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CODE OF CRIMINAL PROCEDURE

FIRST PART: LEGISLATIVE

PRELIMINARY ARTICLE

(Inserted by Law n° 2000-516 of 15 June 2000 Article 1 Official Journal of 16 June 2000)

I. Criminal procedure should be fair and adversarial and preserve a balance between the rights of the parties.

It should guarantee a separation between those authorities responsible for prosecuting and those responsible for judging.

Persons who find themselves in a similar situation and prosecuted for the same offences should be judged according to the same rules.

II. The judicial authority ensures that victims are informed and that their rights are respected throughout any criminal process.

III. Every person suspected or prosecuted is presumed innocent as long as his guilt has not been established. Attacks on his presumption of innocence are proscribed, compensated and punished in the circumstances laid down by statute.

He has the right to be informed of charges brought against him and to be legally defended.

The coercive measures to which such a person may be subjected are taken by or under the effective control of judicial authority. They should be strictly limited to the needs of the process, proportionate to the gravity of the offence charged and not such as to infringe human dignity.

The accusation to which such a person is subjected should be brought to final judgment within a reasonable time.

Every convicted person has the right to have his conviction examined by a second tribunal.

PRELIMINARY TITLE

PUBLIC PROSECUTION AND CIVIL ACTION

Article 1

Public prosecution for the imposition of penalties is initiated and exercised by the judges, prosecutors or civil servants to whom it has been entrusted by law.

This prosecution may also be initiated by the injured party under the conditions determined by the present Code.

Article 2

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

Civil action aimed at the reparation of the damage suffered because of a felony, a misdemeanour or a petty offence is open to all those who have personally suffered damage directly caused by the offence.

The waiver of a civil action will not interrupt or suspend the exercise of the public prosecution, subject to the cases set out under the third paragraph of article 6.

Article 2-1

(Law n° 72-546 of 1 July 1972 Article 8 Official Journal of 2 July 1972)

(Law n° 85-10 of 3 January 1985 Article 99 Official Journal of 4 January 1985)

(Law n° 87-588 of 30 July 1987 Article 87 Official Journal of 31 July 1987)

(Law n° 92-1336 of 16 December 1992 Article 1 Official Journal of 23 December 1992 in force on 1 March 1994)

Any association lawfully registered for at least five years on the date of offence, proposing through its constitution to combat racism or to assist the victims of discrimination grounded on their national, ethnic, racial or religious origin, may exercise the rights granted to the civil party in respect of, first, discrimination punished by articles 225-2 and 432-7 of the Criminal Code, and, secondly, the intentional offences against the life or physical integrity of persons, and destruction, defacement and damage punished by articles 221-1 to 221-4, 222-1 to 222-18 and 322-1 to 322-13 of the Criminal Code, committed to the prejudice of a person because of his national origin, or his membership or non-membership, real or supposed, to any given ethnic group, race or religion.

Article 2-2

(Law n° 80-1041 of 23 December 1980 Article 3 Official Journal of 24 December 1980)

(Law n° 90-602 of 12 July 1990 Article 12 Official Journal of 13 July 1990)

(Law n° 92-1336 of 16 December 1992 Article 2 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 98-468 of 17 June 1998 Article 23 Official Journal of 18 June 1998)

Any association lawfully registered for at least five years on the date of offence, the statutory objectives of which include the combating sexual violence or violence inflicted upon a member of the family, may exercise the rights granted to the civil party in respect of intentional offences against the life or physical integrity of persons, aggressions and other sexual offences, kidnapping, sequestration and unlawful penetration into a domicile, punished by articles 221-1 to 221-4, 222-1 to 222-18, 222-23 to 222-33, 224-1 to 224-5, 226-4, 227-25, 227-26, 227-27 and 432-8 of the Criminal Code. However, the association's action will only be admissible if it proves it obtained the consent of the victim or, where the latter is a minor, the consent of the person holding parental authority or that of the legal representative, or failing this, that of the guardianship judge in charge of the case pursuant to article 389-3 of the Civil Code. This condition is however not required where the offences were committed abroad and where the provisions of the second paragraph of article 222-22 or of article 227-27-1 of the Criminal Code are implemented.

Article 2-3

(Law n° 81-82 of 2 February 1981 Article 19-ii Official Journal of 3 February 1981)

(Law n° 85-772 of 25 July 1985 Article 7 Official Journal of 26 July 1985)

(Law n° 92-1336 of 16 December 1992 Article 1 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 98-468 of 17 June 1998 Article 24 Official Journal of 18 June 1998)

Any association lawfully registered for at least five years on the date of offence proposing through its constitution to defend or assist cruelly-treated children or minors victims of sexual assault may exercise the rights granted to the civil party in respect of torture and acts of barbarity, acts of violence and sexual aggressions committed against minors and the offence of endangering minors punished by articles 222-3 to 222-6, 222-8, 222-10, 222-12, 222-13, 222-14, 222-15, 222-24, 222-25, 222-26, 222-29, 222-30, 227-22, 227-25, 227-26 and 227-27 of the Criminal Code, where the public prosecution has been initiated by the public prosecutor or by the injured party.

Article 2-4

(Law n° 81-82 of 2 February 1981 Article 88 Official Journal of 3 February 1981)

(Law n° 83-466 of 10 June 1993 Official Journal of 11 June 1983 in force on 27 June 1983)

Any association lawfully registered for at least five years proposing in its constitution to combat crimes against humanity or war crimes, or to defend the moral interests and the honour of the Resistance or of those of deported persons, may exercise the rights granted to the civil party in respect of war crimes and crimes against humanity.

Article 2-5

(Inserted by Law n° 83-466 of 10 June 1983 Article 36-ii Official Journal of 11 June 1983 in force on 27 June 1983)

Any association lawfully registered for at least five years on the date of offence proposing through its constitution to defend the moral interests and the honour of the Resistance or those of deported persons may exercise the rights granted to the civil party in respect of the vindication of war crimes or felonies or misdemeanours of collaboration with the enemy, or the destruction or defacement of monuments, or the desecration of graves, or the misdemeanours of defamation or insult, which have caused direct or indirect harm to its objectives.

Article 2-6

(Law n° 85-772 of 25 July 1985 Article 1-v Official Journal of 26 July 1985)

(Law n° 92-1179 of 2 November 1992 Article 4 Official Journal of 24 November 1992)

(Law n° 92-1336 of 16 December 1992 Article 4 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 2000-516 of 15 June 2000 Article 106 Official Journal of 16 June 2000)

(Law n° 2001-397 of 9 May 2001 Article 22 Official Journal of 10 May 2001)

Any association lawfully registered for at least five years on the date of offence proposing in its constitution to combat discrimination based on gender or sexual morals may exercise the rights granted to the civil party in respect of discrimination under articles 225-2 and 432-7 of the Criminal Code, where such offences are committed because of the gender, family situation or sexual morals of the victim, and by article L. 123-1 of the Labour Code.

However, in respect of the violations of the provisions of the last paragraph of article L. 123-1 of the Labour Code and of the four last paragraphs of article 6 of law no. 83-634 of July 13, 1983 governing the rights and duties of civil servants, the association's action will only be admissible if it proves it has obtained the written consent of the person concerned, or, if the latter is a minor, having heard his opinion, that of the holder of parental authority or legal representative.

The association may also exercise the rights of the civil party in cases of intentional attacks on the life or integrity of persons and of

destruction, defacement or damage punished by articles 221-1 to 221-4, 222-1 to 222-18 and 322-1 to 322-13 of the Criminal Code, where the acts were committed by reason of the sex or sexual morals of the victim, provided it shows that it has received the victim's consent, or if the latter is a minor an adult under a guardianship order, that of his legal representative.

Article 2-7

(Inserted by Law n° 87-565 of 22 July 1987 Article 35 Official Journal of 23 July 1987)

In the event of a prosecution for arson committed in woods and forests, heaths, scrubs, garrigues, plantations or reforestation, public law legal persons may file a civil party action with the trial court aimed at obtaining the refund by the convicted person of the expenses incurred in fighting the fire.

Article 2-8

(Law n° 89-18 of 13 January 1989 Article 66 Official Journal of 14 January 1989)

(Law n° 90-602 of 12 July 1990 Article 7 Official Journal of 13 July 1990)

(Law n° 91-663 of 13 July 1991 Article 7 Official Journal of 19 July 1991)

(Law n° 92-1336 of 16 December 1992 Article 5 Official Journal of 23 December 1992 in force on 1 March 1994)

Any association lawfully registered for at least five years on the date of offence which by its constitution aims to defend or assist sick or handicapped persons may exercise the rights granted to the civil party in respect of discrimination punished by articles 225-2 and 432-7 of the Criminal Code, where it was committed by reason of the state of health or handicap of the victim. However, the association's action will only be admissible if it proves it has obtained the consent of the victim or, where the latter is a minor or an adult placed under a guardianship order, the consent of the legal representative.

Any association lawfully registered for at least five years on the date of offence which by its constitution aims to defend or assist sick or handicapped persons may also exercise the rights granted to the civil party in respect of the violations of article L. 111-7 of the Construction and Housing Code, set out and punished by article L. 152-4 of the same Code.

Article 2-9

(Inserted by Law n° 90-589 of 6 July 1990 Article 1 Official Journal of 11 July 1990)

Any association lawfully registered for at least five years on the date of offence proposing through its constitution to assist the victims of offences may exercise the rights granted to the civil party in respect of the offences falling within the scope of article 706-16, where a prosecution has been initiated by the public prosecutor or by the injured party.

Article 2-10

(Law n° 90-602 of 12 July 1990 Article 8 Official Journal of 13 July 1990)

(Law n° 92-1336 of 16 December 1992 Article 6 Official Journal of 23 December 1992 in force on 1 March 1994)

Any association lawfully registered for at least five years on the date of offence which by its constitution is devoted to combating the social or cultural exclusion of persons in a state of great poverty or because of their family situation, may exercise the rights granted to the civil party in respect of the discrimination punished by articles 225-2 and 432-7 of the Criminal Code. However, the association's action will only be admissible if it proves it has obtained the consent of the victim or, where the latter is a minor or an adult placed under a guardianship order, the consent of the legal representative.

Article 2-11

(Inserted by Law n° 91-1257 of 17 December 1991 Article 1 Official Journal of 19 December 1991)

Any association lawfully registered for at least five years on the date of offence and registered with the national board for war veterans and war victims under the conditions fixed by a Council of State Decree, proposing through its constitution to defend the moral interests and the honour of war veterans, war victims and of persons fallen for France may exercise the rights granted to the civil party in respect of the defacement or destruction of monuments or the desecration of graves, which have caused direct or indirect harm to its objectives.

Article 2-12

(Inserted by Law n° 93-2 of 4 January 1993 Article 1 Official Journal of 5 January 1993)

Any association lawfully registered for at least five years on the date of offence proposing through its constitution to fight against criminality on the road and to defend or assist the victims of such criminality may exercise the rights granted to the civil party in respect of the misdemeanours of unintentional homicide or wounding committed in the course of the driving of a motor-powered land vehicle, where the prosecution has been initiated by the public prosecutor or by the injured party.

However, the association's action will only be admissible if it proves it has obtained the consent of the victim or, where the latter is a minor, the consent of the holder of parental authority or that of the legal representative

Article 2-13

(Law n° 94-89 of 1 February 1994 Article 16 Official Journal of 2 February 1994 in force on 2 February 1994)

Any association lawfully registered for at least five years on the date of offence the statutory objective of which is the defence and protection of animals, may exercise the rights granted to the civil party in respect of the offences punishing serious acts of violence or acts of cruelty and maltreatment of animals, and also intentional offences against the lives of animals set out by the Criminal Code.

Article 2-14

(Inserted by Law n° 94-665 of 4 August 1994 Article 19 Official Journal of 5 August 1994)

Any association lawfully registered proposing through its constitution to defend the French language and which is accredited under the conditions determined by a Council of State Decree may exercise the rights granted to the civil party in respect of violations of the provisions taken for the implementation of articles 2, 3, 4, 6, 7 and 10 of law no. 94-665 of August 4, 1994 governing the use of the French language.

Article 2-15

(Inserted by Law n° 95-125 of 8 February 1995 Article 51 Official Journal of 9 February 1995)

(Law n° 2002-1138 of 9 September 2002 Article 33 Official Journal of 10 September 2002)

Any lawfully registered association, the statutory objective of which is the defence of victims of an accident occurring on public transport or within locations or premises open to the public, or on private property used for residential or professional purposes, and which brings together a number of such victims, may, if it has been authorised for this purpose, exercise the rights granted to the civil party in respect of this accident where the prosecution has been initiated by the public prosecutor or by the injured party.

The conditions pursuant to which the associations considered under the first paragraph may be accredited, after hearing the opinion of the public prosecutor on whether they are representative, are determined by decree.

Article 2-16

(Inserted by Law n° 96-392 of 13 May 1996 Article 19 Official Journal of 14 May 1996)

Any association lawfully registered for at least five years on the date of offence proposing in its constitution to combat drug addiction or drug trafficking may exercise the rights granted to the civil party in respect of the offences set out by articles 222-34 to 222-40 and by article 227-18-1 of the Criminal Code, where the prosecution has been initiated by the public prosecutor or by the injured party.

Article 2-17

(Law n° 2000-516 of 15 June 2000 Article 105 Official Journal of 16 June 2000)

(Law n° 2001-504 of 12 June 2001 Article 22 Official Journal of 13 June 2001)

Any association of public utility lawfully registered for at least five years on the date of the offence proposing by its statutes to defend and assist the individual or to defend individual and group freedom may, where acts are committed by a natural or legal person in the framework of a movement or organisation having as its object or effect the creation, maintenance or exploitation of psychological or physical subjection, exercise the rights of a civil party in respect of offences of intentional or unintentional infringement of the life or physical or mental integrity of a person, infringement ofa person's dignity, endangerment of a person, breach against the liberties of a person, breach against the dignity of a person, infringement of personality, endangering minors or harm to property provided under articles 221-1 to 221-6, 222-1 to 222-40, 223-1 to 223-15, 223-15-2, 224-1 to 224-4, 225-5 to 225-15, 225-17 and 225-18, 226-1 to 226-23, 227-1 to 227-27, 311-1 to 311-13, 312-1 to 312-12, 313-1 to 313-3, 314-1 to 314-3 and 324-1 to 324-6 of the Criminal Code, offences of illegal practice of medicine or of pharmacy as under the articles L.4161-5 and L.4223-1 of the Code of Public Health, offences of misleading advertising, frauds or forgery provided under articles L.121-6 and L213-1 to L.213-4 of the Consumers' Code.

Article 2-18

(Inserted by Law n° 2000-516 of 15 June 2000 Article 107 Official Journal of 16 June 2000)

An association lawfully registered for at least five years, proposing by its statutes to defend or to assist victims of industrial accidents or diseases may exercise the rights of a civil party in respect of the offences provided under articles 221-6, 222-119 and 222-20 of the Criminal Code committed in the course of a trade or business where a public prosecution has been instituted by the public prosecutor or an aggrieved party.

However, the association's action will only be admissible where it proves it has obtained the consent of the victim, or, where the latter is a minor, that of the holder of parental authority or that of the legal representative.

Article 2-19

(Inserted by Law n° 2000-516 of 15 June 2000 Article 108 Official Journal of 16 June 2000)

A departmental association of mayors lawfully registered, affiliated to the Association of Mayors of France, and the constitution of which has been filed for at least five years, may exercise the rights of a civil party in all the proceedings brought by municipal councillors in relation to insults, contempt, threats or bodily harm by reason of their occupations.

However, the association's action will only be admissible if it proves it has obtained the consent of the elected office-holder.

Article 2-20

(Inserted by Law n° 2003-239 of 18 March 2003 Article 63 Official Journal of 19 March 2003)

Any association lawfully registered for at least five years on the date of the facts in question, proposing through its constitution to defend the moral and material interests of the tenants, landlords and lessors of collective residential buildings, may exercise the rights of a civil party in cases of intentional injury to the person or the destruction, damaging or defacing of property contrary to 222-1 to 222-18 and 322-1 to 322-13 of the Criminal Code, where a prosecution has been initiated by the public prosecutor or by the injured party, and where the when the offence was committed in a building to which the objects of the association extend.

However, the association's action will only be admissible if it proves it has obtained the consent of the victim or, if the latter is a minor or an adult placed under a guardianship order, that of his legal representative.

Article 3

The civil action may be exercised at the same time as the public prosecution and before the same court.

It is admissible for any cause of damage, whether material, bodily or moral, which ensue from the actions prosecuted.

Article 4

The civil action may also be exercised separately from the public prosecution .

However, the judgment in any action exercised before the civil court is suspended until a final decision is made on the merits of the public prosecution where such a prosecution has been initiated.

Article 4-1

(Inserted by Law No. 2000-647 of 10 July 2000 Article 2 Official Journal of 11 July 2000)

The absence of a non-intentional criminal liability within the meaning of Article 121-3 of the Criminal Code does not bar the exercise of an action before the civil courts with a view to obtaining compensation for damage pursuant to article 1382 of the Civil Code where the existence of civil liability under that article is established, or under that of article L.452-1 of the Code of Social Security where the existence of a strict liability under this article is established.

Article 5

The party who has brought his action before the competent civil court may not bring it before the criminal court. It may only be otherwise where the case was filed with the criminal court by the public prosecutor before a judgment on the merits was made by the civil court.

Article 5-1

(Inserted by Law n° 83-608 of 8 July 1983 Article 2 Official Journal of 9 July 1983 correction 14 July in force on 1 September 1983)

Even when the claimant has filed a civil party suit before the criminal court, the civil court remains competent to make a referral order imposing any interlocutory measure in respect of the actions prosecuted, where the existence of the obligation cannot be seriously disputed.

Article 6

(Ordinance n° 58- 1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law n° 99-515 of 23 June 1999 Article 4 Official Journal of 24 June 1999)

The public prosecution for the imposition of a penalty is extinguished by the death of the defendant, by limitation, amnesty, the repeal of the criminal law and res judicata.

However, if a prosecution resulting in conviction has revealed the falsity of the judgment or decision which declared the public prosecution extinguished, the prosecution may be resumed. The limitation period is then treated as suspended from the date when the judgment or decision became final until that of the conviction of the person guilty of forgery or the use of forgery.

It may also be extinguished by a transaction where the law expressly so provides, or by a criminal mediation settlement. It is the same in the event of the withdrawal of a complaint, where such complaint is a condition necessary to prosecution.

Article 6-1

(Inserted by Law n° 95-125 of 8 February 1995 Article 55 Official Journal of 9 February 1995)

Where a felony or misdemeanour is alleged to have been committed in the course of a judicial prosecution and would imply the violation of a provision concerning criminal procedure, prosecution may only be initiated if the criminal court seised with the case found the prosecution or step taken on that occasion to be unlawful. The limitation period for the prosecution runs from this last decision.

Article 7

(Law n° 57-1426 of 31 December 1957 Official Journal of 8 January 1958 in force on 8 April 1958)

(Law n° 89-487 of 10 July 1989 Official Journal of 14 July 1989 Article 16)

(Law n° 92-1336 of 16 December 1992 Article 7 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 95-116 of 4 February 1995 Article 121 Official Journal of 5 February 1995)

(Law n° 98-468 of 17 June 1998 Article 25 Official Journal of 18 June 1998)

Subject to the provisions of article 213-5 of the Criminal Code, prosecution in felony cases time-barred by the passing of ten years from the day of the commission of the crime if, during this period, no step in investigation or prosecution was taken.

Where such steps were taken, it is time-barred only after the passing of ten years starting from the last step taken. This applies even in respect of those persons who would not have been affected by this investigation or prosecution step.

The limitation term for the prosecution of felonies committed against minors starts to run only from their coming of age.

Article 8

(Law n° 95-116 of 4 February 1995 Article 121 Official Journal of 5 February 1995)

(Law n° 98-468 of 17 June 1998 Article 26 Official Journal of 18 June 1998)

(Law n° 2003-239 of 18 March 2003 Article 38 Official Journal of 19 March 2003)

For misdemeanours, the prosecution limitation period is three complete years; it operates according to the distinctions set out in the previous article.

The limitation period for the prosecution of the misdemeanours committed against minors set out and punished by articles 222-9, 222-11 to 222-15, 222-27 to 222-30, 225-4-2, 225-7, 225-15, 227-22 and 227-25 to 227-27 of the Criminal Code only starts to run from their coming of age.

By way of exception to the provisions of the first paragraph, the limitation period is ten years where the victim is a minor and where the offence is one of the misdemeanours set out in articles 222-30 and 227-26 of the Criminal Code.

Article 9

For petty offences, the public prosecution limitation period is one complete year; it operates according to the distinctions set out in article 7.

Article 10

(Ordinance n° 58- 1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law n° 80-1042 of 23 December 1980 Article 1 Official Journal of 24 December 1980)

(Law n° 81-82 of 2 February 1981 Article 82 Official Journal of 3 February 1981)

The civil action is time-barred according to the rules of the Civil Code. However, this action may not be brought before the criminal court after the expiry of the public prosecution limitation period.

After reaching a decision in respect of the public prosecution , any investigation measures ordered by the criminal judge concerning civil claims follow civil procedure rules.

BOOK I

EXERCISE OF PUBLIC PROSECUTION AND JUDICIAL INVESTIGATION

TITLE I: AUTHORITIES IN CHARGE OF PUBLIC PROSECUTION AND OF JUDICIAL INVESTIGATION - COMMON PROVISIONS. (Art. 11)

Article 11

(Law n° 92-1336 of 16 December 1992 Article 8 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 2000-516 of 15 June 2000 Article 96 Official Journal of 16 June 2000)

Except where the law provides otherwise and subject to the defendant's rights, the enquiry and investigation proceedings are secret.

Any person contributing to such proceedings is subjected to professional secrecy under the conditions and subject to the penalties set out by articles 226-13 and 226-14 of the Criminal Code.

However, in order to prevent the dissemination of incomplete or inaccurate information, or to quell a disturbance to the public peace, thedistrict prosecutor may, on his own motion or at the request of the investigatingcourt or parties, publicise objective matters related to

the procedure that convey no judgement as to whether or the charges brought against the defendants are well founded.

CHAPTER I: THE JUDICIAL POLICE.

SECTION I: GENERAL PROVISIONS

Article 12

Judicial police operations are carried on under the direction of the district prosecutor by the officers, civil servants and agents designated by the present Title.

Article 13

(Law n° 2000-516 of 15 June 2000 Article 83 Official Journal of 16 June 2000 in force on 1 January 2001)

Within each appeal court's territorial jurisdiction the judicial police is placed under the supervision of the public prosecutor and under the control of the investigating chamber in accordance with article 224 onwards.

Article 14

According to the distinctions set out in the present title, the judicial police are charged with the task of discovering violations of the criminal law, of gathering evidence of such violations and of identifying their perpetrators, unless and until a judicial investigation has been initiated.

Where a judicial investigation is initiated, they carry out the duties delegated to them by the judicial investigation authorities and defer to their orders.

Article 15

(Law n° 78-788 of 28 July 1978 Article 1 Official Journal of 29 July 1978)

The judicial police include:

1° the judicial police officers;

2° the judicial police agents and assistant judicial police agents;

3° the civil servants and agents to whom the law assigns certain judicial police functions.

Article 15-1

(Inserted by Law n° 94-89 of 1 February 1994 Article 1 Official Journal of 2 February 1994 in force on 2 February 1994)

(Inserted by Law n° 2003-239 of 18 March 2003 Article 8 I Official Journal of 19 March 2003)

The categories of services or units within which the judicial police officers and agents considered under sections II and III of the present chapter exercise their current functions, the modes of creation of such services or units and the criteria for fixing their area of jurisdiction are set out by a Council of State Decree taken upon the report of the Minister of Justice and of the Minister concerned. The territorial jurisdiction of these services or units is exercised, according to the distinctions provided for by this Decree, either over the whole of the national territory or over one or more defence zones, or parts of these, or over the whole of an administrative department.

Article 15-2

(Law n° 2000-516 of 15 June 2000 Article 17 Official Journal of 16 June 2000)

Administrative enquiries relating to the behaviour of an officer or agent of the judicial police when carrying out his duties in the judicial police are carried out by a combination of the General Inspectorate of Judicial Services and the competent service of enquiry. They may be ordered by the Minister of Justice and are then directed by a judge or prosecutor.

Article 15-3

(Inserted by Law n° 2000-516 of 15 June 2000 Article 114 Official Journal of 16 June 2000)

The judicial police are obliged to receive complaints filed by victims of offences committed against the criminal law and to transmit them, should the occasion arise, to the service or group of judicial police competent for the area in question.

SECTION II : JUDICIAL POLICE OFFICERS

Article 16

(Law n° 66-493 of 9 July 1966 Article 1 Official Journal of 10 July 1966)

(Law n° 72-1226 of 29 December 1972 Article 17 Official Journal of 30 December 1972)

(Law n° 75-701 of 6 August 1975 Article 20 Official Journal of 7 August 1975)

(Law n° 78-788 of 28 July 1978 Article 2 Official Journal of 29 July 1978)

(Law n° 85-1196 of 18 November 1985 Article 1 and 8 Official Journal of 19 November 1985 in force on 11 January 1986)

(Law n° 94-89 of 1 February 1994 Article 2 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law n° 95-125 of 8 February 1995 Article 53 Official Journal of 9 February 1995)

(Law n° 96-647 of 22 July 1996 Article 20 Official Journal of 23 July 1996)

(Law n° 98-1035 of 18 November 1998 Article 1 Official Journal of 19 November 1998)

(Inserted by Law n° 2003-239 of 18 March 2003 Article 8 III Official Journal of 19 March 2003)

The following have the status of judicial police officer:

1° mayors and their deputies;

2° officers and non-commissioned officers of the Gendarmerie, having at least three years' service with the Gendarmerie, being designated by name by a decision of the Ministers of Justice and Defence, on receiving the concurring opinion of a commission;

3° inspectors general, active police deputy-directors, general controllers, police superintendents, civil servants appointed to the command and direction group of the national police, and trainee civil servants appointed to the command and direction group of the national police who already hold this post, being designated by name by a decision of the Ministers of Justice and of the Interior on receiving the concurring opinion of a commission.

4° Civil servants appointed to the control and application group of the national police who have served for at least three years in this body, being designated by name by a decision of the Ministers of Justice and of the Interior on receiving the concurring opinion of a commission.

The composition of the commissions provided for under points 2° to 4° is determined by a public service order made upon the report of the Minister of Justice and of the other Ministers concerned.

Also holding the capacity of judicial police officer are the persons holding the functions of director or deputy-director of the judicial police under the Minister for the Interior, and of director or deputy director the Gendarmerie at the Ministry of Armed Forces.

The civil servants mentioned under points 2° to 4° above may not effectively exercise the attributions entailed by their capacity of judicial police officer, nor claim such capacity, unless they are appointed to a position which calls for such exercise and pursuant to a decision of personal accreditation made by the public prosecutor attached to the local appeal court. The exercise of these attributions is temporarily suspended during the time of their participation, as a formed unit, in an operation for the maintenance of public order. If they belong to a service whose jurisdiction extends beyond the area of the appeal court, the accreditation decision is made by the public prosecutor attached to the appeal court where the seat of their functions is located.

However, the civil servants mentioned in 4 above may not receive accreditation unless they have been attached either to a service or a category of service determined under article 15-1 and figuring on a list fixed by a ruling of the Minister of Justice and the Minister of the Interior, or exclusively attached to a group mentioned in the same ruling.

The conditions for the granting, withdrawal and suspension for a given period of time of the accreditation provided for by the previous paragraph are fixed by a Council of State Decree taken upon the report of the Minister of Justice and of the other Ministers concerned.

Article 16-1

(Inserted by Law n° 75-701 of 6 August 1975 Article 21 Official Journal of 7 August 1975 in force on 1 January 1976)

Within one month of the notification of the decision to suspend or withdraw his accreditation, a judicial police officer may apply to the public prosecutor to have this decision set aside. The public prosecutor must rule within one month. Failing this, his silence amounts to a dismissal of the application.

Article 16-2

(Inserted by Law n° 75-701 of 6 August 1975 Article 21 Official Journal of 7 August 1975 in force on 1 January 1976)

Within one month from the explicit or implicit dismissal provided for by the previous article, the judicial police officer may file a petition before a commission composed of three judges of the Court of Cassation holding the rank of president of division or judge. These judges are appointed annually by the office of the Court of Cassation, at the same time as three alternative judges.

The public prosecutor's duties are carried out by the general prosecution office attached to the Court of Cassation.

Article 16-3

(Inserted by Law n° 75-701 of 6 August 1975 Article 21 Official Journal of 7 August 1975 in force on 1 January 1976)

The commission rules by making a non-reasoned decision. The hearing is held and the decision is given in chambers. The hearing is oral; the applicant may be heard in person, on his own application or on that of his counsel; he may be assisted by his counsel.

The proceedings before the commission are set out by a Council of State Decree.

Article 17

Judicial police officers exercise the powers defined in article 14; they receive complaints and denunciations; they undertake police preliminary inquiries pursuant to the conditions provided for by articles 75 to 78.

In the event of a flagrant felony or misdemeanour, they exercise the powers which are conferred upon them by articles 53 to 67.

They have the right to directly request the support of police for the execution of their task.

Article 18

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 72-1226 of 29 December 1972 Article 18 Official Journal of 30 December 1972)

(Law n° 75-285 of 24 April 1975 Article 2 Official Journal of 25 April 1975)

(Law n° 78-788 of 28 July 1978 Article 3 Official Journal of 29 July 1978)

(Law n° 85-1196 of 18 November 1985 Articles 2 and 8 Official Journal of 19 November 1985 in force on 1 January 1986)

(Ordinance n° 92-1149 of 2 October 1992 Article 20 Official Journal of 16 October 1992 in force on 1 January 1993)

(Law n° 94-89 of 1 February 1994 Article 3 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law n° 95-125 of 8 February 1995 Article 54 Official Journal of 9 February 1995)

(Law n° 2003-239 of 18 March 2003 Article 8 II Official Journal of 19 March 2003)

Judicial police officers are competent within the territorial limits where they perform their usual functions.

Judicial police officers who have been temporarily made available to a service other than the one to which they are attached have the same territorial competence as the judicial police officers of the service they join.

In the event of a flagrant felony or misdemeanour, judicial police officers may go to the jurisdictional area of the district first-instance courts adjacent to the court or courts to which they are attached, in order to pursue their inquiries and proceed with examinations, searches and seizures. For the purpose of the present article, the jurisdictional areas of the district courts situated within the same department are considered to make up one single jurisdiction. The jurisdictional areas of the Paris, Nanterre, Bobigny and Créteil district first-instance courts are considered as a single area.

When acting in accordance with an express rogatory letter from the investigating judge or upon a requisition made by the district prosecutor taken in the course of a preliminary police enquiry or a flagrancy enquiry, judicial police officers may proceed with the operations prescribed by the judge or prosecutor over the entire national territory. They are required to be accompanied by a territorially competent judicial police officer, if the judge or prosecutor issuing the rogatory letter or requisition so decides. The district prosecutor with territorial competence is informed of this by the judge or prosecutor who has ordered the operation.

Where necessary, upon a proposition made by the administrative authorities on which they depend, and upon accreditation by the public prosecutor, they may be empowered to act within the same jurisdictional limits as the judicial police officers they are called upon to replace.

Judicial police officers or agents who carry out their duties in public transport vehicles or within the premises designed for access to such means of transport, are competent to operate throughout the whole of the defence zone of the service to which they are posted, pursuant to the conditions determined by Council of State Decree.

Article 19

Judicial police officers are required to notify the district prosecutor forthwith of the felonies, misdemeanours and petty offences of which they have knowledge. As soon as their operations are concluded, they must send him the original copy as well as a certified copy of the official records they have drafted. Any document or other instrument related to the offence is sent to him at the same time; the articles seized are held at his disposal.

Official records must state the capacity as officer of the judicial police of the person who drew them up.

Article 19-1

(Inserted by Law n° 93-2 of 4 January 1993 Article 2 Official Journal of 5 January 1993 in force on 1 March 1993)

The evaluation made by the public prosecutor of an accredited judicial police officer is taken into account for any promotion decision.

SECTION III : JUDICIAL POLICE AGENTS

Article 20

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 72-1226 of 29 December 1972 Article 19 Official Journal of 30 December 1972)

(Law n° 78-788 of 28 July 1978 Article 4 Official Journal of 29 July 1978)

(Law n° 85-1196 of 18 November 1985 Articles 3-i, 3-ii and 8 Official Journal of 19 November 1985 in force on 1 January 1986)

(Law n° 87-1130 of 31 December 1987 Official Journal of 1 January 1988)

(Law n° 96-647 of 22 July 1996 Article 21 Official Journal of 23 July 1996)

(Law n° 2001-1062 of 15 November 2001 Article 13 Official Journal of 16 November 2001)

The following persons hold the capacity of judicial police agent :

1° gendarmes who do not hold the capacity of judicial police officer;

2° civil servants appointed to the commanding and supervising bodies of the national police who do not have the capacity of judicial police officer, as well as the interns belonging to the same corps and the trainee police lieutenants;

3° civil servants appointed to the supervisory and enforcement body of the national police who do not hold the rank of officer of the judicial police, subject to the provisions concerning the civil servants considered under points 4° and 5° below;

4° police constables coming from the former corps of the non-commissioned officers and police constables of the national police appointed interns before December 31, 1985, where they have at least two years of service in the capacity of a fully qualified constable and have passed the tests of a technical examination in the conditions fixed by a Council of State Decree, or when they hold professional qualifications enabling them to proceed to a higher rank;

5° police constables coming from the former corps of police enquirers appointed interns before March 1, 1979, when they have at least two years of service in the capacity of a fully qualified constable and where they comply with the proficiency conditions set down by law n° 78-788 of July 28, 1978 reforming criminal procedure in respect of judicial police and the assize court jury, or where they have successfully undergone the tests of a technical examination in the conditions fixed by a Council of State Decree, or where they hold the professional qualification enabling them to proceed to a higher rank.

However, the civil servants mentioned in points 1° to 5° above may not validly exercise the attributions attached to their capacity as judicial police agent or claim such capacity unless they are posted to a position which involves its exercise. The exercise of these attributions is temporarily suspended during the time of they are participating, as a formed unit, in an operation for the maintance of public order.

The task of a judicial police agent is:

- to assist judicial police officers in the performance of their duties,

- to establish the existence of felonies, misdemeanours or petty offences and to draw up official records relating to them;

- to receive in the form of official records the statements made to them by any person liable to furnish clues, evidence, and information concerning the perpetrators and accomplices to such offences.

Judicial police agents do not have the capacity to decide on measures of police detention.

Article 20-1

(Inserted by Law n° 2003-239 of 18 March 2003 Article 9 Official Journal of 19 March 2003)

Retired officials of the national police force and national Gendarmerie who exercised the post of judicial police officer or agent during their service may enjoy the status of judicial police officer or agent where they are called up as part of the national police force or national Gendarmerie's reserve force. A Council of State Decree determines the conditions of application of the present article. It specifies the conditions of experience and qualifications required in order to benefit from the status of judicial police officer or agent pursuant to the present article.

Article 21

(Law no. 66-493 of 9 July 1966 Article 2 Official Journal of 10 July 1966)

(Law no. 78-788 of 28 July 1978 Article 5 Official Journal of 29 July 1978)

(Law no. 85-1196 of 18 November 1985 Article 4 & 8 Official Journal of 19 November 1985, in force on 1 January 1986)

(Law no. 97-1019 of 28 October 1997 Article 6 Official Journal of 8 November 1997)

(Law no. 2001-1062 of 15 November 2001 Article 13 Official Journal of 16 November 2001)

(Law n° 2003-239 of 18 March 2003 Article 90 Official Journal of 19 March 2003)

The following persons are assistant judicial police agents:

1° civil servants belonging to the active services of the national police who do not fulfil the conditions set down by article 20;

1° bis: volunteers serving in the capacity of military personnel with the Gendarmerie;

1° ter assistant security officers referred to in article 36 of the Law N° 95-73 of 21 January , 1995 on orientation in relation to security;

1° quater: constables of the Paris watch;

2° municipal police constables.

Their task is:

- to assist judicial police officers in the performance of their duties,

- to report to their superiors any felony, misdemeanour or petty offence of which they have knowledge;

To establish the existence of violations of the criminal law, in accordance with the orders given by their superiors, and to collect any information aimed at identifying the perpetrators of such offences, all this within the framework and pursuant to the formalities set out by the organic or special laws which are specific to them.

To note by way of official reports petty offences against the Traffic Code, of which the list is determined by Council of State Decree.

Where they compile an official report of an offence committed, judicial police officers may also officially receive any observations made by the offender.

Article 21-1

(Inserted by law no. 85-1196 of 18 November 1985 Article 5 & 8 Official Journal of 19 November 1985, in force on 1 January 1986)

Judicial police agents and assistant judicial police agents are competent within the territorial limits where they perform their usual duties, as well as within those where the judicial police officer in charge of the national police service or gendarmerie unit to which they have, by name, been temporarily posted exercises his functions. Where they assist a judicial police officer, they are competent within the territorial limits where the latter exercises his functions pursuant to the provisions of article 18.

Article 21-2

(Inserted by Law no. 99-291 of 15 April 1999 Article 13 Official Journal of 16 April 1999)

Without prejudice to the duty to account to the mayor which they owe under article 21, municipal police agents must immediately report any crime, misdemeanour or petty offence of which he is informed to any judicial police officer of the national police or of the gendarmerie territorially competent.

They simultaneously send their reports and official records without delay to the mayor and, through the officers of the judicial police mentioned in the previous subsection, to the district prosecutor.

SECTION IV: CIVIL SERVANTS AND AGENTS CHARGED WITH CERTAIN JUDICIAL POLICE FUNCTIONS.

Paragraph 1: Engineers, district heads and technical agents of the waters and forestry administration and rural policemen.

Article 22

Engineers, district heads and technical agents of the waters and forestry administration and rural policemen investigate and prove by means of official reports the existence of misdemeanours and petty offences which violate forestry or rural property.

Article 23

The district heads and technical agents of the waters and forestry administration, and also the rural policemen appointed by municipalities, follow objects that have been removed to the places where they have been taken, and sequester them.

They may however only gain access to houses, workshops, buildings, adjacent courtyards and enclosures in the presence of a judicial police officer, who may not refuse to accompany them, and who signs the official record of the operation he witnessed.

Article 24

The district heads and technical agents of the waters and forestry administration as well as the rural policemen appointed by municipalities bring before a judicial police officer any person they find committing a flagrant misdemeanour.

The district heads and technical agents of the waters and forestry administration may in the performance of the duties under article 22, directly require the assistance of the forces of order; rural policemen may ask to be assisted by the mayor, the deputy-mayor, or the head

of the gendarmerie unit, who are not entitled to refuse.

Article 25

The district heads and technical agents of the waters and forestry administration and also the rural policemen appointed by municipalities may be called upon by the district prosecutor, the investigating judge and by judicial police officers to assist them.

