employees' secrecy**

1. Employees may not be enquired about facts that constitute a secret and with which they have become acquainted in the exercise of their functions.

2. Sub-articles 126.2 and 126.3 are correspondingly applicable.

### **Article 128**

#### **State secret**

1. Witnesses shall not be questioned about facts that constitute a state secret.

2. The state secret referred to in the present article covers, namely, the facts the disclosure of which may, even if it does not constitute a crime, cause damage to the internal or external security of the Timorese State or to the defence of the constitutional order.

3. If the witness invokes a state secret, such must be confirmed, through the Minister of Justice, within 60 days from the date on which the Minister was officially notified by the court.

4. If no confirmation is obtained within the deadline set in sub-article 127.3, the deposition must be given.

### **Article 129**

#### **Inquiry rules**

1. A deposition is a personal act and as such shall under no circumstances be given through a proxy.

2. A witnesses shall not be asked any suggestive or impertinent questions, or any other questions that might undermine the spontaneity and sincerity in which answers are to be given.

3. The enquiry shall deal primarily with the elements required to identify the witness, on his or her family relationships or common interests with the defendant, the aggrieved person or other witnesses, as well as on any other circumstances relevant to the assessment of the credibility of the deposition.

4. If required to take an oath, the witness shall take it and then give the deposition under the terms and within the limits established by law.

5. Where deemed advisable, a witness may be shown any briefs, documents related thereto, tools used for committing the criminal offence or any other items seized.
6. Where the witness presents any item or document that can serve as proof, mention of its presentation is made and such an item or document is to be properly kept or attached to the records.

#### **Article 130**

##### **Immunities and prerogatives**

1. Immunities and prerogatives established by the law in respect of the duty to witness and the manner in which and the place where a deposition is to be given are applicable in relation to a criminal proceeding.
2. Where legally applicable, the adversarial principle shall be applied in a case.

#### **Article 131**

##### **Probative effect**

The probative effect of witness testimony is assessed at the court's discretion.

### **SECTION V**

#### **DOCUMENTARY EVIDENCE**

##### **Article 132**

##### **Concept of documentary evidence**

Documentary evidence is considered to be a statement, sign or notation embodied in writing or any other technical means, under the terms of the criminal law.

##### **Article 133**

##### **Time for presentation**

1. The document shall be presented in the course of the enquiry or, where this is not feasible, until the adjournment of the hearing.
2. Where legally applicable, the adversarial principle shall be applied in either case, and the court may grant a time limit of no more than eight (8) days for that purpose.
3. Sub-articles 133.1 and 133.2 are correspondingly applicable to opinions by lawyers, legal advisers or paralegals, which may at all times be presented until the closure of the hearing.
4. The provisions of this article do not affect the procedural status of the defendant.

##### **Article 134**

##### **Types of written documents**

1. A written document may be either authentic or private.
2. An authentic document is a document issued, in accordance with legal procedures, by public authorities within the purview of their competencies or by a notary or other public servant who has been granted full faith and credit, within his or her sphere of activity.
3. Private is any other document that is construed to have been authenticated when confirmed by the parties before a notary under the terms of the notaries laws.

##### **Article 135**

##### **Documents issued in a foreign country**

1. An authentic or private document issued in a foreign country, in accordance with the relevant law of that country, is as trustworthy as any document of the same nature issued in Timor-Leste.
2. Notarisation may be required where a document has not been notarised under the terms of the procedural law and there are any reasoned doubts as to its authenticity or the authenticity of its certification.

### **Article 136**

#### **Probative value of mechanical reproductions**

1. Photographic, film, phonographic or electronic reproductions and, in general, any mechanical reproductions of the facts or things reproduced can be admitted as proof only where such reproductions are not prohibited under the terms of the procedural law.
2. For the purposes of applying sub-article 136.1, any reproductions, particularly mechanical ones, made in compliance with Chapter III of this Title, are not considered to be prohibited.

### **Article 137**

#### **Reproduction of documents**

Subject to article 136, where the original of any document cannot be attached to the records or kept therein, but solely its mechanical reproduction, the latter has the same probative value as that of the original if the reproduction has been identified with the original in that or another proceeding.

### **Article 138**

#### **Probative effect**

1. An authentic or authenticated document fully attests to a fact said to have been performed by a public authority or official, as well as to the facts attested therein on the basis of a scrutiny by the documenting entity; however, mere personal judgements by the documenting person has only the value of an element subject to a free assessment by the judge.
2. If the document contains amended or truncated words or words written over erasures or interlineations, without proper reference to the fact, the judge shall determine the extent to which the external defects of the document either exclude or reduce its probative effect.
3. Private documents are freely assessed by the court.

### **Article 139**

#### **Forgery**

1. The probative effect of an authentic document may only be challenged on the basis of forgery.
2. A document is forged when any fact that has not actually occurred or any act that has not been actually performed is attested therein as having been subjected to a scrutiny by a public authority or official.
3. If the forgery is self-evident in the face of the external signs on the document, the latter may, on a discretionary basis or at request, be declared fake by the court.

4. Where the court only has reasoned suspicion that a particular document has been forged, the fact is reported to the Public Prosecution Service for legal purposes.

## **SECTION VI CONFRONTATION OF WITNESSES**

### **Article 140**

#### **Confrontation of witnesses**

In the case of direct contradiction over a certain fact between witness testimonies, between the latter and statements by the aggrieved person or the defendant, between statements by the aggrieved person and the defendant, or between statements by co-defendants, the persons who have given conflicting testimonies or statements may be confronted on a discretionary basis or at request.

### **Articles 141**

#### **Procedural steps**

1. Where the persons concerned are present, the confrontation shall be carried out forthwith;
2. Where the persons concerned are not present, a date shall be set for that purpose.
3. If the persons to be confronted have given a testimony or made a statement by means of a rogatory letter filed with the same court, it is incumbent upon the court to which the request has been made to carry out the confrontation, except if the trial judge orders the persons to be confronted to appear before him or her, weighing the sacrifice that such a trip would represent..
4. If the testimonies or statements are to be recorded or written down, the outcome of the confrontation shall also be recorded or written down.

### **Article 142**

#### **Probative value**

The outcome of the proof by means of confrontation is assessed at the court's discretion.

## **SECTION VII INSPECTION OF A CRIME SCENE**

### **Article 143**

#### **Object**

Proof by means of inspection is intended for a direct perception of facts by the court or the authorities responsible for the investigation.

### **Article 144**

#### **Purpose of inspection**

When deemed convenient, a court or a person conducting an investigation may, at his or her own discretion or at the request of the parties concerned, and with due regard, to the extent possible, for personal privacy, inspect items or persons in order to clarify any fact of relevance to the decision, and may, if deemed necessary, visit the crime scene or have the facts reconstructed.

### **Article 145**

### **Intervention by the defendant or the aggrieved person**

The defendant and the aggrieved person are notified of the date and time of the search and may, directly or through their counsels, provide the court with any clarifications it may need, or call the court's attention to any facts deemed relevant to the settlement of the case.

### **Article 146**

#### **Intervention by experts**

1. The court is allowed to be accompanied by a person qualified to explain the inspection and interpret the facts it intends to look at.
2. The expert shall be appointed in the decision ordering the inspection and shall attend the trial.

### **Article 147**

#### **Reporting an inspection**

A report of the inspection containing all of the elements helpful in making an assessment and decision of the case is prepared, and pictures may be taken and attached thereto.

### **Article 148**

#### **Probative effect**

The outcome of the inspection is assessed at the court's discretion.

## **SECTION VIII EXPERT PROOF**

### **SUBSECTION I**

#### **DESIGNATING EXPERTS AND THE OBJECT**

### **Article 149**

#### **Object**

Expert proof is aimed at scrutinising or assessing facts through experts, where specific knowledge is not possessed by the judges or where the facts, relating to persons, are not the object of a judicial inspection.

### **Article 150**

#### **Competence to authorise and carry out examinations**

1. The examination is ordered by the judicial authority.
2. Either the public prosecutor or the judge, depending on the procedural phase, requests an appropriate, official establishment, laboratory or service to carry out the examination or, where such is not feasible or advisable, the examination shall be carried out by a single expert, nominated from among professional and ethical persons with ability in the issue under assessment, subject to the provisions of article 151.
3. Medico-legal examinations are carried out by medico-legal services or by hired medical experts, under the terms established by the legal instrument regulating such examinations.

### **Article 151**



### **Single-expert or collegial examinations**

1. The examination is carried out by a single expert, except as otherwise stated in a court decision.
2. The examination is carried out by more than one expert, up to a maximum of three, on a collegial or interdisciplinary basis where:
  - (a) the examination is of a particular complexity or requires knowledge of multidisciplinary subjects;
  - (b) the examination is requested by the public prosecutor, the defendant or by the aggrieved person on grounds that justify the employment of more than one expert.
3. In the case provided in paragraph 151. 2(b), both the defendant and the aggrieved person may appoint an expert, being the responsibility of the court to appoint the expert who will preside over the examination.

### **Article 152**

#### **Serving as an expert**

1. An expert is obligated to fulfil with diligence the task for which he or she has been appointed, and may be punished with a fine in the case of breach of his or her duties to cooperate with the court.
2. An expert may be removed or dismissed by the appointing authority, if he or she fulfils in a negligent manner the task he or she has been entrusted with in a negligent manner, namely where the expert fails to submit or, by inertia, renders impossible the submission of the expert report within the set deadline.

### **Article 153**

#### **Obstacles in appointing experts**

1. The regime on disqualifications and suspicions for judges is applicable to experts, with the necessary adaptations.
2. Barred from serving as an expert are the incumbents of the organs of sovereignty, as well as those who have been granted a similar status by law, public prosecutors in the full exercise of their functions and diplomats from foreign countries.
3. Any person who requires not to serve as an expert may ask to not intervene as an expert, taking into consideration the personal reasons invoked.

### **Article 154**

#### **Appointment of new experts**

Where the appointment of a new expert as a result of the identification of any of the obstacles provided in article 153, of the removal or dismissal of the originally appointed expert or of a subsequent inability for the latter to carry out the examination, for reasons imputable to the expert nominated by the party, the judicial authority has the competence to appoint a new expert.

### **Articles 155**

### **Determining the object of an expert examination**

1. The decision ordering the expert examination shall also determine the object and queries to be dealt with.
2. Should the expert examination be carried out at the request of the defendant or at the suggestion of the aggrieved person, the defendant or aggrieved person may indicate the issues he or she deems relevant for the expert examination to look into.

## **SUBSECTION II CARRYING OUT AN EXPERT EXAMINATION**

### **Article 156**

#### **Determining the date for an expert examination**

1. The same decision which orders the expert examination and appoints the experts shall also indicate the date and venue for the beginning of the examination, and the parties concerned shall be notified thereof.
2. Where the examination is to be carried out in a public institute or establishment, the director of such an institute or establishment is requested to carry out the examination, with an indication of the object of the examination, the queries, and the deadline for submitting the expert report.

### **Article 157**

#### **Pledge by experts**

1. An appointed expert makes a pledge to perform the task that has been entrusted to him or her, except in the case of a public servant carrying out the examination while exercising his or her functions.
2. The pledge referred to in sub-article 157.1 is made at the beginning of the examination where the entity that has ordered is present.
3. Where the entity referred to above is not present at the examination, the pledge mentioned in sub-article 157.1 may be made through a written statement signed by the expert and optionally attached to the expert report.

### **Article 158**

#### **Expert report**

1. The result of the expert examination is conveyed by means of a report in which the expert(s) issues a well-founded opinion on the object and queries of the examination.
2. In the case of lack of unanimity in a collegial examination, the dissenting expert adduces the reasons for his or her disagreement.

## **SUBSECTION III CLARIFYING OR REPEATING AN EXPERT EXAMINATION**

### **Article 159**

#### **Clarifications**

1. The competent judicial authority may, at any stage of the proceeding, determine, on a discretionary basis or at request, where such is deemed to be of relevance to the disclosure of the truth, that the experts be summoned to provide complementary clarifications, namely where the expert report contains deficiencies, obscurities or contradictions or its conclusions are not duly substantiated.

2. Once a decision has been made that complementary clarifications should be provided, the experts shall be notified of the date, time and venue where such clarifications are to be given.

#### **Article 160**

##### **Second expert examination**

1. A second examination is ordered where the action referred to in article 159 proves to be insufficient, whenever the expert report contains deficiencies, obscurities or contradictions or where its conclusions are not duly substantiated.

2. The purpose of the second expert examination is to ascertain the same facts as those dealt with in the first examination and is intended to correct any inaccuracies in the results of the first examination.

3. The second examination shall analyse the conclusions made by the experts who took part in the first examination and, where there is a difference of opinion, substantiate the grounds for such a difference of opinion.

#### **Article 161**

##### **Rules for conducting a second expert examination**

1. The second examination is governed by the provisions applicable to the first examination, with the following exceptions:

(a) an expert who has taken part in the first examination may not take part in the second one;

(b) the second examination shall generally be a collegial one.

#### **SUBSECTION IV**

#### **PROBATIVE VALUE**

#### **Article 162**

##### **Probative value of an expert examination**

1. The technical, scientific or artistic judgment inherent in the expert examination is presumed to be elicited from the free assessment made by the judge.

2. Where the conviction of the judge diverges from the judgement contained in the report of the experts, the judge shall substantiate the reasons for his or her dissenting opinion.

3. In the case of a second examination, the court may give substantiated reasons for opting for a dissenting expert opinion and may, on the basis of knowledge of equal value to that required for the examination in question, reasonably diverge from any conclusions in which regard there has been no disagreement or over which no repetition has been ordered.

### **SECTION IX**

## **ON IDENTIFICATION**

### **Article 163**

#### **Recognising a person**

1. Where a person who is to recognise another person fails to fully identify him or her by describing that person's characteristics, a physical identification of the latter shall be done.
2. Except in the case of a trial hearing, the validity of this means of evidence requires that the person to be recognised be placed in the midst of various others with identical physical characteristics and way of dressing, and the person who is to physically identify another person shall state whether any of the present is the person to be identified and, if so, which one.
3. Should there be more than one person to be identified, the procedure described in Sub-articles 163.1 and 163.2 shall apply separately to each of them.
4. Where there is reason to believe that the person called to physically identify another person might be intimidated or harassed for doing so and the identification is not done at the hearing, it shall be done, where feasible, without the former being seen by the latter.

### **Article 164**

#### **Identifying items**

The provisions of article 163 are correspondingly applicable to the identification of items, with the necessary adaptations.

### **Article 165**

#### **Probative value**

The court shall assess at its own discretion the result of the proof obtained by means of identification.

## **SECTION X RECONSTRUCTION**

### **Article 166**

#### **Reconstructing an act**

1. Reconstruction of an act is admissible where there is a need to determine whether an act could have occurred in a certain way.
2. Reconstruction of an act consists of reproducing as faithfully as possible the conditions under which the fact is said or supposed to have occurred and of repeating the way in which the act was committed.
3. The decision ordering the reconstruction of an act must contain a succinct indication of its object, date, time and venue where and how it is going to be reconstructed, possibly with recourse to audiovisual means; and an expert to execute certain operations may be designated in the same ruling.
4. Subject to the provisions of Chapter I, Title IV, the public character of the action must be avoided to the extent possible.

### **Article 167**

### **Probative value**

The probative value of the reconstruction of the act is assessed at the court's discretion.

## **CHAPTER III ON THE MEANS OF OBTAINING PROOF**

### **SECTION I ON SEARCH OF PERSONS AND PLACES**

#### **Article 168 Concept**

1. A body search shall be carried out where there is a need to seize any items related to a crime or that may serve as a means of evidence, which someone is carrying or hiding on himself or herself.
2. A search is carried out, in a reserved place or a place that is not freely accessible to the public, where:
  - (a) items referred to in sub-article 168.1 are to be seized;
  - (b) any person is to be arrested.

#### **Article 169 Formalities**

1. Except as otherwise stated in the law, the search of persons and items are authorised through an order issued by the judge, who may direct the search if he or she deems it advisable.
2. The search of persons and items are carried by the police bodies responsible for carrying out the inquiry or by a person specifically appointed by the Public Prosecution Service for that purpose.
3. The dignity and sense of decency of the person concerned shall be respected while the search is being carried out.
4. Articles 87 and 88 are correspondingly applicable and the person concerned must sign the report that is required to be prepared during the search.
5. A duplicate of the order authorising the search shall be provided to the person concerned in the act of executing the respective search.
6. In the case of urgency or danger posed by a delay in securing authorisation, police bodies may carry out a search without prior authorisation from the judicial authority, but they shall immediately report the fact to the latter.

#### **Article 170 Search of houses**

1. The search of an inhabited house or of one of its outbuildings may only be carried out between 6 am and 8 pm, except as otherwise provided in sub-article 171.2.

#### **Article 171**

## **Relevance of consent**

1. An order issued by the judge authorising a search can be dispensed with where the person concerned consents, in writing, to the carrying out of the search.
2. Consent with regard to a home search may also cover the period of time stated in the previous article.

## **SECTION II**

### **SEIZURES**

#### **Article 172**

##### **Seizing items**

1. Except as otherwise stated in the law, the seizure of an item relating to a criminal offence or that may serve as a means of evidence must be authorised by the judge.
2. In the case of urgency or danger posed by a delay in securing authorisation, police bodies may carry out a seizure without prior authorisation, but they shall immediately report the fact to the competent judge, with the aim of having the seizure validated.
3. Items seized are attached to the records or, where necessary, placed in the care of a trustee who may be the clerk of the section.
4. Where the object of the seizure is any hazardous or perishable item, the judge shall order that the necessary measures be taken to preserve or maintain such item or to destroy, sell or use it for a socially useful purpose, after an examination and evaluation report has been prepared.
5. Articles 87 and 88 are correspondingly applicable, and the person concerned must sign the report that is required to be prepared during the seizure.

#### **Article 173**

##### **Disposal of seized items**

1. Seized items are restituted to their rightful owners if such items are not to be declared forfeited to the State.
2. Restitution is ordered as soon as seizure for the purpose of proof becomes unnecessary or after a final decision has been handed down by the court.
3. The decision ordering restitution is notified to the owner of the items in question; and the items are declared forfeited to the State by the judge if they are not collected within 60 days of notification.
4. The public prosecutor shall be heard before the decision referred to in sub-article 173.3 is issued.

## **SECTION III**

### **Checks**

#### **Article 174**

##### **Concept and prerequisites**

1. Checks of persons, premises and items are used to examine any clues that may have been left behind in the course of committing a crime and that may indicate how and where it was committed, the person(s) who committed it or the person(s) upon whom it was inflicted.
2. As soon as a criminal offence is reported, action is to be taken in order to avoid, where

feasible, the changing or effacing of clues before they are examined; and, if need be, the entry or movement of aliens into and across the crime scene, or any acts that might undermine the disclosure of the truth, may be prohibited.

3. Where the clues left behind by the perpetrator of a crime are found to have changed or effaced themselves, the state in which the persons, the premises and the items are found shall be described, seeking, where feasible, to reconstruct them and to describe how, when and why such clues have changed or effaced themselves.

4. Pending the arrival of the competent judicial authority in the crime scene, it is the responsibility of any law-enforcement agent to take the precautionary measures referred to in sub-article 174.2, where the obtaining of proof would otherwise be at immediate risk.

### **Article 175**

#### **Subjection to checks**

1. Where a person wishes to refuse or obstruct any required check or refrains from handing over an item that is to be examined, he or she may be compelled to do so by a decision from the competent judicial authority.

2. A check that is likely to offend people's sense of decency must respect the dignity and, to the extent possible, the sense of decency of the person undergoing it.

3. The check referred to in sub-article 175.2 may be attended only by the person conducting it and the competent judicial authority, and, where there is no danger posed by a delay in doing the check, the person to be checked may be accompanied by a person he or she trusts, and must be informed of the right to do so.

4. The check of a person is contingent upon authorisation from the competent judicial authority, except where the person concerned gives his or her consent.

### **Article 176**

#### **People at the crime scene**

1. The competent judicial authority may determine that one or more persons do not leave the place where the check is to be conducted and, if need be, compel, with the assistance of a public force, those trying to leave the place, whose presence is required, to stay there for the duration of the check.

2. Sub-article 174.4 is correspondingly applicable.

## **SECTION IV**

### **TELEPHONE TAPPING**

#### **Article 185**

##### **Prerequisites**

1. The tapping or recording of telephone conversations or communications may be ordered

or authorised by a court decision only where this action is necessary for the disclosure of the truth in connection with criminal offences:

(a) punishable by a prison sentence exceeding three years;

(b) abusive language, threat, duress, intrusion into one's private life, disruption of peace and tranquillity, when committed on the telephone, if there is any reason to believe that this action will prove to be of great importance to the disclosure of the truth or

to the obtaining of proof.

2. The tapping or recording of telephone conversations or communications between the defendant and the defender, except if there are strong indications that the latter may be involved in the criminal offence, is not permitted.

4. Failure to comply with the provisions of this article renders invalid the tapping or recording obtained as a means of evidence.

#### **Article 178**

##### **Procedures**

1. Once a telephone conversation has been tapped or recorded, a report of how, when and where it was conducted is prepared, and alongside with the recorded tapes or similar elements passed on to the competent judge, with a mention of this fact being made in the file.

2. The judge reviews the elements gathered, and if he or she finds them relevant to the proof, orders that such elements be attached to the records or otherwise have them destroyed.

3. The public prosecutor may, at any stage of the proceeding, order or require that the entire or part of the recording be committed to writing if such is deemed to be of relevance to the smooth running of the proceeding.

4. The defendant and the persons whose conversations have been tapped may check the contents thereof, once the investigation is over.

#### **Article 179**

##### **Recordings made at the request of or by any of the parties**

1. A recording made by one of the parties or addressees of the communication or conversation is valid as a means of evidence if prior judicial authorisation has been granted for that purpose, provided that the prerequisites and requirements referred to in the preceding articles have all been met.

2. Such a recording has no value as a means of evidence if the conversation or communication has been prompted by the person who recorded it or requested the recording for that purpose.

#### **Article 180**

##### **Similar cases**

The provisions of the preceding articles are correspondingly applicable to conversations or communications transmitted by any other technical means distinct from telephone.

## **TITLE VI**



**ON RESTRICTIVE AND PROPERTY-GUARANTEE MEASURES**

**CHAPTER I**

**COMMON PROVISIONS**

**SECTION I**

**GENERAL RULES**

**Article 181**

**Principle of legality**

1. Only a defendant may be subject to restrictive or property-guarantee measures.
2. Applicable restrictive and property-guarantee measures are exclusively those provided in the law and may only be applied to meet procedural requirements of a preventive nature.
3. The obligation of any citizen to identify himself or herself before an authority competent to demand it is not considered to be a restrictive measure.

**Article 182**

**Choosing a given measure**

In choosing a restrictive or property-guarantee measure to be actually imposed, the following shall be taken into consideration:

- (a) conform the measure to the procedural needs that are expected to be safeguarded;
- (b) take a measure proportionate to the gravity of the crime and the penalties that are likely to be imposed in the given case;
- (c) give preference to the measure that, being adequate to the preventive requirements, interferes the least with the normal exercise of the fundamental rights of the citizen.

**Article 183**

**General requirements**

With the exception of the provision of proof of identity and residence, the imposition of any other restrictive measure is contingent upon meeting, at least, one of the following requirements:

- (a) escape of the defendant or reasonable fear that he or she might escape;
- (b) reasonable fear that the investigation or trial hearing might be disrupted, namely for fear that the obtaining, conservation or veracity of the proof might be negatively impacted; or
- (c) reasonable fear that the criminal activity might be pursued or that public order and peace might be disrupted as a result of the nature of the criminal offence and the circumstances surrounding it, as well as of the offender's personality.

**Article 184**

### **Legitimacy to impose measures**

1. The public prosecutor or any police entity responsible for conducting an inquiry may, in the course of the inquiry, require the provision of proof of identity and residence.
2. The remaining restrictive measures are imposed by the judge at the request of the public prosecutor, in the course of the inquiry, and by the judge, in any other procedural phase, after consultation with the public prosecutor.
3. The imposition of any restrictive measure must, where feasible and convenient, be preceded or followed by hearing the defendant.

### **Article 185**

#### **Accumulation of measures**

1. Restrictive and property-guarantee measures may be cumulatively imposed on the same person.
2. The provision of proof of identity and residence may be cumulative with any other measure, whereas pre-trial detention excludes the imposition of any other restrictive measure, except for the provision of proof of identity and residence.
3. Bail and the obligation to appear before the competent authority may be cumulative one with another.

## **CHAPTER II**

### **RESTRICTIVE MEASURES**

#### **SECTION I**

#### **APPLICABLE MEASURES AND RESPECTIVE RULES**

### **Article 186**

#### **Proof of identity and residence**

1. Every person who is declared to be a defendant must provide proof of identity and residence, even where he or she is placed under pre-trial detention or is subjected to any other restrictive or property-guarantee measure.
2. Provision of proof of identity and residence by a defendant means:
  - (a) truthfully providing his or her full identification, home and office address, and the address at which notices can be served to him or her in the course of the proceeding;
  - (b) being warned that he or she must appear before the competent authority or to remain at the disposal of the latter as required by law or when notified for that purpose;
  - (c) being warned that he or she must report any change of residence or of the address at which he or she may be contacted, where the defendant changes residence or is absent from it for more than fifteen days;
  - (d) being warned that failure to comply with the paragraphs (b) and (c) legitimises the defender to represent him or her in any procedural acts he or she had the right to attend or was required to do so, and also legitimises public notification of the date set for the trial hearing foreseen in article 257 and the holding of the hearing in his or her absence even if the defendant has justified any absence prior to the hearing.
3. Proof of identity and residence shall be prepared in duplicate and signed by the defendant, to whom one of the copies is to be handed over, and shall contain the particulars and warnings referred to in sub-article 186.2

## **Article 187**

### **Bail**

1. The defendant may be granted bail if the criminal offence imputed to him or her is punishable with imprisonment.
2. The amount of the bail depends on the socioeconomic status of the defendant, the damage caused, the gravity of his or her criminal conduct and on the objectives of a preventive nature being pursued.
3. Bail can be paid by means of a bank deposit, lien, pledge, or bank or personal surety, if requested by the person concerned upon the terms to be established by the competent authority.
4. The payment of bail is entered in the file.
5. Bail can be increased or modified, upon the payment thereof, should new circumstances justifying or requiring such an increase or modification arise.