Article 26

The district heads and technical agents of the waters and forestry administration submit to their superior the official reports establishing the existence of offences committed against forestry properties.

Article 27

Rural policemen send their official reports simultaneously to the mayor and, through the territorially competent judicial police officers attached to the police or the national Gendarmerie, to the district prosecutor.

These must be sent to the recipient within five days, including the day on which they established the matter which is the subject of the official report.

Paragraph 2: Civil servants and agents belonging to administrations and public utilities.

Article 28

The civil servants and agents belonging to the administrations and publics utilities to whom special laws grant certain judicial police powers exercise powers under the conditions and within the limits these laws lay down..

Paragraph 3: Sworn private guards.

Article 28-1

(Law n° 99-515 of 23 June 1999 Article 28 Official Journal of 24 June 1999 in force on 1 February 2000)

(Law No. 2000-516 of 15 June 2001 Article 83 Official Journal of 16 June 2000 in force on 1 January 2001)

I

Custom officers of categories A and B, specifically designated by Order of the Ministers of Justice and of Finance, in accordance with the advice of a commission the composition and functioning of which is determined by a decree of the Conseil d'État, may be authorised to carry out judicial inquiries when required by a district prosecutor or on a rogatory letter from an investigating judge.

For the exercise of the duties specified under this article, these agents are competent to act in any part of the national territory. They are competent to seek out and establish offences under the Customs Code, offence in relation to indirect taxation, offences under articles L. 716-9 to L. 716-11 of the Intellectual Property Code, and also for offences connected with them.

However, subject to the provisions of II, they are not competent to act in drug-trafficking, arms traffic, theft of cultural goods and laundering the products of these three categories of offences.

II

For the discovery and reporting of offences under articles 222-34 to 222-40 of the Criminal Code and under the Ordinance of the 18th April 1939 establishing the regime for war materials, arms and munitions and offences in relation to them, the district prosecutor or investigating judge who is territorially competent may create temporary units composed of judicial police officers and customs officers drawn from those mentioned in I above.

The temporary units shall act under the supervision of the commissioning district prosecutor or investigating judge pursuant to the provisions of the present Code. They are competent in any part of the national territory.

III

Customs officers referred to under I and II above are not competent to carry out judicial inquiries where the facts have been established under the provisions of the Customs Code. However, in these cases they may implement rogatory letter from the investigating judge.

IV

To carry out judicial enquiries and to receive commissions rogatory, customs officers designated under I above must be personally authorised by a decision of the district prosecutor.

The grant of authorisation is made by the district prosecutor before the court of appeal for the place where they carry out their duties. It is delivered, suspended or withdrawn under the conditions fixed by a decree of the Conseil d'État.

Within a month after notification of a decision suspending or withdrawing the authorisation, the relevant officer may request the district prosecutor to revoke that decision. The district prosecutor must rule within one month. Failing this, his silence counts as dismissal of the request. Within one month from the dismissal of the request, the relevant officer may apply for a review before the commission specified

to under article 16-2. The procedure before that commission is that set out in article 16-3 and its implementing rules.

V

For the exercise of the functions mentioned in I and II above, customs officers are under the direction of the district prosecutor, supervised by the prosecutor general and regulated by the investigating chamber of the place where they carry out their duties, as laid down under articles 224 to 230.

VI

Where, when required by the district prosecutor, the customs officers referred to under I and II above carry out judicial inquiries, articles 54 (second and third paragraphs), 56, 57 to 62, 63 to 67, 75 to 78, 706-28, 706-29 and 706-32 shall apply.

Where such officers act under a rogatory letter from an investigating judge, articles 152 to 155 likewise apply.

These officers may declare as their domicile the seat of the body to which they are attached.

VII

The customs officers referred to under I and II as above are placed under the administrative direction of a judge under the conditions laid down by a decree of the Conseil d'État.

VIII

Custom officers referred to under I and II as above may not, under penalty of nullity, exercise any other powers or carry out any other acts apart from those specified under the present Code and in the context of the matters with which they are entrusted by the judicial authority.

Article 29

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

Sworn private guards establish by official reports the existence of all the misdemeanours and petty offences violating the property they guard.

The official reports are given or sent by recorded delivery letter directly to the district prosecutor. This referral must be made within three days at the latest, starting from the date when they established the existence of the fact dealt with in the official report, under penalty of nullity.

SECTION V : Repealed

Article 30

(Repealed by law n° 93-2 of 4 January 1993)

CHAPTER II: THE PUBLIC PROSECUTOR

SECTION I: GENERAL PROVISIONS

Article 31

The public prosecutor exercises the public action and formally requests the law to be enforced.

Article 32

It is represented before each criminal court.

It takes part in hearings of courts of trial; every decision is read in its presence.

It ensures the enforcement of court decisions.

Article 33

The public prosecutor is bound to make written submissions in conformity with the instructions given under the conditions set out in articles 36, 37 and 44. It is free to make such oral submissions as it believes to be in the interest of justice.

SECTION II: ATTRIBUTIONS OF PROSECUTOR GENERAL ATTACHED TO THE APPEAL COURT

Article 34

The prosecutor general represents in person or through his deputies the public prosecutor before the appeal court and before the assize court established at the seat of the appeal court, subject to the provisions of article 105 of the Forestry Code and of article 446 of the Rural Code. He may in the same conditions represent the public prosecutor before the other assize courts within the area of jurisdiction of the appeal court.

Article 35

The prosecutor general has the duty of supervising the implementation of criminal laws throughout the whole area of the appeal court's territorial jurisdiction

He is sent for this purpose a monthly statement of the cases pending within the jurisdiction by each district prosecutor.

In the performance of his duties, the prosecutor general has the right to require directly the assistance of police.

Article 36

(Law no. 93-2 of 4 January 1993 Article 3 Official Journal of 5 January 1993)

(Law n° 93-1013 of 24 August 1993 Article 1 Official Journal of 25 August 1993 in force on 2 September 1993)

The Minister of Justice may notify the prosecutor general of offences against criminal laws of which he has gained knowledge, direct him to initiate or to cause the initiation of a prosecution by written instructions which are attached to the file of the case, and to refer to the competent court such written submissions as the Minister deems appropriate.

Article 37

The prosecutor general holds authority over all the public prosecutors within the area of jurisdiction of the appeal court.

He has the same prerogatives in respect of these prosecutors as those granted to the Minister of Justice under the previous article.

Article 38

Judicial police officers and agents are placed under the supervision of the prosecutor general. He may instruct them to collect any information he considers useful for the proper administration of justice.

SECTION III: ATTRIBUTIONS OF THE DISTRICT PROSECUTOR

Article 39

(Ordinance no. 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Ordinance no.60-529 of 4 June 1960 Article 2 Official Journal 8 June 1960)

The district prosecutor represents in person or through his deputies the public prosecutor before the district court, subject to the provisions of article 105 of the Forestry Code and of article 446 of the Rural Code.

He also represents in person or through his deputies the public prosecutor before the assize court established at the seat of the district court.

In the same way, he represents in person or through his deputies the public prosecutor before the police court under the conditions determined by article 45 of the present Code.

Article 40

(Law no. 85-1407 of 30 December 1985 Article 1 & 94 Official Journal of 31 December 1985, in force on 1 February 1986)

(Law no. 98-468 of 17 June 1998 Article 27 Official Journal of 18 June 1998)

The district prosecutor receives complaints and denunciations and decides how to deal with them. He informs the complainant of the discontinuance of the case, as well as the victim where the latter has been identified. Where the offences are committed against a minor and are set out and punished by articles 222-23 to 222-32 and 227-22 to 227-27 of the Criminal Code, the discontinuance notice must be reasoned and notified in writing.

Every constituted authority, every public officer or civil servant who, in the performance of his duties, has gained knowledge of the existence of a felony or of a misdemeanour is obliged to notify forthwith the district prosecutor of the offence and to transmit to this prosecutor any relevant information, official reports or documents.

Article 40-1

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 64 Official Journal of 10 September 2002)

Where the victim wishes to exercise the rights of the civil party and requests that an advocate be appointed after being informed of this right pursuant to 3° of articles 53-1 and 75, the district prosecutor, informed by the judicial police officer or agent, where he has decided to initiate a prosecution, notifies the president of the Bar of this.

If he does not, he informs the victim, when telling him that his case has been dropped, that he make a request directly to the president of the Bar if he still intends to seek compensation for the harm he has suffered.

Article 41

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law no. 81-82 of 2 February 1981 Article 38 Official Journal of 3 February 1981)

(Law no. 89-461 of 6 July 1989 Article 1 Official Journal 8 July 1989)

(Law no. 93-2 of 4 January 1993 Article 5 & 6 Official Journal of 5 January 1993)

(Law no. 99-515 of 23 June 1999 Article 2 Official Journal of 24 June 1999)

(Law no. 2000-516 of 15 June 2000 Article 102 & 123 Official Journal of 16 June 2000)

(Law no. 2000-516 of 15 June 2000 Article 3 Official Journal of 16 June 2000, in force on 1 January 2001, in force on 1 January 2001)

(Law no. 2002-307 of 4 March 2002 Article 1 Official Journal of 16 June 2000)

(Law n° 2003-1119 9f 26 November 2003 Article 80 Official Journal of 27 November 2003)

The district prosecutor institutes or causes to be taken any step necessary for the discovery and prosecution of violations of the criminal law.

To this end, he directs the activity of the judicial police officers and agents within the area of jurisdiction of his court.

The district prosecutor supervises police custody measures. He visits the places where persons are held whenever he considers this to be necessary and at least once every year; he keeps a record listing the number and frequency of the checks carried out in the various places.

He has all the powers and prerogatives attached to the capacity of judicial police officer provided for by section II of Chapter I of Title I of the present Book, as well as by specific criminal legislation.

In the event of a flagrant offence, he exercises the powers granted by article 68.

The district prosecutor may also request, as the case may be, the assistance of the penal social integration and probation service, of the competent supervised education service, or of any person accredited pursuant to the conditions set out by article 81, sixth paragraph, in order to check the material, family and social situation of a person under investigation, and in order to be informed of the appropriate measures to support the social integration of the person concerned. In the event of a prosecution initiated against an adult of less than twenty-one years of age at the time of the commission of the offence, where the penalty incurred is not in excess of five years of imprisonment, such steps must be ordered before any submission designed to obtain a pre-trial detention order.

Except in respect of offences under Articles 19 and 27 of the Ordinance n° 45-2658 of 2 November 1945 on conditions and entry and residence for foreigners in France, in the case of prosecutions for offences liable to result in the making against any foreigner of an order of banning him from French territory who declares, before any court has been seised of the case, that he falls within one of the situations covered by articles 131-30-1 or 131-30-2 of the Criminal Code, the district prosecutor may not make a recommendation for banning him from French territory unless he has previously engaged, as appropriate, the competent judicial police officer, the penal social integration and probation service, the competent youth protection service, or some other person qualified under Article 81, sixth paragraph, to verify the accuracy of his declaration.

The district prosecutor may also have recourse to an association providing help and assistance to victims of crime which has entered into an agreement with the managers of the court of appeal, in order that help may be provided to the victim of the offence.

Article 41-1

(Law no. 85-1407 of 30 December 1985 Articles 2 and 94 Official Journal of 31 December 1985 in force on 1 February 1986)

(Law no. 87-962 of 30 November 1987 Article 10 Official Journal of 1 December 1987)

(Law no. 99-515 of 23 June 1999 Article 1 Official Journal of 24 June 1999)

(Law n° 2003-495 of 12 June 2003 Article 6 IX Official Journal of 13 June 2003)

Where it appears that such a measure is likely to secure reparation for the damage suffered by the victim, or to put an end to the disturbance resulting from the offence or contribute to the reintegration of the offender, the district prosecutor may, directly or by delegation;

1° bring to the attention of the offender the duties imposed by law;

2° direct the offender towards a public health, social or professional organisation. In cases where the offence was committed while driving a motor vehicle, this measure may consist of requiring the offender to take a road safety awareness course at his own expense;

3° require the offender to regularise his situation under any law or regulation;

4° require the offender to make good the damage caused by the offence;

5° put in train, with the consent of the parties, mediation between the offender and the victim.

The acts specified under this article suspend the limitation period for public prosecution.

Article 41-2

(Law n° 99-515 of 23 June 1999 Article 1 Official Journal of 24 June 1999)

(Law n° 2001-1062 of 15 November 2001 Article 54 Official Journal of 16 November 2001)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000 in force on 1 January 2002)

(Law n° 2002-1138 of 9 September 2002 Article 36 Official Journal of 10 September 2002)

Prior to any public prosecution being instituted, the District prosecutor may propose, directly or through an authorised person, criminal mediation to an adult person who admits having committed one or more misdemeanours under articles 222-11, 222-13 (1° to 11°), 222-16, 222-17, 222-18 (first paragraph), 227-3 to 227-7, 227-9 to 227-11, 311-3, 313-5, 314-5, 314-6, 321-1, 322-1, 322-2, 322-12 to 322-14, 433-5 to 433-7 and 521-1 of the Criminal Code, under the articles 28 and 32 (2°) of the Ordinance of 18 April 1939 fixing the regime of war materials, arms and munitions, under Article L. 1 of the Traffic Code and under Article L. 628 of the Public Health Code, which consists of one or more of the following orders;

1° the payment of a mediatory fine to the Public Treasury. The amount of such a mediatory fine, which may not exceed either € 3,750 or half of the maximum fine for the offence, is fixed in accordance with the gravity of the facts as well as the income and expenses of the person. Its payment may be made by instalments in accordance with a schedule of payments fixed by the district prosecutor within a period which may not exceed one year.

2° ° to hand over to the State the thing which was used to or intended to commit the offence, or which is the product of it;

3° to surrender to the clerk's office of the district court the offender's driving licence for a maximum period of six months, or his hunting licence for a maximum period of four months;

4° to undertake for the benefit of the community unpaid work for a maximum of sixty hours, over a period which may not exceed six months;

5° the completion of a maximum of three months' training course or work experience with an organisation or service provider in health, social care or some other professional area over a period which may not exceed eighteen months.

Where the victim is identified, and unless the offender establishes that the damage has been made good, the district prosecutor must propose to the offender that he make good the damage caused by his offence within a period which may not exceed six months. He informs the victim of this proposal.

The district prosecutor's proposal for criminal mediation may be brought to the knowledge of the offender through a judicial police officer. Here it takes the form of written decision signed by the prosecutor, which specifies the nature and quantum of the measures proposed and which is endorsed on the file.

Criminal mediation may be proposed in a public centre for legal advice.

The person to whom criminal mediation is proposed is informed that he may be assisted by an advocate before giving his consent to the district prosecutor's proposal. This consent is recorded in a official record. A copy of the official record is given to him.

Where the offender consents to the measures proposed, the district prosecutor seises the President of the district court by way of a petition seeking the approval of the mediation. The district prosecutor informs the offender of this and, where necessary, the victim. The President of the court may proceed to hear the offender and the victim, assisted, where necessary, by their advocates. Where the judge makes an order approving the mediation, the measures decided are put into effect; if not, the proposal becomes void. The decision of the President of the district court, which is notified to the offender and, where necessary, the victim, is not open to appeal.

Where the person does not accept the mediation or where, after having given his consent, he does not fully implement the measures decided on, or where the approval required by the previous paragraph is not given, the district prosecutor decides what further action to take in the case. In the case of prosecution and conviction, account is taken, where appropriate, of the work already accomplished and sums already paid by the offender.

The limitation period for prosecution is suspended between the dates when the district prosecutor proposes criminal mediation and the expiry of the time granted for the mediation to be carried out.

The implementation of the criminal mediation extinguishes the prosecution. However it does not negate the right of a civil party to issue a summons before the correctional court under the conditions laid down by the present Code. The court then rules only on the civil aspects of the case, on examining the file, which is open for discussion.

Any criminal mediations carried out are recorded on certificate n°1 of the offender's criminal record.

The conditions for the application of the present article are fixed by a Council of State decree.

Article 41-3

(Law n° 99-515 of 23 June 1999 Article 1 Official Journal of 24 June 1999)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000 in force on 1 January 2002)

(Law n° 2002-1138 of 9 September 2002 Article 36 Official Journal of 10 September 2002)

Criminal mediation is also applicable in cases of assault and minor criminal damage, as well as for the list of offences determined by Council of State decree.

The maximum amount of the mediatory fine may not exceed € 750 nor half the maximum fine applicable to the offence; the period before a driving licence or hunting permit is returned may not exceed two months and the length of unpaid work may not exceed thirty hours, within a maximum period of three months.

The application to validate the arrangement is brought before a judge.

Article 41-4

(Inserted by Law n° 99-515 of 23 June 1999 Articles 1 and 21 Official Journal of 24 June 1999)

Where no court has been seised, or where the court involved has exhausted its jurisdiction without deciding on the return of property, the district prosecutor or prosecutor general are competent to decide, on their own motion or upon application, as to the restitution of property of which the ownership is not seriously disputed.

No restitution takes place when the property is likely to cause danger for persons or property. The decision not to return property which has been taken on these grounds, even on its own motion, by the district prosecutor or by the public prosecutor, may be challenged within one month of being notified through a petition filed by the person concerned with the correctional court or with the criminal appeals division, which rule in chambers. Nor is there restitution when a specific provision provides for the destruction of the articles placed under court administration.

Where the restitution of articles has not been requested or decided within six months from the day of the decision disposing of the matter, or from the decision by which the last court seised has extinguished its jurisdiction, the unreturned articles become the property of the State, subject to the rights of third parties. The same is the case where the owner, or where the person to whom the return has been granted, does not claim the property within two months from being served notice at his place of domicile to collect it. Returnable articles which are liable to endanger other people's persons or property become the property of the State, subject to the rights of third parties, once the decision not to return them is no longer open to challenge, or once the judgment or decision refusing restitution has become final.

Article 42

The district prosecutor has the right to require directly the assistance of police for the performance of his duties.

Article 43

The district prosecutors with jurisdiction are those of the place of commission of the offence, of the residence of one of the persons suspected to have taken part in the commission of the offence, and of the place where one of these persons was arrested, even where this arrest was made for another reason.

Article 44

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

The district prosecutor holds authority over the police prosecutors attached to the police courts within his area of jurisdiction. He may notify them of the petty offences of which he has notice and direct them to initiate a prosecution. He may also, where appropriate, request the initiation of a judicial investigation.

SECTION IV: THE PUBLIC PROSECUTOR ATTACHED TO THE POLICE COURT

Article 45

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Ordinance no.60-529 of 4 June 1960 Article 2 Official Journal 8 June 1960)

(Law no. 72-1226 of 29 December 1972 Article 62 Official Journal of 30 December 1972)

(Law no. 79-1131 of 28 December 1979 Article 5 Official Journal of 29 December 1979)

(Law no. 85-835 of 7 August 1985 Article 7 Official Journal of 8 August 1985, in force on 1 October 1986)

(Law no. 89-469 of 10 July 1989 Article 8 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law no. 92-1336 of 16 December 1992 Article 10 Official Journal of 23 December 1992, in force on 1 March 1994)

The district prosecutor attached to the district court represents the prosecution before the police court for the fifth class of petty offences. If he deems it appropriate he may also represent it in any matter in place of the police superintendent who usually performs such functions,.

However, in the case of forestry offences referred to the police courts, the duties of the public prosecutor are performed either by a waters and forestry administration engineer, or by a district head or a technical agent, who are appointed by the waters and forestry administration warden.

Article 46

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Ordinance no.60-529 of 4 June 1960 Article 2 Official Journal 8 June 1960)

(Law no. 72-1226 of 29 December 1972 Article 20 Official Journal of 30 December 1972)

(Law no. 97-647 of 22 July 1996 Article 22 Official Journal of 23July 1996)

When the police superintendent is unable to attend , the prosecutor general appoints for an entire year one or more substitutes chosen from the police superintendents, police majors or captains residing within the territorial jurisdiction of the district court.

In exceptional circumstances and where it is absolutely necessity for the holding of a hearing, the judge of the court for minor offences may call upon the mayor of the locality where the police court sits, or one of his deputies, to perform the public prosecutor's duties.

Article 47

If several police superintendents reside in the locality where the police court sits, the public prosecutor appoints the one who is to perform the public prosecutor's duties.

Article 48

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Ordinance no.60-529 of 4 June 1960 Article 2 Official Journal 8 June 1960)

(Law no. 72-1226 of 29 December 1972 Article 21 Official Journal of 30 December 1972)

(Law no. 89-461 of 6 July 1989 Article 21 Official Journal 8 July 1989)

(Law no 96-647 of 22 July 1996 Article 22 Official Journal 23 July 1996)

If no police superintendent resides in the locality where the police court sits, the prosecutor general appoints to perform the public prosecutor's duties a police superintendent, a police major or captain residing within the territorial jurisdiction of the district court or, failing which, within that of a neighbouring district court located in the same district.

CHAPTER III: THE INVESTIGATING JUDGE

Article 49

The investigating judge is in charge of judicial investigations, as indicated under Chapter I of Title III.

He may not take part in the trial of the criminal cases he dealt with in his capacity as investigating judge, under penalty of nullity.

Article 50

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law no. 87-1062 of 30 December 1987 Article 24 Official Journal 31 December 1987, in force on 1 March 1998)

The investigating judge is selected from the judges of the court, and is appointed following the formal rules provided for the appointment of judges.

In case of necessity, another judge may be temporarily entrusted with the investigating judge's duties following the same formalities, concurrently with the judge appointed in the manner specified under the first paragraph.

Where the appeal court president delegates a judge to the court, he may similarly make an order temporarily putting the judge in charge of judicial investigations.

Where the investigating judge is absent, ill or otherwise unable to act, the district court appoints one of the court's judges to replace him.

Article 51

The investigating judge may only begin an investigation after having seised of the case by a submission made by the district prosecutor or by a complaint with a petition to become a civil party, pursuant to the conditions set out in articles 80 and 86.

In the event of flagrant felonies or misdemeanours, he exercises the powers attributed to him by article 72.

The investigating judge has the right to require the assistance of police for the performance of his duties.

Article 52

The judges with jurisdiction are the investigating judge of the place of commission of the offence, the judge of the place of residence of one of the persons suspected to have taken part in the offence, and the judge of the place of arrest of one of these persons, even if this arrest was made on other grounds.

TITLE II: INQUIRIES AND IDENTITY CHECKS

CHAPTER I: FLAGRANT FELONIES AND MISDEMEANOURS

Article 53

(Law no. 99-515 of 23 June 1999 Article 11 Official Journal of 24 June 1999)

A flagrant felony or misdemeanour is a felony or misdemeanour in the course of being committed, or which has just been committed. The felony or misdemeanour is also flagrant where, immediately after the act, the person suspected is chased by hue and cry, or is found in the possession of articles, or has on or about him traces or clues that give grounds to believe he has taken part in the felony or misdemeanour.

A flagrant offence investigation following the discovery of a flagrant felony or misdemeanour may not be carried on for longer than eight days.

Article 53-1

(Inserted by Law n° 2000-516 of 15 June 2000 Article 104 Official Journal of 16 June 2000 in force on 1 January 2001)

Judicial police officers and agents inform victims, using any means of communication, of their right:**:**

1° to obtain compensation for the harm suffered;

2° to exercise the rights of the civil party if the public prosecution has been instigated by the public prosecutor or by directly citing the perpetrator to appear before the competent court or by lodging an official complaint before the investigating judge;

3° if they wish to exercise the civil party's right to be assisted by an advocate of their choice or, at their request, by one nominated by the president of the bar attached to the competent court, the costs are to be borne by the victims, unless they are eligible for legal aid, or are covered by legal protection insurance;

4° to be assisted by a service pertaining to one or more local authorities or an approved victim support association;

5° to transfer the case, where appropriate, to the committee for the compensation of victims of offences, where the offence falls under the remit of articles 706-3 and 706-14.

Article 54

The judicial police officer who is told of a flagrant felony immediately informs the district prosecutor, goes forthwith to the scene of the crime and records any appropriate findings.

He ensures the conservation of any clues liable to disappear and of any item which may be of use for the discovery of the truth. He seizes the weapons and instruments which were used to commit the felony or which were designed or intended for its commission, as well as any item which appears to have been the product of this felony.

He presents for recognition any articles seized to any persons who appear to have been involved in the crime, if they are present.

Article 55

(Decree 85-956 of 11 September 1985 Article 2 Official Journal of 12 September 1985)

(Law n° 85-835 of 7 August 1985 Article 8 Official Journal of 8 August 1985 in force on 1 October 1986)

(Decree 89-989 of 29 December 1989 Article 1 Official Journal of 31 December 1989, in force on 1 January 1990)

(Law n° 92-1336 of 16 December 1992 Articles 11 and 326 Official Journal of 23 December 1992, in force on 1 March 1994)

Any non-accredited person on the scene of a crime is forbidden to modify the state of the premises before the first judicial enquiry operations or to take any samples, under penalty of the fine set out for petty offences of the fourth class.

However, an exception is made where such alterations or samples are necessitated by the requirements of public health or safety, or the need to provide help for victims.

Article 55-1

(Inserted by Law n° 2003-239 of 18 March 2003 Article 93 Official Journal of 19 March 2003)

A judicial police officer may carry out or supervise the taking of non-intimate samples from any person able to provide information about the offence in question, or from any person against whom there exist one or more plausible reasons to suspect that he has committed or

attempted to commit an offence, in order to carry out technical and scientific tests comparing them with traces or clues obtained for the purposes of the enquiry.

He carries out or oversees the reporting measures necessary for consulting the relevant police files, and adding information to them, pursuant to the regulations applicable to the file in question.

Refusal to allow the samples ordered by the judicial police officer to be taken is punished by a year's imprisonment and by a fine of €15,000.

Article 56

(Ordinance no. 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 99-515 of 23 June 1999 Article 22 Official Journal of 24 June 1999)

(Law n° 2001-1168 of 11 December 2001 Article 18 Official Journal of 12 December 2001)

Where the type of the crime is such that evidence of it may be collected by seizing papers, documents or other articles in the possession of the persons who appear to be involved in the crime or to be detaining documents or articles pertaining to the criminal offence, the judicial police officer proceeds forthwith to the domicile of such persons to initiate a search, in respect of which he draws up a official report.

He is the only person, together with those persons mentioned under article 57 and any persons upon whom he calls pursuant to article 60, to be allowed to examine the papers or documents before proceeding to seize them.

However, he has the duty first to initiate any step appropriate to ensure the observance of professional secrecy and of the defendant's rights.

Any article or document seized is immediately entered on an inventory and placed under official seals. However, if it is difficult to make such an inventory on the spot, their are put under temporary closed official seals until the moment of inventory and placing under final official seals, and this is done in the presence of the persons who have witnessed the search pursuant to the rules set out by article 57.

Subject to the agreement of the district prosecutor, the judicial police officer only maintains the seizure of the articles and documents useful for the discovery of the truth.

In addition, the district prosecutor may, where the seizure involves money, ingots, property or securities the preservation of which in their original form is not necessary for the discovery of the truth, authorise their deposit in the Caisse des dépots and consignations or at the Bank of France.

Where the seizure involves forged bank notes or money marked in euros, the judicial police officer must transmit, for analysis and identification, at least one example of each type of note or coin suspected of being false to the national laboratory authorised for this task. The national laboratory may open the official seals. It draws up an inventory in a report which must mention any opening or re-opening of the seals. When these operations are completed, the report and the sealed objects are put into the hands of the clerk of the appropriate court. This transfer is recorded by a official report.

The provisions of the previous paragraph do not apply where only one example of a particular type of suspect banknote or coin exists and it is needed for the discovery of the truth.

Article 56-1

(Law n° 85-1407 of 30 December 1985 Article 10 & 94 Official Journal of 31 December 1985 in force on 1 February 1986)

(Law n° 93-2 of 4 January 1993 Article 7 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 44 Official Journal of 16 June 2000)

A search of the chambers of an advocate or of his domicile may only be made by a judge or prosecutor and in the presence of the president of the bar association or of his delegate. The judge or prosecutor and the president or his delegate are the only ones who have the right to be informed about documents discovered during a search with a view to their possible seizure.

The president or his delegate may object to the seizure of a document to which the judge or prosecutor intends to carry out if he considers that it would be irregular. The document is then placed under official seals. This is recorded in a official record indicating the objections of the chairman or his delegate, which is not entered as part of the procedural file. Where other documents have been seized during the search without objection, the official record is separate from that required by article 57. This official record and the document placed under seal is transmitted to custody judge with the original or a copy of the file.

Within five days from receiving the documents, the custody judge gives a reasoned ruling on the objection, which is not open to appeal.

To this end, he hears the judge or prosecutor who carried out the search and, where necessary, the district prosecutor and also the advocate in the chambers subject to the search and the president or his delegate. He may open the seal in the presence of these persons.

Where he considers that it is not necessary to seize the document, the custody judge orders its immediate return and the destruction of the official record recording the events and, where necessary, the cancellation of any reference to that document or its contents which appears in the official file of the case.

Otherwise, he orders the document and the official record to form part of the official file. His decision does not preclude the parties asking the seizure to be nullified by, as appropriate, the trial court or the investigating chamber.

Article 56-2

(Law n° 93-2 of 4 January 1993 Article 55 Official Journal of 5 January 1993, in force on 1 March 1993)

A search of the premises of a press or audio-visual communication undertaking may only be made by a judge or prosecutor who ensures that such investigations do not violate the freedom of exercise of the profession of journalist and do not unjustifiably obstruct or delay the distribution of information.

Article 56-3

(Law n° 2000-516 of 15 June 2000 Article 44 Official Journal of 16 June 2000)

A search of the office of a doctor, notary, attorney or bailiff is made by a judge or prosecutor and in the presence of the person responsible for the professional college or organisation to which the person concerned belongs, or in the presence of his representative.

Article 57

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958, in force on 2 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 1 Official Journal of 8 June 1960)

Subject to the terms of the previous article concerning the observance of professional secrecy and of the defendant's rights, the operations prescribed by that article are made in the presence of the person in whose domicile the search is made.

Where this is impossible, the judicial police officer has the duty to ask him to appoint a representative of his choice; failing this, the judicial police officer will appoint two witnesses, chosen for this purpose from amongs persons who are not under his administrative authority.

The official report of these operations is drafted as described under article 66 and is signed by the persons mentioned by the present article; in the event of a refusal, this is noted in the official report.

Article 57-1

(Inserted by Law n° 2003-239 of 18 March 2003 Article 17 °1 Official Journal of 19 March 2003)

Judicial police officers or judicial police agents under their supervision may, during the course of a seizure carried out in the conditions laid down by the present code, access any data relevant to the enquiry in progress stored in a computer system set up within the premises where the seizure is carried out or in another computer system, provided the data is accessible from the initial system or is available for the initial system.

Where it is known in advance that data which is accessible from the initial system or available for the initial system is stored in another computer system situated outside the territory of the French Republic, it is collected by a judicial police officer, pursuant to the conditions of access provided by any international agreements currently in force.

The data which has been accessed pursuant to the conditions of the present article may be copied onto any medium. Any computer storage equipment may be seized and placed in judicial safekeeping under the conditions laid down by the present code.

Article 58

(Ordinance n° 60-121 of 13 February 1960 Article 1 Official Journal of 14 February 1960)

(Law n° 77-1468 of 30 December 1977 Article 16 Official Journal of 31 December 1977 in force on 1 January 1978)

(Law n° 93-2 of 4 January 1993 Article 160 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 92-1336 of 16 December 1992 Article 322 Official Journal of 23 December 1992, in force on 1 March 1994)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000, in force on 1 January 2002)

Subject to the necessities of enquiries, any communication or disclosure of a document seized during a search to a person not lawfully accredited to examine it, made without the authorisation of the person under judicial investigation or his successors, or that of the signatory or addressee of the document, is punished by a fine of € 4,500 and imprisonment for up to two years.

Article 59

(Ordinance n° 60-1245 of 25 November 1960 Article 12 Official Journal of 27 November 1960)

(Law n° 92-1336 of 16 December 1992 Article 12 Official Journal of 23 December 1992, in force on 1 March 1994)

(Law n° 93-2 of 4 January 1993 Article 161 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 20 Official Journal of 25 August 1993, in force on 2 September 1993)

Except where they are requested from within a building or in the exceptional cases provided for by law, searches and house visits may not be undertaken before 6 a.m. nor after 9 p.m.

The formalities mentioned under articles 56, 56-1, 57 and the present article are prescribed under penalty of nullity.

Article 60

(Law n° 72-1226 of 29 December 1972 Article 9 Official Journal of 30 December 1972)

(Law n° 85-1407 of 30 December 1985 Articles 11 and 94 Official Journal of 31 December 1985 in force on 1 February 1986)

(Law n° 99-515 of 23 June 1999 Article 12 Official Journal of 24 June 1999)

Where there is occasion to carry out any forensic, technical or scientific examination, a judicial police officer has recourse to all qualified persons.

Unless they are registered on a list provided for by article 157, the persons called upon take an oath in writing to assist the administration of justice upon their honour and conscience.

The persons appointed to carry out any technical or scientific examination may open the official seals. They draw up an inventory and mention this in a report made in conformity with articles 163 and 166. They may orally communicate their findings to the investigators in cases of emergency.

On the instructions of the district prosecutor, a judicial police officer discloses the findings of the technical and scientific examinations to those persons against whom matters exist giving rise to the suspicion that they have committed or have attempted to commit offences, and also to the victims.

Article 61

(Ordinance no. 61-112 of 2 February 1961 Article 1 Official Journal of 3 February 1961)

(Law n° 81-82 of 2 February 1981 Article 79 Official Journal of 3 February 1982)

(Law n° 83-466 of 10 June 1983 Article 17 Official Journal of 11 June 1983 in force on 27 June 1983)

A judicial police officer may prohibit any person from leaving the scene of the offence until the conclusion of his operations.

Article 61-1

(Inserted by Law n° 2003-239 of 18 March 2003 Article 18 °1 Official Journal of 19 March 2003)

At the request of a judicial police officer, who can intervene by means of telecommunications or computers, public organisations or private legal persons, with the exception of those set out in the second paragraph of article 31 and article 33 of Law n° 78-17 of 6 January 1978 relating to computers, databases and liberties, must make available information helpful for the discovery of the truth, with the exception of information the secrecy of which is protected by statute, where it is stored in one or more computer or data processing systems that they administer.

A judicial police officer, intervening on the orders of a district prosecutor authorised in advance by a decree from the liberty and custody judge, may require telecommunications operators, particularly those mentioned by article 43-7 of Law n°86-1067 of 30 September 1986 relating to the freedom of communication, to take without delay all appropriate measures to ensure the preservation, for a period that may not exceed one year, of the text of the information consulted by persons using the services provided by the operators.

The organisations or persons to which this article applies must make the required information available as quickly as possible by means of telecommunication or computers.

Refusal to respond to such a request without a legitimate reason is punished by a fine of € 3,750. Legal persons may be declared criminally responsible for the offence set out in the present article under the conditions laid down by article 121-2 of the Criminal Code. The penalty incurred by these legal persons is a fine, pursuant to the provisions outlined in article 131-38 of the Criminal Code.

A Council of State decree made after receiving the opinion of the National Commission for Data Protection determines the categories of organisation covered by the first paragraph, and also the methods for examining, transmitting and processing the required information.

Article 62

(Ordinance n° 60-121 of 13 February 1960 Article 1 Official Journal of 14 February 1960)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 Article 8 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 4 Official Journal of 16 June 2000 in force on 1 January 2001)

(Law n° 2002-307 of 4 March 2002 Article 2 Official Journal of 5 March 2002)

A judicial police officer may summon and hear any person likely to give information in respect of the offence or of the articles and

documents seized.

The persons he summons are obliged to appear. If they do not comply with this obligation, notice of this is given to the district prosecutor who may have them compelled to appear by the law-enforcement agencies.

He draws up an official report of their statements. The persons read this record through themselves; they may have their observations recorded on it and they affix their signature to it. If they declare they cannot read, the record is read over to them by the judicial police officer prior to signature. In the event of refusal to sign the police record, this is noted in the record.

The judicial police agents designated in article 20 may also hear under the supervision of a judicial police officer any person likely to give information concerning the facts of the case. They draft official reports for this purpose in accordance with the formalities prescribed by the present Code, which they transmit to the judicial police officer whom they assist.

Persons in respect of whom there is no plausible reason to suspect that they have committed or attempted to commit an offence may only be detained for as long as is necessary for their hearing.

Article 62-1

(Law no. 95-73 of 27 January 1995 Article 27 Official Journal of 24 January 1995)

(Law no. 99-291 of 15 April 1999 Article 14 Official Journal of 16 April 1999)

(Law no. 2001-1062 of 15 November 2001 Article 57 Official Journal of 16 November 2001)

The persons taking part in the procedure mentioned under articles 16 to 29 are allowed to give as the address of their home the seat of the body to which they are attached.

Article 63

(Ordinance n° 60-121 of 13 February 1960 Article 1 Official Journal of 14 February 1960)

(Law n° 63-22 of 15 January 1963 Article 1 Official Journal of 16 January 1963)

(Law n° 93-2 of 4 January 1993 Article 9 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 2 Official Journal of 25 August 1993, in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 5 Official Journal of 16 June 2000, in force on 1 January 2001)

(Law n° 2002-307 of 4 March 2002 Article 2 Official Journal of 5 March 2002)

A judicial police officer may, where this is necessary for an enquiry, arrest and detain any person against whom there exist one or more plausible reasons to suspect that they have committed or attempted to commit an offence. At the beginning of the arrest and detention he informs the district prosecutor.

The person so placed in custody may not be held for more than twenty-four hours. However, the detention may be extended for a further period of up to twenty-four hours on the written authorisation of the district prosecutor. The district prosecutor may make this authorisation conditional on the prior production before him of the person detained.

On instructions given by district prosecutor, any persons against whom the evidence collected is liable to give rise to a prosecution are, at the end of the police custody, either set free or referred to the district prosecutor.

For the implementation of the present article, the area jurisdiction of the Paris, Nanterre, Bobigny and Créteil district courts constitute a single jurisdiction.

Article 63-1

(Law n° 81-82 of 2 February 1981 Article 39-i Official Journal of 3 February 1981)

(Law n° 83-466 of 10 June 1983 Article 17 Official Journal of 27 June 1983)

(Law n° 93-2 of 4 January 1993 Article 10 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 2 Official Journal of 25 August 1993, in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Articles 7, 8 and 9 Official Journal of 16 June 2000, in force on 1 January 2001)

(Law n° 2002-307 of 4 March 2002 Article 3 Official Journal of 5 March 2002)

(Law n° 2003-239 of 18 March 2003 Article 19 Official Journal of 19 March 2003)

(Law N° 2004-2-4 of 9 March 2004 art. 81 Official Journal of 10 March 2004)

Any person placed under police custody is immediately informed by a judicial police officer, or under the latter's supervision, by a judicial police agent, of the nature of the offence which is being investigated, of the rights mentioned under articles 63-2, 63-3 and 63-4 as well

as of the provisions governing the length of police custody provided for by article 63.