## **Article 188**

### **Substituting a bail**

If the defendant proves that he or she does not have the means to pay the bail or that it causes him or her very serious difficulties or inconveniences, the bail shall be substituted for another measure, except pre-trial detention.

## **Article 189**

### **Breaking a bail**

1. A bail is declared broken through the issuance of a court order where the defendant fails to comply with the procedural obligations arising out of the restrictive measure imposed or to attend a procedural act without a justification.
3. Where a bail is broken, the amount paid accrues to the State.

## **Article 190**

### **Removing a bail**

1. Once the final decision has been pronounced by the court, and the defendant is sentenced to imprisonment, where there is any ground for exonerating the defendant from criminal liability or, for any reason, the bail becomes unnecessary, the court shall, at own its discretion, remove the bail through a court order.
2. The court order removing the bail entails cancelling the registration of the lien or restituting the deposit or pledged assets or also exonerating the bailee from liability.

## **Article 191**

### **Obligation to periodically appear before the competent authority**

1. If a crime is punishable with imprisonment exceeding one year, the defendant may be obligated to appear before a judicial authority or police entity on days and time previously set on the basis of the working requirements and the area of residence of the defendant.

2. The entity before whom the defendant appears shall fill in a proper form of appearances and submit it to the court for attachment to the file, once the measure has finished.
3. Failure to appear on the part of the defendant shall be reported to the court within five (5) days of the date the defendant should have appeared before the competent authority.

#### **Article 192**

##### **Prohibition on travel**

In the case of crimes punishable with imprisonment exceeding three years, the defendant may be prohibited from:

- (a) travelling overseas, or travelling without authorisation, by seizing his or her passport and notifying the passport issuing authority and the border control authorities of the fact;
- (b) leaving, or leaving without authorisation, his or her area of residence.

#### **Article 193**

##### **Prohibition against leaving residence**

Where there are strong indications that a criminal offence punishable by imprisonment exceeding three (3) years has been committed, the judge may prohibit the defendant from leaving, or leaving without authorisation, his or her residence.

#### **Article 194**

##### **Pre-trial detention**

1. In addition to meeting one of the requirements provided in article 183, the imposition of pre-trial detention depends cumulatively on the existence of the following prerequisites:
  - (a) strong indications that a crime punishable with imprisonment exceeding three years has been committed;
  - (b) inadequacy or insufficiency of any other restrictive measure provided in the law.
2. Pre-trial detention may also be imposed on a person who unlawfully enters or remains on the national territory or against whom an extradition or expulsion process has been initiated, under the terms to be regulated by a specific law.
3. The imposition of pre-trial detention must, where feasible, be preceded or followed by hearing the defendant, allowing him or her to challenge the existence of the prerequisites of the said measure.
4. A person suffering from a mental disorder shall, where the requirements for the imposition of pre-trial detention are met and as long as such a disorder persists, be preventively admitted to a psychiatric hospital or other appropriate establishment, for the period of time deemed necessary for the imposition of such a provisional measure.

#### **Article 195**

##### **Duration of pre-trial detention and other measures**

1. Pre-trial detention may not exceed, from its beginning:
  - (a) one year without the presentation of an indictment;
  - (b) two years without a first-instance conviction;
  - (c) three years without a final conviction except that an appeal is filed over

constitutionality matters, in which case the time limit is extended to three and a half years.

2. The abovementioned time limits are also increased by six months where the case proves to be exceptionally complex, and a substantiated order in this respect shall be issued by the judge.

3. Once the time limits mentioned in the previous sub-articles have elapsed, the defendant must be released immediately, except where the defendant is due to remain in prison on account of another case.

4. The restrictive measures provided in articles 192 and 193 shall lapse where, from the beginning of their execution, the time limits referred to in sub-article 195.1, increased twice as much, have expired.

### **Article 196**

#### **Review of prerequisites**

1. The judge shall review the prerequisites that form the basis for maintaining the defendant under pre-trial detention every six months of the duration thereof, and the defendant and the public prosecutor may issue an opinion ten days before that period of time elapses.

2. During the investigation, the public prosecutor submits the records to the competent Judge ten days before the six-month period referred to in sub-article 196.1 elapses.

### **Article 197**

#### **Overriding pre-trial detention**

1. If requested or at his or her own discretion, the judge may override pre-trial detention and determine that the defendant be released where it is established that pre-trial detention has been imposed in cases and conditions other than those provided in the law or where the circumstances that led to pre-trial detention have ceased to exist.

### **Article 198**

#### **Suspending pre-trial detention**

1. Pre-trial detention may be suspended on grounds of serious disease, labour pains or pregnancy for such a period as deemed necessary by the judge, depending on the probable duration of these circumstances.

2. During suspension, pre-trial detention may be substituted for another restrictive measure that is generally consistent with the situation in question.

### **Article 199**

#### **Substituting pre-trial detention**

1. In the situation provided in the sub-article 194.4 and also in the event that the defendant suffers from a serious mental disorder that does not manifest itself continually, the judge may, on an exceptional basis, order that the defendant be admitted to hospital, with or without police surveillance, in substitution for pre-trial detention.

2. Where there is a mitigation of the provisional requirements that have resulted in the imposition of pre-trial detention, the judge may substitute it for a lesser measure, after consultation with the public prosecutor and the defendant, on a discretionary basis or at request.

## **Article 200**

### **Deducting pre-trial detention**

1. The period of time in pre-trial detention spent by a defendant in a case where he or she is convicted is deducted from the term of imprisonment imposed.
2. Where a penalty of fine is imposed, pre-trial detention is deducted at the rate of one day of fine for, at least, one day of imprisonment.

## **Article 201**

### **Crediting pre-trial detention**

For procedural purposes, the period of time in detention spent by a defendant is credited towards the duration of pre-trial detention.

## **Article 202**

### **Substituting restrictive measures**

1. Sub-article 198.2 is correspondingly applicable to any other restrictive measure.
2. In case of failure to fulfil the obligations imposed by means of a restrictive measure, other measure(s) may be imposed, or the original measure substituted, depending on the circumstances.

## **Article 203**

### **Lapse of restrictive measures**

1. Restrictive measures lapse immediately after:
  - (a) a case is dismissed for lack of indictment;
  - (b) an order rejecting an indictment is rendered final;
  - (c) a sentence of acquittal of acquittal is handed down, even though an appeal has been lodged against it;**
  - (d) a convicting decision is rendered final;
2. Pre-trial detention as a measure shall also lapse immediately after a convicting sentence is handed down, even though an appeal has been lodged against it, where the imposed penalty does not exceed the period of time the defendant has spent in pre-trial detention.
3. The lapse of pre-trial detention shall result in the immediate release of the defendant.
4. If, in the case of paragraph 203.1(c), the defendant is convicted in connection with the same case, the latter may, as long as the convicting sentence is not rendered final, be subjected to any of the legally admissible restrictive measures.
5. Where the restrictive measure is bail and the defendant is convicted to imprisonment, the restrictive measure shall lapse only after the penalty begins to be executed.

## **SECTION II**

### **REFUTING IMPOSED RESTRICTIVE MEASURES**

## **Article 204**

### **Refuting a restrictive measure**

With the exception of the proof of identity and residence, all other restrictive measures may be refuted by lodging an appeal.

## **Article 205**

### ***Habeas corpus***

1. Any person who finds himself or herself under unlawful arrest or detention may, directly or through any other person fully exercising his or her political rights, request the Supreme Court of Justice to grant him or her a writ of *habeas corpus*.
2. In order for the arrest or detention of a person to be considered unlawful, it must be based on one of the following facts:
  - (a) be carried out or ordered by an entity not having the competence to do so;
  - (b) be motivated by a fact in which regard arrest or detention is not permitted by law;
  - (c) expiry of the time limits for the duration thereof, namely the seventy-two-hour deadline for the presentation of the person under arrest or detention for his or her first judicial questioning;
  - (d) the person is kept on premises other than the ones permitted by law.

## **Article 206**

### **Procedural steps in handling an incident**

1. The motion, to be addressed to the President of the Supreme Court of Justice, is prepared in duplicate and filed with the authority in whose custody the person under arrest or detention is held, who shall forward it to the Supreme Court of Justice within 24 hours of its receipt, together with information concerning the circumstances surrounding the arrest or detention and whether that person is still under arrest or detention.
2. Upon receipt of the motion, the President of the Supreme Court of Justice shall order that the Public Prosecution Service be notified to issue an opinion within 48 hours and shall appoint a defender for the person under arrest or detention if the latter has not yet retained counsel .
3. Once the necessary action has been taken, a decision shall be pronounced on the motion within five days of its receipt.
4. It is incumbent upon the criminal section presided over by the President of the Supreme Court of Justice to hand down the decision.

## **Article 207**

### **Enforcing a decision**

If the decision by the Supreme Court of Justice holds that the arrest or detention is unlawful, it shall be forthwith communicated to the entity in whose custody the person under arrest or detention is held, who shall release the latter immediately, under penalty of incurring criminal liability.

## **CHAPTER III**

### **PROPERTY-GUARANTEE MEASURES**

#### **SECTION I**

### **APPLICABLE MEASURES AND RULES**

## **Article 208**

### **Pecuniary deposit**

1. Should there be reasonable fears about lack of, or a significant reduction in, guarantees for payment of a pecuniary penalty, court fees, or of any other debt with the Sate,

pertaining to a criminal case or the compensation owed by the damage caused by the crime, the defendant shall be ordered, on a discretionary basis or at request, to make a pecuniary deposit.

2. The pecuniary deposit shall remain distinct and separate from the bail referred to in article 187 and shall continue until a final decision of acquittal is handed down or the obligations lapse.

#### **Article 209**

##### **Preventive attachment**

1. If the deposit imposed under the terms of article 208 is not made, the substitution of that deposit for attachment, as regulated in the civil procedure law, may be ordered.
2. The attachment referred to in this article may be ordered even in relation to a trader.
3. Once the pecuniary deposit imposed has been made, the revocation of the attachment becomes compulsory.

## **PART II**

### **ON ORDINARY PROCEDURES**

#### **TITLE I**

##### **ON INVESTIGATION**

##### **CHAPTER I**

##### **GENERAL PROVISIONS**

##### **SECTION I**

##### **REPORTING A CRIME**

#### **Article 210**

##### **Obtaining a report of a crime**

1. The report of a crime is obtained through:
  - (a) personal knowledge of the person that is to initiate the investigation, be it the Public Prosecution Service or the police;
  - (b) notification of the occurrence of the crime given by the police or other authorities;
  - (c) accusation filed by any citizen in the case of a public crime;
  - (d) accusation filed by any person who holds the right to complain in crimes of a semi-public nature.
2. The report of a crime is forthwith communicated to the Public Prosecution Service if the investigation has not been ordered by the latter.

#### **Article 211**

##### **Notification**

1. Any police officer who learns that a crime has been committed must immediately prepare a notification.
2. Sub-article 211.1 is correspondingly applicable to any civil servant, public manager or any other public agent or authority who, in the exercise of his or her functions or as a result there from, learns that a crime has been committed.
3. In the event of a crime of a semi-public nature, the initiation of the criminal proceeding depends on the exercise of the right to complain, and the proceeding is dismissed if such a right is not exercised within fifteen days following the preparation of the written notice.



4. Sub-article 211.3 does not prejudice the exercise of the right to complain within the time limits and under the terms established by law.

**Article 212**  
**Written notices**

1. A written notice consists of:
  - (a) the identifying elements that could be collected regarding the defendant and the aggrieved person;
  - (b) the facts that constitute the crime;
  - (c) the date, time, place and the circumstances in which the crime could have been committed;
  - (d) the means of evidence already known;
  - (e) if the report of the crime has not been obtained by the person giving the notice himself or herself, the manner in which the latter got the report;
  - (f) the date and signature of the person giving the notice.
2. Where the person giving the notice has witnessed the commission of the crime, the notice is referred to as a *< flagrante delicto crime notice >>*
3. In the cases of relationship provided in article 20 a single notice shall be prepared.

**Article 213**  
**Accusation**

1. An accusation may be made by any citizen in connection with a public crime and may be filed with the Public Prosecution Service or with a police officer, who shall convey it to the Public Prosecution Service.
2. A written accusation shall contain such elements as enumerated in sub-article 212.1 and, when made orally, it is incumbent upon the person receiving the accusation to commit it to writing, which shall be signed by the person making the accusation and by the drafter thereof.

**SECTION II**  
**ON COMPLAINTS**

**Article 214**  
**Persons holding the right to complain**

1. Where a criminal proceeding depends on the lodgement of a complaint, any of the persons indicated below have legitimacy to lodge it, regardless of an agreement between them:
  - (a) any person under any of the situations described in article 71;
  - (b) if the victim dies without having lodged or waived the complaint, the right to complain shall belong to the surviving spouse or a person with a similar status granted by law, to the descendants or, in the absence thereof, to the progenitors, siblings and their progenitors, except where any of these persons has taken part in the crime;
  - (c) where the victim is unable to exercise the right to complain on grounds of a mental disorder or for being aged less than 16 years, that right shall belong to his or her legal representative or, in the absence thereof, to any of the persons referred to in paragraph 214.1 (b), under the terms set forth therein.

2. Where, under the terms of paragraph 214.1(c), the perpetrator of the crime is the respective legal representative, the Public Prosecution Service may initiate the proceeding if the safeguard of the interests of the victim so requires.
3. A complaint lodged against any of the persons involved in a crime implies initiating a criminal proceeding against them all.