A mention of this information is entered on the official report and signed by the person under custody; in the event of a refusal to sign, this is noted.

The information mentioned under the first paragraph must be given to the person held in custody in a language that he understands, where appropriate by using written forms.

Where the person is deaf and cannot read nor write, he must be assisted by a sign language interpreter or by some other person qualified in a language or method of communicating with the deaf. Use may also be made of any other means making it possible to communicate with persons who are deaf.

Where a person is released after detention without the district prosecutor having made a decision as to prosecution, the provisions of articles 77-2 are brought to his attention.

Save in exceptional and unavoidable circumstances, the steps taken by investigators to communicate the rights mentioned in articles 63-2 and 63-3 must be taken no later than three hours from when the person was placed in custody.

Article 63-2

(Law n° 93-2 of 4 January 1993 Article 10 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 2 Official Journal of 25 August 1993, in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 10 Official Journal of 16 June 2000, in force on 1 January 2001 correction 8 July 2000)

(Law n° 2002-307 of 4 March 2002 Article 3 Official Journal of 5 March 2002)

Any person placed under police custody may, upon his request and within the time limit provided for by the last paragraph of article 63-1, have a person with whom he resides habitually, one of his relatives in direct line**,** one of his brothers or sisters, or his employer, informed by telephone of the measure to which he is subjected.

If the judicial police officer considers that he should not grant this request because of the needs of the enquiry, he reports the request forthwith to the district prosecutor, who grants it if he considers it appropriate to do so.

Article 63-3

(Law n° 93-2 of 4 January 1993 Article 10 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 2 Official Journal of 25 August 1993, in force on 2 September 1993)

Any person placed under police custody may, upon his request, be examined by a doctor appointed by the district prosecutor or the judicial police officer. Where the police custody is extended, he may request to be examined a second time.

The district prosecutor or the judicial police officer may at any time appoint on their own motion a doctor to examine the person under police custody.

Where no request has been made by the person under police custody, by the district prosecutor or by the judicial police officer, a medical examination is as of right if a member of the family requests it. The doctor is appointed by the district prosecutor or by the judicial police officer.

The doctor examines the person under police custody forthwith. The medical certificate, which must specifically state the fitness of the person to be held further in police custody, is attached to the case file.

The provisions of the present article are not applicable where a medical examination is made pursuant to any specific rule.

Article 63-4

(Law n° 93-2 of 4 January 1993 Article 231 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-2 of 4 January 1993 Article 10 Official Journal of 5 January 1993, in force on 1 January 1994)

(Law n° 93-1013 of 24 August 1993 Article 3 Official Journal of 25 August 1993, in force on 2 September 1993)

(Law n° 94-89 of 1 February 1994 Articles 10 and 18 Official Journal of 2 February 1994)

(Law n° 94-89 of 1 February 1994 Article 10 Official Journal of 2 February 1994, in force on 1 March 1994)

(Law n° 2000-516 of 15 June 2000 Article 11 Official Journal of 16 June 2000, in force on 1 January 2001)

At the beginning of police detention, and again after twenty hours have elapsed, the person may request to talk to an advocate. Where he is not in a position to choose one, or if the advocate chosen cannot be reached, he may request an advocate to be appointed to him officially by the president of the bar.

The president of the bar is informed of such a request forthwith and by any means available.

The advocate chosen may communicate with the person under police custody under conditions which ensure the confidentiality of the conversation. He is informed of the type and believed date of the offence investigated by the judicial police officer or by a judicial police agent under the former's supervision.

Following the conversation which may not extend beyond thirty minutes, the advocate, if there is occasion to do so, presents written observations which are attached to the proceedings.

The advocate may not mention this conversation to anyone during the time of the police custody.

Where the police custody has been extended, the person may also request an interview with an advocate after twelve hours of the extended custody, subject to the conditions and in the manner prescribed by the previous paragraphs.

The interview with the advocate may take place only after thirty-six hours where the investigation is into participation in a criminal association defined by article 450-1 of the Criminal Code, into the offences of procuring or extortion set out in articles 225-7, 225-9, 312-2 to 312-5 and 312-7 of the Criminal Code or into an offence committed by an organised gang under articles 224-3, 225-8, 311-9, 312-6, 322-8 of the Criminal Code.

The district prosecutor is informed in the shortest time possible by the judicial police officer that the provisions of the previous paragraph are being applied.

The time limit mentioned in the first paragraph is extended to seventy-two hours when the police custody is governed by specific extension rules.

Article 63-5

(Inserted by Law no. 20900-516 of 15 June 2000 Article 6 Official Journal of 16 June 2000, in force 1 January 2001)

When it is indispensable for the progress of the enquiry to carry out an internal examination of the person held in police custody, this may only be done by a doctor brought in for this purpose.

Article 64

(Law n° 81-82 of 2 February 1981 Article 39-ii Official Journal of 3 February 1981)

(Law n° 93-2 of 4 January 1993 Article 11 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 12 Official Journal of 16 June 2000, in force on 1 January 2001)

Every judicial police officer must enter on the official report of the hearing of any person under police custody the length of the interrogations to which this person was subjected and that of the rest taken between these interrogations, the times at which he was allowed to eat, the day and time starting from which he was under custody, and also the day and time starting from which he was either set free or brought before the competent judge or prosecutor. The officer notes in the official report any requests made pursuant to articles 63-2, 63-3 and 63-4 and the answer which was given to them.

This entry must be specifically signed in the margin by the persons concerned and, in the event of a refusal, a mention of this is made. It is compulsory for this entry to state the reasons for the police custody.

Article 65

(Law n° 93-2 of 4 January 1993 Article 12 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 4 Official Journal of 25 August 1993, in force on 2 September 1993)

The entries and signatures provided for by the first paragraph of article 64 in respect of the dates and times of the beginning and end of police custody and the length of interrogations and rest separating these interrogations must also be entered in a special register which is kept for this purpose in every police or gendarmerie premises where people are held in police custody.

Article 66

The official reports drafted by the judicial police officer pursuant to articles 54 to 62 are written up immediately and signed by him on each page of the record.

Article 67

The provisions of articles 54 to 66 are applicable in the event of a flagrant misdemeanour in any case where the law provides for imprisonment as a penalty.

Article 68

The arrival on the scene of the district prosecutor relieves the judicial police officer of his powers.

The district prosecutor exercises all the judicial police powers set out in the present chapter.

He may also order all judicial police officers to continue their operations.

Article 69

(Law n° 93-2 of 4 January 1993 Article 13 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 6 Official Journal of 25 August 1993 in force on 2 September 1993)

If the requirements of the enquiry call for it, the district prosecutor or the investigating judge when he proceeds as described in the present Chapter, may travel to continue his investigations in the jurisdiction of the courts adjacent to that where he performs his duties. He must first notify the district prosecutor of the area of the court to which he is going. He enters in his official record the reasons for his journey.

Article 70

In the event of a flagrant felon, where the investigating judge is not yet seised of the case, the district prosecutor may issue a warrant to have brought before him any person suspected of having taken part in the offence.

The district prosecutor forthwith interrogates the person so brought before him. If the person appears spontaneously in the company of a defence counsel, he may only be interrogated in the presence of the latter.

Article 71 to 71-3

Repealed

Article 72

(Law n° 93-2 of 4 January 1993 Article 14 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 6 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 99-515 of 23 June 1999 Article 13 Official Journal of 24 June 1999)

Where the district prosecutor and the investigating judge are simultaneously on the scene of the offence, the district prosecutor may initiate a regular judicial investigation of which the judge present is then seised, as an exception to the provisions of article 83, if otherwise applicable.

Article 73

In the event of a flagrant felony or of a flagrant misdemeanour punished bya penalty of imprisonment, any person is entitled to arrest the perpetrator and to bring him before the nearest judicial police officer.

Article 74

(Law n° 72-1226 of 29 December 1972 Article 10 Official Journal of 30 December 1972)

Where a corpse has been discovered, whether having died by violence or otherwise, and the cause of death is unknown or suspicious, the judicial police officer who is told of it immediately informs the district prosecutor, and goes forthwith to the scene to make initial findings.

The district prosecutor goes to the scene if he considers it necessary and he is assisted by persons capable of appraising the nature of the circumstances of the death. He may however delegate for this purpose a judicial police officer of his choice.

Except when they are registered on one of the lists provided for under article 157, the persons called upon in this way take an oath in writing to bring their assistance to justice upon their honour and conscience.

The district prosecutor may also initiate a judicial investigation into the causes of the death.

Article 74-1

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 66 Official Journal of 10 September 2002)

When the disappearance of a minor or an adult placed under a guardianship order is reported, judicial police officers, assisted if necessary by judicial police agents, may, on the district prosecutor's instructions, carry out the actions provided for by articles 56 to 62, in order to find the person who has disappeared. Eight days after the district prosecutor's instructions have been issued, these investigations may continue in the form of a preliminary enquiry.

The district prosecutor may also request the opening of an investigation to look into the cause of the disappearance.The provisions of the present article also apply where the disappearance of an adult gives rise to concern, because of the circumstances, or the age or health of the person concerned.

CHAPTER II: THE PRELIMINARY POLICE INQUIRY

Article 75

(Ordinance n° 60-529 of 4 June 1960 Article 1 Official Journal of 8 June 1960)

(Law n° 85-1196 of 18 November 1985 Articles 6 & 8 Official Journal of 19 November 1985, in force on 1 January 1986)

(Law n° 2000-516 of 15 June 2000 Article 104 Official Journal of 16 June 2000, in force on 1 January 2001)

(Law n° 2002-1138 of 9 September 2002 Article 39 Official Journal of 10 September 2002)

The judicial police officers and the judicial police agents under their supervision mentioned under article 20 carry out preliminary inquiries either on the instructions of the district prosecutor, or on their own initiative.

Such operations fall under the supervision of the public prosecutor.

Judicial police officers and agents inform victims, using any means of communication, of their right::

1° to obtain compensation for the harm suffered;

2° to exercise the rights of a civil party if the prosecution has been instigated by the public prosecutor or by directly citing the perpetrator to appear before the competent court or by lodging an official complaint before the investigating judge;

3° if they wish to exercise the rights of the civil party, to be assisted by an advocate of their choice or, at their request, by one nominated by the president of the bar attached to the competent court. The costs are to be borne by the victims unless they are eligible for legal aid or if they are covered by legal protection insurance;

4° to be assisted by a service pertaining to one or more local authorities or an approved victim support association;

5° to transfer the case, where appropriate, to the committee for the compensation of victims of offences, where the offence falls under the remit of articles 706-3 and 706-14.

Article 75-1

(Inserted by Law no. 2000-516 of 15 June 2000 Article 15 Official Journal of 16 June 2000)

Where he instructs the judicial police officers to proceed with a preliminary enquiry, the district prosecutor fixes the time limit within which the enquiry must be carried out. He may extend this for reasons given by the investigators.

Where the enquiry is being carried out on their own initiative, the judicial police officers give the district prosecutor an account of its progress where it has been running for more than six months.

Article 75-2

(Inserted by Law no. 2000-516 of 15 June 2000 Article 15 Official Journal of 16 June 2000)

The judicial police officer carrying out a preliminary enquiry into a felony or misdemeanour informs the district prosecutor as soon as a person has been identified against whom matters exist leading to the belief that he has been identified as having committed or attempted to commit an offence.

Article 76.

Searches, house visits and seizures of exhibits may not be made without the express consent of the person in whose residence the operation takes place.

Such consent must be made in the form of a hand-written statement by the person concerned or, if the person cannot write, a note of this is into the official report together with his consent.

The formalities set out by articles 56 and 59 (first paragraph) are applicable.

Article 76-1

(Inserted by Law no. 2001-1062 of 15 November 2001 Article 24 Official Journal of 16 November 2001)

Notwithstanding the first two paragraphs of article 76, where the needs of an enquiry into to any of the offences concerning armaments and explosives under article 3 of the Act of 19 June 1871 repealing the Decree of 4 September 1870 on the production of armaments for war or under articles 20, 31 and 32 of the Decree of 18 April 1939 fixing the regime for war materials, armaments and munitions or into one of the felonies or misdemeanours of drug trafficking under articles 222-34 to 222-38 of the Criminal Code justify it, the custody judge of the first instance court may, at the request of the district prosecutor, authorise, by a written and reasoned decision, judicial police officers, assisted where necessary by the judicial police agents and assistant judicial police agents as referred to under 1°, 1° bis and 1° ter of article 21, to carry out a search, house visit or seizure of incriminating evidence without the consent of the person in whose premises it takes place. The decision of the custody judge must specify the nature of the offences in respect of which the evidence is sought, the factual elements leading to the belief that they have been committed and the addresses of such premises where the operations are to take place. The provisions of article 57 are then applicable.

Where the searches and seizures are not in relation to dwellings, the custody judge may authorise their being carried out outside those hours prescribed by article 59.

The fact that operations carried out under this article reveal offences other than those mentioned in the decision of the custody judge are not a ground of nullity in relation to the other proceedings.

Article 76-2

(Inserted by Law n° 2003-239 of 18 March 2003 Article 30 °2 Official Journal of 19 March 2003)

The district prosecutor or, with his permission, a judicial police officer may carry out the taking of bodily samples provided for by article 55-1.

The provisions of the second and third paragraphs of article 55-1 are applicable.

Article 76-3

(Law n° 2003-239 of 18 March 2003 Article 17 2° Official Journal of 19 March 2003)

The police officer may, for the needs of the enquiry, have recourse to the processes provided for by article 57-1, pursuant to the terms of article 76.

Article 77.

(Ordinance n° 60-121 of 13 February 1960 Article 1 Official Journal of 14 February 1960)

(Law n° 63-22 of 15 January 1963 Article 1 Official Journal of 16 January 1963 in force on 24 February 1963)

(Law n° 93-2 of 4 January 1993 Article 15 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 5 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 13 Official Journal of 16 June 2000 in force on 1 January 2001)

(Law n° 2002-307 of 4 March 2002 Article 1 Official Journal of 5 March 2002)

The judicial police officer may keep at his disposal for the requirements of the enquiry any person against whom there are one or more plausible reasons to suspect that he has committed or attempted to commit an offence. He informs the district prosecutor of this when the police custody begins. The person under police custody may not be kept more than twenty-four hours.

Before the twenty-four hours have expired the district prosecutor may extend the police custody by a further period not exceeding twenty-four hours. This extension may be granted only after a prior presentation of the person to this prosecutor. However, it may exceptionally be granted by a written and reasoned decision in the absence of a prior presentation of the person. If the enquiry is followed in an area other than that of the seat of office of the district prosecutor dealing with the offence, the extension may be granted by the district prosecutor of the place where the measure is carried out.

On the instructions of the district prosecutor dealing with the case, at the end of the police custody persons against whom material has been collected liable to give rise to a prosecution are either set free, or referred to the prosecutor.

For the implementation of the present article, the area jurisdiction of the Paris, Nanterre, Bobigny and Créteil district courts constitute a single jurisdiction.

The provisions of articles 63-1, 63-2, 63-3, 63-4, 64 and 65 are applicable to police custody that takes place within the framework of the present Chapter.

Article 77-1.

(Law n° 85-1407 of 30 December 1985 Articles 12 and 94 Official Journal of 31 December 1985 in force on 1 February 1986)

(Law n° 99-515 of 23 June 1999 Article 12 Official Journal of 24 June 1999)

If the case calls for findings or technical or scientific examinations which may not be postponed delayed, the district prosecutor or upon his authorisation, the judicial police officer, resorts to any qualified person.

Article 77-1

(Law n° 2003-239 of 18 March 2003 Article 18 2° Official Journal of 19 March 2003)

On the district prosecutor's authorisation, a judicial police officer may issue the demands provided for by the first paragraph of article 60-1.

On the authorisation of the liberty and custody judge who has been seised of this matter by the district prosecutor, the police officer may issue the demands provided for by the second paragraph of article 60-1.

The organisations or persons concerned must make the information requested available by telecommunication or computer correspondence as quickly as possible.

Refusal to fulfil these obligations without legitimate reason is punished in accordance with the provisions of the fourth paragraph of article 60-1.

Article 77-2

(Law n° 2000-516 of 15 June 2000 Article 73 Official Journal of 16 June 2000 in force on 1 January 2001)

(Law n° 2000-1354 of 30 December 2000 Article 23 Official Journal of 31 December 2000 in force on 1 January 2001)

(Law n° 2002-1138 of 9 September 2002 Article 34 Official Journal of 10 September 2002)

Any person detained in the course of a preliminary enquiry or in the course of a flagrant offence investigation who, six months after the end of detention, has not been prosecuted, may enquire of the district prosecutor for the area where the detention took place as to the outcome or likely outcome of the case. This enquiry is addressed by registered post with request for notice of delivery.

Article 77-3

(Inserted by Law n° 2000-516 of 15 June 2000 Article 73 Official Journal of 16 June 2000 in force on 1 January 2001)

(Law n° 2002-1138 of 9 September 2002 Article 34 Official Journal of 10 September 2002)

Where the enquiry was not conducted under the direction of the district prosecutor of the first instance court where the police detention took place, the latter must forthwith direct the request specified in article 77-2 to the district prosecutor conducting the enquiry.

Article 78.

(Law n° 93-2 of 4 January 1993 Article 16 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 95-73 of 27 January 1995 Article 27 Official Journal of 24 January 1995)

(Law n° 2002-307 of 4 March 2002 Article 2 Official Journal of 5 March 2002)

Persons summoned by a judicial police officer for the requirements of the enquiry are obliged to appear. If they do not comply with this obligation, the district prosecutor is notified and he may have them compelled to appear by the law-enforcement agencies.

Persons against whom no plausible reason exists to suspect that they committed or attempted to commit an offence may not be kept longer than the time strictly necessary for their hearing.

The judicial police officer draws up an official report of their statements. The judicial police agents mentioned under article 20 may also, under the supervision of a judicial police officer, hear the persons summoned.

The official reports are drafted pursuant to the conditions set out by articles 62 and 62-1.

CHAPTER III: IDENTITY INSPECTIONS AND IDENTITY CHECKS

Article 78-1.

(Law n° 83-466 of 10 June 1983 Article 21 Official Journal of 11 June 1983 in force on 27 June 1983)

(Law n° 86-1004 of 3 September 1986 Article 1 Official Journal of 4 September 1986)

(Law n° 93-992 of 10 August 1993 Article 2 Official Journal of 11 August 1993)

(Law n° 99-291 of 15 April 1999 Article 15 Official Journal of 16 April 1999)

The implementation of the rules set out by the present chapter are under the supervision of the judicial authorities mentioned under articles 12 and 13.

The application of the present rules is subject to the control of the judicial authorities mentioned in articles 12 and 13.

Any person found on national territory must accept to undergo an identity check made pursuant to the conditions and by the police authorities considered under the following articles.

Article 78-2

(Law n° 83-466 of 10 June 1983 Article 21 Official Journal of 11 June 1983 in force on 27 June 1983)

(Law n° 86-1004 of 3 September 1986 Article 2 Official Journal of 4 September 1986)

(Law n° 93-992 of 10 August 1993 Articles 1 and 2 Official Journal of 11 August 1993)

(Law n° 93-1027 of 24 August 1993 Article 34 Official Journal of 29 August 1993)

(Law n° 97-396 of 24 April 1997 Article 18 Official Journal of 25 April 1997)

(Law n° 99-291 of 15 April 1999 Article 15 Official Journal of 16 April 1999)

(Law n° 2003-239 of 18 March 2003 Article 10 Official Journal of 19 March 2003)

(Law n° 2003-239 of 18 March 2003 Article 143 Official Journal of 19 March 2003)

Judicial police officers and, upon their orders and under their responsibility, the judicial police agents and assistant judicial police agents mentioned under articles 20 and 21-1° may ask any person to justify his identity by any means, where one or more plausible reasons exist to suspect:

- that the person has committed or attempted to commit an offence;

- or that the person is preparing to commit a crime or a misdemeanour;

- or that the person is able to give information useful for an enquiry into a felony or misdemeanour;

- or the person is the object of inquiries ordered a judicial authority.

The identity of any person may be checked, on the district prosecutor's written instructions for the investigation and prosecution of offences specified by him, by the means, in the places and for the period of time that this prosecutor determines. The fact that the identity check uncovers offences other than those to which the district prosecutor's instructions refer does not amount to a ground of nullity for any incidental proceedings.

The identity of any person may also be checked pursuant to the rules set out in the first paragraph, whatever the person's behaviour, to prevent a breach of public order and in particular an offence against the safety of persons or property.

In an area included between the land border of France with the States party to the convention signed in Schengen on 19 June 1990, and a line drawn 20 kilometres behind it (provisions declared unconstitutional by the Constitutional Council, N° 93-323 DC of 5 August 1993) as well as within the areas accessible to the public in the ports, airports and railway stations open to international traffic and listed by a ministerial decision (provisions declared unconstitutional by the Constitutional Council, N° 93-323 DC of 5 August 1993), the identity of any person may also be checked according to the rules set out in the first paragraph in order to ensure the observance of the duty to hold, carry and present for inspection the papers and documents provided for by law. The fact that the identity check reveals an offence other than the non-observance of the aforementioned duties does not amount to a ground of nullity for any incidental proceedings.

In an area included between the land border or the coastline of the département of French Guyana and a line drawn twenty kilometres behind it, and on a line drawn five kilometres on either side, as well as on route nationale 2 in the municipality of Régina, the identity of any person may also be checked according to the rules set out in the first paragraph in order to ensure the observance of the duty to hold, carry and present for inspection the papers and documents provided for by law.

Article 78-2-1

(Law n° 97-396 of 24 April 1997 Article 19 Official Journal of 25 April 1997)

(Law n° 99-291 of 15 April 1999 Article 15 Official Journal of 16 April 1999)

When the district prosecutor formally requires, the judicial police officers and, under the orders or responsibility of these officers, the judicial police agents and assistant judicial police agents mentioned under articles 20 and 21 (1°), are accredited to enter within professional premises and their annexes or outbuildings, except where the latter are a dwelling, where construction, manufacture, transformation, repair, service or trading activities are under way, in order to :

- check that such activities have been registered with the register of professions or the commercial and company register when such registration is compulsory, and are exercised in accordance with the declaration imposed by the social protection institutions and the tax administration;

- be shown the workforce register and the documents establishing that the declarations prior to employment have been made;

- check the identity of the persons employed, with the sole purpose of verifying whether they are entered on the register or have been declared in accordance with the declarations mentioned under the previous paragraph.

The district prosecutor's formal order is made in writing and sets out the offences, among those listed in articles L. 324-9 and L. 341-6 of the Labour Code, which he wishes to have investigated and prosecuted, as well as the premises within which the inspection operation is to take place. These orders are taken for a maximum period of one month and are presented to the person in possession of the premises or his representative.

The measures taken pursuant to the provisions of the present article are entered into a official report handed to the person concerned.

Article 78-2-2

(Inserted by Law n° 2001-1062 of 15 November 2001 Article 23 Official Journal of 16 November 2001)

(Law n° 2003-239 of 18 March 2003 Article 1 1 II Official Journal of 19 March 2003)

Upon the written request of the district prosecutor, for the purposes investigating and prosecuting acts of terrorism under articles 421-1 to 421-5 of the Criminal Code, offences relating to weapons and explosives under article 3 of the Law of 19 June 1871 which repealed the Decree of 4 September 1870 on the manufacture of weapons of war, and under articles 20, 31 and 32 of the Decree of 18 April 1939 determining the regulations relating to weaponry and munitions, theft offences under articles 311-3 to 311-11 of the Criminal Code, possession or receiving of stolen goods provided for by articles 321-1 and 321-2 of the same Code or acts of drug trafficking under articles 222-34 to 222-38 of the aforesaid Code, judicial police officers, assisted by, should the occasion arise, the judicial police agents and the assistant judicial police agents referred to under 1º, 1º bis and 1º ter of article 21, may, within the places and for a duration specified by this prosecutor, which may not exceed twenty-four hours, renewable by means of a reasoned express judgment following the

same procedure, carry out not only identity checks under paragraph 6 of article 78-2 but also inspect vehicles travelling, stopped or parked on the public highway or in premises open to the public.

For the application of the provisions of this present article, moving vehicles may only be stopped for such time as is strictly necessary to carry out the inspection, which must take place in the presence of the driver. Where the inspection is in relation to a stopped or parked vehicle, it is carried out in the presence of the driver or owner of the vehicle or, failing this, of a person, called upon for those purposes by the judicial police officer or judicial police agent, who is not under his administrative authority. The presence of a third person is not required where the inspection involves particular risk to persons or property.

Where an offence is found to have been committed, or where the driver or owner of the vehicle so requests if the inspection took place in his absence, an official record is drawn up stating the place, time, and date when these operations began and ended. A copy is sent to the party concerned and another forwarded without delay to the district prosecutor.

However, the inspection of vehicles specially adapted for residential purposes and actually used as a place of residence can only be made in accordance with the provisions relating to house searches.

The fact that these operations reveal offences other than those covered in the district prosecutor's written request does not amount to a cause of nullity for any incidental proceedings.

Article 78-2-3

(Inserted by Law N° 2003-239 of 18 March 2003 Article 12 Official Journal of 19 March 2003)

Judicial police officers, assisted, where necessary, by judicial police agents and deputy judicial police agents mentioned in 1°, 1°bis and 1°ter of article 21, may carry out the inspection of vehicles which are travelling or parked on a public highway or in premises accessible to the public where there are one or more plausible reasons to suspect that the driver or a passenger has committed (whether as perpetrator or accomplice) a flagrant felony or misdemeanour. These provisions also apply to attempts.

The provisions of the second, third and fourth paragraphs of article 78-2-2 are applicable to the provisions of the present article.

Article 78-2-4

(Inserted by Law N° 2003-239 of 18 March 2003 Article 13 Official Journal of 19 March 2003)

In order to prevent a serious attack on persons and property, the judicial police officers, and judicial police agents under their supervision and deputy judicial police agents mentioned in 1°, 1°bis and 1°ter of article 21 may carry out not only the identity checks provided for by the seventh paragraph of article 78-2, but also, with the agreement of the driver or, failing this, on the instructions of the district prosecutor conveyed by whatever means, carry out the inspection of vehicles which are moving, stopped or parked on a public highway or on premises accessible to the public.

While they are waiting to receive the district prosecutor's instructions, the vehicle may be immobilised for a period of no more than thirty minutes.

The second, third and fourth paragraphs of article 78-2-2 apply to the provisions of the present article.

Article 78-3

(Law n° 83-466 of 10 June 1983 Article 21 Official Journal of 11 June 1983, in force on 27 June 1983)

(Law n° 86-1004 of 3 September 1986 Article 3 Official Journal of 4 September 1986)

(Law n° 93-2 of 4 January 1993 Article 162 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-992 of 10 August 1993 Article 2 Official Journal of 11 August 1993)

(Law n° 93-1013 of 24 August 1993 Article 20 Official Journal of 25 August 1993, in force on 2 September 1993)

(Law n° 99-291 of 15 April 1999 Article 15 Official Journal of 16 April 1999)

If the person concerned refuses or is unable to prove his identity, he may in case of necessity be kept where he is or on the police premises where he is taken in order to have his identity checked. He is in every case immediately brought before a judicial police officer who gives him the opportunity to offer by any means available material establishing his identity, and who proceeds if necessary to do what is necessary to verify them. He is told forthwith by this officer of his right to have the district prosecutor informed of the inspection to which he is subject and to have his family or any person of his choice informed. The judicial police officer himself informs the family or person chosen if particular circumstances call for it.

The district prosecutor must be informed as soon as the retention begin where a minor of less than 18 years of age is involved. The minor must be assisted by his legal representative except where this is impossible.

The person under inspection may be detained only for the time strictly required for ascertaining his identity. The detention may not last longer than four hours from the moment of the identity check made pursuant to article 78-2 and the district prosecutor may put an end to it at any time.

If the person questioned maintains his refusal to establish his identity, or produces proof of identity which is obviously false, the

inspection operations may, after an authorisation granted by the district prosecutor or the investigating judge, lead to the taking of fingerprints or photographs when this is the only way to ascertain the identity of the person concerned.

The taking of fingerprints or photographs must be entered and specially the reasons specially stated in the official report provided for hereafter.

The judicial police officer enters in a official report the grounds which justify the check and inspection of identity, and the conditions under which the person was brought before him, informed of his rights and placed in a position to exercise them. He mentions the date and time starting from which check was carried out, the date and time it ended, and how long it lasted.

The official report is presented for signature by the person concerned. If the latter refuses to sign, a record is made of the refusal and of the grounds given for this refusal.

The official report is sent to the district prosecutor after a copy has been given to the person concerned in the case set out by the previous paragraph.

Where in relation to the person detained there have been no investigation or enforcement proceedings addressed to the judicial authority, the identity check may not be entered into a file and the official record as well as all the documents pertaining to the inspection are destroyed within six months under the supervision of the district prosecutor.

Where a request for investigation or enforcement proceedings is sent to the judicial authority, and the person is detained in police custody, the person detained must be notified forthwith of his right to have the district prosecutor informed of the measure to which he is subjected.

The provisions listed by the present article are imposed under penalty of nullity.

Article 78-4

(Law n° 83-466 of 10 June 1983 Article 21 Official Journal of 11 June 1983 in force on 27 June 1983)

(Law n° 93-992 of 10 August 1993 Article 2 Official Journal of 11 August 1993)

(Law n° 99-291 of 15 April 1999 Article 15 Official Journal of 16 April 1999)

The length of the detention provided for by the previous article is deducted, where relevant, from that of the police custody.

Article 78-5.

(Law n° 83-466 of 10 June 1983 Article 21 Official Journal of 11 June 1983, in force on 27 June 1983)

(Law n° 86-1004 of 3 September 1986 Article 5 Official Journal of 4 September 1986)

(Law n° 93-992 of 10 August 1993 Article 2 Official Journal of 11 August 1993)

(Law n° 92-1336 of 16 December 1992 Articles 322 & 329 Official Journal of 23 December 1992, in force on 1 March 1994)

(Law n° 99-291 of 15 April 1999 Article 15 Official Journal of 16 April 1999)

(Ordinance no. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000, in force on 1 January 2002)

Three months imprisonment and a fine of € 3,750 are incurred by those who refuse to submit to the taking of fingerprints or photographs authorised by the district prosecutor or the investigating judge in accordance with the provisions of article 78-3.

Article 78-6

(Law n° 99-291 of 15 April 1999 Article 16 Official Journal of 16 April 1999)

(Law n° 2001-1062 of 15 November 2001 Article 13 Official Journal of 16 November 2001)

Judicial police agents referred to under 1º bis, 1º ter, 1º quater and 2º of article 21 are authorised to establish the identity of those committing petty offences in order to prepare official reports in relation to breaches of municipal bye-laws, breaches of the Traffic Code for which the law permits them to issue tickets or in relation petty offences they are authorised to record pursuant to any specific enactment.

Where the offender refuses or is unable to establish his identity, the assistant judicial police agent mentioned in the previous paragraph forthwith informs any judicial police officer of the national force or of the gendarmerie territorially competent, who may order him to bring the offender before him immediately. The municipal police agent may not hold an offender in the absence of such an order. Where the judicial police officer decides to proceed with an identity check in the manner provided for in article 78-3, the time limit under the third paragraph runs from the time of the identity check.

TITLE III: INVESTIGATING JURISDICTIONS

CHAPTER I: THE INVESTIGATING JUDGE: THE FIRST-TIER INVESTIGATING JURISDICTION.

SECTION I: GENERAL PROVISIONS

Article 79.

A preliminary judicial investigation is compulsory where a felony has been committed. In the absence of special provisions, it is optional for misdemeanours. It may also be initiated for petty offences if it is requested by the district prosecutor pursuant to article 44.

Article 80.

(Law n° 93-2 of 4 January 1993 Article 22 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 7 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 999-515 of 23 June 1999 Article 14 Official Journal of 24 June 1999)

The investigating judge may only investigate in accordance with a submission made by the district prosecutor.

The prosecution submission may be made against a named or unnamed person.

Where an offence not covered by the prosecution submissions is brought to the knowledge of the investigating judge, he must communicate forthwith to the district prosecutor the complaints or the official records which establish its existence. The district prosecutor may then require the investigating judge, by an additional submission, to investigate the additional facts, or require him to open a separate investigation, or send the case to the trial court, or order an enquiry, or decide to drop the case, or proceed to one of the measures provided for in articles 41-1 to 41-3, or to transfer the complaint or the official reports to the district prosecutor who is territorially competent. If the district prosecutor requires the opening of a separate investigation, this may be entrusted to the same investigating judge, designated under the conditions set out in the first paragraph of article 83.

In the event of a complaint with civil party petition the case proceeds as stated under article 86. However, where new facts are brought to the attention of the investigating judge by the civil party in the course of the investigation, the provisions of the previous paragraph apply.

Article 80-1.

(Law n° 93-2 of 4 January 1993 Article 23 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 7 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 19 Official Journal of 16 June 2000 in force on 1 January 2001)

On pain of nullity, the investigating judge may place under judicial examination only those persons against whom there is strong and concordant evidence making it probable that they may have participated, as perpetrator or accomplice, in the commission of the offences he is investigating.

He may proceed with the placement under judicial examination only after having previously heard the observations of the person or having given him the opportunity to be heard, when accompanied by his advocate, either in the manner provided by article 116 on questioning at first appearance, or as an assisted witness under the provisions of articles 113-1 to 113-8.

The investigating judge may only proceed to place under judicial examination a person whom he considers unable to use the procedure for assisted witnesses.

Article 80-2

(Law n° 93-2 of 4 January 1993 Article 23 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 7 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 20 Official Journal of 16 June 2000 in force on 1 January 2001)

(Law n° 2002-1138 of 9 September 2002 Article 39 Official Journal of 10 September 2002)

The investigating judge may notify any person by recorded delivery that he will be called, within a period of not less than ten days or longer than two months, for a first appearance held under the conditions set out in article 116. This letter specifies the date and time of the required appearance. It informs the person of each one of the matters of which the judge is seised and for which it is envisaged to place him under judicial examination, giving their legal definitions. It informs the person that he has the right to choose an advocate or to request a duty advocate to be assigned to him, the choice or request to be addressed to the investigating judge's clerk. It makes it plain that a placement under judicial examination may not take place until after the person's first appearance before the investigating judge.

The investigating judge may also have this summons notified through a judicial police officer. This notification includes mention of all the matters provided for by the previous paragraph. It is recorded by a official report signed by the person who receives a copy of it.

The advocate chosen or designated is summoned in the manner specified by article 114; he has access to the procedural file in the manner this article provides.

Article 80-4

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 66 Official Journal of 10 September 2002)

During the course of an enquiry into the death or disappearance of a person set out in articles 74 and 74-1, the investigating judge proceeds pursuant to the provisions of Chapter 1 of Title 3 of Book 1. The interception of telecommunication correspondence is carried out under his authority and control under the conditions laid down in the second paragraph of article 100 and in articles 100-1 to 100-7. This interception may not exceed a period of two months, which is renewable.

The family members or close relations of the deceased or missing person may exercise civil party rights as accessories. However, where the missing person is found, the latter's address and other matters that would lead to the direct or indirect disclosure of this address may not be revealed to the civil party without the consent of the party concerned, if he is an adult, or with the consent of the investigating judge in the case of minors or of adults under guardianship orders.

Article 81.

(Ordinance no. 58-1296 of 23 December 1958 Official Journal of 24 December 1958, in force on 2 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 83-466 of 10 June 1983 Article 28 Official Journal of 11 June 1983)

(Law n° 84-576 of 9 July 1984 Articles 18 and 19 Official Journal of 10 July 1984, in force on 1 January 1985)

(Law n° 89-461 of 6 July 1989 Article 1 Official Journal of 8 July 1989 in force on 1 December 1989)

(Law n° 93-2 of 4 January 1993 Articles 24 and 224 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 6 Official Journal of 25 August 1993, in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 2 Official Journal of 16 June 2000)

(Law n° 2000-516 of 15 June 2000 Articles 50 and 83 Official Journal of 16 June 2000, in force on 1 January 2001)

The investigating judge undertakes in accordance with the law any investigative step he deems useful for the discovery of the truth. He seeks out evidence of innocence as well as guilt.

A copy of these steps and of all of the documents in the proceedings is made; each copy is certified true by the clerk or by the designated judicial police officer mentioned under paragraph four. All the case file documents are numbered by the clerk as they are drafted or received by the investigating judge.

However, if copies can be made through photographic processes or similar techniques, they are made upon the transmission of the case file. As many sets are made as necessary for the administration of justice. The clerk certifies the conformity of the duplicated case file with the original copy of the file. If the investigation is temporarily interrupted because an appeal is filed, the drafting of copies must be done immediately so that in no circumstances is the preparation of the case for trial provided for by article 194 delayed.

Where it is impossible for the investigating judge to undertake in person all the investigative steps, he may give a rogatory letter to judicial police officers in order to have them perform the necessary investigative steps pursuant to the conditions and under the restrictions set out by articles 151 and 152.

The investigating judge is required to check the pieces of information thus collected.

The investigating judge undertakes or procures, either by judicial police officers in accordance with paragraph four, or by any person accredited pursuant to the conditions determined by a Council of State Decree, an enquiry into the personality of the persons investigated, as well as into their financial, family or social situation. This enquiry is however optional for a misdemeanour.

The investigating judge may also appoint according to the nature of the case the prison social insertion and probation service, the competent child protection service or any organisation authorised according to the previous paragraph, in order to check the financial, family and social situation of a person under judicial examination and to inform the judge of the appropriate steps to support the social integration of the person concerned. Unless they were already ordered by the public prosecutor, such proceedings must be ordered by the investigating judge every time he considers placing in pre-trial detention an adult of less than twenty-one years of age at the moment of the commission of the offence, where the penalty incurred does not exceed five years of imprisonment.

The investigating judge may order a medical examination, a psychological examination or any appropriate measure.

Where a party refers to him by a written and reasoned application for the implementation of one of these examinations or any other appropriate measure provided for by the previous paragraph, the investigating judge must make a reasoned order within one month from receiving the application if he decides not to defer to the application.

The application mentioned under the previous paragraph must be filed with the clerk of the investigating judge seised of the case. It is recorded and date-stamped by the clerk who signs it as well as the applicant or the latter's advocate. The clerk makes a specific entry where the applicant is unable to sign. Where the applicant or his advocate do not reside within the area jurisdiction of the competent court, the declaration filed with the clerk may be sent by recorded delivery letter with request for acknowledgement of receipt. Where the person under judicial examination is detained, the application may also be made by a declaration to the prison governor. This declaration is recorded and date-stamped by the warden who signs it as well as the applicant. The warden makes a specific entry if the latter is unable to sign. This document is immediately sent to the investigating judge's clerk as an original or simple copy and by any means of transmission.

Where the investigating judge fails to decide on the application within one month, the party may apply directly to the presiding judge of the investigating chamber, who decides and acts in accordance with the third, fourth and fifth paragraphs of article 186-1.