#### **Article 215**

##### **Lapse of the right to complain**

1. The right to complain lapses after six months from the date the person holding that right becomes acquainted with the act and the authors thereof, from the date the victim dies, or from the date the victim becomes legally competent to do so.
2. The deadline is counted separately with regard to the various persons holding the right to complain.

#### **Article 216**

##### **Waiving or withdrawing a complaint**

1. An explicit or implied waiver of the right to complain precludes the exercise thereof at a later stage, and withdrawal of a complaint prevents that same complaint from being lodged anew.
2. Withdrawal of a complaint is admissible until such a time as the first-instance sentence is handed down, and no opposition having been filed by the defendant is a condition for validating the withdrawal.
3. Where the withdrawal becomes known during the investigation, it is the responsibility of the public prosecutor to validate it, and this responsibility rests with the presiding judge of the court where the withdrawal becomes known during the trial.
4. The judicial authority competent to validate the withdrawal notifies the defendant, as soon as it becomes acquainted with the withdrawal, requesting the defendant to state, within five days, whether he or she opposes the withdrawal, and silence on the part of the defendant in this respect shall be regarded as no opposition.
5. Where the defendant does not have an appointed defender and his or her whereabouts is not known, the notice referred to in sub-article 216.4 is given by publication.
6. A withdrawal deemed valid entails the acquittal of the defendant and of any co-participants that may benefit from such a withdrawal.
7. In order for a waiver or withdrawal to be valid where the right to complain is, or could have been, exercised by more than one person, there needs to be an agreement among all such persons.

### **SECTION III**

### **DETENTION**

#### **Article 217**

##### **Purpose**

1. Detention as referred to in the following articles is carried out for the purpose of:
  - (a) within seventy two hours, bringing the person under detention to court in an expedited proceeding or presenting that person to the judge for his or her first judicial questioning or for the imposition of a restrictive measure; or
  - (b) ensuring that the person under detention is immediately brought before the judicial authority in a procedural act or, this not being feasible, at the earliest opportunity, but under no circumstances shall it be done after the seventy-two-hour deadline.

2. The judge may order the detention of any procedural participant other than a legal practitioner, magistrate or public defender as a means of ensuring the immediate appearance of that person in a procedural act from which he or she has been absent without justification.

#### **Article 218**

##### ***Arrest in flagrante delicto***

1. In the case of *flagrante delicto* in connection with a criminal offence punishable by imprisonment, any police authority may carry out the arrest.

2. If no police authority can carry out the arrest, any person witnessing the *flagrante delicto* offence may do so.

3. The person carrying out the arrest shall immediately hand the detainee over to the nearest police authority, who shall prepare a handover note containing such elements as referred to in article 220, in addition to the captor's identification and the circumstances surrounding the capture.

4. In the case of a criminal offence the prosecution of which is dependant on the lodgement of a complaint, the arrested person shall be kept under arrest only where, immediately after the arrest, the right to complain is exercised by the person who holds that right, and the complaint shall be entered in the records.

#### **Article 219**

##### ***Flagrante delicto***

1. *Flagrante delicto* refers to any crime that is in the process of being committed or that has just been committed.

2. *Flagrante delicto* applies to any case in which the perpetrator is, as soon as the crime has been committed, tracked down by any person or found with items or indications that clearly show that he or she has just committed the crime or has taken part in it.

3. In the case of an ongoing crime, the *flagrante delicto* status continues as long as there are any indications showing that the crime is in the process of being committed and the perpetrator is taking part in it.

#### **Article 220**

##### ***Arrest other than in flagrante delicto***

1. With the exception of *flagrante delicto*, an arrest may only be carried out following a warrant issued by the judge.

2. Police authorities and the Public Prosecution Service, or other agencies with a similar status, may order the arrest of the defendant other than in *flagrante delicto* where:

(a) pre-trial detention is admissible;

(b) there exist strong indications that the defendant is preparing to escape legal action;

(c) in an emergency and dangerous situation, the judge's intervention would come too late.

#### **Article 221**

##### ***Arrest warrants***

1. Subject to sub-article 220.2, an arrest other than in *flagrante delicto* may be carried out only through a warrant the duplicate of which shall be handed over to the person to be

arrested.

2. An arrest warrant must contain:

(a) the identification of the person to be arrested and the capacity in which he or she is intervening in the case;

(b) brief indication of the grounds for the arrest and its purpose;

(c) identification and number of the case file regarding the arrest.

3. The warrant is written in triplicate, one of the duplicates being attached to the records once the arrest has been certified, the other kept in the files of the arresting entity, and the original handed over to the person to be arrested, in the act of his or her capture.

4. An arrest that is not in compliance with this and the preceding article is unlawful.

### **Article 222**

#### **Notifying an arrest**

An arrest must be immediately notified to:

(a) the judge who has ordered the arrest if the arrested person is not immediately presented to the former;

(b) the public prosecutor in any other cases.

### **Article 223**

#### **Releasing an a person under arrest**

1. Any entity who has ordered an arrest or to whom the person under arrest has been delivered shall release the latter immediately:

(a) as soon as it becomes evident that the arrest was carried out in a situation of mistaken identity;

(b) if it has been carried out outside the cases and the conditions provided in the law, namely in the cases where the 72-hour period to present the detainee has been exceeded;

(c) as soon as such order becomes unnecessary.

2. Release is preceded by a writ if the arrest has been ordered by the public prosecutor or the judge and, in the case of another entity, through the subsequent preparation of a report to be attached to the case file.

3. Any release carried out on the initiative of any police entity, before the person under arrest has been presented to the judge, must be notified to the public prosecutor, under the penalty of disciplinary liability.

## **CHAPTER II**

### **ON ENQUIRES**

#### **SECTION I**

#### **ACTS OF ENQUIRY**

### **Article 224**

#### **Starting an enquiry**

The enquiry starts when the report of the crime is brought to the notice of the entity responsible for conducting it.

## **Article 225**

### **Purpose**

The enquiry is the investigative procedural phase intended to collect proofs and take the action required to demonstrate that a crime has been committed, hold its perpetrators liable, and secure any elements of relevance in determining the damage caused by the crime and the compensation amount, where the perpetrators are not to be tried in an expedited proceeding.

## **Article 226**

### **Acts under judicial jurisdiction**

The following acts are under the exclusive jurisdiction of the judge of the area where the enquiry is being conducted:

- (a) to carry out the first questioning of an arrested defendant;
- (b) to conduct the committal of statements to writing for future use;
- (c) to decide about the search of items and/or persons, where the law reserves the judge the competence to do so, namely the search of a lawyer's or doctor's office, a bank or other credit institution;
- (d) to authorise telephone tapings;
- (e) to authorise the seizure of mail and become acquainted with its contents before any other entity does, as well as to seize any items from a lawyer's or doctor's office, bank or other credit institution, examining any records deemed necessary for that purpose;
- (f) to perform such other acts as may be assigned by the law.

2. The acts referred to in sub-article 226.1 are performed at the request of the public prosecutor.

3. Where the person under arrest cannot be presented to the judge referred to in sub-article 226.1, within seventy two hours, for his or her first questioning, the former must, on an exceptional basis, be presented to the judge of the area where the arrest was carried out, but under no circumstances shall the presentation occur beyond the seventy-two-hour period.

4. The search of, or the seizure of any items from, a lawyer's or doctor's office, a bank or other credit institution, as referred to in paragraphs 226.1 (c ) and (e), shall be carried out by the judge personally.

## **Article 227**

### **Acts under the jurisdiction of the public prosecutor**

In addition to assuming a leadership role in any enquiry that the public prosecutor is not carrying out directly, it is the responsibility of the public prosecutor to perform or authorise any acts, where the law reserves the public prosecutor the competence to do so.

## **Article 228**

### **Carrying out an enquiry**

1. The police entity may carry out any other procedural acts to be carried out in the course of the enquiry.

2. For the purposes of sub-article 228.1, territorial jurisdiction is determined by the decree setting out the organic structure of the police entity.

## **Article 229**

### **Enquires against magistrates**

1. Where a magistrate is the subject of the report of a crime, a magistrate with a category or seniority that is equal to or higher than that of the defendant is appointed to conduct the enquiry.
2. Where the subject of the report of a crime is the Prosecutor General, a judge from the Supreme Court of Justice, who shall not take part in the trial phase, shall be appointed by the drawing of a lot.

## **Article 230**

### **Statements for future use**

1. Statements and confrontation of witnesses may take place beforehand where there are substantiated grounds for doing so, particularly in the case of a victim of a sexual crime, or in the case of an imminent overseas trip by a person who is to give testimony as a witness, victim, aggrieved person, expert, technical consultant or take part in a confrontation of witnesses that is likely to prevent him or her from appearing at the trial.
2. Early statements under the terms of sub-article 230.1 shall be taken by the territorially competent judge, following a request by the public prosecutor, the aggrieved person or the defendant, and committed to writing.
3. The procedural participants referred to in sub-article 230.2 may attend the hearing where the statements are made and may request the judge to ask any questions deemed necessary.
4. Statements for future use shall be freely assessed in trial.

## **Article 231**

### **Inquiry against a particular person**

1. After an enquiry against a particular person has commenced, the questioning of that person becomes compulsory
2. Exception to sub-article 231.1 is made where:
  - (a) the defendant resides overseas;
  - (b) the defendant resides in an area under the jurisdiction of a court other than the one where the inquiry is taking place;
  - (c) the defendant cannot be found for notification purposes.

## **Article 232**

### **Duration of an inquiry**

1. Six months is the time limit for conducting an inquiry where there are any defendants held under pre-trial detention.
2. In cases of great complexity during the investigation phase, the time limit referred to in Sub-article 232.1 may be extended, only once, for another six months, through an order issued by the public prosecutor.
3. The time limits referred to in sub-articles 232.1 and 232.2 are doubled where there are no defendants held under detention.

### **Article 233**

#### **Reporting the outcome of search for proof in writing**

The outcome of the search for proof undertaken in the course of an enquiry must be committed to writing.

## **SECTION II ON CLOSURE OF ENQUIRY**

### **Article 234**

#### **Final report**

1. Where an enquiry has been completed under sub-article 57.2, the entity tasked with carrying out the inquiry prepares a final report and submits the records to the Public Prosecution Service.
2. The Public Prosecution Service may order further action and set a time limit for the completion thereof if it deems such action necessary for the disclosure of the truth.

### **Article 235**

#### **Dismissing a case**

1. Once the provisions of article 234 have been complied with or the enquiry closed, the Public Prosecution Service shall issue an order of dismissal:
  - (a) if sufficient evidence amounting to a crime has not been gathered;
  - (b) if the perpetrator of the crime remains unknown;
  - (c) if the criminal proceeding is legally inadmissible.
2. Dismissal may be total or partial.
3. Where new elements of relevance to the investigation arise, an enquiry dismissed on the grounds referred to in sub-articles 235.1 and 235.2 must be reopened on a discretionary basis or at request.
4. The immediate superior may order the indictment on a discretionary basis or at the request of the aggrieved person; otherwise the case shall be placed on the files of the Public Prosecution Service.

### **Article 236**

#### **Order of indictment**

1. If sufficient evidence amounting to a crime and leading to the identification of the perpetrator thereof has been gathered during the enquiry, the Public Prosecution Service shall issue a writ of indictment within fifteen days.
2. Evidence is considered to be sufficient where a penalty or security measure may be reasonably imposed on the defendant in trial by virtue of such evidence.
3. Under the penalty of nullity, the writ of indictment shall contain:
  - (a) elements conducive to the identification of the defendant;
  - (b) the account of the facts that constitute the crime or are of relevance to the determination of the penalty or security measure;
  - (c) the indication of the applicable substantive provisions;
  - (d) the date and signature.
4. In the case of relationship between cases a single writ of indictment is issued.
5. The indictment also indicates the roll of witnesses and any other proofs to be presented at the hearing.

**Article 237**

**Notification**

1. The order of dismissal or the writ of indictment is notified to both the defendant and the aggrieved person.
2. Where notifying the defendant personally proves to be of no avail, a notice by publication may be given to the defendant informing him or her of the order of dismissal or of the writ of indictment referred to in sub-article 237.1

**Article 238**

**Referral to trial**

Subject to sub-articles 14.2 and 14.3, the records are referred to the trial court for distribution once the writ of indictment has been notified by the Public Prosecution Service.

**TITLE II**

**ON TRIALS**

**CHAPTER**

**ON THE PREPARATION OF A TRIAL**

**Article 239**

**Assessing an indictment**

1. Once the records have been received by the court, the judge shall:
  - (a) assess the jurisdiction, legitimacy, nullities and other exceptions or any prior issues that are likely to impede an immediate assessment of the grounds of action;
  - (b) issues a rejection order, where the indictment is deemed to be blatantly groundless;
  - (c) admit the indictment and set a trial date, if the judge is of the opinion that the case must proceed to trial.

**Article 240**

**Setting a date for trial**

1. The order admitting the indictment and setting a trial date must also contain:
  - (a) the appointment of a defender, if counsel has not yet been retained or appointed for the entire proceeding;
  - (b) the decision on any restrictive or property-guarantee measures to be imposed on the defendant or the review of the imposed ones;
  - (c) the request for a criminal record check.
2. The order, accompanied by a copy of the indictment, is notified to the public prosecutor, the defendant, and his or her defender, and the aggrieved person.



#### **Article 241**

##### **Rebuttal and roll of witnesses**

1. Within fifteen days of notification of the order setting the trial date, the defendant shall present, if he or she so wishes, his or her rebuttal, the roll of witnesses and any other proofs to be produced.
2. The motion is filed in the written form and is not subject to any procedures, with a duplicate attached thereto to be handed over to the public prosecutor.

#### **Article 242**

##### **Endorsement**

Where the trial is to be held in a court with more than one judge, the records are afterwards referred to each of the assistant judges for consultation and endorsement.

#### **Article 243**

##### **Statements for future use or taken in the domicile**

1. At the request of the public prosecutor, of the victim or of the defendant, the court may take statements from any of the procedural participants referred to in sub-articles 236.5 and 241.1 in their domicile where, on substantiated grounds, they are not able to appear at the hearing.
2. The procedures set for hearings, except with regard to the public character thereof, are observed while taking statements.
3. Statements are committed to writing.

#### **Article 244**

##### **Rogatory letters**

1. The issuance of rogatory letters is not permitted in connection with the taking of statements from procedural participants who have been heard during the inquiry.
2. On an exceptional basis, persons who have not been heard through statements during the inquiry, residing outside of the territorial jurisdiction of the court and having serious difficulties or inconveniences in making a trip to appear before the court, may be questioned by means of a rogatory letter at the request of either the prosecution or the defence.

### **CHAPTER II ON HEARINGS**

#### **SECTION I**

#### **GENERAL PROVISIONS**

#### **Article 245**

##### **Conduct and order at hearings**

1. The conduct of the hearing and the order of business are the responsibility of the judge, who shall adopt such measures as deemed appropriate and necessary for the smooth running of the hearing, to the extent that they are not inconsistent with any expressed law.
2. Sub-article 73.2 is correspondingly applicable.
3. Decisions relating to the order of business and the conduct of the hearing may be pronounced orally and without following any specific procedures.

#### **Article 246**

##### **The adversarial nature of proceedings**

The court shall ensure the observance of the adversarial nature of the proceeding, namely before a decision on incidental matters is made and in relation to the presentation or examination of any proofs at the hearing, under the penalty of nullity.

#### **Article 247**

##### **Public character of hearings**

1. Hearings shall have a public character, under the penalty of irreparable nullity.
2. Articles 75 and 76 are correspondingly applicable.

#### **Article 248**

##### **Oral character of hearings**

Except as otherwise stated by the law, the proceedings and the production of proofs at the hearing are conducted orally before the court.

#### **Article 249**

##### **Documenting acts performed at hearings**

1. A court clerk shall prepare the minutes of the hearing containing:
  - (a) the indication of the venue, date, opening and closing time and the number of hearing sessions;
  - (b) the name of the judge and of the public prosecutor;
  - (c) the identification of the defendant and his or her counsel or defender;
  - (d) the identification of the deposing witnesses, experts, technical consultants, and interpreters;
  - (e) the recording of any motions made orally, the stance of the other procedural participants in regard to such acts and the decisions made thereon, including the record of any challenges made at the hearing;
  - (f) the terms of conciliation or withdrawal, if any;
  - (g) any other decisions and indications determined by the law;
  - (h) the signature of the presiding judge and of the court clerk who prepared the minutes;
2. Statements made before the court are committed to writing in the absence of video or audio recording equipment.
3. The judge may determine that the acts referred to in paragraph 249.1(e) be recorded in writing at the end of the production of proofs where an immediate writing thereof might disrupt the smooth running of the proceedings.

#### **Article 250**

##### **Uninterrupted character of hearings**

1. A hearing proceeds without interruption, except in the case of adjournment or interruption provided by law.
2. The judge shall determine the adjournment of the hearing for such a duration as deemed necessary for the rest and refreshment needs of the participants.
3. The hearing shall be adjourned until the following workday where it cannot be concluded on the day it started.

4. The judge shall order the interruption of the hearing after it has started if:
  - (a) a person who cannot be immediately replaced and whose presence is indispensable, by operation of the law or of a court decision, fails to appear at the hearing or becomes unable to attend it;
  - (b) it is absolutely necessary to produce further evidence, which is unavailable at the time the hearing is in progress;
  - (c) any prejudicial or incidental matter, the settlement of which is essential for a proper adjudication of the case and that renders the continuation of the hearing highly inconvenient before that matter is settled, arises.
5. An interrupted or adjourned hearing is resumed from the last procedural act performed; however, any proofs produced lose validity where the resumption of the hearing is not feasible within 30 days.

#### **Article 251**

##### **Postponing the date set for a hearing**

1. The inability of constituting a court and failure to take any of the steps set out in article 244 are the grounds on which to postpone the date set for the hearing.
2. The absence of procedural participants before the hearing has started may result in a postponement only when and as determined by the law.

#### **Article 252**

##### **Investigation principle**

At its own discretion or if requested to do so, the court shall issue a writ ordering the production of every evidence the knowledge of which proves to be essential for the disclosure of the truth and for a proper adjudication of the case, while observing the adversarial nature of the proceedings.

#### **Article 253**

##### **Attendance of defendants**

1. The presence of the defendant at the hearing is compulsory, except as otherwise stated in the law.
2. It is the responsibility of the judge to take the appropriate and necessary action to prevent the defendant from leaving the hearing before it comes to a close.
3. Once the defendant has been questioned about his or her identification, he or she may be removed from the courtroom on the grounds of repeated breaches of the rules of conduct at the hearing.
4. The defendant may also be removed from the courtroom for a period of time deemed necessary when his or her presence may contribute to inhibiting or intimidating a person who is to make statements.
5. Even if the defendant is removed from the courtroom, he or she must hear the reading of the sentence.

## **SECTION II PRELIMINARY ACTS**

#### **Article 254**

##### **Calling the roll**

1. At the time set for the beginning of the trial, the court clerk shall, publicly and loudly,

identify the case and call the procedural participants.

2. Should any procedural participant be absent, a second call shall be made after fifteen minutes have elapsed.

3. Once these procedures have been complied with, the court clerk shall inform the presiding judge of the persons present and/or absent.

#### **Article 255**

##### **Starting or postponing a hearing**

1. Where all the procedural participants are present or where, though a person is absent, the hearing is not postponed, the court calls the hearing to order and starts the trial.

2. Otherwise, the court sets a new date for the trial.

3. The postponement of the hearing and the grounds therefore, including the position of the public prosecutor and of the defendant are entered in the postponement minutes.

#### **Article 256**

##### **Absence of defendants**

1. Where the defendant fails to appear at the hearing, having been duly notified, the hearing shall be postponed before proofs begin to be presented.

2. Failure to justify the absence within five days implies the payment of a fine and the issuance of an arrest warrant in order to ensure the defendant's presence at the hearing to be held on the reset date.

3. Should the defendant justify his or her absence, he or she shall be notified of the reset date for the trial with the warning that, in the case of a new absence, the trial shall be held in absentia and that he or she shall, for all possible purposes, be represented by his or her defender.

#### **Article 257**

##### **Impossibility of notifying or arresting a defendant**

1. Where the defendant has provided the proof of identity and residence and he or she cannot be either arrested in order to ensure his or her presence at the hearing or notified personally of the writ setting the date for the trial, a public notice shall be affixed at the residence indicated in his or her proof of identity and residence.

2. A public notice thus served shall be affixed no later than twenty days before the reset date for the trial and with the warning that the trial shall be held as if the defendant were present and that he or she shall, for all possible purposes, be represented by the defender.

3. The use of a public notice does not preclude a detention or arrest warrant from being simultaneously issued.

#### **Article 258**

##### **Waiving the attendance of a defendant**

Where a defendant is practically unable to appear at the hearing due to advanced age, serious disease or residence overseas, he or she may request or agree that the hearing be held in his or her absence, in which case the defendant shall be represented by his or her defender for all possible purposes.

#### **Article 259**

##### **Other cases of impossibility of notifying or arresting a defendant**

1. Apart from the cases provided in sub-article 257, where the defendant has not provided a proof of identity and residence, the police shall be requested to investigate and report about the whereabouts of the defendant in order that he or she can be given the notice.
2. Should the impossibility of notifying the defendant in the case referred to in sub-article 259.1 persists in that his or her whereabouts remains unknown, the court may order the arrest of the former in order to ensure his or her appearance in court.

#### **Article 260**

##### **Absence of the public prosecutor or defender**

1. The absence of either the public prosecutor or the defender shall not justify the postponement of the hearing.
2. The public prosecutor shall be replaced by his or her legal substitute and the defender by a competent person, preferably a lawyer or law graduate, under the penalty of irreparable nullity.
3. Substitutes shall be given the time required for them to prepare for the trial, namely for the perusal of the records and contact with the defendant.

#### **Article 261**

##### **Absence of the victim, witnesses, experts or technical consultants**

1. The absence of the aggrieved person, witness, expert or technical consultant may justify the postponement of the hearing on one occasion only and only if the court believes that his or her presence is essential for the discovery of the truth and that the presence of the absentee on the new date to be set for the hearing is likely to be ensured.
2. Where any of the aforementioned persons is likely to still appear in the course of the hearing or such a hearing shall require more than one session, the court shall initiate the trial and shall allow that person to give his or her testimony as soon as he or she arrives at the hearing; otherwise, sub-article 261.1 shall apply.

### **SECTION III**

#### **ON PRODUCTION OF PROOFS**

#### **Article 262**

##### **Attempts at conciliation**

1. Where proof has commenced to be produced, in a crime the criminal proceeding of which depends on the lodgement of a complaint, the judge may seek to reach conciliation between the defendant and the aggrieved person.
2. If conciliation is reached, mention of this fact shall be made in the minutes and the judge shall, after consultation with the public prosecutor, endorse the agreement reached.

#### **Article 263**

##### **Keeping away a person who is to make statements**

1. While proof is being produced, every person who is to make statements is excluded from the courtroom without access to any information about what is occurring inside the courtroom.
2. It is the responsibility of the court clerk to ensure that sub-article 263.1 is complied with before and after the production of proof commences.

**Article 264**  
**Information**

The production of proof is preceded by the reading and explanation of the contents of the indictment by the judge to the defendant.

**Article 265**  
**Order followed in the production of proof**

1. The order in which proof is produced is as follows:
  - (a) statements by the defendant;
  - (b) evidence presented by the public prosecutor;
  - (c) evidence presented by the defendant;
  - (d) other evidence the court deems necessary.
2. Lastly, proof produced beforehand by way of documents attached to the records shall be examined, provided that any of the parties concerned so requires.
3. If the court deems it convenient for the discovery of the truth, the aforementioned order of production of proof may be altered, except with regard to statements by the defendant who is the first person to intervene in this respect, and the latter may make further statements at any stage of the hearing.

**Article 266**  
**Evaluation of proof**

1. The court's opinion may only be based on proof that has been either produced or examined at the hearing.
2. Excepted from sub-article 266.1 is the following proof, which may be used even without having been examined at the hearing, where no one has required the examination thereof:
  - (a) records relating to statements for future use or taken in a person's domicile, or by means of a rogatory letter, in an act conducted by a judge;
  - (b) enquiry records to the extent that they contain statements by the defendant, the aggrieved person or by witnesses heard before a judicial authority;
  - (c) any documents compiled in the course of the enquiry or presented with the rebuttal;
  - (d) records prepared in the course of the enquiry, which do not contain statements by any of the persons referred to in paragraph 266.2(b).

**Article 267**  
**Prohibited reading of statements**

1. With the exception of the cases provided in article 266, records of statements made during the inquiry may not be used at the hearing.
2. Exceptionally, the records of statements referred to in sub-article 267.1 may be used at the hearing but only for substantiating the opinion of the court where there is a noticeable contradiction or discrepancy between those statements and the ones made at the hearing by the same person, which cannot be otherwise clarified.

3. The use of the prerogative granted in sub-article 267.2 must be mentioned in the hearing minutes in the form of a writ authorising it and pointing out the contradiction or discrepancy that requires clarification.
4. Proof obtained in breach of the foregoing sub-articles of this article is not valid.

### **Article 268**

#### **Statements by the defendant**

1. The questioning of the defendant begins with questions relating to his or her identification, preceded by the warning referred to in paragraph 60 (c) and sub-article 62.3.
2. Article 62 is correspondingly applicable to the questioning of the defendant at the hearing.
3. Where the defendant wishes to make statements as to the grounds of the action, the judge shall ask him or her whether he or she admits or denies the facts set forth in the indictment.
4. Where the court is satisfied that the admission of guilt is free and genuine, the questioning, including the remaining production of proof, is limited to the facts and circumstances that have not been sufficiently clarified
5. Where the defendant denies the facts set forth in the indictment, the court shall hear him or her in all that is of relevance to the case.
6. The public prosecutor and the defender shall, following this order and through the presiding judge, ask any questions deemed necessary for the clarification of the truth.
7. The defendant may, spontaneously or on the recommendation of the defender, refuse to respond to some or all of the questions asked, without detriment to himself or herself.

### **Article 269**

#### **Several defendants**

1. In the event of several defendants, the judge determines whether these should be heard in each other's presence or separately.
2. In the case of a separate hearing, the judge shall, after hearing all the defendants, inform them on what has occurred in their absence, under the penalty of nullity.