Article 81-1

(Law n° 85- 1303 of 10 dec 1985 Articles 7 & Article 42 Official Journal of 11 December 1985, in force on 1 March 1988)

(Law n° 87-1062 of 30 December 1987 Article 23 Official Journal of 31 December 1987)

(Law n° 2000-516 of 15 June 2000 Article 101 Official Journal of 16 June 2000)

The investigating judge can automatically, or at the demand of the court or the civil party, carry out, in accordance with the law, any act permitting him to evaluate the nature and the importance of the prejudice suffered by the victim, or to obtain information about the latter's personality.

Article 82

(Law n° 85- 1407 of 30 December 1985 Articles 13 and 94 Official Journal of 31 December 1985, in force on 1 February 1986)

(Law n° 93-2 of 4 January 1993 Article 233 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-2 of 4 January 1993 Article 26 Official Journal of 5 January 1993, in force on 1 January 1994)

(Law n° 93-1013 of 24 August 1993 Article 16 Official Journal of 25 August 1993, in force on 2 September 1993)

(Law n° 96-1235 of 30 December 1996 Article 1 Official Journal of 1 January 1997, in force on 31 March 1997)

(Law n° 2000-516 of 15 June 2000 Articles 83 and 135 Official Journal of 16 June 2000, in force on 1 January 2001)

In his initial submission, and at any time during the investigation through a supplementary submission, the district prosecutor may request the investigating judge to take any step which he considers useful for the discovery of the truth as well as any safety measure necessary. He may also request to be present when the steps for which he asks are carried out.

He may have the case file sent to him for this purpose provided that he returns it within twenty-four hours.

If he asks for the placement or keeping in pre-trial detention of the person under judicial examination, his submissions must be in writing and reasoned by reference only to the provisions of article 144.

If the investigating judge does not endorse the district prosecutor's submissions, he must make a reasoned order within five days of such submissions, except in the cases set out under the second paragraph of article 137.

Where no order is made by the investigating judge, the district prosecutor may apply within ten days directly to the investigating chamber.

Article 82-1

(Law n° 85- 1303 of 10 dec 1985 Articles 8 and 42 Official Journal of 11 dec 1985, in force on 1 March 1988)

(Law n° 87-1062 of 30 December 1987 Article 23 Official Journal of 31 December 1987)

(Law n° 93-2 of 4 January 1993 Articles 27 and 226 Official Journal of 25 August 1993, in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 8 Official Journal of 25 August 1993 amended by JORF 26 July 1994, in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 21 Official Journal of 16 June 2000, in force on 1 January 2001)

(Law n° 2000-1354 of 30 December 2000 Article 24 Official Journal of 31 December 2000, in force on 1 January 2001)

In the course of the investigation the parties may file with the investigating judge a written and reasoned application in order to be heard or interrogated, to hear a witness, for a confrontation or an inspection of the scene of the offence, to order one of them to disclose an element useful for the investigation, or for any other step to be taken which seems to them necessary for the discovery of the truth. On pain of nullity, this application must be made in accordance with the provisions of the tenth paragraph of article 81; it must mention all the acts requested, and where a hearing is concerned, specify the identity of the person whose hearing is requested.

The investigating judge must make a reasoned order within one month from receiving the application, when he decides not to grant it. The provisions of the last paragraph of article 81 are applicable.

Upon the expiry of a four-month term since his last appearance , the person under judicial examination who requests it in writing must be heard by the investigating judge. The investigating judge carries out this interrogation within thirty days from receiving the application, which must be drafted in accordance with the provisions of the tenth paragraph of article 81.

Article 82-2

(Inserted by Law no. 2000-516 of 15 June 2000 Article 21 Official Journal of 16 June 2000 in force on 1 January 2001)

Where the person under judicial examination under the provisions of Article 82-1 makes a formal request to the investigating judge to visit a particular place, or to hear a witness, a civil party or other person under judicial examination, that person may request that this be done in the presence of his advocate.

The civil party has the same right concerning visits to places, the hearing of a witness or another civil party or an interrogation of the person under judicial examination.

The investigating judge rules on these requests in accordance with the provisions of the second paragraph of article 82-1. Where he accedes to a request, the investigating judge calls in the advocate not later than two working days before the date of the visit, witness hearing or or interview, in the course of which he may take part in the manner prescribed by article 120.

Article 82-3

(Law no. 2000-516 of 15 June 2000 Article 22 Official Journal of 16 June 2000, in force on 1 January 2001)

Where the investigating judge challenges the validity of a request of a party seeking a ruling that the prosecution is time-barred, he must give a reasoned decision within a month from the receipt of the request.

Article 83.

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law n° 89-146 of 6 July 1989 Article 8 Official Journal of 8 July 1989 in force on 1 December 1989)

(Law n° 93-2 of 4 January 1993 Article 232 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-2 of 4 January 1993 Article 19 Official Journal of 5 January 1993 in force on 1 January 1994)

(Law n° 93-1013 of 24 August 1993 Article 35 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 94-89 of 1 February 1994 Article 17 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law n° 2000-516 of 15 June 2000 Article 132 Official Journal of 16 June 2000 in force on 1 January 2001)

Where several investigating judges are posted to a court, the court's presiding judge or, where he is unable to act, the judge replacing him, appoints for each judicial investigation the judge who will be in charge. He may draft a duty rota for this purpose.

Where the seriousness or complexity of the case call for it, the court's presiding judge or, where he is unable to act, the judge replacing him, may second to the investigating judge in charge of the investigation one or more investigating judges whom he appoints either at the start of the proceedings or at any point in the proceedings, upon the application of the judge in charge of the investigation.

The judge in charge of the investigation co-ordinates its progress; he alone is competent to seise the custody judge, to order on its own motion that person be released.

The appointments provided for by the present article are unappealable judicial administration measures.

Article 83-1.

(Inserted by Law n° 93-2 of 4 January 1993 Article 20 Official Journal of 5 January 1993)

For the implementation of the second paragraph of article 83, where the court numbers one or two investigating judges, the appeal court presiding judge may second to the judge in charge of the investigation one or more judges from his jurisdiction upon the request of the presiding judge of the district court or, where he is unable to act, the judge replacing him.

Article 84.

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law n° 85-1407 of 30 December 1985 Articles 64 and 94 Official Journal of 31 December 1985 in force on 1 February 1986)

(Law n° 93-2 of 4 January 1993 Article 21 Official Journal of 5 January 1993 in force on 1 March 1993)

Subject to the implementation of articles 657 and 663, the replacement of the investigating judge by another investigating judge may be requested of the court's presiding judge in the interests of the proper administration of justice, by a reasoned submission made by the district prosecutor acting either spontaneously or upon the application of the parties.

The court's presiding judge must decide within a week by making an order, which is not open to appeal.

Where the judge in charge of the investigation is unable to act because of vacations, illness or any other reason, including appointment to another post, the presiding judge designates an investigating judge to replace him.

However, in urgent cases and for isolated steps, any investigating judge may stand in for another investigating judge belonging to the same court, provided he reports this immediately to the court's presiding judge.

In the cases set out by the second paragraph of article 83 and article 83-1, the judge appointed or, if there are several, the first judge by

order of appointment, may replace or stand in for the judge in charge of the investigation without the need to make use of the previous paragraphs.

SECTION II : THE CIVIL PARTY PETITION AND ITS CONSEQUENCES

Article 85.

Any person claiming to have suffered harm from a felony or misdemeanour may petition to become a civil party by filing a complaint with the competent investigating judge.

Article 86.

(Law n° 85-1407 of 30 December 1985 Articles 87-ii Official Journal of 31 December 1985 in force on 1 March 1988)

(Law n° 93-2 of 4 January 1993 Article 28 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 9 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 2002-1138 of 9 September 2002 Article 39 Official Journal of 10 September 2002)

The investigating judge orders the complaint to be sent to the district prosecutor in order that this prosecutor may draft his submissions.

The prosecution submissions may be made against a named or unnamed person.

Where the complaint is insufficiently grounded or justified, the district prosecutor may, before making his submissions and if this has not been done by the investigating judge on his own motion, request this judge to hear the civil party and, as the case may be, invite the latter to disclose any element liable to support his complaint.

The district prosecutor may only send the investigating judge submissions not to investigate where the facts of the case cannot lead to a lawful prosecution for reasons relating to the right to prosecute, or where, if the facts were shown to exist, they would not amount to any criminal offence. Where the investigating judge decides otherwise, he must make a reasoned order.

Where the investigating judge makes an order declining to investigate, he may apply the provisions of articles 177-2 and 177-3.

Article 87.

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 Article 29 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 35 Official Journal of 25 August 1993 in force on 2 September 1993)

A civil party petition may be filed at any time during the judicial investigation.

It may be challenged by the district prosecutor or by a party.

In the event of a challenge or where he declares the civil party petition inadmissible the investigating judge decides, after having sent the case file to the public prosecutor, by making a reasoned order, against which the party concerned may appeal.

Article 87-1.

The investigating judge to whom are referred actions intentionally committed against an under-age child by the holders of parental authority or by one of them may appoint an ad hoc administrator to exercise in the name of the child, where necessary, the rights accorded to the civil party. In the event of a civil party petition, the judge causes an advocate to be appointed officially for the minor if one has not yet been chosen.

The above provisions are applicable to the trial court.

Article 88.

(Law n° 72-1226 of 29 December 1972 Article 23 Official Journal of 30 December 1972)

(Law n° 83-608 of 8 July 1983 Article 3 Official Journal of 9 July 1983 in force on 1 September 1983)

(Law n° 93-2 of 4 January 1993 Article 121 Official Journal of 5 January 1993 in force on 1 March 1993)

The investigating judge makes an order recording the filing of the complaint. Where no legal aid was granted, he fixes according to the income of the civil party the amount of the payment into court the latter must deposit with the court office and the time limit within which the payment must be made, under penalty of inadmissibility of the complaint. He may exempt the civil party from making a payment into court.

Article 88-1.

(Law n° 93-2 of 4 January 1993 Article 122 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 87 Official Journal of 16 June 2000)

The payment into court fixed pursuant to article 88 secures the payment of any civil fine liable imposed pursuant to the first paragraph of article 177-2.

The amount paid into court is returned where no such fine is ordered by the investigating judge or, where the prosecutor or the civil party appeals, by the investigating chamber.

Article 89.

(Law n° 85-1407 of 30 December 1985 Articles 14 and 94 Official Journal of 31 December 1985 in force on 1 February 1986)

Every civil party must declare to the investigating judge an address. This must be situated in metropolitan France if the investigation is under way in metropolitan France, or if it made in an overseas département, in this same département.

The civil party may declare either his personal address or the address of a third party entrusted to receive the documents which are addressed to him, with the agreement of this third party, which may be ascertained by any means.

The civil party is informed that he must notify the investigating judge of any change in the stated address before the closure of the judicial investigation, by making a new declaration or by sending a registered letter with request of acknowledgement of receipt. He is also notified that any service made at the last address given is deemed to have been made to him in person.

Where he fails to give an address, the civil party may not allege the absence of service of the documents which should have been notified to him in accordance with the law.

Article 89-1.

(Law n° 93-1013 of 24 August 1993 Article 10 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Articles 29 and 74 Official Journal of 16 June 2000 in force on 1 January 2001)

The civil party is informed in the course of his first examination of his right to file an application for a decision or to bring an annulment application on the grounds of articles 81, ninth paragraph, 82-1, 156, first paragraph, and 173, third paragraph, during the progress of the investigation and at the latest on the twentieth day following the sending of the notice provided for by the first paragraph of article 175.

Where he believes that the foreseeable time for completing the investigation is less than a year in a case involving a misdemeanour and less than eighteen months in a case involving a felony, the investigating judge communicates this period to the civil party and advises him that at the end of this period the civil party may request the closure of the procedure under the provisions of article 175-1. Where this is not the case, he indicates to the civil party that he may, under the same article, request the closure of the procedure after a period of one year in a case involving a misdemeanour or eighteen months in the case of a felony.

The information set out under the previous paragraph may also be provided by recorded delivery letter.

Article 90.

Where the investigating judge is not competent according to the provisions of article 52, he makes, after the public prosecutor's submissions, an order sending the civil party back to initiate proceedings before such court as may be appropriate.

Article 91.

(Law n° 93-2 of 4 January 1993 Articles 123 and 224 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 87 Official Journal of 16 June 2000)

When, after an investigation has been opened by a person constituting himself a civil party a discharge decision has been made, the person under judicial examination, or any other person targeted by the complaint may, without prejudice to a prosecution for malicious denunciation, and if they do not initiate civil proceedings, seek damages from the complainant, as set out below.

The action for damages must be filed within three months from the date when the discharge order became final. It is brought by means of a summons before the correctional court where the case has been investigated. This court is immediately sent the case file of the investigation ended by a discharge order, to communicate it to the parties. The debates take place in chambers: the parties, or their counsel, and the public prosecutor are heard. The judgment is read in open court.

Where the claim succeeds, the court may order the publication of its judgment in its entirety or in extract form in one or more newspapers of the court's choice, at the convicted person's expense. The court determines the maximum cost of each insertion.

Applications to set aside and appeals are admissible within the ordinary time limits set out for misdemeanours.

The appeal is brought before the criminal appeals division which rules under the same conditions as the court. The appeal court judgment may be transferred to the Court of Cassation as in criminal matters.

If a final judgment made in accordance with article 177-2 finds that the person constituted himself a civil party abusively or late, this judgment is binding on the correctional court according to the conditions set out in the previous paragraphs.

Sub-section 1: Inspections of premises, searches and seizures

Article 92.

(Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

The investigating judge may go to the scene of the offence to make any useful findings or conduct a search. He informs the district prosecutor who is entitled to accompany him.

The investigating judge is always accompanied by a clerk.

He drafts an official record of all his operations.

Article 93.

(Law n° 68-542 of 12 June 1968 Article 1 Official Journal of 13 June 1968)

(Law n° 75-701 of 6 August 1975 Article 14 Official Journal of 7 August 1975 in force on 1 January 1976)

(Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

If the requirements of the investigation call for it, the investigating judge may, after informing the court's prosecutor, journey with his clerk to any place within the national territory to proceed with any investigatory step, provided that he notifies in advance the district prosecutor attached to the court of the jurisdiction to which he travel. He enters into his official record the grounds of his journey.

Article 94.

(Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

Searches are made in all the places where may be found items which could be useful for the discovery of the truth.

Article 95.

(Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

(Law n° 93-2 of 4 January 1993 Article 163 Official Journal of 5 January 1993 in force on 1 March 1993)

If the search is made in the domicile of the person under judicial examination, the investigating judge must comply with the provisions of articles 57 and 59.

Article 96.

(Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

(Law n° 93-2 of 4 January 1993 Article 163 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 44 Official Journal of 16 June 2000)

If the search is made in a domicile other than that of the person under judicial examination, the person in whose domicile it must be made is invited to attend. If this person is absent or refuses to attend, the search is made in the presence of two of his relatives or relatives by marriage present on the premises or, failing which, in the presence of two witnesses.

The investigating judge must comply with the provisions of articles 57 (second paragraph) and 59.

However, he has the duty to organise in advance all the appropriate measures to ensure the observance of professional secrecy and the defendant's rights.

The provisions of articles 56-1, 56-2 and 56-3 apply to searches carried out by the investigating judge.

Article 97.

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958)

(Ordinance n° 60-121 of 13 February 1960 Article 13 Official Journal of 14 February 1960)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 85-1407 of 30 December 1985 Articles 3 and 4 Official Journal of 31 December 1985 in force on 1 February 1986)

(Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

(Law n° 93-2 of 4 January 1993 Articles 164 and 224 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 2001-1168 of 11 December 2001 Article 18 Official Journal of 12 December 2001)

Where in the course of an investigation there is a need to search for documents, and subject to the requirements of the investigation and

compliance, where necessary, with the obligation imposed by the third paragraph of the previous article, the investigating judge or the judicial police officer commissioned by him has the sole right to examine such documents before carrying out the seizure.

An inventory is made of all items and documents placed in judicial safekeeping, which are immediately placed under official seals. However, if this is difficult to do on the spot, the judicial police officer proceeds as indicated under the fourth paragraph of article 56.

With the agreement of the investigating judge, the judicial police officer upholds the seizure of only such articles and documents as are useful for the discovery of the truth.

If these official seals are closed, they may be opened and the documents examined only in the presence of the person under judicial examination in the presence of his advocate, or where the latter has been duly summoned. The third party in whose residence the seizure was made is also invited to attend during this operation.

Unless the requirements of the investigation prevent it, a copy or photocopy of the documents placed under judicial authority may be delivered as soon as possible to any persons concerned who request it at their own expense.

If the seizure comprises monies, ingots, papers or securities which do not necessarily have to be preserved in kind for the discovery of the truth or for the safeguarding of the rights of parties, he may authorise the clerk to deposit them with the Deposit and Consignment Office or with the Bank of France.

If the seizure comprises counterfeit banknotes or coins, the investigating judge or the judicial police officer working with him must provide the national analysis centre with at least one example of each type of coin or banknote suspected of being fake. The national analysis centre may proceed to open any seals. It makes a list in a report which must record any opening or reopening of the seals. When the process of testing is complete, the report and the seals must be put into the hands of a clerk in the relevent court of law. An official record is made of their being so deposited.

The requirements of the preceding paragraph do not apply in cases where there is only one suspected fake coin or note, and this is needed to establish the truth.

Article 97-1

(Inserted by Law n°2003-239 of 18 March 2003 Article 18 3° Official Journal of 19 March 2003)

Where this is necessary to comply with a rogatory letter, the judicial police officer may carry out the measures provided for by article 57-1.

Article 98.

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 77-1468 of 30 December 1977 Article 16 Official Journal of 31 December 1977 in force on 1 January 1978)

(Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

(Law n° 93-2 of 4 January 1993 Articles 163 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law no. 92-1336 of 16 December 1992 Article 322 Official Journal of 23 December 1992, in force on 1 March 1994)

(Law no. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000, in force on 1 January 2002)

Subject to the requirements of the judicial investigation, any communication or disclosure made without the authorisation of the person under judicial examination or that of his beneficiaries or of the signatory or addressee of a document found during a search, to a person not authorised by law to examine it, is punished by a €4500 fine and two years' imprisonment.

Article 99.

(Law no. 85-1407 of 30 December 1985 Article 4 & 94 Official Journal of 31 December 1985, in force on 1 February 1986)

(Law no. 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991, in force 1 October 1991)

(Law no. 93-2 of 4 January 1993 Article 163 Official Journal of 5 January 1993, in force 1 March 1993)

(Law no. 2000-516 of 15 June 2000 Article 83 Official Journal of 16 June 2000, in force 1 January 2001)

During the investigation, the investigating judge is competent to decide on the restitution of articles placed under judicial authority.

He decides by a making a reasoned order either upon the district prosecutor's submissions or on his own motion, after hearing the prosecutor's opinion, or upon the application of the person under judicial examination, the civil party or any other person claiming a right over the article.

He may also on its own motion decide, with the agreement of the district prosecutor, to return or to have returned the articles placed under judicial authority whose ownership is not disputed to the victim of the offence.

No restitution is made where it is liable to hinder the discovery of the truth or the safeguard of the rights of the parties, or where it

creates a danger for persons or for property. It may be refused when the confiscation of the article is provided for by law.

The investigating judge's order under the second paragraph of the present article is served either on the applicant in the event of a dismissal of the application, or on the public prosecutor and on any other party concerned in the event of a restitution decision. It may be referred to the investigating chamber by an ordinary application filed with the court office within the time limit and according to the conditions set out by the fourth paragraph of article 186. This time limit is suspensive.

The third party's observations may be heard by the investigating chamber, as well as those of the parties, but he may not ask for the case file to be put at his disposal.

Article 99-1.

(Law n° 99-5 of 6 January 1999 Article 9 Official Journal of 7 January 1999)

(Law n° 2000-516 of 15 June 2000 Article 83 Official Journal of 16 January 2000, in force on 1 January 2001)

Where, in the course of judicial proceedings or of checks referred to in article 283-5 of the Rural Code, the decision has been made to seize or confiscate one or more live animals, for whatever reason, the district prosecutor attached to the district court with jurisdiction over where the offence took place or, if he is seised of the case, the investigating judge, may place the animal in a specially designated holding place until the offence has been tried.

If the conditions the animal is kept in are liable to render it a danger to others or to damage its health, the investigating judge, if seised of the case, or the presiding judge of the district court or another judge delegated by him may, in a reasoned decision taken on the submissions of the district prosecutor and after hearing the opinion of a veterinary surgeon, order it to be sold, entrusted to a third party, or destroyed.

The owner, if his identity is known, is informed of this order. He may refer it to the presiding judge of the court of appeal of the jurisdiction or to a judge of this court appointed by him, or, if the order came from the investigating judge, to the investigating chamber under the conditions provided for in the fifth and sixth paragraphs of article 99.

Any proceeds generated by the sale of the animal are deposited for a period of five years. Where the judicial proceedings which justified the seizure end in a discharge or the proceedings being dropped, the proceeds of the sale are given to the person who owned the animal at the moment of the seizure, if he so requests. In cases where the animal was entrusted to a third party, the owner can submit a demand for the restitution of the animal to the judge appointed in the second paragraph.

The animal's owner will be liable for any costs relating to the impounding of his animal, unless the judge designated in the second paragraph, who is seised of a request for exemption, or the court ruling on the merits of the case otherwise decides. This exemption may also be granted where proceedings are dropped or end in a discharge.

Article 99-2.

(Law n° 99-515 of 23 June 1999 Article 23 Official Journal of 24 June 1999)

(Law n° 2000-516 of 15 June 2000 Article 83 Official Journal of 16 January 2000 in force on 1 January 2001)

Where, during the course of the investigation, it proves impossible to carry out the restitution of movable property placed under judicial safekeeping, which no longer needs to be kept in order to establish the truth, either because the owner cannot be identified, or because the owner does not claim the item within two months from the time that the official notice was sent to his domicile, the investigating judge may, subject to the rights of third parties, order the destruction of the assets or their transfer to the State property agency with a view to their disposal.

Subject to the rights of third parties, the investigating judge may also order that ownership of personal property placed under judicial safekeeping which belongs to the persons being prosecuted, where the items no longer need to be kept in order to establish the truth, and their confiscation has been provided for by the law, be surrendered to the State property service with a view to their disposal, where to continue the seizure would decrease the value of the property. If the sale of the asset is then carried out, the proceeds of this are deposited for a period of ten years.Where the proceedings are dropped, or end in a discharge or acquittal, or where the court does not order confiscation, these proceeds are given back to the owner of the items, if he so requests.

The investigating judge may also order the destruction of moveable property placed under judicial safekeeping, which no longer needs to be kept in order to establish the truth, where the items concerned are qualified by law as dangerous or harmful, or where holding them is unlawful.

The decisions taken pursuant to the present article are the subject of a reasoned decision. This order is made either on the district prosecutor's request, or by the court on its own motion after hearing his views. It is communicated to the public prosecutor, the parties concerned and, if their identity is known, the owner as well as the third parties who have rights over this property, who can transfer the matter to the investigating chamber under the conditions provided for in the fifth and sixth paragraphs of article 99.

A Council of State Decree determines the mode of enforcement of the present article.

Sub-section 2: Interception of correspondence by telecommunications

Article 100.

(Law n° 85-1407 of 30 December 1985 Articles 9 and 94 Official Journal of 31 December 1985 in force on 1 February 1986)

(Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

For the investigation of felonies and misdemeanours, if the penalty incurred is equal to or in excess of two years's imprisonment, the investigating judge may order the interception, recording and transcription of telecommunication correspondence where the requirements of the investigation call for it. Such operations are made under his authority and supervision.

The interception decision is made in writing. It is not a jurisdictional decision and is unappealable.

Article 100-1.

(Inserted by Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

The order made pursuant to article 100 must include all the details identifying the link to be intercepted, the offence which justifies resorting to an interception as well as the duration of this interception.

Article 100-2.

(Inserted by Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

This decision is taken for a maximum duration of four months. It may be extended only by following the same conditions as to form and duration.

Article 100-3.

(Inserted by Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

The investigating judge or the judicial police officer appointed by him may require any qualified agent of a service or institution placed under the authority or supervision of the Minister in charge of telecommunications, or any qualified agent of a network operator or authorised purveyor of telecommunication services to set up an interception device.

Article 100-4.

(Inserted by Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

The investigating judge or the judicial police officer appointed by him drafts an official record of both the interception and recording operations. This official record mentions the date and time when the operation started and ended.

The recordings are placed under closed official seals.

Article 100-5.

(Inserted by Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

The investigating judge or the judicial police officer appointed by him transcribes any correspondence which is useful for the discovery of the truth. An official record is made of these transcriptions. The transcription is attached to the case file.

Correspondence in a foreign language is transcribed into French with the assistance of an interpreter appointed for this purpose.

Article 100-6.

(Inserted by Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

The recordings are destroyed on the request of the district prosecutor or of the public prosecutor upon the expiry of the limitation period for prosecution.

An official record is made of the destruction.

Article 100-7.

(Inserted by Law n° 91-646 of 10 July 1991 Article 2 Official Journal of 13 July 1991 in force on 1 October 1991)

(Law n° 93-1013 of 24 August 1993 Article 20 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law no. 95-125 of 8 February 1995 Article 50 Official Journal of 9 February 1995)

No interception may be made on the telephone line of a member of parliament or senator unless the president of the assembly he belongs to is informed of the interception by the investigating judge.

No interception may be made on a telephone line connecting the chambers or domicile of an advocate unless the president of the bar association is informed by the investigating judge.

The formalities set out by the present article are prescribed under penalty of nullity.

SECTION IV: THE HEARING OF WITNESSES

Sub-section 1: General provisions

Article 101.

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

The investigating judge summons any person whose statement appears useful to him before him through a bailliff or a police officer. A copy of this summons is handed over to the person.

Witnesses may also be summoned by an ordinary letter, a recorded delivery letter or through administrative channels; they may also appear of their own volition.

Where he is summoned or sent for, the witness is informed that if he does not appear or refuses to appear, he can be compelled to by the law-enforcement agencies in accordance with the provisions of article 109.

Article 102.

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958)

(Law n° 72-1226 of 29 December 1972 Article 16 Official Journal of 30 December 1972)

(Law n° 74-631 of 5 July 1974 Article 13 Official Journal of 7 July 1974)

(Law n° 93-2 of 4 January 1993 Article 163 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

They are examined individually by the investigating judge in the presence of his clerk and without the person under judicial examination being present; an official record is made of their statement.

The investigating judge may call upon an interpreter who has reached the age of majority, with other than his clerk or other witnesses. If the interpreter is not already sworn in, he swears an oath to bring his assistance to justice upon his honour and his conscience.

If the witness is deaf, the investigating judge officially appoints a sign-language interpreter or other qualified person able to communicate with deaf people to help him during the hearing.

This interpreter, if he is not under oath, swears an oath to bring his assistance to justice upon his honour and his conscience. Any other technical means of communicating with the witness may also be used.

If the deaf witness knows how to read and write, the investigating judge may also communicate with him by writing.

Article 103.

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

Witnesses swear an oath to tell the whole truth and nothing but the truth. The judge asks their surname, first names, age, profession, residence, whether they are the parties' family members or relations by marriage, and to what degree, or if they are in their service. A record is made of the questions and of the answers.

Article 104.

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 87-1062 of 30 December 1987 Article 16 Official Journal of 8 January 1958)

(Law n° 93-2 of 4 January 1993 Article 30 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 2 August 1993 Article 11 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 131 Official Journal of 16 June 2000 in force on 1 January 2001)

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

Translator's note: according to Dalloz, this was repealed in 2001. You need to check this.

[Any person against whom is directed a named complaint with a civil party petition may upon his request, when being examined as a witness, be granted the rights recognised to persons placed under judicial examination by articles 114, 115 and 120. The investigating judge informs the person of this possibility during the first examination after having informed him of the complaint. A record of such a caution is entered into the official record.]

Article 105.

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958)

(Ordinance n° 60-121 of 13 February 1960 Article 1 Official Journal of 14 February 1960)

(Law n° 93-2 of 4 January 1993 Article 31 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 11 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Articles 31 and 131 Official Journal of 16 June 2000 in force on 1 January 2001)

Persons against whom there is serious and corroborative evidence that they took part in the offences referred to the investigating judge may not be heard as witnesses.

Article 106.

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

Each page of the official records is signed by the judge, the clerk and by the witness. The witness is then invited to read over his statement as it has been transcribed, and then to sign it if he declares that he upholds his statement. If the witness is unable to read, the statement is read to him by the clerk. If the witness refuses or is unable to sign, this is mentioned in the official record. Each page is also signed by the interpreter, where there is one.

Article 107.

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

Official records are drafted in single spacing. Words crossed out and references are approved by the investigating judge, the clerk and the witness and, where necessary, by the interpreter. Without this approval, these words crossed out and references are deemed to be void.

The same rule applies to an official record which has not been signed in accordance with the law.

Article 108.

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

Children under the age of sixteen are heard without having to take an oath.

Article 109.

(Ordinance n° 58-1296 of 23 December 1958 Official Journal of 24 December 1958)

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law n° 89-461 of 6 July 1989 Article 20 Official Journal of 8 July 1989)

(Law n° 92-1336 of 16 December 1992 Articles 13 and 326 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 93-2 of 4 January 1993 Article 56 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law no. 2000-516 of 15 June 2000 Article 31, 32 & 83 Official Journal of 16 June 2000, in force on 1 January 2001)

(Law no. 2000-1354 of 30 December 2000 Article 8 Official Journal of 31 December 2000, in force on 1 January 2001)

Any person summoned to be heard in the capacity of a witness is obliged to appear, to swear an oath, and to make a statement, subject to the provisions of articles 226-13 and 226-14 of the Criminal Code.

Any journalist heard as a witness in respect of information collected in the course of his activities is free not to disclose its origin.

If the witness does not appear or refuses to appear, the investigating judge may, on the request of the district prosecutor, order him to be produced by the law-enforcement agencies.

Article 110.

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

Enforcement measures taken against the defaulting witness is made by a requisition order. The witness is brought directly before the judge who prescribed the measures.

Article 111

Repealed

Article 112.

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

Where a witness is unable to appear, the investigating judge goes to hear him or delivers a rogatory letter for this purpose in accordance

with the formalities set out by article 151.

Article 113.

(Law n° 2000-516 of 15 June 2000 Article 31 Official Journal of 16 June 2000 in force on 1 January 2001)

If the witness examined in the conditions provided for by the previous article previous was not prevented from appearing in answer to the summons, the investigating judge may sentence this witness to the fine set out in article 109.

Sub-Section 2: The assisted witness

Article 113-1

(Inserted by Law n° 2000-516 of 15 June 2000 Article 33 Official Journal of 16 June 2000 in force on 1 January 2001)

Any person mentioned by name in the initial submission and who is not indicted may only be heard as an assisted witness.

Article 113-2

(Inserted by Law n° 2000-516 of 15 June 2000 Article 33 Official Journal of 16 June 2000 in force on 1 January 2001)

Any person mentioned by name in a complaint or implicated by the victim may be heard as an assisted witness. Where he appears before the investigating judge, he is compulsorily heard in this capacity if he requests this.

Any person implicated by a witness or against whom there is evidence making it seem probable that he could have participated, as the perpetrator or accomplice, in committing the offence of which the investigating judge is seised, may be heard as an assisted witness.

Article 113-3

(Inserted by Law n° 2000-516 of 15 June 2000 Article 33 Official Journal of 16 June 2000 in force on 1 January 2001)

The assisted witness benefits from the right to be assisted by an advocate, who is informed prior to the hearings and who has access to the case file, in accordance with the provisions of articles 114 and 114-1. He may also ask the investigating judge to be confronted with the person or persons who have implicated him, in accordance with the provisions of article 82-1. This advocate is chosen by the assisted witness or appointed ex officio by the president of the bar association if the person concerned requests this.

During his first hearing as an assisted witness, the person is informed of his rights by the investigating judge.

Article 113-4

(Inserted by Law n° 2000-516 of 15 June 2000 Article 33 Official Journal of 16 June 2000 in force on 1 January 2001)

During his first hearing as an assisted witness, the investigating judge certifies his identity, informs him about the initial submission, the complaint or the denunciation, informs him of his rights and carries out the formalities provided for in the last two paragraphs of article 116. This information is noted in the official record.

The investigating judge may notify a person that he will be heard as an assisted witness by sending a recorded delivery letter. This letter includes the information provided for in the first paragraph. It specifies that the name of the advocate chosen or the request for the automatic appointment of an advocate must be sent to the investigating judge's clerk.

Article 113-5

(Inserted by Law n° 2000-516 of 15 June 2000 Article 33 Official Journal of 16 June 2000 in force on 1 January 2001)

The assisted witness cannot be placed under judicial supervision or in pre-trial detention, or be the subject of a transfer order or be placed under judicial examination.

Article 113-6

(Inserted by Law n° 2000-516 of 15 June 2000 Article 33 Official Journal of 16 June 2000 in force on 1 January 2001)

At any point of the proceedings, the assisted witness may, during his hearing or by a recorded delivery letter with acknowledgement of receipt, request that the investigating judge place him under judicial examination; the person is then considered as under judicial examination and benefits from all the rights of defence, as from his request, or the sending of his recorded delivery letter with acknowledgement of receipt.

The provisions of article 105 are not applicable to the assisted witness.

Article 113-7

(Inserted by Law n° 2000-516 of 15 June 2000 Article 33 Official Journal of 16 June 2000 in force on 1 January 2001)

The assisted witness does not take the oath.

Article 113-8

(Inserted by Law n° 2000-516 of 15 June 2000 Article 33 Official Journal of 16 June 2000 in force on 1 January 2001)

If, during the course of the proceedings, it appears that there is serious corroborative proof justifying the assisted witness being placed under judicial examination, the investigating judge may only place him under judicial examination by applying the provisions of the seventh paragraph of article 116 after informing the person of his intention, if necessary by recorded delivery letter, and putting him in a position to make his comments known. He may also place him under judicial examination by sending the person a recorded delivery letter, at the same time as the notice of the end of the investigation provided for in article 175, listing each of the charges against him, as well as their legal qualification, and informing him of his right during a period of twenty days to request steps to be taken or to apply for the proceedings to be annulled under articles 81, 82-1, 82-2, 156 and 173. The person is also informed that if he requests to be heard again by the judge, the judge is obliged to proceed to interrogate him.

SECTION V: INTERROGATIONS AND CONFRONTATIONS

Article 114.

(Law n° 85-1407 of 30 December 1985 Article 15 and 94 Official Journal of 31 December 1985 in force the 1 February 1986)

(Law n° 93-2 of 4 January 1993 Article 32 Official Journal of 5 January 1993)

(Law n° 93-1013 of 24 August 1993 Article 312Official Journal of of 25 August 1993 in force 2 September 1993)

(Law no 96-1235 of 30 December 1996 Article 12 Official Journal 1January 1997, in force 31 March 1997)

(Law n° 2000-516 of 15 June 2000 Article 83 Official Journal of 16 June 2000 in force the 1 January 2001)

Unless they expressly waive this right, parties may only be heard, interrogated or confronted in the presence of their advocates or when their advocates have been duly called upon.

The advocates are summoned five working days at the latest before the interrogation or examination of the party they assist, by recorded delivery letter with request for acknowledgement of receipt, by fax with receipt, or verbally with a signature in the case file of the proceedings.

The case file is put at their disposal four working days at the latest before each interrogation of the person under judicial examination or each hearing of the civil party. After the first appearance of the person under judicial examination or the first hearing of the civil party, the case file is also put at the permanent disposal of the advocates during working days, subject to the requirements of the proper functioning of the investigating judge's office. Where the provisions of the last paragraph of article 80-1 are implemented, the case file is put at the advocate's disposal, subject to the requirements of the proper functioning of the investigating judge's office, fifteen days after the sending of the recorded delivery letter or the note made in the official record, if the first appearance has not meanwhile taken place.

After the first appearance or first examination, the advocates of the parties may request the issuance at their expense of a copy of some or all of the documents and instruments of the case file.

The advocates may transmit a reproduction of the copies obtained in this way to their client. The latter states beforehand in writing that he is aware of the provisions of the following paragraph and of article 114-1.

Only copies of the experts' reports may be communicated to third parties, by the parties or their advocates, and for the needs of the defence.

The advocate must notify the investigating judge of the list of documents or procedural acts, copies of which he wishes to give to his client, by a declaration made to the investigating judge's clerk, or by a recorded delivery letter with request for acknowledgement of receipt, and made for this sole purpose.

The investigating judge has five working days from receiving the application to refuse to deliver some or all of these copies by making a specially reasoned order in respect of the risks of pressure on the victims, the person under judicial examination, their advocates, the witnesses, the investigators, the experts or any other person taking part in the proceedings.

This decision is made known to the advocate immediately, and by any method. Failing a response from the investigating judge notified within the assigned time limit, the advocate may give his client the copy of the documents or acts in the list that he provided. Within two days of its notification, he can refer the investigating judge's decision to the investigating chamber's presiding judge, who rules within five working days by making a written, reasoned and unappealable decision. Where there is no response within the assigned time limit, the advocate may give his client the copy of the documents or acts mentioned on the list.

The rules pursuant to which such documents may be handed by his advocate to a person detained and the conditions under which this person may hold these documents are determined by a Council of State Decree.

By way of exception to the provisions of the eighth and ninth paragraphs, the advocate of a civil party whose petition is challenged as inadmissible may not give his client a copy of the documents or procedural acts without the prior authorisation of the investigating judge, which may be sent to him by any means. In the event of a refusal by the investigating judge or in the absence of a response made by this judge within five working days, the advocate may refer to the presiding judge of the investigating chamber, who decides within five working days by making a written, reasoned and unappealable decision. In the absence of prior authorisation from the presiding judge of the investigating chamber, the advocate may not give the copy of the documents or procedural acts to his client.

Article 114-1.

(Law n° 96-1235 of 30 December 1996 Article 2 Official Journal of 1 January 1997 in force 31 March 1997)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal of of 22 September 2000 in force 1 January 2002)

Subject to the provisions of the sixth paragraph of article 114, for a party given a copy of documents or procedural acts, in accordance with this article, to pass them on to a third party, is punished by a fine of € 3,750.

Article 115.

(Law n° 93-2 of 4 January 1993 Article 33 Official Journal of 5 January 1993)

(Law n° 2000-516 of 15 June 2000 Article 83 Official Journal of 16 June 2000)

The parties may at any time of the investigation notify the investigating judge of the name of the advocate they have chosen; if they appoint several advocates, they must indicate to which one of them will be sent the summons and notifications; the latter will be sent to the first advocate chosen in the absence of such a choice.

Where the person under judicial examination is held in custody, the choice of his advocate is made in a letter sent by this person to the advocate, appointing him to act in his defence. A copy of this letter, in its entirety or parts of it, must be sent by the advocate to the investigating judge's office. The person under judicial examination must confirm this choice to the investigating judge within fifteen days. This time limit does not affect the free communication of the case file to the advocate.

Article 116.