### **Article 270**

#### **Statements by the aggrieved person**

The judge or, through him or her, the public prosecutor and the defender may, following this order, ask the aggrieved person any questions.

### **Article 271**

#### **Statements by witnesses**

1. Witnesses are questioned, one after the other, by the order in which they have been indicated, unless the judge reasonably decides otherwise.
2. A witness is questioned by the person who has indicated him or her, and shall then be cross-examined by the remaining procedural participants. The witness may be questioned again if issues that have not been addressed in the initial questioning arise during the cross-examination.

3. The judges may, at all times, ask any questions deemed relevant to the discovery of the truth.

4. The witnesses indicated by a defendant may only be questioned by the defenders of the other defendants if those defenders request the judge to do so and the latter deems it necessary for a reasonable adjudication of the case.

#### **Article 272**

##### **Statements by experts and technical consultants**

Any questions addressed to an expert or technical consultant are asked by the judge or, through him or her, by the public prosecutor and the defender.

#### **Article 273**

##### **Non-substantial amendments to the facts set forth in the indictment**

1. If any facts that are not set forth in the indictment but are clearly relevant to the adjudication of the case, and do not imply an aggravation of the maximum limit of the applicable penalty, come up while proof is being produced, the court shall, on one's own initiative or at request, report those facts to the public prosecutor and the defender, giving them, if required, time for preparing their procedural position.

2. Sub-article 273.1 does not apply where an amendment results from facts alleged by the defence.

#### **Article 274**

##### **Changing legal qualification**

Where the court believes that the facts contained in the indictment must have a legal qualification different from the one stated therein, even though this results in an increase in the maximum limit of the applicable penalty, the court shall report it to the public prosecutor and the defender, giving them, if requested, a deadline for preparing their procedural position.

#### **Article 275**

##### **Substantial amendments to the facts of an indictment**

1. If during the production of proof facts that are not contained in the indictment arise, which amount to imputing to the defendant a more serious crime or the aggravation of the maximum limit of the applicable penalty, the court shall, on a discretionary basis or at request, report such facts to the public prosecutor and the defender.

2. The trial shall proceed if the public prosecutor and the defendant agree that it should proceed with the inclusion of the new facts and such new facts do not fall outside the jurisdiction of the court.

3. Where the trial proceeds, the court shall give the public prosecutor and the defender a deadline not exceeding 10 days for preparing their procedural position, if requested, and shall postpone the hearing, if necessary.

4. In the absence of the agreement referred to in sub-article 275.2, the notice of amendments given to the public prosecutor is equated with an advice for him or her to proceed in accordance with the new facts.

5. In the event that the new facts fall outside the jurisdiction of the court, the records are referred to the competent court for trial.



**Article 276**  
**Oral allegations**

1. Once proof has been produced, the right to be heard is successively given to the public prosecutor and the defender for them to orally present their factual and legal conclusions, for a period of time not exceeding thirty minutes, which may be extended by the judge in particularly complex cases.
2. A response to refute arguments that have not been previously discussed is admissible, following that same order, for a period of time not exceeding fifteen minutes.

**Article 277**  
**Final statements by the defendant**

Before the hearing is declared closed, the judge shall ask the defendant whether he or she has any further allegations to make in favour of his or her defence, and shall take note of anything said by the defendant that substantiates his or her defence.

**Article 278**  
**Decision-making process**

1. The closing of the discussion is followed by a decision-making process involving all the judges who constitute the court.
2. The decision is made through a simple majority of votes.
3. The court begins by examining incidental or prior issues falling under its jurisdiction, which are yet to be decided: if the case is to proceed, questions are asked about the facts contained in the indictment, and in the defendant's initial reply, or arising from the arguments of the case, which are of relevance in deciding the matters referred to in sub-article 278.8.
4. Even if defeated in a previous matter, each member of the court has the obligation to take part in the deliberations and vote on subsequent matters, and the prevailing opinion is presumed to have been adhered to.
5. Judges may not, under the penalty of incurring disciplinary and criminal liability, disclose anything related to the case, which has occurred during the deliberation, namely publicise any voting direction.
6. Abstention is not admissible.
7. Substantiation of proved and unproved facts, through an account as complete as possible of the grounds on which the opinion of the court was based while assessing, examining or identifying the proof, is required while responding to the questions.
8. The court shall afterwards decide, taking into account the proved facts:
  - (a) whether the elements that constitute the type of crime have been identified;
  - (b) whether the defendant has committed or taken part in the crime;
  - (c) whether the defendant has acted with guilt;
  - (d) whether any reason for excluding the illegality or guilt has been identified;

- (e) whether any other legal prerequisites for rendering the perpetrator punishable or for imposing a security measure thereon have been identified;
- (f) on the choice and specific extent of the penalty;
- (g) whether the prerequisites for civil compensation arbitration have been identified.

#### **Article 284**

##### **Preparing and reading out a sentence**

1. Once the decision-making process has been completed, the judge or his or her substitute, where the former has been defeated in the matter of law, shall prepare the sentence in keeping with the prevailing opinions.
2. The sentence is signed by the judge and the assistant judges, who may issue statements of vote concerning any issues related to the legal provisions applied and the choice and extent of the penalty.
3. The sentence shall be read out and explained publicly by the judge at the hearing, within fifteen days.
4. The reading is tantamount to notifying the persons who are or are to be considered present at the hearing.

#### **Article 280**

##### **Exhortation to the defendant**

Upon reading out the sentence, the judge may address the defendant explaining to him or her the sense of the decision and exhorting him or her to correct himself or herself, if convicted.

#### **Article 281**

##### **Elements required for a sentence**

1. The sentence begins with a report containing:
  - (a) the identifying elements of the defendant;
  - (b) an indication of the crime(s) imputed to the defendant;
  - (c) a summary of the conclusions contained in the defendant's initial reply, if any;
  - (d) an indication of the amendments to the facts of the indictment, if any;
2. The report is followed by a rationale enumerating the proved and unproved facts and containing the substantiation of facts referred to in sub-article 278.7, with reference thereto if required, as well as an account as accurate and concise as possible of the legal and factual grounds on which the decision is based.
3. The sentence ends with an opinion containing:
  - (a) the applicable legal provisions;
  - (b) the convicting or decision of acquittal, including the one on civil compensation;
  - (c) the indication of how the items and objects related to the crime are to be disposed of;
  - (d) the order to refer the criminal record to the criminal registry;
  - (e) the date and signatures of the court members, with mention of the declaration of vote, if any
4. The sentence shall be in compliance with the provisions of this Code and of the Code of Court Costs concerning costs.

## **Article 282**

### **Convicting sentence**

The court shall, in a convicting sentence, specify the grounds on which the choice and extent of the penalty applied are based, indicating, where applicable, when and how the sentence is going to be served, other duties imposed upon the convict and the duration thereof, as well as the status of the convict in regards to any restrictive measures.

## **Article 283**

### **Sentence of acquittal**

1. A sentence of acquittal shall declare the extinction of any restrictive measure and order the immediate release of a defendant held under pre-trial detention; however, the defendant may remain in prison on account of another case.
2. If the crime has been committed by a person immune from criminal culpability, a sentence of acquittal together with the imposition of a security measure shall be equivalent to a convicting sentence for the purpose of applying article 282.

## **Article 284**

### **Deciding on a request for compensation**

1. A sentence of acquittal may also punish the defendant with the payment of compensation where losses and the liability of the defendant have been ascertained and assessed.
2. Where the amount of the compensation cannot be assessed or other relevant elements cannot be ascertained, the court shall refer the matter to a civil court for a decision thereon, even though in part.

## **Article 285**

### **Correcting a sentence**

1. The court shall, on a discretionary basis or at request, proceed with the correction of a sentence where:
  - (a) apart from the cases provided in article 286, the provisions of articles 281 to 284 have not been complied with or have not been fully complied with;
  - (b) the sentence contains an error, lapse, obscurity or ambiguity the elimination of which does not amount to a change in its essence.
2. Where an appeal has already been filed, the correction is made, where feasible, by the court competent to adjudicate the appeal.
3. Sub-articles 285.1 and 285.2 are correspondingly applicable to court orders.

## **Article 286**

### **Nullity of sentence**

1. A sentence is null where:
  - (a) it does not contain the factual and legal rationale, the indication of the rationale of the court's opinion on the proved and unproved facts, even though by reference thereto, and the convicting or decision of acquittal;
  - (b) it convicts the defendant of facts other than those set forth in the indictment or in the amendment thereto, if any.
  - (c) it is pronounced by a court with no criminal jurisdiction;

(d) it is not put to writing, subject to sub-article 349.4.

**TITLE III  
ON APPEALS  
CHAPTER I  
ON ORDINARY APPEALS  
SECTION I  
ON GENERAL PRINCIPLES  
Article 287**

**Principles of maximum admissibility of appeals**

1. Where it is not expressly prohibited by law, court orders, sentences and decisions may be appealed against in entire or in part.
2. The appeal may cover both matters of fact and matters of law.

**Article 288**

**Decisions not subject to appeal**

An appeal is not admissible against:

- (a) routine orders;
- (b) decisions ordering the execution of acts that depend on the court's discretion;
- (c) sentences containing civil compensation where the amount of the compensation falls within the jurisdictional limit of the court appealed against and the decision challenged is unfavourable to the appellant in an amount lower than one half of that limit;
- (d) in any other cases provided by law.

**Article 289**

**Persons eligible to appeal**

Only a person interested in acting may appeal, namely:

- (a) the public prosecutor, against any decision, even though he or she does it in the defendant's exclusive interest;
- (b) the defendant, against any decision pronounced against him or her or in relation to the part which is against him or her;
- (c) a person who has been punished with the payment of any amount of money or who has to defend any right affected by the decision.

**Article 290**

**Scope of appeal**

1. An appeal lodged against a sentence covers the entire decision.
2. Except if based upon strictly personal grounds, an appeal lodged by one of the defendants, in the case of co-participation, shall include the other defendants.

**Article 291**

### **Degrees of appeal**

1. Every final criminal decision pronounced by a district court is appealable to the Supreme Court of Justice.
2. A criminal decision pronounced in the first instance by the criminal section of the Supreme Court of Justice is appealable to the full bench of that court.
3. The Supreme Court of Justice shall adjudicate matters of fact and matters of law.

### **Article 292**

#### **Limitation of appeal**

1. An appeal is limited to one part of the decision where the part appealed against may be separated from the part that has not been appealed against, in order to render possible a separate review and decision, is admissible, without prejudice to any consequences imposed by law in regard to the entire decision appealed against if the appeal is deemed granted.
2. For the purpose of applying sub-article 292.1, a separate part means the part of the decision referring to:
  - (a) criminal matters as opposed to the part relating to civil matters;
  - (b) each of the crimes, in the case of accumulation of crimes;
  - (c) the issue of culpability as opposed to the part relating to the issue of determining the penalty;
  - (d) each of the penalties or security measures, within the scope of the issue of determining the penalty.
3. Where the appellant limits the scope of the appeal to one part that the higher court believes it is not susceptible to be adjudicated and decided separately, a decision shall be made against the adjudication of the appeal.
4. The appellant may, by means of a request filed within five days of the date on which the partial adjudication of the appeal was rejected, amend the particulars of the appeal subject by expanding its object.

### **Article 293**

#### **Prohibition of *reformatio in pejus***

1. Where the defendant alone lodges an ordinary appeal against the final decision, the higher court may not impose a penalty that might be regarded as heavier in nature or degree than that set out in the appealed decision.
2. Sub-article 293.1 also applies where the appeal has been lodged by the public prosecutor alone or by the public prosecutor and the defendant, but in the exclusive interest of the defence.

### **Article 294**

#### **Waiving or withdrawing an appeal**

1. The right to lodge an appeal against a particular decision may be waived.
2. The withdrawal of an appeal is admissible through a motion or request on the court record, before a decision on the appealed matter has been pronounced.

### **Article 295**

#### **Remitting an appeal to a higher court**

1. Remitted in the records themselves are the appeals lodged against decisions bringing a

case to a close and those that must be remitted together with the records.

2. Appeals other than those referred to in sub-article 295.1, which are to be remitted immediately, are remitted separately.

#### **Article 296**

##### **Appeals to be remitted immediately to the higher court**

1. The following appeals are immediately remitted to the higher court:
  - (a) against a decision bringing a case to a close and against any decision pronounced thereafter;
  - (b) against a decision imposing or maintaining a restrictive measure, except proof of identity and residence;
  - (c) against a decision by the judge punishing the defendant with the payment of any amount of money under the terms of this code;
  - (d) against an order in which the judge does not recognise himself or herself as a disqualified judge;
  - (e) against an order rejecting an indictment.
2. Any appeal the retention of which would render it absolutely useless is also immediately remitted to the higher court.

#### **Article 297**

##### **Appeals to be remitted at a later stage**

Any appeal that is not remitted immediately is remitted, processed and adjudicated along with the appeal against the final decision.

#### **Article 298**

##### **Effects of appeals**

1. An appeal lodged against a final convicting decision has a suspensive effect.
2. The effects of the appealed decision are suspended by:
  - (a) an appeal lodged against a decision punishing the defendant with the payment of any amount of money under the terms of this code, if the appellant makes a deposit of that amount within seven days of the lodgement of the appeal;
  - (b) an appeal lodged against a court order declaring a bail broken;
3. Any other appeals shall be merely devolutive in their nature.

## **SECTION II ON APPEALS**

#### **Article 299**

##### **Scope of the powers of cognition**

1. An appeal may be predicated on a disagreement with the decision made or on the omission of a decision relating to an issue that was expected to be adjudicated.
2. Even though an appeal is limited to matters of law, the court shall, on a discretionary basis or if requested to do so, adjudicate any defects that clearly amount to:
  - (a) insufficient matter of fact held as proved for a decision;
  - (b) an irreparable contradiction of the rationale or between the rationale and the

decision on the matter of fact held as proved;  
(c) a blatant error in assessing the proof;  
(d) the omission of any action that could have been taken at the trial hearing and that ought to be considered essential to the discovery of the truth.

### **Article 300**

#### **Time limit for lodging an appeal**

1. An appeal shall be lodged within fifteen days of notification of the decision or of the date from which it should be considered as having been notified.
2. An appeal is lodged by way of a motion or by way of a simple statement entered in the minutes, if related to a decision pronounced at a hearing.
3. An appeal motion shall at all times be lodged on substantiated grounds; otherwise, the appeal shall not be admitted.
4. Where the appeal is lodged by way of a statement entered in the minutes the substantiation of the appeal may be presented within fifteen days from the date on which the appeal was lodged.

### **Article 301**

#### **Substantiation of an appeal**

1. The substantiation of an appeal specifies the grounds for the appeal and ends with a presentation of conclusions, set out article by article in which the appellant summaries the grounds for the motion.
2. With respect to matters of law, the conclusions shall also state the following elements, under the penalty of rejection;
  - (a) the provisions that have been breached;
  - (b) the sense in which, in the opinion of the appellant, the appealed court has interpreted each provision or what it has been applied with, and the sense in which it should have been interpreted or what it should have been applied with; and
  - (c) in the case of error in determining the applicable provision, the legal provision that, in the opinion of the appellant, should be applied.
3. With respect to matters of fact, the appellant must specify;
  - (a) the points of fact that he or she believes have been wrongly adjudicated;
  - (b) the proof that leads to a decision distinct from the one that is being appealed against;
  - (c) the proof that needs to be renewed.

### **Article 302**

#### **Notification and reply**

1. The appeal motion and the substantiation of the appeal shall be notified to the other procedural subjects affected by the appeal and shall therefore be accompanied by the number of copies required.
2. The procedural subjects affected by the appeal may reply within fifteen days from the date the notice referred to in sub-article 302.1 was given.
3. The reply shall be notified to the procedural subjects concerned, in conformity with Sub-article 302.1 with regard to the number of copies.

### **Article 303**

#### **Remitting an appeal**

Once the appeal has been lodged and all other procedures complied with by the court registry, the appeal is immediately remitted to the higher court.

### **Article 304**

#### **Admitting an appeal**

1. Once the appeal has been received, the higher court assesses all prior or incidental issues that might impede the adjudication of the grounds of action.
2. The higher court shall not adjudicate the appeal where the decision may not be appealed against, where the appeal has been lodged beyond the time limit, where the appellant does not meet the requirements for lodging the appeal or in the absence of substantiation.
3. It is incumbent upon the rapporteur to draft the decision on the appeal, whether the appeal is to proceed or to be rejected.

### **Article 305**

#### **Endorsement by the assistant judges**

Where proof needs not be produced, the records are referred, for a 5-day period, to each of the assistant judges, along with the draft decision.

### **Article 306**

#### **Deliberation and decision**

1. The trial judge and two assistant judges shall make a deliberation and decide by a simple majority of votes.
2. Where proof needs not be renewed, deliberation is made collectively; however, the court may previously listen to the prosecution and the defence in oral allegations in a hearing session, if the court deems it necessary for a proper adjudication of the appeal
3. The decision is drafted by the trial judge or, where the latter is defeated, by his or her substitute, and the dissenting opinion is admissible.
4. The decision is notified to the appellants, the respondents, and the public prosecutor.

### **Article 307**

#### **Renewal of proof**

1. Where a matter of fact and a matter of law are to be adjudicated, the court admits the renewal of proof if any of the defects referred to in sub--article 299.2 has been identified and there is a reason to believe that the renewal of proof shall prevent the case from being returned.
2. The decision admitting or rejecting the renewal of proof shall determine the terms and the extent to which the proof produced in the first instance may be renewed.
3. Proof is renewed at a hearing.
4. The defendant shall at all times be summoned to the hearing, but, if he or she has been regularly summoned, his or her absence does not imply the postponement of the hearing, except as otherwise decided by the court.



### **Article 308**

#### **Amending a decision that has been appealed against**

1. Subject to article 299, a decision by a first-instance court on a matter of fact may be amended where:
  - (a) the records contain all the elements of proof on which the decision was based;
  - (b) where documented proof is challenged under the terms of sub-article 301.3;
  - Or (c) the proof has been renewed.

### **Article 309**

#### **Proceeding with a case**

1. Where the case is to proceed, the judge shall make the conclusions, set a date for the hearing, determine the persons to be summoned, and shall have the endorsements completed, where applicable.
2. The public prosecutor and the defender shall at all times be summoned to the hearing.

### **Article 310**

#### **Postponing a hearing**

1. The absence of a person summoned shall result in the postponement of the hearing only where the court deems it indispensable for the administration of justice.
2. Where the defender fails to appear before the hearing and the hearing cannot be postponed, the court shall appoint a new defender and shall give the latter the time required for him or her to consult with the defendant and to examine the records, if required.
3. Postponing a hearing more than once is not permitted.

### **Article 311**

#### **Hearing**

1. Once the hearing has been called to order, the judge shall initiate the discussions with a brief statement on the object of the appeal, in which he or she enunciates the matters the court believes to deserve a special examination.
2. The statement shall be followed by the renewal of proof, where applicable.
3. Afterwards, the public prosecutor and the defender are given the floor to make allegations, each for a period of time not exceeding thirty minutes.
4. The provisions relating to hearings in first-instance trials are correspondingly applicable.

### **Article 312**

#### **Deliberation**

Once the hearing has come to a close, the court shall meet to deliberate over the case, in

compliance with article 306.

### **Article 313**

#### **Returning a case for a new trial**

1. Where the cause of action cannot be determined, the court of appeal shall decide that the case be returned for a new trial in regard to the totality of the object of the case or to any matters that have been specifically identified in the decision ordering the return thereof.

## **CHAPTER II ON EXTRAORDINARY APPEALS**

### **SECTION I EXISTENT APPEALS**

#### **Article 314**

#### **Types of extraordinary appeals**

Extraordinary appeals may be considered for a review or for the establishment of jurisprudence.

#### **Article 315**

#### **Grounds for a review and the admissibility thereof**

1. The review of a final sentence rendered by the court is admissible where:
  - (a) another final sentence rendered by the court has considered false any of the elements of proof upon which such a decision was determined;
  - (b) another final sentence rendered by the court proves that a judge has committed a crime related to the exercise of his or her functions in the case;
  - (c) the facts upon which the conviction was established are inconsistent with the data as proved in another sentence and serious doubts arise from this contradiction as to the fairness of the conviction;
  - (d) newly disclosed facts or elements of proof that, per se or combined with those that have been assessed in the case, raise doubts as to the fairness of the conviction, except if the sole purpose of such facts or elements of proof is to correct the specific extent of the penalty.
2. For the purpose of applying sub-article 315.2, the order that has brought a case to a close is equated with a sentence.
3. Review is admissible even though the proceeding has abated or the penalty has either lapsed or been served.

#### **Article 316**

#### **Legitimacy**

1. Review may be requested by the public prosecutor and, in a convicting sentence, by the convicted person.
2. Where the convicted person is deceased, review may be requested by a spouse,

descendant, progenitor or anyone related by blood or affinity up to the fourth degree in the collateral line.

#### **Article 317**

##### **Procedures for submitting and handling a petition for review**

1. A petition for review shall be filed with the court that has handed down the sentence to be reviewed.
2. A petition for review is attached to the record where the sentence to be reviewed was issued.
3. It is incumbent upon the aforementioned court to process the review file by taking any action deemed necessary and ordering that any documents relevant to the decision be attached to the file.
4. The production of proof by means of statements shall always be documented.
5. Upon completion of the necessary action or after thirty days have elapsed from the date on which the petition for a review is submitted, the referral of the file to the full bench of the Supreme Court of Justice, along with information from the investigating judge regarding the grounds of action, is ordered.

#### **Article 318**

##### **Procedures for handling and deciding review**

1. Upon receipt by the Supreme Court of Justice, the file is submitted to the judge.
2. The judge shall, within fifteen days, draft the decision to be submitted for endorsement as an attachment to the file, if he or she deems it necessary that any action be taken before the decision is rendered.
3. The decision to grant or reject the review is pronounced within fifteen days of the date on which the last endorsement was affixed to the file and is made by the judge and two assistant judges.
4. Where the Supreme Court of Justice authorises a review, it designates, for the purpose of holding a new trial, a court with the same rank and composition as those of the court that has handed down the decision to be reviewed.

#### **Article 319**

##### **New trial**

1. In order to proceed with the review of the decision as soon as it receives the file, the designated court shall set a date for the trial and follow all other procedures as if in an ordinary proceeding.
2. The decision handed down in this new trial may not be subjected to further review, except as provided in paragraph 315.1(b).

#### **Article 320**

##### **Compensation**

1. Where the reviewed decision has been one of conviction and the review court acquits the defendant, the latter has the right to compensation for losses suffered and to a refund of any amount of money paid as a fine, tax costs, and court costs.
2. The review court has the competence to decide on the compensation and may, in the absence of particulars, submit it for settlement during the execution of the sentence.
3. The State is responsible for the payment of the assessed amounts.

## **SECTION III ESTABLISHING JURISPRUDENCE**

### **Article 321**

#### **Grounds for lodging an appeal**

1. Where, within the scope of the same legislation, the Supreme Court of Justice renders two decisions that, being related to the same matter of law, are predicated on conflicting reasoning, either the public prosecutor or the defendant may appeal to the full bench of that court against the decision rendered last.
2. Decisions are considered to have been rendered within the scope of the same legislation where no legislative modifications have impacted, whether directly or indirectly, on the settlement of the controverted matter of law between the times such decisions were rendered.
3. Only a previous final decision may serve as the basis for an appeal.

### **Article 322**

#### **Lodging an appeal and the effect thereof**

1. An appeal to establish jurisprudence shall be lodged within thirty (30) days from the date on which the last final decision was rendered and it does not have suspensive effect.
2. The appellant shall identify in the petition the decision that is in contradiction with the appealed decision and, if the latter has been published, the place of its publication, and demonstrate the contradiction causing the jurisprudential conflict.
3. The appeal to establish jurisprudence is binding on all courts of Timor-Leste upon publication in the Official Gazette.

### **Article 323**

#### **Subsidiary regime**

The provisions relating to ordinary appeals shall apply on a subsidiary basis to appeals to establish jurisprudence, with the necessary adaptations.

## **TITLE IV ON EXECUTION CHAPTER I ON GENERAL PROVISIONS**

### **Article 324**

#### **Executive force of criminal decisions**

1. Decisions of criminal conviction shall have executive force nationwide as soon as they become final, and it is the responsibility of the Public Prosecution Service to enforce them.

2. Decisions of final acquittal shall be executed as soon as they are handed down.
3. The executive force of criminal decisions handed down by courts in Timor-Leste is extensive to a foreign territory in conformity with treaties, conventions, and the norms of international law.

#### **Article 325**

##### **Decisions that may not be executed**

The following are decisions that shall not be executed:

- (a) criminal decisions handed down by a court with no criminal jurisdiction;
- (b) decisions imposing a penalty or measure that is non-existent in the Timorese law;
- (c) decisions that fail to specifically determine the imposed penalty or measure;
- (d) decisions that have not been put to writing.

#### **Article 326**

##### **Executive competence**

1. Executive competence rests with the first-instance court where the case has been handled.
2. Where the Supreme Court of Justice has intervened as a first instance court, executive competence lies with the first instance court of the area where the domicile of the convicted person is located.
3. The execution of a penalty is dealt with in the records themselves, and it is the responsibility of the public prosecutor to take any action necessary to correctly execute the penalty.
4. A court that declares a penalty or security measure to cease shall notify the defendant and, where applicable, the prison service or other competent service of the fact.

#### **Article 327**

##### **Suspending an execution process**

1. Where a case is initiated against a magistrate, court clerk, witness or expert in connection with facts that may have resulted in the conviction of the defendant, the suspension of the execution process is ordered pending the adjudication of that case.
2. The request to suspend an execution process is filed with the Supreme Court of Justice, sitting in full bench, which has the competence to determine the restrictive measure that may be applied to the convict during the suspension.

## **CHAPTER II ON THE EXECUTION OF A PRISON SENTENCE**

#### **Article 328**

##### **Beginning and end of imprisonment**

1. A convicted person punished with imprisonment begins serving the sentence upon his or her admission to the prison establishment and such a sentence ends with his or her release on the morning of the last day of the sentence.

2. In order to start or finish serving his or her sentence, a convicted person is admitted to or discharged from a prison establishment by means of a writ issued by the trial judge.

#### **Article 329**

##### **Suspending execution on grounds of escape**

1. The suspension of a prison sentence occurs where a convict escapes from prison or fails to report back after an exit from prison and the execution of the prison sentence shall be resumed when the convicted person is either captured or reports back to prison.
2. Interspersed periods of time are added up for the purpose of crediting imprisonment.