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force the 2 March 1959)

(Law n° 93-2 of 4 January 1993 Article 64 Official Journal of 5 January 1993)

(Law n° 93-1013 of 24 August 1993 Article 13 Official Journal of of 25 August 1993 in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 23 Official Journal of 16 June 2000 in force the 1 January 2001)

(Law no. 2000-1354 of 30 December 2000 Article 12 Official Journal of 31 December 2000, in force on 1 January 2001)

Where he envisages placing a person who has not already been heard as an assisted witness under judicial examination, the investigating judge carries out his first appearance according to the conditions set out by the present article.

The investigating judge confirms the person's identity and expressly informs him of each of the charges of which he is seised and for which placement under judicial examination is contemplated, specifying their legal qualification. A record of these charges and their legal qualification is made in the official record.

Where the provisions of article 80-2 have been applied and the person is aided by an advocate, the investigating judge carries out his interrogation; the person's advocate may present his comments to the investigating judge.

In all other cases, the investigating judge informs the person of his right to choose an advocate or to ask that one be officially appointed for him. The chosen advocate, or in the case of a request for a court-appointed advocate, the president of the bar association, is informed without delay and by any method. If the chosen advocate cannot be contacted or cannot come, the person is advised of his right to request a court-appointed advocate, in order to help him during his first appearance. The advocate may consult the case file at once and freely communicate with the person. The investigating judge then informs the person of his choice to remain silent, to make a statement, or to be interrogated. A record of this information is made in the official record. The consent to being interrogated can only be given in the presence of an advocate. The person's advocate may also present his remarks to the investigating judge.

After, as may be, recording the person's statements or carrying out his interrogation and hearing his advocate's comments, the investigating judge informs him:

- either that he is not placed under judicial examination; the investigating judge then advises him that he benefits from the rights of an assisted witness;

- or that he is placed under judicial examination; the investigating judge then brings to the person's attention the matters or the legal qualification of the matters of which he is accused, if these matters or their legal qualification differ from those of which he has previously been informed; he informs him of his right to request steps to be taken or to apply for the proceedings to be anulled under 81, 82-1, 82-2, 156 and 173 during the course of the investigation, and at the latest by the twentieth day after the notice provided for by the last paragraph of article 175, subject to the provisions of article 173.-1.

If he feels that the expected time for the completion of the investigation is less than a year in the case of a misdemeanour or eighteen months in the case of a felony, the investigating judge informs the person of this expected time, and advises that at the expiry of this time limit, he will be able to request the closure of the proceedings, pursuant to the provisions of article 175-1. If not, he indicates to the person that he can request the closure of the proceedings at the end of a year in in the case of a misdemeanour, or eighteen months inthe case of a felony, in accordance with the same article.

At the end of the first appearance, the person must register his personal address with the investigating judge. He may, however, substitute the address of a third party responsible for receiving the acts which are meant for him if he produces evidence that this third party agrees. If the investigation takes place in metropolitan France, the address must be located within an adminsistrative division of metropolitan France. If the investigation takes place in an overseas département, the address must be within this département. This

declaration is made before the liberty and custody judge where this judge, referred the case by the investigating judge, decides not to place the person in detention.

The person is advised that he must indicate any change of registered address to the investigating judge in a new declaration or a recorded delivery letter with acknowledgement of receipt until the completion of the investigation. He is also informed that any notification or service made to the last registered address is considered to be delivered to him in person. A record of this notice, as well as the declaration of address, made in the official record. Where the liberty and custody judge decides not to put the person in detention, these notices are given by this judge.

Article 117.

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Ordinance no.60-529 of 4 June 1960 Article 8 Official Journal 8 June 1960)

(Law no. 72-1226 of 29 December 1972 Article 14 Official Journal of 30 December 1972)

(Law no. 83-466 of 10 June 1983 Article 29-i Official Journal of 11 June 1983, in force 27 June 1983)

(Law n° 93-2 of 4 January 1993 Article 36 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 6 Official Journal of 25 August 1993, in force on 2 September 1993)

Notwithstanding the provisions set out in article 116, the investigating judge may carry out an immediate interrogation and confrontations in a case of urgency arising from the condition of a witness in danger of death, or from the existence of evidence on the point of disappearing, as well as in the case set out by the last paragraph of article 72.

The reasons for this urgency are noted in the official report.

Article 118

Repealed

Article 119.

(Law n° 93-2 of 4 January 1993 Article 163 Official Journal of 5 January 1993, in force on 1 March 1993)

(Law no. 2000-516 of 15 June 2000 Article 3 Official Journal of 16 June 2000, in force on 1 January 2001)

The district prosecutor may attend the interrogations and confrontations of the person under judicial examination and the civil party hearings.

Whenever the district prosecutor has informed the investigating judge of his intention to be present, the investigating judge's clerk must, under penalty of a 1.5 € civil fine imposed by the presiding judge of the investigating chamber, notify him by a simple note, at the latest two days before the interrogation.

Article 120

(Law n° 93-2 of 4 January 1993 Article 165 and 224 Official Journal of 5 January 1993 decision 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 25 Official Journal of 16 June 2000 in force the 1 January 2001)

The investigating judge is in charge of interrogations, confrontations and hearings. The district prosecutor and the advocates acting for the parties may ask questions or make brief observations.

Where appropriate, the investigating judge decides on the order of interventions and may put an end to them if he feels himself to be adequately informed. He may refuse any questions likely to disrupt the proper course of the enquiry, as well as questions of a personal or insulting nature.

Any such refusal must be recorded in the official report.

Submissions made by the district prosecutor or the parties' advocates, which represent a formal acknowledgement of a disagreement with the investigating judge over the contents of the official report, are to be attached to the case file by the investigating judge.

Article 121.

(Law n° 2000-516 of 15 June 2000 Article 26 Official Journal of 16 June 2000 in force the 1 January 2001)

The official records of interrogations and confrontations are drafted in accordance with the formalities set out in articles 106 and 107.

The provisions of article 102 are applicable if an interpreter is called upon.

If the person under judicial examination is deaf, the investigating judge officially appoints a sign-language interpreter or another qualified person able to communicate with deaf people to help him during the enquiry.

This interpreter, if he is not under oath, swears an oath to bring his assistance to justice upon his honour and his conscience

Any other technical means of communicating with the person under judicial examination may also be used.

If the person under judicial examination knows how to read and write, the investigating judge may also communicate with him by writing.

SECTION VI: ISSUANCE AND EXECUTION OF WARRANTS

Article 122.

(Law n° 87-432 of 22 June 1987 Article 5-i Official Journal of 23 June 1987)

(Law n° 87-1062 of 30 December 1987 Article 11 Official Journal of of 31 December 1987)

(Law n° 93-2 of 4 January 1993 Article 236 Official Journal of 5 January 1993 decision 1 March 1993)

(Law n° 93-2 of 4 January 1993 Article 59 Official Journal of 5 January 1993 decision 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 19 Official Journal of of 25 August 1993 in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 132 Official Journal of 16 June 2000 in force the 1 January 2001)

The investigating judge may issue a subpoena, a summons or an arrest warrant, according to the case. The liberty and custody judge may issue a committal order.

A subpoena is designed to give to the person against whom it is made a notice to appear before the judge at the date and time specified by this warrant.

A summons is the order given by the judge to the law-enforcement forces to bring the person against whom it is made immediately before him.

A committal warrant is the order given by the liberty and custody judge to the prison governor to receive and detain the person under judicial examination against whom a remand ruling has been made. This warrant also authorises the collection or the transfer of the person concerned, so long as he has been previously notified.

An arrest warrant is the order given to the law-enforcement authorities to collect the person against whom it is made and to bring him to the remand prison mentioned on the warrant, where he will be received and detained.

Article 123.

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 72-1226 of 29 December 1972 Article 26 Official Journal of of 30 December 1972 in force 1 January 1973)

(Law n° 84-576 of 9 July 1984 Article 1 and Article 19 Official Journal of 10 July 1984 in force 1 January 1985)

(Law n° 87-432 of 22 June 1987 Article 5-i Official Journal of 23 June 1987)

(Law n° 87-1062 of 30 December 1987 Article 1 Official Journal of 31 December 1987)

(Law n° 89-461 of 6 July 1989 Article 2 Official Journal of 8 July 1989 in force 1 December 1989)

(Law n° 93-2 of 4 January 1993 Article 166 Official Journal of 5 January 1993 decision 1 March 1993)

Every warrant specifies the identity of the person against whom it is made; it is dated and signed by the judge who makes it and it bears his seal.

Summonses, committal orders and warrants for arrest also mention the type of charges brought against the named person, their legal qualification and the applicable legal statutes.

A subpoena is served by a bailiff to the person against whom it are made, or is served on this person by a judicial police officer or agent, or by an agent of the law-enforcent authorities, who hands him a copy of it.

A summons or an arrest warrant is served and enforced by a judicial police officer or agent or by an agent of the law-enforcement authorities, who shows the warrant to the person and hands him a copy of it.

If the person has already been detained for another reason, the warrrant is served as indicated in the previous paragraph or, on the district prosecutor's instructions, by the prison governor, who also delivers a copy of the warrant.

In urgent cases, summonses and arrest warrants may be sent by any possible means.

Where this is the case, the essential information from the original warrant, especially the identity of the person against whom it is made, the type of offences he is charged with and their legal qualification, the name and position of the judge making the warrant must all be specified. The original warrant or its copy is sent as quickly as possible to the agent in charge of enforcing it.

Article 124

Warrants are enforceable over the entire territory of the Republic.

Article 125

(Law n° 87-432 of 22 June 1987 Article 5-ii Official Journal of 23 June 1987)

(Law n° 93-2 of 4 January 1993 Article 167 Official Journal of 5 January 1993 decision 1 March 1993)

The investigating judge immediately interrogates the person against whom a summons has been issued.

The interrogation of a person arrested in accordance with a summons is carried out under the same conditions. However, if the interrogation cannot be immediate, the person is brought to the remand prison, where he may not be detained more than twenty-four hours.

Upon the expiry of this time limit, he is automatically brought by the prison governor before the district prosecutor who calls upon the investigating judge, or in his absence, the court's presiding judge, to immediately carry out the interrogation, failing which the person is released.

Article 126

(Law n° 92-1336 of 16 December 1992 Article 14 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 93-2 of 4 January 1993 Article 168 Official Journal of 5 January 1993 decision 1 March 1993)

Any person arrested in accordance with a summons, who has been kept more than twenty-four hours in the remand prison without being interrogated, is deemed arbitrarily detained.

Articles 432-4 to 432-6 of the Criminal Code are applicable to any judges, prosecutors or civil servants who have ordered or knowingly tolerated this arbitrary detention.

Article 127

(Law n° 72-1226 of 29 December 1972 Article 27 Official Journal of of 30 December 1972 in force 1 January 1973)

(Law n° 93-2 of 4 January 1993 Article 169 Official Journal of 5 January 1993 decision 1 March 1993)

If the person searched for in accordance with a summons is found more than two hundred kilometres from the seat of office of the investigating judge who made the warrant, he is brought within twenty-four hours either, with his consent, before the judge who made this warrant, or before the district prosecutor of the place of arrest.

Article 128

(Law nº 84-576 du 9 July 1984 art. 2 and art. 19 Official Journal 10 July 1984 in force 1 January 1985)

(Law nº 93-of 4 January 1993 art. 170 Official Journal of 5 January 1993 in force 1 March 1993)

This judge questions him as to his identity, records his statement after cautioning him that he free not to make one, asks him if he consents to be transferred or prefers to extend the effect of the summons by waiting in the place he then is for the decision of the investigating judge in charge of the case. If the person declares he opposes the transfer, he is brought to the remand prison and an immediate notification is sent to the competent investigating judge. The original or the copy of the official record of the appearance including a full description is immediately sent to this judge, with any information likely to facilitate in ascertaining his identity.

This official record must mention that the person was informed that he was free not to make a statement.

Article 129

The investigating judge in charge of the case decides immediately upon receiving these documents whether there is a need to order the transfer of the person.

Article 130

(Law nº 84-576 of 9 July 1984 art. 3 Official Journal of 10 July 1984 in force 1 January 1985)

(Law nº 93-2 4 of 4 January 1993 art. 171 Official Journal of 5 January 1993 in force 1 March 1993)

Where a transfer is required under the conditions set out by articles 128 and 129, the person must be brought before the investigating judge who made the warrant within four days of the notification of the warrant.

This time limit is however extended to six days in the event of a transfer from an overseas département to another département or from continental France to an overseas département.

Article 130-1

(Law nº 84-576 of 9 July 1984 art. 4 Official Journal of 10 July 1984 in force 1 January 1985)

(Law nº 93-2 of 4 January 1993 art. 172 Official Journal of 5 January 1993 in force 1 March 1993)

Where the time limits imposed by articles 127 and 130 are not complied with, the person is released upon the order of the investigating judge in charge of the case, unless his transfer was delayed by insuperable circumstances.

Article 131

(Law n° 93-2 of 4 January 1993 art. 173; Official Journal of 5 January 1993; in force 1 March 1993)

If the person has absconded or if he resides outside the territory of the Republic, the investigating judge may, after hearing the opinion of the district prosecutor, issue an arrest warrant against him if the offence carries a misdemeanour imprisonment penalty or a more serious penalty.

Article 132

(Law n° 87-432 of 22 June 1987 art. 5-ii; Official Journal 23 June 1987)

(Law n° 93-2 of 4 January 9113 art. 174; Official Journal of 5 January 1993, in force 1 March 1993)

The person arrested in accordance with an arrest warrant is brought forthwith to the remand prison mentioned in the warrant, subject to the provisions of article 133, paragraph 2.

The prison governor hands a receipt acknowledging the person's transfer to the official in charge of enforcing the warrant.

Article 133

(Law n° 70-643 of 17 July 1970 Article 2; Official Journal of 19 July 1970)

(Law n° 84-576 of 9 July 1984 Article 5-i, 5-ii, 5-iii; Official Journal of 10 July 1984 in force 1 January 1985)

(Law n° 87-1062 of 30 December 1987 Article 1 Official Journal of of 31 December 1987, in force 1 September 1989)

(Law n° 89-461 of 6 July 1989 Article 21 Official Journal of 8 July 1989)

(Law n° 93-2 of 4 January 1993 Article 175 Official Journal of 5 January 1993 in force 1 March 1993)

The judge proceeds with the examination of the person and decides on the extension of his detention pursuant to the conditions set out by article 145, within twenty-fours hours of the incarceration. Failing this, and upon expiry of this time limit, the provisions of articles 125, third paragraph, and 126 are applicable.

If the person is arrested more than two hundred kilometres from the seat of office of the investigating judge who issued the warrant, he is immediately brought before the district prosecutor of the place of arrest, who records his statement after cautioning him that he is free not to make a statement. This notice is recorded in the official record.

The district prosecutor immediately informs the judge who made the warrant and requests the transfer. If the transfer cannot be made immediately, the district prosecutor reports this to the issuing judge.

Where a transfer must be made, the person is brought to the remand prison mentioned in the warrant within the time limits set out in article 130. The provisions of article 130-1 are applicable.

Article 134

(Law n° 72-1226 of 29 December 1972 Article 30 Official Journal of of 30 December 1972 in force 1 January 1973)

(Law n° 93-2 of 4 January 1993 Article 176 Official Journal of 5 January 1993 in force 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 24; Official Journal of 16 June 2000 in force 1 January 2001)

The officer in charge of enforcing the summons or the arrest warrant may not enter a citizen's home before 6 a.m. or after 9 p.m.

He may be accompanied by sufficient force to ensure that the person does not evade the law. This force is taken from the place closest to where the warrant must be enforced and it is obliged to obey the requisitions included in this warrant.

If the person cannot be arrested, an official report of the fruitless search is sent to the judge who issued the warrant., The person concerned is then considered to be placed under judicial examination for the purposes of article 176.

Article 135

(Law n° 70-643 of 17 July 1970 Article 3 Official Journal of 19 July 1970)

(Law n° 87-432 of 22 June 1987 Article 5-I; Official Journal of 23 June 1987)

(Law n° 87-1062 of 30 December 1987 Article 1; Official Journal of of 31 December 1987)

(Law n° 89-461 of 6 July 1989 Article 3; Official Journal of 8 July 1989 in force 1 December 1989)

(Law n° 93-2 of 4 January 1993 Article 237; Official Journal of 5 January 1993 decision 1 March 1993)

(Law n° 93-2 of 4 January 1993 Article 61; Official Journal of 5 January 1993 in force 1 January 1994)

(Law n° 93-1013 of 24 August 1993 Article 19; Official Journal of of 25 August 1993 in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 132 Official Journal of 16 June 2000, in foprce 1 January 2001)

As regards felonies or misdemeanours, committal warrants may not be issued except to enforce the ruling provided for in article 145.

The officer in charge of enforcing the committal warrant hands over the person concerned to the prison governor, who gives him a receipt acknowledging this hand-over.

Article 136

(Law n° 92-1336 of 16 December 1992 Article 18; Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 93-2 of 4 January 1993 Article 177; Official Journal 5 January 1993 decision 1 March 1993)

(Law n° 2000-516 of 15 June 2000 Article 83; Official Journal of 16 June 2000 in force 1 January 2001)

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

The non-observance of the formalities laid down for subpoenas, summonses, committal orders and arrest warrants is punished by a € 7,5 civil fine imposed upon the clerk by the presiding judge of the investigating chamber; it can lead to disciplinary sanctions against the investigating judge, the liberty and custody judge or the district prosecutor.

These provisions are extended, unless more severe penalties are enforced, to any violation of the measures protecting personal freedom laid down in articles 56, 57, 59, 96, 97, 138 and 139.

In the cases outlined in the previous two paragraphs and in any case of violation of personal freedom, the issue may never be raised by administrative authorities, and judicial courts always have exclusive competence.

The same rules apply to any civil proceedings initiated on the grounds of actions amounting to an attack against personal freedom or against the inviolability of a person's home set out by articles 432-4 to 432-6 and 432-8 of the Criminal Code, whether directed against a public body or its agents.

SECTION VII : JUDICIAL SUPERVISION AND PRE-TRIAL DETENTION

Article 137

(Law n° 70-643 of 17 July 1970 Article 1; Official Journal of 19 July 1970)

(Law n° 84-576 of 9 July 1984 Article 8 and Article 19; Official Journal of 10 July 1984 in force 1 January 1985)

(Law n° 87-1062 of 30 December 1987 Article 2; Official Journal of 31 December 1987 in force 1 September 1989)

(Law n° 89-461 of 6 July 1989 Article 21; Official Journal 8 July 1989)

(Law n° 93-2 of 4 January 1993 Article 178; Official Journal of 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 16; Official Journal of of 25 August 1993 in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 46; Official Journal of 16 June 2000)

The person under judicial examination, presumed innocent, remains at liberty. However, if the investigation so requires, or as a precautionary measure, he may be subjected to one or more obligations of judicial supervision. If this does not serve its purpose, he may, in exceptional cases, be remanded in custody.

Article 137-1

(Law n° 93-2 of 4 January 1993 Article 235; Official Journal of 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 34; Official Journal of of 25 August 1993 in force 2 September 1993)

(Law n° 93-2 of 4 January 1993 Article 57; Official Journal of 5 January 1993, in force 1 January 1994)

(Law n° 93-1013 of 24 August 1993 Article 18; Official Journal of of 25 August 1993 in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 Article 48; Official Journal of 16 June 2000 in force the 1st January 2001)

(Law n° 2000-1354 of 30 December 2000 art. 13; Official Journal 31 December 2000, in force 1 January 2001)

Pre-trial detention is ordered and extended by the liberty and custody judge. Release applications are also submitted to him.

The liberty and custody judge is a judge with the rank of presiding judge, of senior deputy presiding judge, or of deputy presiding judge. He is appointed by the presiding judge of the district first instance court. When he gives a decision at the end of a debate, he is aided by a clerk. He can, in that case, apply the provisions of article 93.

He may not, under pain of nullity, participate in the trial of criminal cases of which he has taken cognizance.

He is seised of the case by a reasoned judgment ruling from the investigating judge, who transfers to him the case file and the district prosecutor's initial submissions.

Article 137-2

(Inserted by Law n° 2000-516 of 15 June 2000 Article 48; Official Journal of 16 June 2000 in force the 1st January 2001)

Judicial supervision is ordered by the investigating judge, who gives his judgment after taking note of the district prosecutor's recommendations.

Where he is in charge of the case, the liberty and custody judge may also make a custody ruling.

Article 137-3

(Inserted by Law n° 2000-516 of 15 June 2000 Article 48; Official Journal of 16 June 2000 in force 1 January 2001)

The liberty and custody judge gives his ruling by a reasoned judgment. Where he orders or prolongs a remand in custody, or rejects a request for release, the ruling must enunciate the legal and factual matters that render judicial supervision inadequate, as well as the grounds for detention, with reference only to the provisions of articles 143-1 and 144.

In every case, the person under judicial examination is notified of the ruling and receives a complete copy of it, for which he has to sign the case file.

Article 137-4

(Inserted by Law n° 2000-516 of 15 June 2000 Article 48; Official Journal of 16 June 2000 in force 1 January 2001)

(Law n° 2002-1138 of 9 September 2002 art. 37 Official Journal of 10 September 2002)

Where, having received the district prosecutor's submissions in favour of remanding a person in custody, the investigating judge finds that this detention is not justified and decides not to send the case file to the liberty and custody judge, he is required to give a reasoned ruling forthwith, which is immediately communicated to the district prosecutor.

Article 137-5

(Inserted by Law n° 2000-516 of 15 June 2000 Article 48; Official Journal of 16 June 2000 in force the 1st January 2001)

Where he was not successful in his submissions requesting that the person under judicial examination be remanded in custody or placed under judicial supervision, or extending his remand in custody, the district prosecutor may directly seise the investigating chamber within ten days of the notice served on him by the court office.

Sub-section 1 : Judicial supervision

Article 138

(Law n° 70-643 of 17 July 1970 art. 1; Official Journal 19 July 1970)

(Law n° 75-701 of 6 August 1975art 23; Official Journal 7 August 1975)

(Law n° 83-466 of 10 June 1983 art. 30; Official Journal of 11 June 1983)

(Law n° 83-608 of 8 July 1983 art 4; Official Journal 9 July 1983)

(Law n° 85-1407 of 30 December 1985 art. 16 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law n° 87-1062 of 30 December 1987 art 3; Official Journal of 31 December 1987, in force 1 September 1989)

(Law n° 89-461 of 6 July 1989 art 21; Official Journal 8 July 1989)

(Law n° 93-2 of 4 January 1993 art 149; Official Journal 5 January 1993)

(Law n° 93-2 of 4 January 1993 art 179; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 46; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 45; Official Journal 16 June 2000)

(Law n° 2000-516 of 15 June 2000 art 50, 51 and 132; Official Journal 16 June 2000, in force 1 January 2001)

(Law n° 2002-1138 of 9 September 2002 Article 49 Official Journal of 10 September 2002)

Judicial supervision may be ordered by the investigating judge or the liberty and custody judge if the person under judicial examination is liable to incur a misdemeanour imprisonment penalty, or one that is more severe.

This supervision compels the person to submit himself to one or more of the obligations enumerated hereafter, according to the investigating judge's decision :

1° not to leave the territorial boundaries fixed by the investigating judge;

2° not to leave his domicile or the residence fixed by the investigating judge except under the conditions and for the grounds determined by this judge;

3° not to go to certain places or only to go to the places determined by the investigating judge;

4° to notify the investigating judge of any travel beyond the boundaries determined;

5° to appear periodically before the services, authorised associations or authorities appointed by the investigating judge, who are obliged to observe strict confidentiality in respect of the actions of which the person under judicial examination is accused;

6° to answer the summons of any authority, association or qualified person appointed by the investigating judge and to submit himself to, as the case may be, supervision measures concerning his work or trade, or attendance at lessons of any description as well as any socio-educational measures designed to favour his reinsertion into society as well as to prevent re-offending;

7° to hand over all identity documents, especially his passport, to the court office or a police station in exchange for a receipt which acts as a proof of identity;

8° to abstain from driving all or certain types of vehicle and, if necessary, to hand over his driving licence to the court office in exchange for a receipt. However the investigating judge may decide that the person under judicial examination may drive in order to work;

9° to abstain from seeing, meeting and contacting by any means those persons specifically identified by the investigating judge;

10° to undergo medical examination, treatment or care, or even hospitalisation, particularly with the aim of detoxification;

11° to provide a guarantee, of which the amount and instalments (which may be one or more) are determined by the investigating judge, taking into account the income and outgoings of the person under judicial examination.

12° not to engage in certain professional or social activities, with the exception of electoral mandates or union responsibilities, where the offence was committed in the performance of these activities and where it is feared that a new offence may be committed. Where the activity concerned is that of an advocate, the investigating judge must refer the case to the bar council, which decides as stated under articles 23 and 24 of law n° 71-1130 of 31 December 1971 governing the reform of certain judicial and legal professions. The Bar Council gives a ruling within fifteen days.

13° not to draw cheques other than those which exclusively allow the withdrawal of sums by the drawer from the drawee or certified cheques and, if necessary, to hand over to the court office any cheques whose use is thus prohibited.

14° not to hold or carry any weapons and, if necessary, to hand any weapons he holds over to the court office in exchange for a receipt;

15° to provide real or personal securities, for a sum and for a period determined by the investigating judge;

16° to prove he contributes to family expenses or regularly pays the maintenance he has been ordered to pay in accordance with judicial decisions and the judicially confirmed agreements entailing the obligation to pay services, subsidies or contributions to matrimonial expenses.

The obligation provided for by 2° may be carried out, with the agreement of the party concerned in the presence of his advocate, under the regime of placement under electronic supervision provided for by article 723-8. Articles 723-9 and 723-12 are applicable, the investigating judge having the same jurisdiction as the post-sentencing judge.

The terms of implementation of the present article, in particular as regards the certification of persons contributing towards judicial supervision, are determined, if necessary, by a Decree of the Council of State.

Article 139

(Law n° 70-643 of 17 July 1970 art. 1; Official Journal 19 July 1970)

(Law n° 85-1407 of 30 December 1985 art. 17 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law n° 87-1062 of 30 December 1987 art 3; Official Journal of 31 December 1987, in force 1 September 1989)

(Law n° 89-461 of 6 July 1989 art 21; Official Journal 8 July 1989)

(Law n° 93-2 of 4 January 1993 art 180; Official Journal 5 January 1993)

The person under judicial examination is placed under judicial supervision by an order given by the investigating judge which may be made at any stage of the investigation.

The investigating judge may at any time impose upon the person under judicial examination one or more new obligations, cancel all or part of the obligations included in the supervision, amend one or more of these obligations or grant an occasional or temporary exemption from complying with specific obligations.

Article 140

(Law n° 70-643 of 17 July 1970 art. 1; Official Journal 19 July 1970)

(Law n° 85-1407 of 30 December 1985 art. 18 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 179; Official Journal 5 January 1993)

(Law n° 2000-516 of 15 June 2000 art 83; Official Journal 16 June 2000)

The investigating judge may order the lifting of the judicial supervision at any time either on his own motion, on the district prosecutor's recommendations, at the person concerned's request after hearing the opinion of the district prosecutor. The investigating judge rules on person's application within five days, with a reasoned judgment.

If the investigating judge has not given judgment within this period, the person concerned may refer his application directly to the investigating chamber which, after receiving the public prosecutor's written and reasoned submissions, decides within twenty days of the submission of the case. Failing this, the lifting of the judicial supervision is granted as of right, except when verification of the person's application have been ordered.

Article 141

Repealed

Article 141-1

(Inserted by Law n° 70-643 of 17 July 1970 art 1;Official Journal 19 July 1970, in force 1 January 1971)

The powers granted to the investigating judge by articles 139 and 140 may be exercised in any case by the competent court according to the provisions of article 148-1.

Article 141-2

(Law n° 70-643 of 17 July 1970 art 1;Official Journal 19 July 1970 in force 1 January) 1971)

(Law n° 85-1303 of 10 December 1985 art 15 and 42;Official Journal 11 December 1985 in force 1 March 1988)

(Law n° 87-1062 of 30 December 1987 art 3;Official Journal 31 December 1987, in force 1 September 1989)

(Law n° 89-461 of 6 July 1989 art 21;Official Journal 8 July 1989)

(Law n° 93-2 of 4 January 1993 art 62 and 226;Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 1993 art 19;Official Journal 25 August 1993 in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 132 and 136;Official Journal 16 June 2000, in force 1 January 2001)

If the person under judicial examination intentionally evades the obligations of the judicial supervision, the investigating judge may issue an arrest warrant or a summons against him. Under the conditions provided for in paragraph four of article 137-1, he may also refer the case to the liberty and custody judge in order to remand the person in custody. Whatever period of imprisonment the offence in question carries, the liberty and custody judge may issue a committal order against him with a view to remanding him in custody, subject to the provisions of article 141-3.

The same rights are granted in any case to the competent court, according to the distinctions contained in article 148-1. However, there is no need to serve a warrant on the accused and the order for arrest is enforced at the direction of the presiding judge of the investigating chamber or, during the assizes at which the person concerned should be tried, by the presiding judge of the court of assizes.

Article 141-3

(Law n° 70-643 of 17 June 2000 art 61;Official Journal 16 June 2000, in force 1 January 2001)

Where the order to remand someone in custody is made after the judicial supervision of a person earlier remanded in custody for the same charges is revoked, the cumulative duration of the separate remands may not exceed by more than four months the maximum periods of detention set out in articles 145-1 and 145-2. Where the sentence applicable to the offence is shorter than the one mentioned in article 143-1, the total amount of time spent in prison may not exceed four months.

Article 142

(Law n° 70-642 of 17 July 1970 art 1;Official Journal 19 July 1970 in force 1 January 1971)

(Law n° 93-2 of 4 January 1993 art 124;Official Journal 5 January 1993 in force 1 March 1993)

(Law n° 2000-516 of 15 June 2000 art 51;Official Journal 16 June 2000 in force 1 January 2001)

Where the person under judicial examination is obliged to provide a guarantee or sureties, the guarantee or sureties secure :

1° the appearance of the person under judicial examination, of the defendant or of the accused for all the procedural steps and for the enforcement of the judgment, as well as, where necessary, the enforcement of the other obligations imposed upon him;

2° the payment in the following order:

a) of compensation for the damage caused by the offence and of restitution, as well as of any sum of alimony due where the person under judicial examination is prosecuted for defaulting on the payment of this debt;

b) of fines.

The decision of the investigating judge determines the sums attributed to each of the two parts of the guarantee or security. The investigating judge may also decide that the sureties guarantee the victims' rights in their entirety.

Article 142-1

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970)

(Law nº 83-608 of 8 July 1983 art. 5 Official Journal of 9 July 1983 in force 1 September 1983)

(Law nº 93-2 of 4 January 1993 art. 242 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-2 of 4 January 1993 art. 181 Official Journal of 5 January 1993 in force 1 January 1994)

(Law nº 94-89 of 1 February 1994 art. 17 Official Journal of 2 February 1994 in force 2 February 1994)

The investigating judge may, with the consent of the person under judicial examination, order that the part of the guarantee assigned to the guarantee of the victim's rights or the creditor of an alimony debt is provisionally paid to these persons upon their application.

This payment may also be ordered even without the consent of the person under judicial examination, where an enforceable judicial decision has granted the victim or creditor an interim payment in respect of the offences prosecuted.

Article 142-2

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 92-1336 of 16 December 1992 art. 16 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 179 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 51 Official Journal of 16 June 2000 in force 1 January 2001)

The first part of the guarantee is returned if the person under judicial examination, the defendant or the accused appears for all the procedural steps, complies with the judicial supervision obligations and submits to the enforcement of the judgment.

In the opposite case, unless there is a legitimate reason, or a decision to drop the case, discharge the defendant or acquit him, the first part of the guarantee is forfeited to the State, or the collection of the debt guaranteed by the first part of the security is carried out.

Article 142-3

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 89-461 of 6 July 1989 art. 14 Official Journal of 8 July 1989)

(Law nº 2000-516 of 15 June 2000 art. 51 Official Journal of 16 June 2000 in force 1 January 2001)

The amount attributed to the second part of the security which has not been paid to the victim of the offence or to the creditor of an alimony debt is returned in the event of a discharge and, unless article 372 is implemented, in the event of a pardon or acquittal.

It is used in accordance with the provisions of point 2° of article 142 in the event of a conviction. The surplus is returned when the sentence has become final.

The second part of the guarantee is levied or the debt that this part guarantees is enforced in accordance with the provisions of the two previous paragraphs.

The conditions of implementation of the present article are fixed by a Decree of the Council of State.

Article 143

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Where a trial court is called upon to decide in the cases set out under the present sub-section, it does so under the conditions determined by article 148-2.

Sub-section 2 : Pre-trial detention

Article 143-1

(Law nº 2000-516 of 15 June 2000 art. 57 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2002-307 of 4 March 2002 art. 5 Official Journal of 5 March 2002)

(Law nº 2002-1138 of 9 September 2002 art. 37 Official Journal of 10 September 2002)

Subject to the provisions of article 137, pre-trial detention may only be ordered or extended in one of the cases listed below:

1 The person under judicial examination risks incurring a sentence for a felony;

2 The person under judicial examination risks incurring a sentence for a misdemeanour of at least three years' imprisonment.

Pre-trial detention may also be ordered under the conditions provided for in article 141-2 where the person under judicial examination voluntarily submits himself to the obligations of judicial supervision.

Article 144

(Law nº 70-463 of 17 July 1970 art. 1 Official Journal of 19 July 1970)

(Law nº 81-82 of 2 February 1981 art. 40 and art. 51-ii Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 19-i and 19-ii Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 87-1062 of 30 December 1987 art. 4 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 89-146 of 6 July 1989 art. 21 Official Journal of 8 July 1989)

(Law nº 89-461 of 6 July 1989 art. 4 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 93-2 of 4 January 1993 art. 63 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 96-1235 of 30 December 1996 art. 3 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 57 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2002-1138 of 9 September 2002 art. 37 Official Journal of 10 September 2002)

Pre-trial detention may only be ordered or extended if it is the only way:

1 to preserve material evidence or clues or to prevent either witnesses or victims being pressurised, or fraudulent conspiracy between persons under judicial examination and their accomplices;

2 to protect the person under judicial examination, to guarantee that he remains at the disposal of the law, to put an end to the offence or to prevent its renewal;

3 to put an end to an exceptional and persistent disruption of public order caused by the seriousness of the offence, the circumstances in which it was committed, or the gravity of the harm that it has caused.

Article 144-1

(Law nº 87-1062 of 30 December 1987 art. 5 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 89-461 of 6 July 1989 art. 21 Official Journal of 8 July 1989)

(Law nº 96-1235 of 30 December 1996 art. 4 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 132 Official Journal of 16 June 2000 in force 1 January 2001)

Pre-trial detention may not exceed a reasonable length of time in respect of the seriousness of the charges brought against the person under judicial examination and of the complexity of the investigations necessary for the discovery of the truth.

The investigating judge, or where seised the liberty and custody judge, must order the immediate release of the person placed in pre-trial detention, pursuant to the terms provided for by article 147, as soon as the conditions provided under article 144 and under the present article are no longer fulfilled.

[Art. 144-2—Where it is ordered, pre-trial detention may be carried out, at the decision of the liberty and custody judge on his own motion or on the request of the person concerned, or at the decision of the investigating judge with the person concerned's agreement, in the manner provided for by articles 737-7 onwards. The liberty and custody judge takes the person concerned's family situation into account, particularly where he exercises parental authority over a child who lives permanently with him, and who is younger than ten years old. For the implementation of this measure, the liberty and custody judge exercises the powers granted to the post-sentencing judge.

Article 145

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970)

(Law nº 75-701 of 6 August 1975 art. 1 Official Journal of 7 August 1975)

(Law nº 84-576 of 9 July 1984 art. 9 and art. 19 Official Journal of 10 August 1984 in force 1 January 1985)

(Law nº 87-1062 of 30 December 1987 art. 6 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 89-461 of 6 July 1989 art. 21 Official Journal of 8 July 1989)

(Law nº 89-461 of 6 July 1989 art. 5 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 92-1336 of 16 December 1992 art. 17 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 238 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-2 of 4 January 1993 art. 64 Official Journal of 5 January 1993 in force 1 January 1994)

(Law nº 93-1013 of 24 August 1993 art. 19 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 96-1235 of 30 December 1996 art. 5 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 52 and 96 Official Journal of 16 June 2000 in force 1 January 2001)

The liberty and custody judge, seised by a order from the investigating judge seeking the remand in custody of the person under judicial examination, brings him before him, accompanied by his advocate if one has already been appointed, and proceeds in accordance with the provisions of the present article.

On reviewing the facts in the case file and after noting the comments of the party concerned, where he feels this is useful, the judge informs the person whether he intends to remand him in custody.

If he does not envisage remanding the person in custody, after ordering, where appropriate, that the person be placed under judicial supervision, the judge proceeds in accordance with the last two paragraphs of article 116 relating to registering addresses.

If he intends to remand the person in custody, he informs him that his decision can only intervene at the end of an adversarial debate, and that the person has the right to demand a waiting period in order to prepare his defence. If an adult person under judicial supervision or his advocate so requests at the start of the hearing, the debate takes place in open court, unless publicity would hinder the specific inquiries needed by the investigation, or would threaten personal dignity or a third party's interests. The liberty and custody judge rules on this request for publicity in a reasoned decision, after noting the comments of the public prosecutor, the person under judicial examination or his advocate.

If this person does not yet have the assistance of an advocate, he advises him that he has the right to be aided by an advocate of his choice or one that is court- appointed. The chosen advocate or, where court-appointed, the president of the bar, is immediately notified by any possible means; this formality is noted in the official record.

The liberty and custody judge rules in a hearing in chambers, after an adversarial debate, during which he hears the public prosecutor who elaborates his submissions made in accordance with the third paragraph of article 82, then the remarks of the person under judicial examination and, if appropriate, his advocate.

However, the liberty and custody judge may not immediately order the pre-trial detention where the person under judicial examination or his advocate requests an extension in order to prepare his defence.

In this case, he can prescribe, by means of a reasoned decision with reference to the provisions of the previous paragraph and which is not open to appeal, the imprisonment of the person for a fixed period which cannot in any case exceed four working days. During this period, he makes the person appear before him again and, whether the latter is assisted by an advocate or not, proceeds as stated in the sixth paragraph. If he does not order the person to be remanded in custody, the latter is automatically released.

Temporary imprisonment is, where necessary, added to the length of the pre-trial detention for the application of articles 145-1 and 145-2. It is assimilated with a pre-trial detention in the sense of article 149 of the present Code and article 24 of the Criminal Code (article repealed, see article 716-4 of the Code of Criminal Procedure).