#### **Article 330**

##### **Crediting imprisonment**

1. Years, months and days are computed on the basis of the following criteria for the purpose of crediting imprisonment:
  - (a) imprisonment determined in years ends on the day, within the last year, that corresponds to the beginning of the crediting and, in the absence of a corresponding day, on the last day of the month;
  - (b) imprisonment determined in months is credited with each month being considered as a period ending on the corresponding day of the following month, or in the absence thereof, on the last day of the month;
  - (c) imprisonment determined in days is credited with each day being considered as a 24-hour period, subject to article 331, which provides for the time of release.
2. Where imprisonment is not served on a continued basis, to the day figured out on the basis of the criteria set out in sub-article 330.1, is added the day that corresponds to the interruptions.

#### **Article 331**

##### **Parole**

1. Where the imposed prison sentence exceeds six months, and once one half of the sentence has been served, the court shall, if requested to do so or at its own discretion, request the public prosecutor, the prison service, and other services referred to in the sentencing law, to issue an opinion on the granting of parole.
2. Opinions shall be issued within thirty days.
3. Once the opinions referred to in sub-article 331.1 have been compiled, the judge issues an order deciding whether to grant parole or not.
4. The granting of parole may be subject to the fulfilment of the same duties as those upon which the suspension of the execution of a prison sentence is dependant.

#### **Article 332**

##### **Requirements for granting parole**

1. The granting of parole depends on the convicted person's good behaviour in prison and strong capacity and willingness to readapt himself or herself to society and on other requirements as provided in the sentencing law.
2. The granting of parole, regardless of the requirements referred to in sub-article 332.1, is compulsory after the convict has served five-sixths of the sentence, where it has not been granted at an earlier stage.

### **Article 333**

#### **Revocation of parole**

1. Parole is revoked where the convicted person commits, during the course of the period of parole, a crime punishable with imprisonment and is convicted of such a crime and punished with imprisonment.
2. If during the course of the period of parole, the convicted person is punished for another crime or breaches the duties upon which parole is dependant, the judge may, as the case may be:
  - (a) solemnly warn him or her;
  - (b) extend the period of parole for another year;
  - (c) revoke parole.
3. Revocation of parole implies the execution, in entire or in part, of the imprisonment yet to be served, without prejudice to the convict being granted parole again, after one year has elapsed.

### **Article 334**

#### **Exit from prison while serving a sentence**

A convicted person may be authorised to exit prison for periods of short or medium duration, to be regulated by specific decree.

## **CHAPTER III**

### **ON THE EXECUTION OF PENALTY OF FINE**

#### **Article 335**

##### **Voluntary payment**

1. A fine may be paid within fifteen days from the date on which the decision imposing it has become final, in an amount determined therein.
2. A request may, within the same deadline, be filed for the payment of the fine to be made in instalments.
3. Sub-article 335.1 does not apply in the event that the payment of a fine in instalments has been authorised.

#### **Article 336**

##### **Property execution**

1. Property execution shall, at the request of the public prosecutor, apply where the deadline for paying a fine, or some of its instalments, has expired or the convicted person has ceased doing the work he or she is required to carry out in lieu of the fine.
2. Property execution shall be initiated with the motion by the public prosecutor indicating any sufficient and unencumbered assets owned by the convicted person and the latter may, within the same deadline as in which he or she could have voluntarily paid the fine, indicate any assets to be garnished in lieu of those mentioned in the initial motion filed by the public prosecutor.
3. Property execution shall follow the terms of an ordinary execution proceeding, with the necessary adaptations, and shall be dealt with as an attachment to the records in which the conviction was passed.

#### **Article 337**

### **Alternative imprisonment**

1. In the event a fine is not paid or where property execution is not feasible, the serving of a prison sentence may be imposed as an alternative.
3. Upon being arrested to serve an alternative prison sentence, the convicted person may avoid the execution of the arrest by paying the fine in its entirety to the official tasked with executing the warrant of arrest. The latter shall issue a receipt acknowledging receipt of the corresponding amount of money and certify the reason why the warrant has not been executed.

## **CHAPTER IV ON THE EXECUTION OF A SUSPENDED SENTENCE**

### **Article 338**

#### **Changing duties and extending the period of suspension**

An order changing any duties upon which the suspension of the execution of a prison sentence or the extension of the period of suspension is dependant shall be preceded by hearing the convicted person and the public prosecutor and by collecting proof relating to the circumstances determining the failure to fulfil such duties.

### **Article 339**

#### **Revoking a suspension**

The court shall proceed in accordance with article 338, except where the revocation of the suspension derives from the commission of a crime during the period of suspension.

### **Article 340**

#### **Pardoning a suspended sentence**

The pardoning of a prison sentence the execution of which is suspended occurs if and when the suspension is revoked.

### **Article 341**

#### **Declaring the lapse of a suspended sentence**

1. A sentence is declared lapsed where the period of suspension has elapsed without a reasonable justification for determining the revocation or extension of the suspension.
2. Where the case is pending due to a crime that might lead to the revocation of the suspension or procedural incident that might result in the revocation or extension of the suspension, the sentence may not be declared lapsed until after a decision thereon is handed down.

## **CHAPTER V ON THE EXECUTION OF THE PENALTY OF COMMUNITY LABOUR**

### **Article 342**

#### **Execution**

1. The public agency where the convicted person is required to provide community labour shall, on a quarterly basis or whenever the circumstances so justify, inform the court of the manner in which the sentence is being served.
2. Refusal to deliver services or a deficient delivery thereof shall be reported to the court that shall, before issuing a decision, proceed in accordance with articles 332 and 333.



3. Once the period of delivery of services has elapsed and the report from the agency where the services have been provided is attached to the records, the court shall declare the sentence to have lapsed.

**CHAPTER VI**  
**ON THE EXECUTION OF SECURITY MEASURES**  
**Article 343**

**Deciding on the execution of a security measure**

1. The decision imposing any security measure shall determine the form of its execution.
2. During the execution of a security measure, the court shall decide on what appropriate action to take with regard to the execution phase, after consultation with the public prosecutor and the convicted person or his or her defender and, where the court deems it necessary, the medical expert.

**Article 344**

**Internment as a security measure**

1. When a security measure consists of interning the convicted person, the establishment where he or she is interned shall organise a personal file containing:
  - (a) communications from and/or to the court;
  - (b) periodic evaluation reports on the internee's situation;
  - (c) mental examinations relating to the danger that the convict might pose;
  - (d) any other elements required to evaluate the internee's situation from the perspective of his or her rehabilitation.
2. The internee's situation shall be re-evaluated every six months and the corresponding report submitted to the court for that purpose.
3. Yearly re-evaluations shall be preceded by hearing the public prosecutor and the convicted person or his or her defender.

**Article 345**

**Suspending or prohibiting the practice of a profession**

1. The court shall request the employer concerned to execute any penalty or measure that consists of suspending or prohibiting the exercise of any professional activity.
2. For the purposes of applying sub-article 345.1, the court shall submit a copy of the decision to the agency tasked with executing the measure.
3. Sub-articles 345.1 and 345.2 are correspondingly applicable to the execution of any other accessory penalties and measures.

**PART III**  
**EXPEDITED TRIAL**

**Article 346**

**When expedited trial takes place**

1. A person arrested in flagrante delicto, in connection with a crime carrying a prison sentence of up to five years, shall be judged by an expedited trial.
2. The trial hearing shall be initiated within seventy-two hours following his or her arrest.
3. Where the trial hearing may not be initiated within the 72-hour period, the proceeding shall, in accordance with article 348, retain its expedited nature until its closure.

#### **Article 347**

##### **Referring a person under arrest to trial**

1. The police entity that has carried out the arrest or the person to whom the person under arrest has been delivered shall forthwith refer him or her to the Public Prosecution Service or, in a case of urgency, directly to the competent court for trial, and shall notify the Public Prosecution Service concurrently.
2. The indictment shall be replaced with a report prepared by the public prosecutor before the hearing begins, after consultation with the arresting entity.

#### **Article 348**

##### **Notification**

1. Where the trial cannot be initiated within seventy-two hours following the arrest or, having the defendant been brought to court, the trial cannot take place immediately, the person under arrest is released on the basis of proof of identity and residence.
2. In the case referred to in sub-article 348.1, the defendant and the other procedural participants shall be notified of the date on which the trial hearing shall be held.
3. Upon the arrest or delivery of the detained person, the police entity shall notify the witnesses of the crime and the aggrieved person to appear at the hearing and inform the defendant that he or she may present up to three witnesses at the trial hearing.
4. All preceding information shall be contained in the report of arrest *in flagrante delicto*.

#### **Article 349**

##### **Procedures for conducting an expedited trial**

1. Proof shall be documented in accordance with article 249.
2. The court shall, where feasible, hear the aggrieved person with regard to damage suffered as a consequence of the crime and decide the respective compensation on a discretionary basis.
3. A rebuttal may be submitted in writing at the beginning of the trial hearing.
4. The sentence shall have a simplified format and may be handed down orally and dictated into the minutes soon after the trial hearing ends, but where its complexity so justifies, the sentence may be handed down in writing within five days of the date on which the hearing was held.
5. The provisions relating to trial hearings in an ordinary proceeding are correspondingly applicable, with the necessary adaptations.

#### **Article 350**

##### **Appeals**

In an expedited proceeding only an appeal against the sentence or the order closing the case is admissible.

**PART IV**  
**ON FINAL PROVISIONS**  
**Article 351**

**Compensation for deprivation of liberty**

1. A person who has been unlawfully arrested or placed under pre-trial detention may ask for compensation for the losses suffered as a result of deprivation of liberty.
2. Deprivation of liberty is presumed to be unlawful where the entity who has carried out or ordered it fails to prepare a record, report or writ stating the prerequisites for carrying out the arrest or detention.
4. The deadline for filing a compensation request for damage suffered as a result of deprivation of liberty shall be one (1) year, counted from the date on which the arrest or detention was carried out or the person concerned was released.

**Article 352**

**Need to review and confirm a sentence passed by a foreign court**

1. Where, by virtue of the law, treaty or convention, a criminal sentence imposed by a foreign court is to be valid in the Democratic Republic of Timor-Leste, its enforceability is contingent upon prior review and confirmation by the Supreme Court of Justice.
2. At the request of the person concerned, a civil compensation order contained in a sentence imposed by a foreign court may be confirmed in the same proceeding of review and confirmation of that sentence.
3. Sub-article 355.1 does not apply where the sentence imposed by a foreign court is invoked in the courts of the Democratic Republic of Timor-Leste as an element of proof.

**Article 353**

**Legitimacy**

The public prosecutor and the defendant are the persons with legitimacy to lodge a petition for the review and confirmation of a criminal sentence imposed by a foreign court.

**Article 354**

**Requirements for confirmation**

1. In order for a criminal sentence imposed by a foreign court to be confirmed, the following requirements need to be met:
  - (a) that, by virtue of the law, treaty or convention, the sentence may be enforced in the territory of Timor-Leste;
  - (b) that the fact that has served as a basis for the conviction is also punishable by the

Timorese law;

(c) that the sentence has not imposed any penalty or security measure prohibited by the Timorese law;

(d) that the defendant has been assisted by a defender and, where the defendant was not familiar with the language used in the proceeding, also by an interpreter;

(e) that, except as otherwise stated in a treaty or convention, the sentence is not related to a crime that can be described, in accordance with the Timorese law or that of the country where the sentence was rendered, as a crime against the state security.

2. Where the criminal sentence imposed by a foreign court has imposed a penalty that is not provided in the Timorese law or a penalty provided in the Timorese law but to an extent greater than the maximum admissible under law, the sentence is confirmed, but the penalty imposed shall be either converted to the extent that corresponds to such a case under the Timorese law or reduced up to the appropriate limit.

3. A sentence imposed by a foreign court may be confirmed even though its minimum limit is below the one admissible under the Timorese law.

#### **Article 355**

##### **Excluding enforceability**

Where all requirements for the confirmation of a sentence have been met, but the criminal proceeding or the penalty has lapsed under the Timorese law on the grounds of a statute of limitations, amnesty or otherwise, the sentence shall be confirmed but the enforceability of the penalty or security measure imposed is overruled.

#### **Article 356**

##### **Executing a sentence**

The execution of a criminal sentence passed by a foreign court and confirmed by the Supreme Court of Justice of Timor-Leste may not be initiated unless the convicted person has served the sentence or security measure of a similar nature of which he or she may have been convicted by a Timorese court.

#### **Article 357**

##### **Relations with foreign authorities**

Relations with authorities of a foreign country, in the area of criminal justice administration, are regulated by international treaties and conventions and any other loose legislation on judicial cooperation.

#### **Article 358**

##### **Liability to pay court costs and procedural fees**

1. Where the defendant is found guilty, the court may also punish the defendant with the payment of the court costs and other procedural fees if the court believes that the economic status of the defendant allows him or her to bear such expenses.

2. Execution in connection with court costs shall follow the civil procedure rules and is dealt with as an attachment to the records in which the sentence was handed down, under the responsibility of the public prosecutor.

#### **Article 359**

**Disposing of criminal fines**

Article 31 of the Code of Court Costs is correspondingly applicable to the disposal of criminal fines.