Article 145-1

(Law nº 84-576 of 9 July 1984 art. 10 and 19 Official Journal of 10 July 1984 in force 1 January 1985)

(Law nº 87-1062 of 30 December 1987 art. 7 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 89-461 of 6 July 1989 art. 6 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 93-2 of 4 January 1993 art. 239 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-2 of 4 January 1993 art. 65 Official Journal of 5 January 1993 in force 1 January 1994)

(Law nº 93-1013 of 24 August 1993 art. 19 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 96-1235 of 30 December 1996 art. 6 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 96-1235 of 30 December 1996 art. 6 Official Journal of 1 January 1997 in force 1 July 1997)

(Law nº 2000-516 of 15 June 2000 art. 58 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2002-1138 of 9 September 2002 art. 37 Official Journal of 10 September 2002)

Detention may not be in excess of four months in misdemeanour matters if the person under judicial examination has not previously been sentenced, in respect of a felony or an ordinary misdemeanour, to an unsuspended prison sentence of at least a year, and when he is at risk of a sentence of five years or less.

In any other case, the liberty and custody judge may exceptionally decide to extend the pre-trial detention for period not in excess of four months, in a reasoned decision in accordance with the provisions of article 137-3 and delivered after a debate organised in accordance with the provisions of the sixth paragraph of article 145, where the advocate has been duly summoned according to the provisions of the second paragraph of article 114. This decision may be renewed following the same procedure, subject to the provisions of article 145-3. The total duration of the detention may not exceed a year. However, this time limit is extended to two years where one of the component parts of the offence was committed outside the national territory, or where the person is being prosecuted for drug trafficking, terrorism, criminal conspiracy, living off immoral earnings, extortion of money or for a felony committed by an organised gang and which carries a sentence of ten years' imprisonment.

In exceptional cases, where the investigating judge must continue his enquiries and releasing the person under judicial examination would pose a particularly serious risk to persons and property, the investigating chamber may increase the period of two years provided for by the present article by a further four months. The investigating chamber, which the person under examination has the right to appear before in person, is seised by a reasoned decision from the liberty and custody judge, under the conditions set out by the last paragraph of article 137-1, and it rules according to the provisions of articles 144, 144-1, 145-3, 194, 197, 198, 199, 200, 206 and 207.

Article 145-2

(Law nº 89-461 of 6 July 1989 art. 6 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 93-2 of 4 January 1993 art. 240 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-2 of 4 January 1993 art. 66 Official Journal of 5 January 1993 in force 1 January 1994)

(Law nº 93-1013 of 24 August 1993 art. 19 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 96-1235 of 30 December 1996 art. 7 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 59 and 132 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2002-1138 of 9 September 2002 art. 37 Official Journal of 10 September 2002)

For a suspected felony, the person under judicial examination may not be kept under detention for more than a year. However, subject to the provisions of article 145-3, the liberty and custody judge may, upon the expiry of this time limit, extend the detention for a length of time which may not exceed six months, in a reasoned decision in accordance with the provisions of article 137-3 and delivered after an adversarial debate organised in accordance with the provisions of the sixth paragraph of article 145, the advocate having been duly summoned in accordance with the provisions of the second paragraph of article 114. This decision may be renewed by following the same procedure.

The person under judicial examination may not be kept in custody for more than two years, where the applicable sentence is less than twenty years' imprisonment, and for more than three years in all other cases. The time limits are extended to three and four years respectively where one of the elements of the offence has been committed outside the national territory. The time limit is also four years where the person is being prosecuted for one or more felonies mentioned in Books II and IV of the Criminal Code, or for drug trafficking, terrorism, living off immoral earnings, extortion of money or for a felony committed by an organised gang.

In exceptional cases, where the investigating judge must continue his enquiries and releasing the person under examination would pose a particularly serious risk to persons and property, the investigating chamber may increase the detention periods provided for by the present article by a further four months. The investigating chamber, before which the person under examination has the right to appear in person, is seised by a reasoned decision from the liberty and custody judge, under the conditions set out by the last paragraph of article 137-1, and it rules according to the provisions of articles 144, 144-1, 145-3, 194, 197, 198, 199, 200, 206 and 207. This ruling may be renewed once under the same conditions and in the same manner.

The provisions of the present article are applicable until the order closing the examination.

Article 145-3

(Law nº 93-2 of 4 January 1993 art. 67 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 96-1235 of 30 December 1996 art. 8 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 53 Official Journal of 16 June 2000 in force 1 January 2001)

Where the length of the pre-trial detention is in excess of one year for a crime, or eight months for a misdemeanour, the decisions ordering its extension or dismissing the applications for release must also include the specific indications which justify in the given case the continuance of the investigation and the foreseeable delay for the ending of the procedure.

It is, however, not necessary for the extension order to indicate the nature of the investigations which the investigating judge is intending to carry out, where this indication risks hindering the carrying out of these investigations.

Article 145-4

(Law nº 96-1235 of 30 December 1996 art. 8 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Where the person under judicial examination is placed in pre-trial detention, the investigating judge may impose on him a ban from communicating for a period of ten days. This measure may be renewed but only for a further ten-day period. Under no circumstance does the ban from communicating extend to the person under judicial examination's advocate.

Subject to the previous provisions, any person placed in pre-trial detention may be visited at his place of detention with the authorisation of the investigating judge.

At the end of a month from the date of his placement in pre-trial detention, the investigating judge may not refuse to grant a visiting permit to a family member of the person detained, except by a written and specially reasoned decision in respect of the requirements of the investigation.

This decision is notified forthwith to the applicant by any available means. The applicant may refer it to the presiding judge of the investigating chamber who decides within five days by making a written and reasoned decision which is unappealable. Where he quashes the decision of the investigating judge, the presiding judge of the investigating chamber grants the visiting permit.

Article 145-5

(Law nº 2000-516 of 15 June 2000 art. 60 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2002-307 of 4 March 2002 art. 6 Official Journal of 5 March 2002)

The placement of a person in pre-trial detention, who makes it known, during his interrogation by the investigating judge prior to the transfer of the case to the liberty and custody judge, that he has exclusive parental authority over a minor of under sixteen years, who lives with him, may not be ordered unless one of the services or people described in the seventh paragraph of article 81 has first been put in charge of researching and proposing all measures necessary to prevent the endangering of the minor's health, safety or morals or the serious compromising of his education.

The provisions of the present article do not apply in cases of felony, misdemeanours committed against a minor, or in cases where the obligations of judicial supervision are not respected.

Article 146

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970)

(Law nº 84-576 of 9 July 1984 art. 11 and art. 19 Official Journal of 10 July 1984 in force 1 January 1985)

(Law nº 93-2 of 4 January 1993 art. 179 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 54 Official Journal of 16 June 2000 in force 1 January 2001)

If it appears in the course of the investigation that the offence under investigation can no longer be qualified as a felony, the investigating judge, after sending the case file to the district prosecutor for his submissions, may either by a reasoned order seise the liberty and custody judge with a view to maintaing the person's remand in custody, or pronounce his release with or without judicial supervision.

The liberty and custody judge rules within three days from the date of the investigating judge's referral of the case.

Article 147

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 93-2 of 4 January 1993 art. 182 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 55 Official Journal of 16 June 2000 in force 1 January 2001)

In every case, a release with or without judicial supervision may be ordered on his own motion by the investigating judge after hearing the

opinion of the district prosecutor, on the condition that the person under judicial examination undertakes to appear for every procedural step as soon as he is required to do so and keeps the investigating judge informed of all his movements.

The district prosecutor may also request release at any time. Unless he orders the person's release, the investigating judge must, within five days of the district prosecutor's requisitions, send the case file, accompanied by this own reason opinion, to the liberty and custody judge, who rules with three working days.

Article 148

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970)

(Law nº 84-576 of 9 July 1984 art. 12 and 19 Official Journal of 10 July 1984)

(Law nº 85-1407 of 30 December 1985 art. 19-i, 19-ii, 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 86-1019 of 9 September 1986 art. 16 Official Journal of 10 September 1986)

(Law nº 89-461 of 6 July 1989 art. 6 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 93-2 of 4 January 1993 art. 183 and 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-1013 of 24 August 1993 art. 35 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 56 and 83 Official Journal of 16 June 2000 in force 1 January 2001)

In all matters, the person remanded in custody or his advocate may, at any time, request his release, under the obligations provided for in the previous article.

The request for release is sent to the investigating judge, who immediately sends the case file to the district prosecutor to obtain his submissions.

Unless the prosecutor agrees to the request, the investigating judge must within five days of its sending to the district prosecutor, send it with his reasoned opinion to the liberty and custody judge. This judge rules within three working days, by a decree which contains the terms of the legal and factual considerations which form the basis of this decision, with reference to the provisions of article 144. However, where a previous release request or appeal against a previous order denying a release have still not been ruled upon, the aforementioned time limits do not come into effect until the judgment has been given by the competent court.

Where granted, the release may be accompanied by measures of judicial supervision.

Where the liberty and custody judge has not ruled within the time limit specified in the third paragraph, the person may immediately refer his request to the investigating chamber which, on the written, reasoned requistions of the public prosecutor, rules within twenty days of being seised of the case. Failing this, the person is automatically freed, unless checks to do with his request have been ordered. The right to transfer the case to the investigating chamber under the same conditions also attaches to the district prosecutor.

Article 148-1

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 11 July 1970 in force 1 January 1971)

(Law nº 93-2 of 4 January 1993 art. 184 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 and 136 Official Journal of 16 June 2000 in force 1 January 2001)

A release may also be requested in every case by any person under judicial examination, defendant or accused person and at any stage of the proceedings.

Where a trial court is seised of the case, it must rule on the pre-trial detention. However, in felony cases, the court of assizes is only competent where the application is made duing the session within which it must judge the accused. In all other cases, the request is examined by the investigating chamber.

Where an application is made for cassation, then until the Court of Cassation rules, the decision upon the release application is made by the court which last heard the case on the merits. If the application is made against a judgment of the assize court, the investigating chamber decides on the detention.

In the event of a finding of lack of jurisdiction and generally in every case where no court is seised of the case, the investigating chamber decides on applications for release.

Article 148-1-1

(Inserted by Law nº 2002-1138 of 9 September 2002 art. 38 Official Journal of 10 September 2002 in force 1 November 2002)

Where the order to free a person being held in custody is pronounced by the liberty and custody judge contrary to the district prosecutor's instructions, this ruling is immediately brought to the latter's attention. Subject to the provisions of the last paragraph of the present article, the person under examination may not be released, and this ruling may not be sent to the prison governor to be carried out, within four hours from when the district prosecutor was informed of the ruling.

The district prosecutor may lodge an appeal against the ruling before the clerk attached to the liberty and custody judge or the investigating judge, while simultaneously sending a request to review detention to the presiding judge of the appeal court, pursuant to the provisions of article 187-3; the appeal and request to review detention are mentioned in the ruling. The person under judicial examination and his advocate are notified at the same time that they receive the ruling, which may not be executed, the former remaining in custody unless a ruling of the presiding judge of the appeal court or, where appropriate, the investigating judge, has intervened. The person under judicial examination and his advocate are also informed of their right to make written observations to the presiding judge of the appeal court. If the district prosecutor fails to make a request to review detention within four hours of being notified of the release ruling, this notification along with a note from the clerk indicating the absence of the request to review detention is sent to the prison governor and the detainee is released, unless he has been detained for another reason.

If the district prosecutor, having made official representations recommending that the detainee be kept in custody, nevertheless concludes, that there is no reason to oppose the immediate release of the prisoner, then (without prejudice to his right to lodge an appeal later within the time limit provided for by article 185) he returns the ruling to the judge who delivered it, stating on it that he does not oppose its execution. The defendant is then set free, unless he has been detained for another reason.

Article 148-2

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970)

(Law nº 83-466 of 10 June 1983 art. 22 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 86-1019 of 9 September 1986 art. 17 Official Journal of 10 September 1986)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2002-1138 of 9 September 2002 art. 38 Official Journal of 10 September 2002)

Every court called upon to rule on an application for the total or partial lifting of judicial supervision or on an application for release makes its decision after hearing the public prosecutor, the defendant or his advocate, pursuant to articles 141-1 and 148-1. The defendant who is at liberty and his advocate are summoned by recorded delivery letter at least forty-eight hours before the date of the hearing.

The court seised of the case makes its decision within ten or twenty days from receiving the application, depending on whether it is a first-tier or second-tier court. When the defendant has already been tried at first instance and the case is being heard on appeal, the court dealing with the case decides within two months of the request. When the defendant's case has already been decided on appeal and he has made an application for cassation, the court decides within four months of the request.

However, where on the day of receiving the application a decision has not yet been made on a previous application for release or on an appeal against a previous decision refusing a release, the ten-day or twenty-day time limit only starts from the date of the decision made by the competent court. Where no decision has been made before the expiry of this time limit, an end is put to the judicial supervision or pre-trial detention, and the defendant is automatically set free if he is not detained for another reason.

The court's decision is immediately enforceable notwithstanding the filing of an appeal. Where the defendant is kept detained, the court decides within twenty days of the appeal, failing which the defendant is automatically set free if he is not detained for another reason.

Article 148-3

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 85-1407 of 30 December 1985 art. 20 Official Journal of 31 December 1985)

(Law nº 93-2 of 4 January 1993 art. 185 Official Journal of 5 January 1993 in force 1 March 1993)

Before being released, the person under judicial examination must formally declare his address to the investigating judge or to the prison governor as provided for by the third paragraph of article 116.

The person under judicial examination is notified that until the termination of the judicial investigation he must notify the investigating judge of any change in the address stated, by means of a new declaration or by recorded delivery letter with a request for acknowledgement of receipt. He is also cautioned that any notification or service made to the last declared address is deemed to have been made in person.

A record of this notice, as well as the notification of address is made either in the official record, or in the document of which the original or a copy is immediately sent by the prison governor to the investigating judge.

Article 148-4

(Law nº 75-701 of 6 August 1975 art. 2 Official Journal of 7 August 1975 in force 1 January 1976)

(Law nº 89-461 of 6 July 1989 art. 7 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 93-2 of 4 January 1993 art. 186 and 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

At the expiry of a four-month time limit since his last appearance before the investigating judge or the judge which he has delegated, and as long as the closing order has not been made, the person detained or his advocate may directly refer an application for release to the investigating chamber which decides under the conditions provided for in article 148 (last paragraph).

Article 148-5

(Law nº 78-1097 of 22 November 1978 art. 6 Official Journal of 23 November 1978)

(Law nº 93-2 of 4 January 1993 art. 179 Official Journal of 5 January 1993 in force 1 March 1993)

In any case and at any stage of the proceedings, the investigating or trial court may exceptionally grant an authorisation for an escorted leave to the person under judicial examination, the defendant or the accused.

Article 148-6

(Law nº 85-1407 of 30 December 1985 art. 21 and art. 94 Official Journal of 31 December 1985 in force 1 February 1986)

(Law nº 93-2 of 4 January 1993 art. 68 Official Journal of 5 January 1993 in force 1 March 1993)

Any application for the discharge or alteration of the judicial supervision or for a release must be declared to the clerk of the investigating court seised of the case or to the clerk of the court with jurisdiction in accordance with article 148-1.

It must be recorded and dated by the clerk who signs it with the applicant or his advocate. If the applicant is unable to sign it, this is indicated by the clerk.

Where the person or his advocate do not reside in the area of jurisdiction of the competent court, the declaration made to the clerk may be made by recorded delivery letter with a request for acknowledgement of receipt.

Article 148-7

(Law nº 85-1407 of 30 December 1985 art. 21 and art. 94 Official Journal of 31 December 1985 in force 1 February 1986)

(Law nº 93-2 of 4 January 1993 art. 179 Official Journal of 5 January 1993 in force 1 March 1993)

Where the person under judicial examination, the defendant or the accused is detained, the application for release may be made by a declaration to the prison governor.

This declaration is recorded and dated by the prison governor who signs it with the applicant. If the applicant is unable to sign, the prison governor makes a note of this.

The original document or a copy is immediately sent by any avalable means to either to the clerk of the court seised of the case, or to the court with jurisdiction as provided by article 148-1.

Article 148-8

(Law nº 85-1407 of 30 December 1985 art. 21 and art. 94 Official Journal of 31 December 1985 in force 1 February 1986)

(Law nº 89-461 of 6 July 1989 art. 7 Official Journal of 8 July 1989)

(Law nº 93-2 of 4 January 1993 art. 179 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Where the person under judicial examination wishes to refer the case to the investigating chamber pursuant to the provisions of articles 140, third paragraph, 148, sixth paragraph, or 148-4, his application is made in accordance with the formalities set out by articles 148-6 and 148-7 to the clerk of the competent investigating chamber or to the prison governor, who sees to its transmission.

Where the presiding judge of the investigating chamber ascertains that the court has under article 140, article 148 sixth paragraph, or article 148-4, been directly seised of an application for discharge of judicial supervision or release which is obviously inadmissible, he may rule by means of a reasoned unappealable order that no decision need be made on this application. In such a case, the application and the order are attached to the case file.

Sub-section 3 : Compensation for pre-trial detention

Article 149

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 96-1235 of 30 December 1996 art. 9 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 70 Official Journal of 16 June 2000)

(Law nº 2000-1354 of 30 December 2000 art. 1, 2, 3 and 7 Official Journal of 31 December 2000)

Without prejudice to the application of the provisions of the second and third paragraphs of article L.781-1 of the code of judicial

organisation, a person who has been remanded in custody during the course of proceedings ended by a decision to drop the case or a discharge or acquittal decision that has become final has, at his request, the right to full compensation for any material or moral harm that this detention has caused him. However, no compensation is due where this decision is based solely on the recognition of his irresponsibility under article 122-1 of the Criminal Code, an amnesty passed after the person has been remanded in custody, or where the person was remanded in custody for freely and voluntarily accusing himself or letting himself be wrongly accused in order to let the perpetrator of the acts escape prosecution. At the request of the person concerned, the harm is evaluated by means of adversarial expert reports commissioned under the conditions of articles 156 and onwards.

Where the decision to drop the case, or the discharge or acquittal decision, is made known to him, the person is advised of his right to demand compensation, and also of the provisions of articles 149-1 to 149-3 (first paragraph).

Article 149-1

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 93-2 of 4 January 1993 art. 150 Official Journal of 5 January 1993)

(Law nº 2000-516 of 15 June 2000 art. 71 Official Journal of 16 June 2000 in force 16 December 2000)

(Law nº 2000-1354 of 30 December 2000 art. 4 and 7 Official Journal of 31 December 2000)

The compensation set out under the previous article is granted by a decision made by the senior presiding judge of the court of appeal in the jurisdiction within which the decision to drop the case, the discharge, or acquittal has been pronounced.

Article 149-2

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 2000-516 of 15 June 2000 art. 70 Official Journal of 16 June 2000)

(Law nº 2000-516 of 15 June 2000 art. 71 Official Journal of 16 June 2000 in force 16 December 2000)

(Law nº 2000-1354 of 30 December 2000 art. 7 Official Journal of 31 December 2000)

The first president of the court of appeal, seised by an application made within the six months of when the decision to drop the case, the discharge or acquittal became final, rules in a reasoned decision.

The debates take place in open court, unless the applicant opposes this. At his request, the applicant is heard in person, or through his counsel.

Article 149-3

(Law nº 2000-516 of 15 June 2000 art. 71 Official Journal of 16 June 2000 in force 16 December 2000)

(Law nº 2000-1354 of 30 December 2000 art. 7 Official Journal of 31 December 2000)

The decisions taken by the senior presiding judge of the court of appeal may be appealed to the National Commission for the Compensation of Detention within ten days of being communicated. This Commission, situated in the Court of Cassation, has full power to decide the case, and its decisions are not subject to any form of appeal.

The office of the Court of Cassation may decide that the National Commission will be made up of several divisions.

The National Commission, or if necessary, each of the divisions which make it up, is composed of the senior presiding judge of the Court of Cassation, or his representative, who presides, and two court judges holding the rank of president of a chamber, conseiller or conseiller référendaire, appointed annually by the office of the court. In addition to these two judges, this office also appoints three supplementary judges under the same conditions.

The public prosecutor's duties are carried out by the prosecutor general's office at the Court of Cassation.

The provisions of article 149-2 are applicable to the decisions pronounced by the National Commission.

Article 149-4

(Law nº 2000-516 of 15 June 2000 art. 71 Official Journal of 16 June 2000 in force 16 December 2000)

(Law nº 2000-1354 of 30 December 2000 art. 7 Official Journal of 31 December 2000)

The procedure before the senior presiding judge of the court of appeal and the National Commission, who rule as civil courts, is determined by a Decree of the Council of State.

Article 150

(Law nº 70-643 of 17 July 1970 art. 1 Official Journal of 19 July 1970 in force 1 January 1971)

(Law nº 2000-1354 of 30 December 2000 art. 5 and 7 Official Journal of 31 December 2000)

The compensation granted pursuant to the present sub-section is paid by the State, subject to the State action against any malicious denunciator or the false witness whose fault caused the detention or its extension. It is paid as criminal justice costs.

SECTION VIII: ROGATORY LETTERS

Article 151

(Ordinance n° 58-1296 of 23 December 1958)

(Ordinance n° 60-121 of 13 February 1960 Article 1 Official Journal of 14 February 1960)

(Law no° 85-1407 of 30 December 1985 Articles 22-i, 22-ii & 94 Official Journal of 31 December 1985, in force on 1 February 1986)

(Law n° 93-2 of 4 January 1993 Article 17 Official Journal of 5 January 1993, in force on 1 March 1993)

The investigating judge may require by rogatory letter any judge of his court, any investigating judge or any judicial police officer, who in the latter case informs the district prosecutor, to undertake the investigative steps which he considers necessary in the places where each one of them has territorial jurisdiction.

The rogatory letter states the nature of the offence prosecuted. Is is dated and signed by the judge who issues it and it bears his official seal.

It may only prescribe investigative steps which are directly connected with the repression of the offence prosecuted.

The investigating judge fixes the time limit within which the rogatory letter must be returned to him with the official reports drafted for its execution by the judicial police officer. Failing such determination, the rogatory letter and the official reports must be transmitted to him within a week of the end of the operations executed pursuant to the letter.

Article 151-1-1

(Inserted by Law n° 2003-239 of 18 March 2003 Article 18 3° Official Journal of 19 March 2003)

Where necessary to carry out a rogatory commission, a judicial police officer may issue the demands provided for by the first paragraph of article 60-1.

With the express permission of the investigating judge, a judicial police officer may issue the demands provided for by the second paragraph of article 60-1.

The bodies or persons concerned must put the requisite information at their disposal by telecommunication or computer means as quickly as possible.

Refusal to respond to these demands without legitimate grounds is punished in accordance with the provisions of the fourth paragraph of article 60-1.

Article 152

(Law nº 87-1062 of 30 December 1987 art. 17 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 93-2 of 4 January 1993 art. 188 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-1013 of 24 August 1993 art. 14 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 131 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2000-1354 of 30 December 2000 art. 14 Official Journal of 31 December 2000)

The judge or the judicial police officers appointed to carry out the rogatory letter exercise all the powers of the investigating judge within the limits set by the letter.

However, judicial police officers may not interrogate and confront the persons placed under judicial examination. They may only hear civil parties or assisted witnesses at their request.

Article 153

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Law n° 95-73 of 27 January 1995 Article 27 Official Journal of 24 January 1995)

(Law nº 2000-516 of 15 June 2000 art. 4 & 31 Official Journal of 16 June 2000 in force 1 January 2001)

(Law n° 2001-1062 of 15 November 2001 Article 57 Official Journal of 16 November 2001)

(Law n° 2002-307 of 4 March 2002 Articles 2 & 4 Official Journal of 5 March 2002)

Any witness summoned to be heard in the course of the execution of a rogatory letter is obliged to appear, to swear an oath and to make

a statement. Where there is no plausible reason to suspect that he has committed or attempted to commit an offence, he may be only be detained for the length of time necessary for his hearing.

If he does not comply with this obligation, the mandating judge is informed, who may then use the law-enforcement agencies to compel him to appear. A witness who does not appear incurs the fine provided for in article 434-15-1 of the Criminal Code.

Article 154

(Ordinance n° 60-121 of 13 February 1960 Article 1 Official Journal of 14 February 1960)

(Law n° 63-22 of 15 January 1963 Article 1 Official Journal of 16 January 1963 in force on 24 February 1963)

(Law n° 93-2 of 4 January 1993 Article 18 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 93-1013 of 24 August 1993 Article 5 Official Journal of 25 August 1993 in force on 2 September 1993)

(Law nº 94-89 of 1 February 1994 art. 19 Official Journal of 2 February 1994 in force 2 February 1994)

(Law n° 2000-516 of 15 June 2000 Articles 5 & 134 Official Journal of 16 June 2000 in force on 1 January 2001)

(Law n° 2002-307 of 4 March 2002 Article 2 Official Journal of 5 March 2002)

Where it is necessary for the judicial police officer to keep a person, against whom there are one or more plausible reasons to suspect that he has committed or attempted to commit an offence, at his disposal in order to carry out the rogatory letter, the judicial police officer informs at the start of this measure the investigating judge who is seised of the case. The investigating judge supervises the custody measure. The judicial police officer may not hold the person for more than twenty-four hours

The person must be presented to this judge before the expiry of the twenty-four hour time limit or, if the rogatory letter is carried out in another area of jurisdiction, to the investigating judge of the place where this measure will be carried out. At the end of this presentation, the investigating judge may grant written authorisation to extend the measure for a further period which may not be in excess of twenty-four hours. In exceptional circumstances, he may grant this authorisation by a written and reasoned decision without a prior presentation of the person.

The area jurisdictions of the Paris, Nanterre, Bobigny and Créteil district courts are deemed to be a single jurisdiction for the implementation of the present article.

The provisions of articles 63-1, 63-2, 63-3, 63-4, 64 and 65 are applicable to the custody measures carried out within the context of the present section. The powers conferred on the district prosecutor by articles 63-2 and 63-3 are then exercised by the investigating judge. The information provided for by the third paragraph of article 63-4 must make it clear that the custody measure is taken within the context of a rogatory letter.

Article 155

(Law n° 85-1407 of 30 December 1985 art. 23 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law n° 93-1013 of 24 August 1993 Article 46 Official Journal of 25 August 1993 in force on 2 September 1993)

Where the rogatory letter prescribes simultaneous operations in various places of the national territory, it may be sent, upon the order of the mandating investigating judge, to the investigating judges or judicial police officers in charge of its execution in the form of a duplication or full copy of the original document.

In urgent cases it may be sent by any means available. Each copy must, however, state the essential indications of the original letter, and in particular the nature of the placement under judicial examination, and the name and position of the principal judge.

Article 154-1

(Inserted by Law n°2003-239 of 18 March 2003 Article 30 3° Official Journal of 19 March 2003)

Where necessary to carry out a rogatory commission, the judicial police officer may take the steps to obtain the non-intimate bodily samples provided for by article 55-1.

The provisions of the second and third paragraphs of article 55-1 are applicable.

SECTION IX: EXPERT OPINIONS

Article 156

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 1 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 38; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 8; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 27; Official Journal 16 June 2000, in force 1 January 2001)

Any investigating or trial court may order an expert opinion where a technical question arises, either upon the application of the public prosecutor, or of its own motion, or upon the application of the parties. The public prosecutor or the party who requests this expert opinion may specify the questions that he wants put to the expert in his application.

Where the investigating judge considers he need not grant an application for an expert opinion, he must make a reasoned order within no longer than one month of receiving the application. The provisions of the ninth and tenth paragraphs of article 81 are applicable.

The experts carry out their task under the supervision of the investigating judge or other judge designated by the court ordering the expert opinion.

Article 157

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 1 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 38; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 75-701 of 6 August 1975 art 24; Official Journal 7 August 1975)

Experts are chosen from the natural persons or legal entities registered either on a national list drafted by the office of the Court of Cassation, or on one of the lists drafted by the appeal courts after hearing the opinion of the public prosecutor.

The rules governing registration and withdrawal from these lists are fixed by a Decree of the Council of State.

In exceptional cases, the courts may make a reasoned decision choosing experts not registered on any one of these lists.

Article 157-1

(Inserted by Law n° 75-701 of 6 August 1975 art 24; Official Journal 7 August 1975)

If the expert appointed is a legal entity, his legal representative submits for the court's approval the name of the natural person or persons who will carry out the expert opinion for the legal entity and on its behalf.

Article 158

The experts' task is precisely set out in the decision ordering the expert opinion and may only address the examination of technical questions.

Article 159

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 85-1407 of 30 December 1985 art. 24 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 39; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 35; Official Journal 25 August 1993, in force 2 September 1993)

The investigating judge appoints the expert responsible for giving the expert opinion.

If circumstances call for it, he appoints more than one expert.

Article 160

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Law n° 72-1226 of 29 December 1972 Article 11 Official Journal of 30 December 1972)

For their registration on one of the lists provided for by article 157, the experts take an oath before the appeal court in whose area of jurisdiction they are domiciled, to bring their assistance to justice in honour and good conscience. These experts are not required to renew their oath each time they are appointed.

Each time they are nominated, the experts who do not feature on either of these lists take the oath set out under the previous paragraph before the investigating judge or the judge appointed by the court. The official record of the taking of the oath is signed by the competent judge, by the expert and by the clerk. In the event of an impediment, the grounds of which must be stated, the oath may be sworn in writing and the letter of oath is attached to the case file.

Article 161

Any decision appointing experts must set them a time limit within which to complete their task.

If special reasons call for it, this time limit may be extended at the experts' request and through a reasoned decision made by the judge or the court which appointed them. Experts who do not file their report within the time limit they were set may be replaced immediately and must report the investigations they have already made. They must also return within forty-eight hours any articles, evidence and documents which may have been entrusted to them in order to carry out their task. They may also incur disciplinary measures which may include being struck off one or other of the lists provided for by article 157.

The experts must liaise in the course of their task with the investigating judge or the delegated judge; they must keep him informed of the progress of their operations and put him in a position to take any appropriate step at any time.

In the course of his operations the investigating judge, if he deems it useful, may always get the experts to assist him.

Article 162

If the experts ask for a question which does not fall within their field of expertise to be explained to them, the judge may authorise them to be joined by persons, appointed by name, whose skills particularly qualify them to do this.

The persons thus appointed take an oath in the conditions laid down by the second paragraph of article 160.

Their report will be attached in its entirety to the report specified in article 166.

Article 163

(Law n° 85-1407 of 30 December 1985 art. 25 and 94; Official Journal 31 December 1985 in force 1 February 1986)

Before sending the articles under official seals to the experts, the investigating judge or judge appointed by the court makes if necessary an inventory of them in the conditions provided for by article 97. He lists the articles under official seals in an official record. The experts must state in their report any opening or re-opening of the official seals; in this case they draft an inventory.

Article 164

(Ordinance n° 58-1296 of 23 December 1958 art. 2 Official Journal of 24 December 1958 in force 1 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 189 & 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 14; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 27; Official Journal 16 June 2000, in force 1 January 2001)

For their information and where strictly necessary for their task, the experts may receive the declarations of persons other than the person under judicial examination.

If they consider there is a need to interrogate the person under judicial examination, then except in the case of a reasoned delegation exceptionally granted by the judge, this interrogation is made in their presence by the investigating judge or by the judge appointed by the court, in accordance in every case with the formalities and conditions provided for by articles 114, first and second paragraph, and 119.

The person under judicial examination may, however, waive the benefit of this provision by making an express statement before the investigating judge or the judge appointed by the court and in the presence of his advocate, and give the experts the explanations necessary to carry out their task. The person under judicial examination may also waive the assistance of his advocate for one or more hearings in a written statement given to the experts, which is attached to their report.

Nevertheless, doctors and psychologists charged with examining the person under judicial examination may ask him the questions necessary for carrying out their task outside the presence of the judge and advocates.

The provisions of the present article are also applicable to the assisted witness and the civil party.

Article 165

During the course of expert operations the parties may apply to the court that has commissioned them, in order that the experts be directed to make particular inquiries or to hear any person appointed by name who might be able to give them information of a technical nature.

Article 166

(Law n° 85-1407 of 30 December 1985 art. 26 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law n°2003-239 of 18 March 2003 Article 16 Official Journal of 19 March 2003)

When their operations are ended the experts draft a report, which must include a description of their operations as well as their conclusions. The experts must sign their report and record the names and status of any persons who assisted them under their direction and for whom they were responsible in the carrying out of the task entrusted to them.

Where several experts have been appointed and differ in their opinions, or if they have reservations to make concerning common conclusions, each one of them states his opinion or reservations and gives his reasons.

The report and the articles under official seals or their residues are returned into the keeping of the clerk of the court which ordered the expert opinion; this deposit is proved by an official record.

Article 167

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 85-1407 of 30 December 1985 art. 27 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 40; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 8; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 99-515 of 23 June 1999 Article 12 Official Journal of 24 June 1999)

(Law n° 2000-516 of 15 June 2000 art 27; Official Journal 16 June 2000, in force 1 January 2001)

The investigating judge informs the parties and their advocates of the experts' conclusions, after summoning them in accordance with the provisions of the second paragraph of article 114. He also informs them, where necessary, of the conclusions in the reports of the persons called upon in accordance with articles 60 and 77-1, where the provisions of the fourth paragraph of article 60 have not been applied. A copy of the report in its entirety is then delivered, at their request, to the parties' advocates.

The conclusions may also be delivered by recorded delivery letter or, where the person is detained, by the prison governor, who immediately sends the original or the copy of the receipt signed by the person concerned to the investigating judge.

In every case, the investigating judge sets a time limit for the parties to present their comments or to file an application, in particular with the aim of requesting a further report or a second opinion. This application must be filed in accordance with the provisions of the tenth paragraph of article 81. During this period of time, the case file is made available to the parties' advocates.

Where he dismisses an application, the investigating judge drafts a reasoned decision which must be made within one month from receiving the application. The same applies where he appoints a single expert when the party requested the appointment of more than one expert. The provisions of the last paragraph of article 81 are applicable.

Article 167-1

(Inserted by Law no. 95-125 of 8 February 1995 Article 56 Official Journal of 9 February 1995)

Where the conclusions of the expert opinion are liable to lead the investigating judge to declare a discharge pursuant to the provisions of the first paragraph of article 122-1 of the Criminal Code, their notification to the civil party must be made under the conditions provided for by the first paragraph of article 167. The civil party is granted a time limit of fifteen days to present observations or to file an application requesting further report or second opinion. A request for a second opinion made by the civil party is granted as of right. It must be given by at least two experts.

Article 168

(Law n° 57-1426 of 31 December 1957 Official Journal of 8 January 1958 in force on 8 April 1958)

(Law n° 72-1226 of 29 December 1972 Article 12 Official Journal of 30 December 1972)

Where necessary, the experts report at the hearing the results of the technical operations they have performed, after taking an oath to bring their assistance to justice upon their honour and upon their conscience. They may consult their report and its annexes in the course of their examination.

The presiding judge, either on his own motion or upon the application of the public prosecutor, the parties or their advocates, may ask the experts any questions falling within the scope of the task they were given.

The experts attend the hearing after their report unless the presiding judge allows them to withdraw.

Article 169

If in the course of a trial court hearing a person heard in the capacity of a witness or as a source of information contradicts the conclusions of an expert's report or brings new information from a technical point of view, the presiding judge asks the experts, the public prosecutor, the defence and, as the case may be, the civil party, to present their observations. The trial court rules, by a reasoned decision, either that the hearing will proceed further or that the case be adjourned to a later date. If it is the latter, the trial court may order any measure it deems useful in respect of the expert opinion.

Article 169-1

(Inserted by Law n° 72-1226 of 29 December 1972 Article 13 Official Journal of 30 December 1972)

The provisions of articles 168 and 169 are applicable to persons called upon to make findings or give an opinion as to the circumstances of a death in accordance with articles 60 and 74.

SECTION X: JUDICIAL INVESTIGATION : NULLITIES

Article 170

(Law n° 93-2 of 4 January 1993 art 71; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 2000-516 of 15 June 2000 art 83; Official Journal 16 June 2000, in force 1 January 2001)

In the course of the investigation the investigating chamber may in any matter be referred for annulment a procedural instrument or procedural document by the investigating judge, by the district prosecutor or by the parties.

Article 171

(Law n° 93-2 of 4 January 1993 art 71; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 21; Official Journal 25 August 1993, in force 2 September 1993)

There is a nullity when the breach of an essential formality provided for by a provision of the present Code or by any other rule of criminal procedure has harmed the interests of the party it concerns.

Article 172

(Law n° 93-2 of 4 January 1993 art 71; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 21; Official Journal 25 August 1993, in force 2 September 1993)

The party in respect of whom an essential formality has been broken may waive the breach and thus regularise the proceedings. Such a waiver must be expressly stated. It may only be made in the presence of the advocate or where the latter has been summoned in due form.

Article 173

(Law n° 93-2 of 4 January 1993 art 71; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 22; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 29 & 83; Official Journal 16 June 2000, in force 1 January 2001)

If the investigating judge believes that a procedural step or instrument is tainted by nullity, he refers it to the investigating chamber for annulment, after having heard the opinion of the district prosecutor and having informed the parties.

If the district prosecutor considers a nullity has been committed, he orders the investigating judge to send him the case file in order to transmit it to the investigating chamber, files an annulment application with this chamber and informs the parties thereof.

If one of the parties considers that a nullity has been committed, he refers the case to the investigating chamber by filing a reasoned application of which he sends a copy to the investigating judge who transmits the case file to the presiding judge of the investigating chamber. The application must, under penalty of inadmissibility, be filed as a declaration with the court office of the investigating chamber. It is recorded and dated by the clerk who signs it with the applicant or his advocate. If the applicant is unable to sign, an entry to that effect is made by the clerk. Where the applicant or his advocate do not reside within the area of jurisdiction of the competent court, the declaration made to the court office may be made by recorded delivery letter with a request for acknowledgement of receipt. Where the person under judicial examination is detained, the application may also be made through a declaration filed with the prison governor. This declaration is recorded and dated by the prison governor who signs it with the applicant. If the latter is unable to sign, an entry to that effect is made by the prison governor. This document is immediately sent in its original form or as a copy, by any means available, to the court office of the investigating chamber.

The provisions of the first three paragraphs are not applicable to procedural decisions which may be appealed against by the parties, and in particular, to decisions made in respect of pre-trial detention or judicial supervision.

Within a week of receipt of the case file by the court office of the investigating chamber, the presiding judge may, by an unappealable order, rule that the application is inadmissible pursuant to the present article, third or fourth paragraph, article 173-1, articles 174 first paragraph, or 175 second paragraph; he may also rule that an application is inadmissible if it is made without reasons given. If he finds the application inadmissible, the presiding judge of the investigating chamber orders the case file of the investigation to be returned to the investigating judge; in the other cases, he transmits it to the public prosecutor who proceeds as stated under articles 194 onwards.

Article 173-1

(Law n° 2000-516 of 15 June 2000 Articles 29 Official Journal of 16 June 2000 in force on 1 January 2001)

(Law n° 2002-307 of 4 March 2002 Article 7 Official Journal of 5 March 2002)

Under pain of inadmissibility, the person under judicial examination must state the grounds for the nullification of any steps that were

taken before his interrogation at first appearance, or at this interrogation itself, within a period of six months from being notified that he was under judicial examination, except in cases where he could not have known about them. The same applies to the grounds for voiding any procedural steps carried out before each of his subsequent interrogations.

The same applies to the civil party, from the time of his first hearing, and then of his later hearings.

Article 174

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 85-1407 of 30 December 1985 art. 28 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 71; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 23; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 83; Official Journal 16 June 2000, in force 1 January 2001)

Where the investigating chamber is seised of the case on the basis of article 173, all grounds for the annulment of the procedure transmitted to it must, without prejudice of the court's right to raise them of its own motion, be then submitted to it. Failing such submission, the parties are not admitted to raise them except where they could not have known about them.

The investigating chamber decides whether the annulment should be limited to all or part of the vitiated procedural instruments or documents, or should extend to all or part of the later proceedings, and proceeds as stated in the third paragraph of article 206.

The annulled instruments or documents are withdrawn from the case file of the investigation and filed in the court office of the court of appeal. The procedural instruments or documents annulled in part are cancelled after the taking of a copy certified true to the original, which is filed with the court office of the court of appeal. It is prohibited to draw any information against the parties from the annulled procedural instruments or documents or from the annulled parts of such instruments or documents, under penalty of disciplinary proceedings for the advocates and the judges or prosecutors.

Article 174-1

(Inserted by Law n° 2000-516 of 15 June 2000 art 30; Official Journal 16 June 2000, in force 1 January 2001)

Where the investigating chamber annuls placement under judicial investigation for breach of the provisions of article 80-1, the person is considered an assisted witness from the time of his interrogation at first appearance, and for all of his subsequent interrogations, until the end of the enquiry, subject to the provisions of articles 113-6 and 113-8.

SECTION XI: CLOSING ORDERS

Article 175

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Law n° 85-1407 of 30 December 1985 art. 29 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law nº 89-461 of 6 July 1989 art. 9 Official Journal of 8 July 1989)

(Law n° 93-2 of 4 January 1993 art 72 & 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 24; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 131; Official Journal 16 June 2000, in force 1 January 2001)

As soon as he considers the investigation is over, the investigating judge informs the parties and their advocates of this, either verbally with a signature entered into the case file or by recorded delivery letter. Where the person is detained this notice may also be served by the prison governor, who immediately sends the original receipt or its copy signed by the person concerned to the investigating judge.

Upon the expiry of twenty-day days from the sending of the notice provided for by the previous paragraph, the parties are no longer competent to file an application or to make a request on the basis of articles 81 (ninth paragraph), 82-1, 156 (first paragraph), or 173 (third paragraph). The parties may, in the presence of their advocate or where the advocate has been summoned in due form, waive their right to invoke this time limit.

The investigating judge sends the case file to the district prosecutor when this time limit is over. The latter sends his submissions within one month if a person under judicial examination is detained, and within three months in other cases.

The investigating judge who does not receive the prosecution's submissions within the prescribed time limit may make the closing order.

The provisions of the first paragraph are also applicable to the assisted witness.

Article 175-1

(Law n° 85-1303 of 10 December 1985 art 21 and 42;Official Journal 11 December 1985 in force 1 March 1988)

(Law n° 87-1062 of 30 December 1987 art 23;Official Journal 31 December 1987, in force 1 September 1989)

(Law n° 93-2 of 4 January 1993 art 41;Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 2000-516 of 15 June 2000 art 74;Official Journal 16 June 2000, in force 1 January 2001)

(Law nº 2000-1354 of 30 December 2000 art. 25 Official Journal of 31 December 2000)

A person under judicial examination, an assisted witness or a civil party may, at the expiry of the time limit indicated to him in accordance with paragraph 8 of article 116 or the second paragraph of article 89-1, which runs respectively from the date of the placement under judicial examination, the first hearing or when civil party was officially constituted, ask the investigating judge, in accordance with the conditions laid down by the tenth paragraph of article 81, to bring the case before the court of trial by transfer or indictment, or to declare that there is no case to answer. This includes proceeding, where appropriate, to a severance. This request may also be formed when no investigating act has been carried out for a period of four months.

Within a month of receiving this request, the investigating judge must grant it or declare, in a reasoned decision, that there are grounds for seeking further information. In the first case, he proceeds according to the conditions set out in the present section. In the second case, or if the judge has failed to rule within the allotted month, the person under judicial examination, the assisted witness or the civil party may transfer the case to the presiding judge of the investigating chamber, in accordance with article 207-1. Seising the court in such a way must be done within the five days of notification of the judge's decision, or at the end of a one-month time limit.

Where the investigating judge has declared that he is continuing with his investigation, a new application may be made at the end of a six month period.

The provisions of the present article are not applicable after the notice provided for in the first paragraph of article 175 has been sent.

Article 175-2

(Law n° 85-1303 of 10 December 1985 art 21 and 42;Official Journal 11 December 1985 in force 1 March 1988)

(Law n° 87-1062 of 30 December 1987 art 23;Official Journal 31 December 1987, in force 1 September 1989)

(Law n° 2000-516 of 15 June 2000 art 74;Official Journal 16 June 2000, in force 1 January 2001)

In all cases, the length of the investigation must not exceed a reasonable length of time, with consideration to the seriousness of the charges brought against the person under judicial examination, the complexity of the investigations needed to establish the truth, and the exercise of the rights of the defence.

If, at the end of two years from when the investigation was opened, it has not been concluded, the investigating judge delivers a reasoned judgment, with reference to the criteria provided for in the previous paragraph, explaining the reasons for the length of the proceedings, including indications justifying the continuation of the investigation and specifying the prospects for completion. This ruling is communicated to the presiding judge of the investigating chamber, who can, if he requests it, transfer the case to this court, in accordance with the provisions of article 221-1.

The order provided for in the previous paragraph must be renewed every six months.

Article 175-3

(Law n° 85-1303 of 10 December 1985 art 21 and 42;Official Journal 11 December 1985 in force 1 March 1988)

(Law n° 87-1062 of 30 December 1987 art 23;Official Journal 31 December 1987, in force 1 September 1989)

(Law n° 2000-516 of 15 June 2000 art 75;Official Journal 16 June 2000, in force 1 January 2001)

The investigating judge informs the civil party of the progress of the investigation every six months.

Article 176

(Law n° 93-2 of 4 January 1993 art 42;Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 1993 art 6;Official Journal 25 August 1993 in force 2 September 1993)

The investigating judge examines whether there exist against the person under judicial examination charges which constitute an offence, of which he determines the legal qualification.

Article 177

(Law n° 85-1407 of 30 December 1985 art. 5, 87 and 94; Official Journal 31 December 1985 in force 1 February 1986)

(Law no. 87-962 of 30 November 1987 Article 11 Official Journal of 1 December 1987)

(Law n° 93-2 of 4 January 1993 art 43;Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 1993 art 15;Official Journal 25 August 1993 in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 83;Official Journal 16 June 2000, in force 1 January 2001)

If the investigating judge considers that the facts do not constitute a crime, a misdemeanour, or a petty offence, or if the perpetrator has remained unidentified, or if there are no sufficient charges against the person under judicial examination, he makes an order ruling that there is no cause to prosecute.

The persons under judicial examination who are in pre-trial detention are released. The order puts an end to the judicial supervision.

The investigating judge rules by the same order on the restitution of any articles placed under judicial safekeeping. He may refuse restitution where this presents a danger for persons or property. The decision made in respect of restitution may be referred by any person with an interest to the investigating chamber under the conditions and pursuant to the rules provided for in article 99.

Article 177-1

(Law n° 93-2 of 4 January 1993 art 48;Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 1993 art 36;Official Journal 25 August 1993 in force 2 September 1993)

(Law n° 2000-516 of 15 June 2000 art 96;Official Journal 16 June 2000, in force 1 January 2001)

At the request of the person concerned or with his agreement, or on his own motion, or at the request of the public prosecutor, the investigating judge may order either the partial or full publication of his discharge order, or the insertion of a communiqué informing the public of the grounds and enacting terms of the order in one or more newspapers, periodicals or audio-visual telecommunication services he chooses.

Where appropriate, he determines which extracts from the decision which will be published or fixes the wording of the communiqué to be inserted.

If the judge does not grant the person request of the person concerned he must provide a reasoned decision, which may be subject to appeal before the investigating chamber.

Article 177-2

(Law n° 2000-516 of 15 June 2000 Article 87; Official Journal of 16 June 2000 in force 1 January 2001)

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

Where he delivers a discharge order begun by the constitution of a civil party, the judge, where he feels that the constitution as civil party was excessive or dilatory, may, at the request of the district prosecutor and in a reasoned decision, impose a civil fine not in excess of € 15,000 on the civil party.

This decision may only be made after twenty days have elapsed from when the district prosecutor's remarks were sent to the civil party and his advocate, in a recorded delivery letter or by a fax with acknowledgement of receipt, in order to allow the party concerned to send his written response to the investigating judge.

This decision may be appealed against by the civil party under the same conditions as the discharge order.

If the investigating judge does not follow the district prosecutor's requistions, the latter may lodge an appeal under the same conditions.

Article 177-3

(Inserted by Law nº 2002-1138 of 9 September 2002 Article 39 Official Journal of 10 September 2002)

Where the civil party is a legal person, the civil fine provided for by article 177-2 may be imposed against its legal representative, if the dishonesty of the latter is established.

Article 178

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

(Law nº 70-643 of 17 July 1970 art. 4 Official Journal of 19 July 1970)

(Law n° 93-2 of 4 January 1993 art 73; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 37; Official Journal 25 August 1993, in force 2 September 1993)

If the judge considers the facts amount to a petty offence, he makes an order referring the case to the police court.

When it becomes final, this order wipes out all procedural defects, if there were any.

Article 179

(Law nº 70-643 of 14 July 1970 art. 4 Official Journal of 19 July 1970)

(Law n° 75-701 of 6 August 1975 Article 3 Official Journal of 7 August 1975)

(Law no. 87-1062 of 30 December 1987 Article 8 Official Journal 31 December 1987, in force on 1 March 1998)

(Law n° 93-2 of 4 January 1993 art 74; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 37; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 96-1235 of 30 December 1996 art. 10 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 76 Official Journal of 16 June 2000)

(Law nº 2000-1354 of 30 December 2000 art. 15 Official Journal of 31 December 2000)

If the judge considers the facts amount to a misdemeanour, he makes an order referring the case to the correctional court.

The closing order puts an end to any pre-trial detention or judicial supervision.

However, the investigating judge may keep the defendant detained or under judicial supervision until he appears before the court, by making a separate and specially reasoned order. In the event of an extension of the pre-trial detention, the elements of the case expressly stated in the order must justify this special measure by the need to prevent pressure on the witnesses or victims, to prevent the renewal of the offence, to protect the defendant or to ensure he is kept at the disposal of justice. The same order may also be made where the offence, because of its seriousness, the circumstances of its commission or the importance of the harm it caused, has created an exceptional and persistant disturbance of public order which can only be ended by the extension of pre-trial detention.

The detained defendant is immediately released if the correctional court has not begun to hear the case on its merits at the end of a period of two months from the date of the transfer order.

However, if the hearing on the merits of the case cannot take place before the expiry of this time limit, the court may, in exceptional cases, order the extension of the detention for a new six month period, in a decision recording the factual and legal reasons preventing the trial of the case. The defendant has the right to appear in person if either he or his advocate requests this. This decision may be renewed once only, in the same manner. If at the end of this new extension period the defendant has still not been tried, he is immediately set free.

When it has become final, the order stated in the first paragraph wipes out all procedural errors, if there were any.

Article 180

(Ordinance n° 58-1296 of 23 December 1958 art. 1 Official Journal of 24 December 1958 in force 1 March 1959)

Where a reference is made either to the police court or to the correctional court, the investigating judge transmits the case file with his order to the district prosecutor. The latter is required to send it forthwith to the office of the court which is due to decide the case.

If the correctional court is seised of the case, the district prosecutor must have the defendant summoned for one of the next hearings and comply with the time limits for the summoning him set out in the present Code.

Article 181

(Law nº 70-643 of 14 July 1970 art. 4 Official Journal of 19 July 1970)

(Law n° 93-2 of 4 January 1993 art 75; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 5 1993 art 15; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 82 Official Journal of 16 June 2000)

If the investigating judge considers that the charges accepted against person under judicial examination constitute an offence qualified as a felony by the law, he orders their indictment before the assize court.

He may also seise the same court with related offences.

The indictment order contains, under pain of nullity, a presentation and the legal qualification of the matters to which the accusation relates, and specifies the accused's identity.

Where it has become final, the indictment order wipes out procedural errors, if there were any.

Any judicial supervision to which the accused is subjected remains fully in force.

Any pre-trial detention or judicial supervision of persons sent for trial for a related misdemeanour comes to an end, unless the provisions of the third paragraph of article 179 are applied. The time limit provided for by the fourth paragraph of article 179 is then extended to six months.

The indictment ruling also orders the accused's arrest, and the arrest of any persons sent for trial for related offences.

The investigating judge sends the case file with his ruling to the district prosecutor. The district prosecutor is obliged to send them

immediately to the court office of the assize court.

The exhibits, of which an inventory has been made, are sent to the court office of the assize court if the latter has its seat within a court other than that of the investigating judge.

Article 182

(Law nº 81-82 of 2 February 1981 art. 53 Official Journal of 3 February 1981)

(Law n° 99-515 of 23 June 1999 Article 15 Official Journal of 24 June 1999)

Orders carrying a partial discharge may occur in the course of the investigation.

Orders for a partial reference or a partial transmission of documents may be made in the same conditions, where the charges ascertained in respect of one or more of the offences of which the investigating judge is seised appear to be sufficient.

Persons who have been the subject of a partial transfer order or the partial transmission of documents, and who do not remain under judicial examination for other charges, are heard as assisted witnesses. It is the same where a judicial investigation is severed.

Article 183

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 70-643 of 14 July 1970 art. 4 Official Journal of 19 July 1970)

(Law n° 72-1226 of 29 December 1972 Article 31 Official Journal of 30 December 1972)

(Law nº 84-576 of 9 July 1984 art. 13 and 19 Official Journal of 10 July 1984)

(Law nº 85-1407 of 30 December 1985 art. 30 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 85-1407 of 30 December 1985 art. 87-i-2 Official Journal of 31 July 1985 in force 1 February 1986)

(Law no. 87-1062 of 30 December 1987 Article 8 Official Journal 31 December 1987, in force on 1 March 1998)

(Law nº 89-461 of 6 July 1989 art. 21 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 89-461 of 6 July 1989 art. 10 Official Journal of 8 July 1989 in force 1 December 1989)

(Law n° 93-2 of 4 January 1993 art 190; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-2 of 4 January 1993 art 190 & 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 5 1993 art 14; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 84 & 131 Official Journal of 16 June 2000)

(Law nº 2002-1138 of 9 September 2002 Article 38 Official Journal of 10 September 2002)

The person under judicial examination and the assisted witness are notified of the closing order, and the civil party is informed of the referral order or indictment order. The notification is made within the shortest time possible, either verbally with a signature entered into the case file or by recorded delivery letter.

Subject to article 137-3, second paragraph, the decisions liable to be appealed against by a party to the proceedings or by a third party in accordance with articles 99, 186 and 186-1 are notified to them within the shortest time possible either verbally with a signature entered into the case file or by recorded delivery letter. If the person under judicial examination is detained, they may also be brought to his knowledge by the prison governor, who immediately sends the original or a copy of the receipt signed by the person to the investigating judge. In every case a copy of the decision is given to the person concerned.

Any service of a document to a party by recorded delivery letter, sent to the person concerned's last registered address, is deemed to have been made in person.

The orders mentioned in the first and second paragraphs of the present article which must be brought to the knowledge of the parties are brought to the knowledge of their advocates at the same time and in the same manner.

Notices addressed to the district prosecutor are sent to him by any means available. Where the investigating judge makes an order which is not in conformity with the district prosecutor's submissions, notice of this is sent to the prosecutor by the clerk.

In all cases, the clerk records in the case file the type and the date of the steps made pursuant to the present article and the forms used to carry them out.

Article 184

(Law n° 93-2 of 4 January 1993 art 191; Official Journal 5 January 1993, in force 1 March 1993)

The orders made by the investigating judge in accordance with the present section include the surname, first names, date and place of birth, domicile and profession of the person under judicial examination. They state the legal qualification of the actions he is charged with and state precisely the grounds for which there is or is not sufficient evidence against him.

SECTION XII: APPEALS FILED AGAINST RULINGS BY THE INVESTIGATING JUDGE AND THE LIBERTY AND CUSTODY JUDGE

Article 185

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law nº 85-1407 of 30 December 1985 art. 31 Official Journal of 31 July 1985 in force 1 February 1986)

(Law no. 87-1062 of 30 December 1987 Article 9 Official Journal 31 December 1987, in force on 1 March 1998)

(Law nº 2000-516 of 15 June 2000 art. 83 & 132 Official Journal of 16 June 2000)

(Law n° 2000-1354 of 30 December 2000 art 26 Official Journal of 31 December 2000)

The district prosecutor has the right to lodge an appeal before the investigating chamber against any order made by the investigating judge or the liberty and custody judge.

This appeal must be filed within five days of the notification of the decision and is made by a declaration at court office at the district court.

In the event of an appeal by the person under judicial examination against being indicted, provided for in article 181, the district prosecutor has an incidental time limit of five extra days at his disposal, running from the time of the person under judicial examination's appeal.

In every case the right to appeal also belongs to the public prosecutor. He must notify the parties of his appeal within ten days of the ruling by the investigating judge or the liberty and custody judge.

Article 186

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 70-643 of 14 July 1970 art. 5 Official Journal of 19 July 1970)

(Law n° 72-1226 of 29 December 1972 Article 32-i Official Journal of 30 December 1972)

(Law nº 81-82 of 2 February 1981 art. 57 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 18 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 84-576 of 9 July 1984 art. 14-i, 14-ii and 19 Official Journal of 10 July 1984)

(Law nº 85-1407 of 30 December 1985 art. 32-i, 32-ii & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 44; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-2 of 4 January 1993 art 234; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 14; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 32, 82, 83 & 132 Official Journal of 16 June 2000)

(Law nº 2002-1138 of 9 September 2002 Article 39 Official Journal of 10 September 2002)

The right to appeal against the orders and decisions set out by articles 87, 137-3, 139, 140, 145-1, 145-2, 148, 179, third paragraph, and 181 is open to the person under judicial examination.

The civil party may file an appeal against orders refusing the investigation, against discharge orders and against orders affecting his civil claims. However, in no case may he appeal against an order or the provisions of an order made in respect of the detention of the person under judicial examination or in respect of judicial supervision.

The parties may also file an appeal against an order by which the judge has ruled upon his jurisdiction, either on his own motion, or upon an objection made to his jurisdiction.

The appeal filed by the parties as well as the application provided for in the fifth paragraph of article 99 must be drafted in the conditions and pursuant to the rules provided for in articles 502 and 503, within ten days of the notification or service of the decision.

The investigation case file, or its copy made in accordance with article 81, is transmitted with the reasoned opinion of the district prosecutor to the public prosecutor, who proceeds as stated under article 194 onwards.

If the presiding judge of the investigating chamber finds that an appeal is filed against an order not covered by paragraphs 1 to 3 of the present article, he makes on his own motion an order ruling the appeal inadmissible and such order is unappealable. The same applies to appeals filed against any rulings made by an investigating judge after the time limit provided for in the fourth paragraph of the present article, or where an appeal has become groundless.

Article 186-1

(Law n° 72-1226 of 29 December 1972 Article 32-ii Official Journal of 30 December 1972)

(Law nº 85-1407 of 30 December 1985 art. 33 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law noº 87-1062 of 30 December 1987 Article 9 Official Journal 31 December 1987, in force on 1 March 1998)

(Law n° 93-2 of 4 January 1993 art 45; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 22, 83 & 132 Official Journal of 16 June 2000)

The parties may also lodge an appeal against the orders set out in the ninth paragraph of article 81, in articles 82-1 and 82-3, in the second paragraph of article 156 and the fourth paragraph of article 167.

In this case the investigation case file or its copy made in accordance with article 81 is sent with the reasoned opinion of the district prosecutor to the presiding judge of the investigating chamber.

Within a week of receiving this case file, the presiding judge rules, by an order not susceptible of appeal, whether or not to refer this appeal to the investigating chamber.

If the answer is in the affirmative, he transmits the case file to the public prosecutor who proceeeds as stated under article 194 onwards.

If the answer is negative, he makes a reasoned order for the return of the investigation case file to the investigating judge.

Article 186-2

(Law nº 2000-516 of 15 June 2000 art. 82 & 132 Official Journal of 16 June 2000)

In the event of an appeal against a ruling provided for in article 181, the investigating chamber rules within four months of the order, failing which the person concerned, if he is detained, is automatically released.

Article 187

(Law no. 87-1062 of 30 December 1987 Article 9 Official Journal 31 December 1987, in force on 1 March 1998)

(Law n° 93-1013 of 24 August 5 1993 art 38; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 95-125 of 8 February 1995 Article 57 Official Journal of 9 February 1995)

(Law nº 2000-516 of 15 June 2000 art. 83 & 132 Official Journal of 16 June 2000)

Where an appeal is filed against an order other than a closing order, or where the investigating chamber is directly seised pursuant to articles 81, ninth paragraph, 82-1, second paragraph, 156, second paragraph, or 167, fourth paragraph, the investigating judge carries on his judicial investigation, where appropriate, as far as the closing of this investigation, except when the presiding judge of the investigating chamber decides otherwise. This decision is unappealable.

The same rules apply where the investigating chamber is seised of an annulment application pursuant to article 173.

Article 187-1

(Law n° 93-1013 of 24 August 5 1993 art 17; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 96-1235 of 30 December 1996 art. 11 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 83 & 132 Official Journal of 16 June 2000)

(Law n° 2000-1354 of 30 December 2000 art 16 Official Journal of 31 December 2000)

In the event of an appeal filed against an order placing in pre-trial detention, the person under judicial examination or the district prosecutor may, if the appeal is filed at the latest on the day following that of the decision order, apply to the presiding judge of the investigating chamber, or where he is unable to act, to the judge who replaces him, so as to hear his appeal immediately and without waiting for the investigating chamber's hearing. This application must be filed at the same time as the appeal brought before the investigating chamber, under penalty of inadmissibility. The person under judicial examination, his advocate or the district prosecutor may attach any written observations to support the application. If he so requests, the advocate of the person under judicial examination presents his observations verbally in the course of a hearing in chambers to the presiding judge of the investigating chamber or to the judge replacing him. The public prosecutor is notified of this hearing in order to make submissions, as appropriate. The advocate makes the final speech.

The presiding judge of the investigating chamber or the judge replacing him rules at the latest on the third working day following the

application, after an examination of the material contained in the case file, by making an unappealable non-reasoned order.

The presiding judge of the investigating chamber or the judge replacing him may quash the investigating judge's order and order the release of the person if he considers that the conditions provided for in article 144 are not fulfilled. The investigating chamber is then relieved of the file.

In the opposite case, he must refer the examination of the appeal to the investigating chamber.

If he quashes the order made by the liberty and custody judge, the presiding judge of the investigating chamber or the judge who replaces him may order the person under judicial examination to be placed under judicial supervision.

If the examination of the appeal is referred to the investigating chamber, the decision is brought to the knowledge of the public prosecutor. It is notified to the person under judicial examination by the registry of the penitentiary institution, which may, as the case may be, record the waiver of the appeal made by this person.

The filing of an appeal and the application set out under the first paragraph of the present article may be recorded by the investigating judge at the close of the adversarial debate provided for by the fourth paragraph of article 145. For the purposes of the second paragraph of the present article, transmission of the case file to the presiding judge of the investigating chamber may be made by fax.

Article 187-2

(Inserted by Law nº 2000-516 of 15 June 2000 art. 64 & 187-1 Official Journal of 16 June 2000)

A person who formulates the appeal provided for in article 187-1 may request that it be directly examined by the investigating chamber. In such a case it is decided, after consideration of the facts in the case file, within no more than five working days of the application being made.

Article 187-3

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 38 Official Journal of 10 September 2002 in force 1 November 2002)

In cases provided for by the second paragraph of article 148-1-1, the public prosecutor who lodges an appeal against an order granting the release of a prisoner contrary to his submissions must, under penalty of inadmissibility, within four hours from the time of his notification, also submit a request to review detention to the presiding judge of the appeal court (or where he is unable to act, the person replacing him), in order to declare this appeal suspensive. The district prosecutor attaches to his application written submissions in favour of keeping the person under examination in custody. The person under examination and his advocate may also submit such written observations as they wish.

The presiding judge of the appeal court or the judge replacing him must decide within two working days of the application. During this time, the effects of the release order are suspended and the person remains in detention. If the presiding judge of the appeal court (or judge replacing him) fails to rule within this time limit, the detainee is released, unless he has been detained for another reason. The presiding judge of the appeal court (or judge replacing him) gives a reasoned decision on the basis of the file, and this decision is not open to appeal. At his request, the advocate of the person under examination may present oral submissions before this judge at a hearing in chambers, of which the public prosecutor is informed so as to enable him to make representations as appropriate.

If the presiding judge of the appeal court or the judge replacing him concludes that by at least two of the criteria contained in article 144 it is manifestly necessary to keep the person under examination in custody until the investigating chamber has ruled on the public prosecutor's appeal, he orders the suspension of the order for release until this date. The person under examination may then not be freed until the hearing by the investigating chamber, before which he has a right to appear in person. The investigating chamber must rule as quickly as possible and no later than ten days after the appeal was entered, failing which the person is automatically freed, unless he has been detained for another reason.

Otherwise, the presiding judge of the appeal court (or judge replacing him) orders the person's release, unless he is detained for another reason.

Under penalty of nullity, the judge who has ruled on the request to review detention may not be part of the investigating chamber which rules on the public prosecutor's appeal.

The case file may be sent to the presiding judge of the appeal court (or judge replacing him) by fax.

SECTION XIII: RESUMPTION OF THE INVESTIGATION ON NEW CHARGES

Article 188

(Law n° 93-2 of 4 January 1993 art 192; Official Journal 5 January 1993, in force 1 March 1993)

The person under judicial examination in respect of whom the investigating judge has ruled there was no cause to proceed may not be prosecuted on the same facts unless new charges are made.

Article 189

New charges are considered to be those witness statements, evidence and official reports which could not be examined by the investigating judge, and are nevertheless liable to reinforce the charges which were found to be too weak, or to place the facts alleged in a new light that could lead to the discovery of the truth.

Article 190

It is for the public prosecutor alone to decide whether there is a case for the resumption of the investigation on new charges.

CHAPTER II: THE INDICTMENT DIVISION: THE SECOND-TIER INVESTIGATING AUTHORITY.

SECTION I: GENERAL PROVISIONS

Article 191

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Decree n° 71-163 of 27 February 1974 Article 10 Official Journal of 28 February 1974)

(Law nº 81-82 of 2 February 1981 art. 54 Official Journal of 3 February 1981)

(Law no. 87-1062 of 30 December 1987 Article 12 Official Journal 31 December 1987, in force on 1 March 1998)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Each appeal court includes at least one investigating chamber.

This division is made of a division presiding judge who is exclusively attached to this service and of two judges who may, in case of need, serve with other divisions .

The investigating chamber presiding judge is appointed by a decree upon hearing the opinion of the High Council for the Judiciary. Where the presiding judge of the investigating chamber is absent or unable to act, the appeal court presiding judge appoints to temporarily replace him another division presiding judge or a judge.

The judges composing the investigating chamber are chosen annually by the general assembly of the court for the duration of the next judicial year.

A decree may provide that the presiding judge of the investigating chamber of a court of appeal with less than three divisions will exceptionally assume the service of another division of the same court.

Article 192

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The duties of the public prosecutor attached to the investigating chamber are performed by the prosecutor general or by his deputies. Those of the court office are performed by a clerk of the appeal court.

Article 193

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The investigating chamber meets at least once a week, and upon notice from its presiding judge or application from the prosecutor general, whenever necessary.

Article 194

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law no. 87-1062 of 30 December 1987 Article 13 Official Journal 31 December 1987, in force on 1 March 1998)

(Law n° 93-2 of 4 January 1993 art 76; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 39; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 64 & 83 Official Journal of 16 June 2000)

The prosecutor general prepares the case for hearing within forty-eight hours of receiving the documents in pre-trial detention matters and within ten days in any other matter; he refers it with his submissions to the investigating chamber.

In the cases provided for by articles 173 and 186-1, or where it is directly seised pursuant to articles 81, ninth paragraph, 82-1, second paragraph, 156, second paragraph, or 167, fourth paragraph, the investigating chamber rules within two months from the transmission of the case file to the prosecutor general by the presiding judge of the investigating chamber.

In pre-trial detention matters, the investigating chamber must decide within the shortest time possible and at the latest within ten days of the appeal, where it is relating to a detention order, or in fifteen days in all other cases, failing which the person concerned is automatically released, except when investigations concerning his application have been ordered or if unforeseeable and insuperable circumstances prevent the the case being heard within the time limit set out by the present article.

Article 195

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

In cases referred to correctional courts or police courts, at any time before the beginning of the hearing the prosecutor general, if he considers that the facts amount to a more serious offence than the one charged, orders the file to be brought, prepares the case and refers with his submissions to the investigating chamber.

Article 196

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The prosecutor general acts in the same manner when, after a discharge judgment made by the investigating chamber, he receives evidence which seem to contain new charges in the meaning of article 189. In this case, until such time as the investigating chamber meets the presiding judge of this division may, upon the prosecutor general's submission, issue a detention or arrest warrant.

Article 197

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Ordinance n° 60-529 of 4 June 1960 Article 12 Official Journal of 8 June 1960)

(Law nº 81-82 of 2 February 1981 art. 58 Official Journal of 3 February 1981)

(Law nº 85-1407 of 30 December 1985 art. 34 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law no. 87-1062 of 30 December 1987 Article 14 Official Journal 31 December 1987, in force on 1 March 1998)

(Law n° 93-2 of 4 January 1993 art 46 & 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The prosecutor general notifies by recorded delivery letter to each one of the parties and to their advocates the date at which the case will be listed for hearing. The notification is made to the person detained by the prison governor who immediately returns the original receipt signed by the person, or its copy, to the prosecutor general. As long as the investigating judge has not closed his judicial investigation, notifications made to any person not detained, to the civil party or to the applicant mentioned in the fifth paragraph of article 99 are sent to the last declared address.

A minimum term of forty-eight hours in pre-trial detention matters and of five days in any other matter must be observed between the date of sending of the recorded delivery letter and that of the hearing.

During this period the case file is deposited in the court office of the investigating chamber and held at the disposal of the advocates of the person under judicial examination and of any civil parties whose petition has not been challenged or, in the event of a challenge, where this has been dismissed.

A copy of the case file is delivered to them without delay, at their expense, upon an ordinary written application. These copies may not be made public.

Article 197-1

(Inserted by Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Where the dismissal of a charge is being appealed against, the assisted witness may, through the intermediary of his advocate, make submissions before the investigating chamber. The date of the hearing is made known to the person concerned and his advocate, pursuant to the provisions of article 197.

Article 198

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law n° 93-2 of 4 January 1993 art 69 & 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The parties and their advocates are allowed to file reports until the day of the hearing, which they communicate to the public prosecutor and to the other parties.

These reports are filed with the court office of the investigating chamber and signed by the clerk, with the indication of the day and time of filing.

Where an advocate does not exercise his profession in the town where the investigating chamber sits, he may send his report to the clerk, to the public prosecutor and to the other parties by fax or by recorded delivery letter with request for acknowledgement of receipt, which much reach the addressees before the day of the hearing.

Article 199

(Law nº 89-461 of 6 July 1989 art. 7 Official Journal of 8 July 1989 in force 1 December 1989)

(Law n° 93-2 of 4 January 1993 art 144; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 99-515 of 23 June 1999 Article 16 Official Journal of 24 June 1999)

(Law nº 2000-516 of 15 June 2000 art. 96 Official Journal of 16 June 2000)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

(Law nº 2002-1138 of 9 September 2002 Article 38 Official Journal of 10 September 2002)

The hearing is held and the judgment given in chambers. However, if an adult person under judicial examination or his advocate so requests at the opening of the proceedings, the proceedings take place, and the judgment is given in a public session, unless publicity is likely to hinder the specific investigations required by the enquiry, or to harm personal dignity or a third party's interests. The investigating chamber rules on this request, after recording the public prosecutor's remarks and, if appropriate, the remarks of the other parties' advocates, by a decree pronounced in chambers, which may be appealed against only together with the judgment ruling on the main application.

After the report of the reporting judge, the prosecutor general and the advocates of the parties who have requested it present summary observations.

The investigating chamber may order the appearance of the parties in person as well as the production of the exhibits.

The judgment is read by the presiding judge or by one of the judges; this reading may be made even in the absence of the other judges.

In pre-trial detention matters, the appearance of the person concerned is granted as of right if the person or his advocate requests it. This request must be made at the same time as the filing of the appeal or the application for release is sent to the investigating chamber, under penalty of inadmissibility. Where an appeal has been lodged against a ruling which rejects the release of a detainee, if the person concerned has already appeared before the investigating chamber less than four months previously, the presiding judge of the court may refuse to let him appear before the court again, by means of a reasoned decision that is not open to appeal.

If the appearance of the person concerned was ordered, the time limit provided for in the third paragraph of article 194 is extended by five days.

Article 199-1

(Law n° 95-125 of 8 February 1995 Article 56 Official Journal of 9 February 1995)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

In the event of an appeal filed against an order for discharge by reason of the provisions of the first paragraph of article 122-1 of the Criminal Code, the investigating chamber must upon the appplication of the civil party order the appearance in person of the person under judicial examination, if his state of health allows for it. Under penalty of inadmissibility, this application must be made at the same time as the appeal application.

If the appearance in person of the person under judicial examination has been ordered and the civil party or his advocate makes such an application at the beginning of the hearing, the hearing takes place and the judgment is made in public, except where publicity is liable to prejudice public order or morality. The investigating chamber rules on the application for publicity after having heard the observations of the public prosecutor, of the person under judicial examination and of his advocate as well as, as the case may be, of the advocates of the other parties, by making a decision in chambers; this may only be appealed against together with the judgment concerning the main application.

The experts who have examined the person under judicial examination must be heard by the investigating chamber.

Article 200

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The investigating chamber deliberates at the end of the hearing; in no case may the prosecutor general, the parties, their advocates or the clerk be present.

Article 201

(Law n° 93-2 of 4 January 1993 art 193; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

In every case the investigating chamber may order any additional investigatory step it deems appropriate, upon the application of the public prosecutor, of a party or on its own motion.

In any case it may, after hearing the public prosecutor, order the release of the person under judicial examination.

Article 202

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law n° 93-2 of 4 January 1993 art 194; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 94-89 of 1 February 1994 Article 17 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

It may, either on its own motion or upon the prosecutor general's submissions, order with respect to the person under judicial examination or of defendants referred to it an investigation into any counts of felonies, misdemeanours, or petty offences, whether principal or incidental, which derive from the case file and not dealt with in the investigating judge's order, or which have been withdrawn by an order including a part discharge, a severance or a reference before the correctional court or the police court.

It may rule without ordering a new judicial investigation if the prosecution counts considered under the previous paragraph have been included among the matters for which the person was placed under judicial examination by the investigating judge.

Article 203

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Offences are related either when they were committed at the same time by several persons acting together, or when they were committed by different persons, even at different times and in different places, but as the result of a conspiracy made between them in advance, or where the guilty parties committed certain offences to obtain the means of committing the others, to facilitate or achieve their execution, or to ensure impunity, or where property abstracted, misappropriated or obtained through a felony or misdemeanour has been wholly or partly received.

Article 204

(Law n° 93-2 of 4 January 1993 art 195; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

In respect of the offences arising out of the case file, the investigating chamber may also order the placing under judicial examination of persons who have not been referred to it, pursuant to the conditions provided for by article 205, unless they have been granted a final discharge order.

This decision may not be the subject of proceedings for cassation.

Article 205

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The additional investigative steps are implemented in accordance with the provisions governing the preliminary investigation, either by a member of the investigating chamber or by an investigating judge it delegates for this purpose.

The public prosecutor may at any time request the communication of the file, provided he returns the documents within twenty-four hours.

Article 206

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The investigating chamber examines the lawfulness of the proceedings of which it is seised.

If it discovers a ground of nullity, it pronounces the nullity of the instrument vitiated and, where necessary, of all or part of the subsequent proceedings.

After an annulment, it may either transfer the case to itself and proceed pursuant to the conditions set out in articles 201, 202 and 204, or return the case file to the same investigating judge or to another investigating judge in order to continue the investigation.

Article 207

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law no. 87-1062 of 30 December 1987 Articles 2 & 10 Official Journal 31 December 1987, in force on 1 March 1998)

(Law n° 89-18 of 13 January 1989 Article 2 Official Journal of 14 January 1989)

(Law n° 93-2 of 4 January 1993 art 241; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-2 of 4 January 1993 art 70 & 228; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 40; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 & 132 Official Journal of 16 June 2000)

Where the investigating chamber has ruled on an appeal filed against an order made by the liberty and custody judge in pre-trial detention matters or following an application of the district prosecutor made pursuant to the second paragraph of article 137, then, whether it has upheld the investigating judge's decision or, after quashing it, has ordered a release or has continued a detention or has issued a detention or arrest warrant, the prosecutor general returns the case file to the investigating judge forthwith, after ensuring the enforcement of the appeal court's judgment.

Where in any other matter the investigating chamber quashes an order made by the investigating judge or is seised under articles 81, ninth paragraph, 82, fourth paragraph, 82-1, second paragraph, 156, second paragraph, or 167, fourth paragraph, it may either transfer the case to itself and proceed as stated under the conditions set out by articles 201, 202, 204 and 205, or refer the case file back to the investigating judge or to another investigating judge in order to continue the investigation.

An order made by an investigating judge or a liberty and custody judge, where appealed against, is fully and completely effective if it is upheld by the investigating chamber.

In the event of an appeal filed against an order refusing release, the investigating chamber may in the course of the hearing and before its conclusion, consider immediately any application for release upon which the investigating judge or the liberty and custody judge has not yet ruled. In this case, it decides both on the appeal and on this application.

Article 207-1.

(Law nº 2000-516 of 15 June 2000 art. 74 & 83 & 132 Official Journal of 16 June 2000)

(Law n° 2000-1354 of 30 December 2000 art 17 Official Journal of 31 December 2000)

Within a week of receiving the case file, the investigating chamber's presiding judge who is seised under second paragraph of article 175-1 decides whether there are grounds for referring the case to the investigating chamber, by a ruling that is not open to appeal.

In the affirmative, he hands the case file over to the prosecutor general, who proceeds in accordance with articles 194 onwards. Once seised of the case the investigating chamber may either send the case to the trial court or indict the defendant before the assize court, rule that there are no grounds to proceed, or call the case in and proceed under articles 201, 202 and 204, or send the case file back to the same investigating judge or to another, in order to carry on the investigation.

Where the answer is negative, he rules, by means of a reasoned judgment, that the case file of the investigation be sent back to the investigating judge.

Article 208

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Where it has prescribed an additional judicial investigation and this investigation has come to end, the investigating chamber orders that the case file be lodged with the court office.

The public prosecutor immediately informs each of the parties and their advocates of this step in a letter sent by recorded delivery.

Article 209

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The case file remains deposited with the court office for forty-eight hours in pre-trial detention matters, and for five days in all other cases.

The case then proceeds in accordance with articles 197, 198 and 199.

Article 210

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The investigating chamber rules by a single judgment on all the facts between which there exists a connecting link.

Article 211

(Law n° 93-2 of 4 January 1993 art 196; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

It examines whether sufficient charges exist against the person under judicial examination.

Article 212

(Law nº 85-1407 of 30 December 1985 art. 5 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 197; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 94-89 of 1 February 1994 Article 17 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

If the investigating chamber considers that the facts of the case do not constitute a felony, a misdemeanour, or a petty offence or if the perpetrator remains unidentified, or where there are no sufficient charges against the person under judicial examination, it declares there is no case to prosecute.

Those under judicial supervision who are in pre-trial detention are released. The judgment puts an end to the judicial supervision.

The investigating chamber rules by the same judgment on the restitution of articles placed under judicial safekeeping. It may refuse restitution where this presents a danger for persons or property.

Article 212-1

(Law n° 93-2 of 4 January 1993 art 49; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 36; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 96 Official Journal of 16 June 2000)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The investigating chamber may order, at the person concerned's request or with his assent, of its own motion or at the public prosecutor's request, either the partial or full publication of the discharge judgment, or the insertion of a communiqué informing the public of the grounds and terms of the judgment, in one or more newspapers, periodicals or audio-visual telecommunication services chosen by the chamber.

As appropriate, it determines the extracts of the decision to be published or chooses the wording of the communiqué to be inserted.

If the investigating chamber does not grant the person concerned's request, it must render a reasoned judgment.

Article 213

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December)

(Law n° 70-643 of 14 July 1970 art. 6 Official Journal of 19 July 1970)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

If the investigating chamber considers that the facts of the case constitute a misdemeanour or a petty offence, it refers the case to the correctional court in the first case, and to the police court in the second.

The detained defendant is immediately set free and the judicial supervision ends. However, the investigating chamber may implement through a specially reasoned judgment the provisions set out in the third and fourth paragraphs of article 179.

Where the case is referred to the police court, the detained defendant is immediately set free. The judicial supervision ends.

Article 214

(Law nº 81-82 of 2 February 1981 art. 59 Official Journal of 3 February 1981)

(Law n° 93-2 of 4 January 1993 art 198; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 82, 83 Official Journal of 16 June 2000)

If the charges brought against the person under judicial examination constitute an offence termed a felony by law, the investigating chamber orders indictment before the assize court.

It may also refer related offences to this court.

The investigating chamber rules by making a judgment within two months of the order transmitting the file, failing which the person is automatically set free.

Article 215

(Law nº 2000-516 of 15 June 2000 art. 82 Official Journal of 16 June 2000)

(Law n° 2002-1138 of 9 September 2002 Article 43 Official Journal of 10 September 2002)

The indictment judgment includes, under penalty of nullity, a statement of the facts of which the person is accused and their legal qualification, and specifies the identity of the accused.

It also contains an arrest warrant upon indictment against the accused and against any persons referred to the assize court on a related misdemeanour.

The provisions of the fifth and sixth paragraphs of article 181 are applicable.

The defendant is notified of the indictment judgment in accordance with the provisions of the second paragraph of article 183.

Article 215-2

(Inserted by Law nº 2000-516 of 15 June 2000 art. 77 Official Journal of 16 June 2000)

(Law n° 2002-1138 of 9 September 2002 Article 43 Official Journal of 10 September 2002)

An accused person detained on charges for which he has been committed to the assize court is immediately set free if he has not appeared before this court within a year either from the date on which the decision to indict him became final if he was already in custody at that point, or from the date he was subsequently placed in pre-trial detention.

However, if the trial cannot begin before the expiry of this time limit, the investigating chamber may exceptionally, in a decision made pursuant to article 144 and mentioning the factual and legal reasons which prevent the case being tried, order the effect of the arrest order to be extended for a further six months. The accused's personal appearance is granted as of right if he or his advocate makes the request. This extension can be renewed once in the same forms. If the accused has not appeared before the assize court at the end of this newly extended period, he is immediately set free.

Article 216

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959

(Law nº 81-82 of 2 February 1981 art. 41 & 83 Official Journal of 3 February 1981)

(Law n° 93-2 of 4 January 1993 art 125 & 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Investigating chamber judgments are signed by the presiding judge and by the clerk. A note is made of the name of the judges, of the filing of documents and reports, of the reading of the report, of the public prosecutor's submissions and, where necessary, of the hearing of the parties or of their advocates.

The chamber orders the perpetrator of the offence to pay the civil party such sum as it determines in respect of costs not paid by the State and borne by the civil party. It takes into account considerations of equity or the financial situation of the party convicted. On grounds based on these considerations it may rule, even on its own motion, that there is no case for such an order.

Article 217

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 85-1407 of 30 December 1985 art. 35 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 89-461 of 6 July 1989 art. 11 Official Journal of 8 July 1989 in force 1 December 1989)

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 28, 83 Official Journal of 16 June 2000)

Judgments are notified to the parties' advocates by recorded delivery letter within three days of their pronouncement, except in the case provided for in article 196.

Within the same time limit and the same forms, discharge judgments are notified to the persons under judicial investigation. The parties are also notified of the referral judgments transferring a case to the correctional court or the police court.

Judgments against which the parties may file a cassation application are served on them within three days upon the public prosecutor's application. However, these judgments are notified by recorded delivery letter to the parties or to the applicant mentioned under the fifth paragraph of article 99 as long as the investigating judge has not closed his judicial investigation. They may be served on the person detained by the prison governor, who without delay sends the public prosecutor the original receipt signed by the person or a copy of this.

Any service of documents to a party's last official address is deemed to have been made to him in person

Article 218

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 77; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The provisions of articles 171, 172 and of the last paragraph of article 174 are applicable to the present chapter.

The lawfulness of the judgments made by investigating chambers and that of prior proceedings, when this division has ruled on the closure of proceedings, fall under the sole supervision of the Court of Cassation, whether the application is immediately admissible or whether it may only be examined at the same time as the judgment on the merits.

SECTION II: THE INDICTMENT DIVISION PRESIDING JUDGE'S SPECIFIC POWERS

Article 219

(Law n° 75-701 of 6 August 1975 Article 25 Official Journal of 7 August 1975)

(Law nº 2000-516 of 15 June 2000 art. 65 & 83 Official Journal of 16 June 2000)

The presiding judge of the investigating chamber and, in the courts where several investigating chambers are established, one of the presiding judges specially appointed by the general assembly, exercise the particular powers defined in the following articles.

Where this presiding judge is unable to act, his specific powers are attributed by a deliberation of the appeal court's general assembly to a judge belonging to this court.

The presiding judge may delegate all or part of his powers to a judge belonging to the investigating chamber and, in courts where several investigating chambers are established, to a judge belonging to another investigating chamber with the consent of the presiding judge of this division. He may also delegate all or part of his powers to a senior vice-president of the district court appointed by this court's presiding judge.

Article 220

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law nº 81-82 of 2 February 1981 art. 55-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 17 Official Journal of 11 June 1983 in force 27 June 1983

(Law nº 96-1235 of 30 December 1996 art. 13 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The presiding judge of the investigating chamber sees to the proper operating of the investigating chambers within the area jurisdiction of the appeal court. He more particularly checks the conditions of implementation of paragraphs 4 and 5 of article 81 and of article 144 and is active to ensure that proceedings do not suffer any undue delay. Whenever he considers it necessary, and at least once a year, he sends his written observations to the appeal court presiding judge, to the prosecutor general attached to this court, and also to the presiding judge of the district court concerned and to the prosecutor attached to this court.

Article 221

(Law nº 81-82 of 2 February 1981 art. 55-ii Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 18 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 93-2 of 4 January 1993 art. 200 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

To this end, a statement of all the cases pending which mentions for each case the date of the last investigatory step taken is drawn up quarterly in each investigating chamber.

The cases involving persons under judicial examinations placed in pre-trial detention are entered on a special statement.

The statements provided for by the present article are sent to the presiding judge of the investigating chamber and to the public prosecutor in the first three days of the quarter.

Article 221-1

(Law nº 87-1062 of 30 December 1987 art. 15 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Where four months have passed since the last investigatory step necessary for the discovery of the truth, the presiding judge of the investigating chamber may, by application, refer the case to the investigating chamber. This court may in the interests of the proper administration of justice either transfer the case to itself and proceed as provided for by articles 201, 202, 204 and 205, or refer the case file back to the investigating judge or to another investigating judge in order to continue the investigation.

Article 221-2

(Law nº 96-1235 of 30 December 1996 art. 14 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Where four months have passed since the last investigatory step, the parties may seise the investigating chamber directly as provided for in the third paragraph of article 173. This time limit is reduced to two months in the interests of the person under judicial examination when he is held in pre-trial detention.

Within eight days of the court office of the investigating receiving the case file, the presiding judge may rule by a making a reasoned order that there is no case to be referred to the investigating chamber.

When seised, the investigating chamber may either transfer the case to itself and proceed as provided by articles 201, 202, 204 and 205, or refer the case file back to the investigating judge or to another investigating judge in order to continue the investigation.

If no investigatory step has been undertaken within two months from the reference of the case file back to the investigating judge initially appointed, the investigating chamber may again be seised under the procedure set out in the first and second paragraphs of the present article. This time limit is reduced to one month in the interests of the person under judicial examination when he is held in pre-trial detention.

The investigating chamber must then either transfer the case to itself as stated in the third paragraph of the present article, or refer the case file to another investigating judge in order to continue the investigation.

Article 222

(Law nº 93-2 of 4 January 1993 art. 201 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The presiding judge visits the remand prisons within the area jurisdiction of the appeal court and checks the situation of the persons under judicial examinations placed in pre-trial detention in those premises, whenever he deems it necessary and at least once every quarter.

Article 223

(Law nº 93-2 of 4 January 1993 art. 202 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

He may seise the investigating chamber in order for it to rule on the continued detention of a person under judicial examination held in pre-trial detention.

SECTION III: SUPERVISION OF THE ACTIVITY OF JUDICIAL POLICE OFFICERS AND AGENTS

Article 224

(Law n° 78-788 of 28 July 1978 Articles 6 & 7 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The investigating chamber exercises supervision over the activity of the civil and military personnel who are judicial police officers and agents, taken in this capacity.

Article 225

(Law n° 78-788 of 28 July 1978 Articles 6 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The chamber is seised by the public prosecutor, or by its presiding judge.

It may seise itself of on its own motion when examining proceedings submitted to it.

Article 226

(Law n° 78-788 of 28 July 1978 Articles 6 & 8 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Once seised of a case, the investigating chamber carries out an investigation; it hears the public prosecutor and judicial police officer or agent concerned.

The latter must first have been put in a position to read his judicial police officer file held by the general prosecution office of the appeal court.

He may be assisted by an advocate.

Article 227

(Ordinance n° 58-1296 of 23 December 1958 Article 1 Official Journal of 24 December 1958 in force on 2 March 1959)

(Law n° 78-788 of 28 July 1978 Articles 6 & 9 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 16 Official Journal of 16 June 2000)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Without prejudice to any disciplinary sanctions which may be imposed upon the judicial police officer or agent by his superiors, the investigating chamber may admonish him or decide that he may not exercise either temporarily or permanently his functions of judicial police officer or as delegate of the investigating judge or his functions as judicial police agent, either in the area jurisdiction of the appeal court or in any part of the national territory. Such a decision takes effect immediately.

Article 228

(Law n° 78-788 of 28 July 1978 Articles 6 & 9 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

If the investigating chamber considers that the judicial police officer or agent has committed an offence against criminal law, it orders in addition the transmission of the case file to the public prosecutor for appropriate steps to be taken.

Article 229

(Law n° 78-788 of 28 July 1978 Articles 6 & 9 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

At the request of the public prosecutor, decisions taken by the investigating chamber against judicial police officers or agents are notified to the authorities responsible for them.

Article 230

(Law n° 78-788 of 28 July 1978 Article 6 Official Journal of 29 July 1978)

(Law nº 93-2 of 4 January 1993 art.151 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The provisions of the present section are applicable to assistant judicial police agents, and also to the civil servants and agents in charge of certain judicial police functions.

SINGLE CHAPTER: TRANSCRIPTION OF ENCRYPTED INFORMATION NECESSARY TO THE ESTABLISHMENT OF TRUTH

Article 230-1

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 30 Official Journal of 16 November 2001)

Without prejudice to the provisions of articles 60, 77-1 and 156, where it appears that data seized or obtained during the course of the enquiry or investigation has been altered, preventing access to or understanding of the information in clear that it contains, the district prosecutor, the investigating court or the trial court seised of the case may appoint any qualified legal or natural person to carry out the technical operations necessary to obtain a readable version of this information, and also, where a method of encryption has been used, the secret key for decoding it, if this appears necessary.

If the penalty applicable to the offence is of at least two years' imprisonment and the needs of the enquiry or investigation justify this, the district prosecutor, the investigating court or the trial court seised of the case may order the use of means protected by official State secrecy, following procedures laid down by the present chapter.

Article 230-2

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 30 Official Journal of 16 November 2001)

Where the district prosecutor, the investigating court or the trial court in charge of a case decide to use, for the procedures mentioned in article 230-1, means protected by official State secrecy, the written submission must be sent to the national judicial police service responsible for the fight against crime involving information technology, along with the medium containing the data to be deciphered or a

copy of this. This submission fixes the time limit in which these deciphering procedures must be carried out. The time limit may be extended under the same conditions. The judicial authority requiring it may order the interruption of these prescribed procedures at any time.

The judicial police service to whom the submission has been sent forwards the submission together with, where appropriate, the interruption order, to a technical organisation protected by official State secrecy, and designated for this purpose by Decree. Data protected in the interests of national security may only be passed on under the conditions provided for by law n 98-567 of 8th July 1998 establishing the Advisory Commission for Official Secrets.

Article 230-3

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 30 Official Journal of 16 November 2001)

As soon as the procedures have been completed, or as soon as it becomes clear that the procedures are technically impossible, or at the expiry of the time limit prescribed, or when an interruption order is received from the judicial authority, the results obtained and the documents received are returned by an official from the technical organisation to the judicial police service which made the request. Subject to the obligations of State secrecy, the results are accompanied by technical instructions enabling them to be understood and used, as well as by a statement drawn up by the official from the technical organisation, which attests to the genuineness of the results.

These documents are immediately returned to the judicial authority by the national judicial police service responsible for the fight against crime involving information technology.

The facts thus obtained are recorded in an official record marking their receipt and are added to the case file of the proceedings.

Article 230-4

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 30 Official Journal of 16 November 2001)

Judicial decisions taken pursuant to the present chapter do not have judicial status and are not subject to appeal.

Article 230-5

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 30 Official Journal of 16 November 2001)

Without prejudice to any obligations relating to State secrecy, officials to whom requests are made under to the provisions of the present chapter are obliged to bring their support to justice.

BOOK II

TRIAL COURTS

TITLE I: THE ASSIZE COURT.

CHAPTER I: JURISDICTION OF THE ASSIZE COURT

Article 231

(Law nº 72-625 of 5 July 1972 art. 3 Official Journal of 9 July 1972)

(Law nº 2000-516 of 15 June 2000 art. 79 Official Journal of 16 June 2000 in force 1 January 2001)

The assize court has full jurisdiction to try at first instance or on appeal those persons committed for trial before it by the indictment judgment.

CHAPTER II: HOLDING OF ASSIZES

Article 232

(Law nº 72-625 of 5 July 1972 art. 3 Official Journal of 9 July 1972)

Assizes are held in Paris and in each département.

Article 233

The appeal court, on the submission of the public prosecutor, may establish as many assize divisions as the needs of the service require.

Article 234

In the départements where an appeal court has its seat, the assizes are ordinarily held at the main seat of this court.

In the other départements the assizes are ordinarily held at the main town of these administrative districts.

In exceptional cases, a Council of State Decree may fix the seat of the assize court in another town in the département where a district court is established.

Article 235

The appeal court may upon the prosecutor general's submissions make a reasoned judgment ordering the assizes to be held at the seat of a first-instance court where they are not normally held.

The judgment is brought to the knowledge of the courts concerned by the prosecutor general.

Article 236

Assizes are held every three months.

However, the appeal court presiding judge may, after hearing the opinion of the prosecutor general, order that one or more additional sessions to be held during the same quarter.

Article 237

The date for the beginning of every ordinary or additional assize session is fixed, after hearing the opinion of the prosecutor general, by an order made by the presiding judge of the appeal court or, in the case set out by article 235, by an appeal court judgment.

This order or judgment is notified to the court where the assize is to take place by the prosecutor general no less than fifteen days before the beginning of the session.

Article 238

The list of each session is made by the presiding judge of the assize court upon the proposals of the public prosecutor.

Article 239

The public prosecutor informs the accused of the date at which he must appear.

CHAPTER III: COMPOSITION OF THE ASSIZE COURT

COMMON PROVISIONS

Article 240

The assize court comprises the court proper and the jury.

Article 241

(Law nº 85-1407 of 30 December 1985 articles 36 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

The public prosecutor's duties are carried out here under the conditions defined under articles 34 and 39.

However, the prosecutor general may appoint any member of the public prosecutor's office from the area of jurisdiction of the appeal court to an assize court within this area.

Article 242

(Law nº 67-557 of 12 July 1967 article 19 Official Journal of 13 July 1967)

The assize court is assisted by a clerk at its hearings.

In Paris and in the départements where an appeal court has its seat, the clerk's duties are performed by the chief clerk or a clerk of the appeal court.

In the other départements these duties are fulfilled by the head clerk or a clerk belonging to the district court.

SECTION I: THE ASSIZE COURT

COMMON PROVISIONS

Article 243

The court proper consists of the presiding judge and the assessors.

Paragraph 1: The presiding judge

Article 244

The assize court is presided over by a division presiding judge or a judge of the appeal court.

Article 245

The presiding judge is appointed for the duration of each quarter and for each assize court by an order made by the presiding judge of the court of appeal which fixes the date for the beginning of the sessions.

Article 246

If for any reason arising before the session opens the president of the assize court is unable to act, he is replaced by order of the appeal court presiding judge.

If the assize court presiding judge becomes unable to act during the session, he is replaced by the highest ranking assessor.

Article 247

The president of the court of appeal may preside over the assize court whenever he considers this appropriate.

Paragraph 2: The assessors

Article 248

The assessors are two in number.

One or more additional assessors may be assigned to them if the length or the importance of the session make this necessary.

The additional assessors sit at the hearings. They take part in the deliberations only where a principal assessor is unable to act, this being established by a reasoned order of the assize court presiding judge.

Article 249

The assessors are chosen either from among the appeal court judges, or the presiding judge, vice-presidents or judges of the district court of the place where the assizes sits.

Article 250

The assessors are appointed by the appeal court presiding judge for a period of three months and for each assize court, and under the same procedure as the presiding judge.

Article 251

If for reasons arising before the session opens assessors are unable to act, they are replaced by order of the appeal court presiding judge.

Where assessors become unable to act during the session, assessors are replaced by order of the assize court presiding judge, who nominates from among the judges of the court of appeal or first instance court of the place where the assize is sitting.

Article 252

When the session has begun the assize court presiding judge may in case of need appoint one or more additional assessors.

Article 253

Judges or prosecutors who have previously taken any step in the prosecution or investigation of the case referred to the assize court, or who have previously taken part in the decision to indict or in any decision on the merits relating to the guilt of the accused, may not sit in the assize court as presiding judges or assessors.

SECTION II: THE JURY

COMMON PROVISIONS

Article 254

The jury is made up of citizens designated in accordance with the provisions of the following articles.

Paragraph 1: Capacity conditions for jury service

Article 255

(Law n° 72-1226 of 29 December 1972 Article 3 Official Journal of 30 December 1972

Only those citizens of either sex who are over the age of twenty-three, who are able to read and write in French, who enjoy their full political, civil and family rights, and who do not fall within any of the cases of incapacity or incompatibility listed by the two following articles are qualified for jury service.

Article 256

(Law n° 78-788 of 28 July 1978 Article 13 Official Journal of 29 July 1978)

(Law nº 92-1336 of 16 December 1992 article 18 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 article 256 Official Journal of 16 June 2000 in force 1 January 2001)

The following persons do not have the capacity to be jurors:

1° persons who have a conviction for a felony or misdemeanour, resulting in a sentence of at least six months' imprisonment, recorded under heading no.1 of their criminal record;

2° repealed

3° accused persons, persons in a state of contumacy and persons under a detention or arrest warrant;

4° civil servants and agents of the State, districts and municipalities who have been dismissed from their office;

5° legal professionals who have been debarred, and members of professional bodies who are subject to a final judicial prohibition against exercising their profession;

6° persons declared bankrupt and who have not been discharged;

7° persons prohibited from jury service pursuant to article 288, paragraph 5, of the present Code or of article 131-26 of the Criminal Code;

8° adults under guardianship orders and those placed in institutions for the mentally ill pursuant to articles L. 326-1 to L. 355 of the Public Health Code.

Article 257

(Law n° 72-1226 of 29 December 1972 Article 4 Official Journal of 30 December 1972)

(Law n° 78-788 of 28 July 1978 Article 14 Official Journal of 29 July 1978)

(Law nº 85-1407 of 30 December 1985 articles 37 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Jury service is incompatible with the following positions:

1° member of the Government, of Parliament, of the Constitutional Council, of the High Council for the Judiciary and of the Economic and Social Council;

2° member of the Council of State or of the Public Accounts Court, judge or prosecutor of the judicial courts, member of administrative courts, judge of the commercial courts, assessor of the paritary court for rural leases, and labour court judge;

3° secretary general of the Government or of a Ministry, division head of a Ministry, member of the body of district administrators (préfets);

4° civil servant belonging to police or prison services, active military personnel.

Article 258

(Law n° 78-788 of 28 July 1978 Article 14 Official Journal of 29 July 1978)

(Law nº 81-82 of 2 February 1981 article 61 Official Journal of 3 February 1981)

Persons aged over seventy and those who do not have their main residence within the district where the seat of the assize court is located are exempt from jury service when they apply for this exemption to the commission provided for by article 262.

In addition, persons invoking any serious reason which the commission recognises as valid may also be exempted from jury service.

Article 258-1

(Law n° 78-788 of 28 July 1978 Article 14 Official Journal of 29 July 1978)

(Law n° 80-1042 of 23 December 1980 Article 2-i Official Journal of 24 December 1980)

Persons who have served as jurors within the département in the five previous years are excluded or struck off the annual list of jurors and of the special list of extra jurors.

A lay or religious moral objection is not a serious reason capable of justifying an exclusion from the list of jurors.

The commission provided for under article 262 may also exclude any persons who do not seem capable of jury service for a serious reason.

Non-compliance with the provisions of the present article or of the previous article does not render the formation of the jury null and void.

Paragraph 2: The formation of the jury

Article 259

An annual list of the criminal jury is drafted in the area of jurisdiction of each assize court.

Article 260

(Law nº 72-625 of 5 July 1972 article 3 Official Journal of 9 July 1972)

(Law n° 78-788 of 28 July 1978 Article 16 Official Journal of 29 July 1978)

(Law n° 80-1042 of 23 December 1980 Article 2-ii Official Journal of 24 December 1980)

(Law n° 81-82 of 2 February 1981 Article 62 Official Journal of 3 February 1981)

(Law nº 2000-516 of 15 June 2000 article 136 Official Journal of 16 June 2000 in force 1 January 2001)

This list numbers one thousand eight hundred jurors for the Paris assize court, and one juror per one thousand three hundred inhabitants for the other assize court areas; provided that the number of jurors shall never be lower than two hundred.

A Council of State Decree may fix for the annual list of each assize court a number of jurors higher than that resulting from the provisions of the first paragraph, if the number of sessions held each year by the assize court justifies this.

The number of jurors for the annual list is distributed in proportion to the official population figures. This distribution is made for each municipality or group of municipalities by a decision made by the préfet in April of each year. In Paris, the distribution between the boroughs is made by a decision of the préfet in the course of the month of June.

Article 261

(Law nº 67-557 of 12 July 1967 article 19 Official Journal of 13 July 1967)

(Law n° 78-788 of 28 July 1978 Article 16 Official Journal of 29 July 1978)

(Law n° 81-82 of 2 February 1981 Article 3 Official Journal of 3 February 1981)

In each municipality the mayor publicly draws by lot from the electoral list a number of names three times that fixed by the préfet's decision, in order to draw up the preliminary list for the annual list. Persons who will not reach the age of twenty-three in the coming civil year are not retained for the composition of this preliminary list.

If the préfet's decision has provided for municipalities to be grouped, the lots are drawn by the mayor of the municipality designated in the préfet's decision. It includes all the electoral lists of the municipalities concerned.

For Paris, the drawing of lots is made in each borough by the civil status officer appointed by the mayor.

Article 261-1

(Law n° 78-788 of 28 July 1978 Article 17 Official Journal of 29 July 1978)

(Law n° 80-1042 of 23 December 1980 Article 2-iii Official Journal of 24 December 1980)

(Law n° 81-82 of 2 February 1981 Article 64 Official Journal of 3 February 1981)

The preliminary list must be drafted in two original copies of which one is deposited at the town hall, and for Paris at the subsidiary town hall, and the other is sent before July 15 to the court office of the court where the assize sits.

The mayor must notify the persons drawn by lot. He requests them to state their profession to him. He informs them they have the opportunity to request, in a letter sent by the ordinary post before the first of September to the president of the commission set out in article 262, to be allowed to take advantage of the provisions of article 258.

The mayor must notify the head clerk of the appeal court or of the district court where the assize court sits of any legal incapacities arising from articles 255, 256 and 257 which to his knowledge are imposed on persons entered on the preliminary list. He may also present observations relating to persons who for serious reasons seem unable to perform jury service.

Article 262

(Law nº 72-625 of 5 July 1972 article 3 Official Journal of 9 July 1972)

(Law n° 78-788 of 28 July 1978 Article 18 Official Journal of 29 July 1978)

The annual list is drafted at the seat of each assize court by a commission presided over by the appeal court presiding judge or his delegate, at the seat of the appeal court and, in the district courts where the assize court sits, by the court's presiding judge or his delegate.

This commission includes, in addition to its president:

- three judges appointed each year by the general assembly of the court where the assize court sits;

- according to the case, either the prosecutor general, or his delegate, or the district prosecutor, or his delegate;

- the president of the bar association attached to the court where the assize court sits, or his representative;

- five district councillors appointed each year by the district council, and in Paris, five councillors appointed by the Paris council.

Article 263

(Law n° 78-788 of 28 July 1978 Article 18 Official Journal of 29 July 1978)

(Law n° 80-1042 of 23 December 1980 Article 2-iv Official Journal of 24 December 1980)

The commission convenes upon the summons of its president at the seat of the assize court in the course of the month of September. Its secretariat is the chief clerk of the court where the assize court sits.

It excludes the persons who do not fulfil the legal capacity conditions arising from articles 255, 256 and 257. It rules upon the applications presented pursuant to article 258. Any persons falling under article 258-1 (paragraph 1) and, as may be, any falling under article 258-1 (paragraph 2) are also excluded.

The decisions of the commission are taken by a majority vote; in the case of a tie, the president has a casting vote.

The annual list of jurors is drafted by drawing lots from among the names which have not been excluded.

The list is finally drafted in the order in which the lots were drawn, immediately signed and deposited with the court office of the court where the assize court sits.

Article 264

(Law n° 78-788 of 28 July 1978 Article 8 Official Journal of 29 July 1978)

(Law n° 80-1042 of 23 December 1980 Article 2-v Official Journal of 24 December 1980)

(Law nº 84-576 of 9 July 1984 article 9 and article 19 Official Journal of 10 August 1984 in force 1 January 1985)

(Law nº 85-1407 of 30 December 1985 article 38 Official Journal of 31 July 1985 in force 1 February 1986)

In addition to the annual list of jurors, a special list of extra jurors is also drafted each year by the commission as provided for by article 263. The extra jurors must reside in the town where the assize court sits.

The number of jurors entered on this list is fixed for each assize court by a Council of State Decree, and may not be less than fifty, nor more than seven hundred.

Article 265

(Law n° 78-788 of 28 July 1978 Article 18 Official Journal of 29 July 1978)

The annual list and the special list are sent by the president of the Commission to the préfet who transmits them to the mayor of each municipality. The mayor must notify the appeal court presiding judge, or the presiding judge of the district court where the assize court has its seat, of any deaths, disqualifications or legal incompatibilities which might affect the persons whose names are entered on these lists, as soon as he knows of these events.

The appeal court presiding judge or the presiding judge of the district court where the assize court has its seat or their delegate are authorised to withdraw these persons' names from the annual list and from the special list.

Article 266

(Law n° 78-788 of 28 July 1978 Article 18 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

No less than thirty days before the beginning of the assizes, the appeal court presiding judge or his delegate, or the presiding judge of the district court where the assize court has its seat, or his delegate draws by lot from the annual list in open court the names of forty jurors who will form the list for the session. He also draws the names of ten extra jurors from the special list.

If among the names drawn by lot are those of one or more deceased persons or persons who do not fulfil the legal capacity conditions arising out of articles 255, 256 and 257 or who have served as jurors in the département less than five years previously, the names are immediately replaced on the session list and on the list of extra jurors by the names of one or more other jurors appointed by lot. They are withdrawn from the annual list or from the special list by the appeal court presiding judge or by the presiding judge of the district court where the assize court has its seat, or by their delegates.

If they are drawn by lot, the names of the persons who fall within the conditions prescribed by paragraphs 2 and 3 of article 267 are also replaced on the session list and on the list of the ten extra jurors.

Article 267

(Law n° 78-788 of 28 July 1978 Article 28 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

The préfet notifies each juror of the extract of the session list or the list of ten extra jurors which concerns him at least fifteen days before the day set down for the beginning of the session.

This date is mentioned in the notification, which also states the foreseeable length of the session and includes a summons to appear at the day and time stated under the penalties set out in the present Code.

Failing a notification made to the person himself, the notification is made to the person's domicile as well as to the mayor, who then must inform the appointed juror.

CHAPTER IV: INTERLOCUTORY PROCEDURE FOR ASSIZE SESSIONS

SECTION I: COMPULSORY STEPS

Article 268

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 145; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

The decision indicting him is served on the accused.

He is left a copy of it.

This notification must be made to the accused in person if he is detained. However, the indictment may be served on an accused in detention by the prison governor, who immediately sends the original or the copy of the receipt signed by the person concerned to the district prosecutor or the prosecutor genera, according to the case.

In other cases, the service is made in accordance with the formalities set out in Title IV of the present book.

Article 269

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

As soon as the decision to indict the defendant has become final or, in appeal cases, as soon as the decree appointing the assize court has been served, the accused, if he is detained, is transferred to the prison of the place where the assizes are held.

Article 270

Contumacy proceedings are initiated if the accused cannot be arrested or does not appear.

Article 271

If the case is not tried at the seat of the appeal court, the case file is sent back by the prosecutor general to the court office of the district court where the assizes are held.

The exhibits are also transferred to the office of this court.

Article 272

(Law n° 70-643 of 14 July 1970 art. 8 Official Journal of 19 July 1970)

(Law nº 2000-516 of 15 June 2000 art. 82 Official Journal of 16 June 2000)

The assize court presiding judge interrogates the accused as soon as possible after the arrival of the accused at the prison and the transfer of the documents to the court office.

If the accused is free, the case proceeds as stated in article 272-1, second paragraph.

The presiding judge may delegate one of his assessors to carry out the interrogation.

An interpreter must be called upon if the accused does not speak or understand French.

Article 272-1

(Inserted by Law nº 2000-516 of 15 June 2000 art. 82 Official Journal of 16 June 2000)

If the accused, after being summoned by administrative steps from the assize court office, fails to present himself on the day fixed for his interrogation by the presiding judge of the assize court without legitimate grounds for being excused, the presiding judge may, in a reasoned decision, order the accused's arrest.

During the course of the hearing at the assize court, the court may also, at the public prosecutor's request, rule that the arrest warrant against the accused be put into effect if the accused fails to observe the conditions of his judicial supervision or if it appears that detention is the only way of ensuring his presence at the proceedings or to avoid the pressuring of victims and witnesses. From the

beginning of the hearing, the court, at the request of the public prosecutor, may also order that the accused be placed under judicial supervision to assure his presence during the course of the proceedings or to prevent victims and witnesses being subjected to pressure. The provisions of the present paragraph also apply to persons who have been sent for trial for related offences.

The person may request his freedom before the court at any time.

Article 273

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

The presiding judge interrogates the accused as to his identity and ascertains that he has been served with the indictment or, in case of appeal, the order designating the assize court.

Article 274

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

The accused is then invited to choose an advocate to assist him in his defence.

If the accused does not choose his advocate, the presiding judge or his delegate appoints one ex officio to act for him.

This appointment becomes void if the accused later chooses an advocate.

Article 275

(Law n° 78-788 of 28 July 1978 Article 19 Official Journal of 29 July 1978)

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

The presiding judge may exceptionally authorise the accused to take one of his family members or friends as counsel.

Article 276

The performance of the formalities prescribed by articles 272 to 275 is proved by an official record which is signed by the presiding judge or his delegate, the clerk, the accused and, where necessary, by the interpreter.

If the accused cannot or will not sign, this is noted in the official record.

Article 277

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

The hearing may begin not less than five days from the interrogation made by the presiding judge of the assize court. The accused and his advocate may waive this time limit.

Article 278

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

The accused is allowed to communicate freely with his advocate at any time.

The advocate may examine any part of the case file there and then, provided this communication does not entail a delay in the progress of proceedings.

Article 279

(Inserted by Law n° 90-589 of 6 July 1990 Article 16 Official Journal of 11 July 1990)

A copy of the official records establishing the existence of the offence, of the written statements of witnesses and of any experts' reports is delivered free of charge to every accused person and civil party.

Article 280

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

The accused and the civil party or their advocates may take a copy or have a copy taken at their expense of all the procedural documents.

Article 281

(Law n° 94-89 of 1 February 1994 Article 2 Official Journal of 2 February 1994 in force on 2 February 1994)

The public prosecutor and the civil party serve on the accused, and the accused serves on the public prosecutor and where necessary on the civil party, the list of the persons they wish to have heard as witnesses, no later than twenty-four hours before the beginning of the

hearing.

The names of the experts called upon to report on the tasks entrusted to them in the course of the investigation must be notified in the same conditions.

The writ of service must mention the name, first name, profession and residence of these witnesses or experts.

Witness summonses issued on the application of the parties are made at their expense, as well as any indemnities paid to the witnesses summoned, if they require such indemnities. However, the public prosecutor is obliged to summon upon his application the witnesses on the list that has been communicated by the parties, no later than five days before the beginning of the hearing. This list may not include more than five names.

Article 282

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law nº 83-466 of 10 June 1983 art. 31 Official Journal of 11 June 1983 in force 27 June 1983)

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 94-89 of 1 February 1994 Article 22 Official Journal of 2 February 1994 in force on 2 February 1994)

The list of the jurors for the session as drafted in accordance with article 266 is served on each accused no later than two days before the beginning of the hearing.

This list must include sufficient information to identify the juror, other than information as to their domicile or residence.

SECTION II: OPTIONAL OR EXCEPTIONAL STEPS

Article 283

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

The presiding judge may order any investigatory step he deems useful if the investigations appear to him to be incomplete, or if further matters have come to light since it was concluded.

Such steps are taken either by the presiding judge, by one of his assessors or by an investigating judge he delegates for this purpose. In this case, the prescriptions of chapter I of Title III of Book I must be complied with, with the exception of that contained in article 167.

Article 284

The official reports and the other evidence or documents collected during the additional investigation are deposited with the court office and attached to the case file.

They are put at the disposal of the public prosecutor and of the parties who are notified of this deposit by the clerk.

The prosecutor general may at any time request the procedural documents to be handed over to him, provided he returns the documents within twenty-four hours.

Article 285

Where in respect of a single crime several transfer decisions have been made against different accused persons, the presiding judge may either on its own motion or upon the submission of the public prosecutor, order the joinder of proceedings.

Joinder may also be ordered when transfer rulings have been made against the same accused in respect of different offences.

Article 286

Where the ruling transferring the cases covers a number of unrelated offences, the presiding judge may, either on his own motion or upon the public prosecutor's request, order that the accused be now proceeded against in respect of one or more of these offences only.

Article 287

The presiding judge may, either on his own motion or upon the public prosecutor's request, order any cases that do not seem to him ready for trial in the course of the session for which they are listed be adjourned to a later session .

CHAPTER V: OPENING OF THE SESSIONS.

SECTION I: THE REVISION OF THE JURY LIST

Article 288

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

The court sits at the place and upon the date and time fixed for the beginning of the session.

The clerk calls the roll of the jurors entered on the list in accordance with article 266.

The court rules on the case of absent jurors.

Any juror who, without a legitimate motive, does not respond to the citation served upon him, is sentenced by the court to a fine of € 15 for the first occasion (which the court may reduce by half), to € 30 for the second occasion, and of € 75 for the third occasion.

In this last case, the juror is also declared incapable of serving as a juror in the future.

The penalties provided for in the present article are applicable to any juror who, having responded to the citation, before completing his service withdraws without an excuse ruled valid by the court.

Article 289

(Law n° 78-788 of 28 July 1978 Article 20 Official Journal of 29 July 1978)

If among the jurors present any do not fulfil the legal capacity conditions required by articles 255, 256 and 257, the courts orders their names to be struck off the list and to be sent to the appeal court presiding judge or to the presiding judge of the district court where the assize court has its seat, in order for them to be struck off the annual list.

The same rules apply for the names of deceased jurors.

From the list are also removed the names of any jurors who turn out to be the spouses, family members or relations by marriage (to the degree of uncle or nephew inclusively) of any member of the court, or of any of the jurors present whose name appears on the list ahead of them.

Article 289-1

(Law n° 78-788 of 28 July 1978 Article 21 Official Journal of 29 July 1978)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

If fewer than twenty-three jurors or, where the assize court is to decide on appeal, fewer than twenty-six jurors remain on the session list because of absences or names being struck off the list by the court, this number is completed by the extra jurors in the order of their registration. Where this is insufficient, the number is completed by jurors drawn by lot in a public hearing from the jurors entered on the special list and, after this, from the jurors of the town registered on the annual list.

Where the assizes are held in a place where they would not usually be held, the number of regular jurors is complemented by drawing lots at a public hearing from among the jurors of the town registered on the annual list.

The names of the extra jurors, of those registered on the special list as well as the names of the jurors from the town where the assizes are held, who are registered on the annual list, are struck off the lists under the provisions of the previous article.

Article 290

All the court's decisions are made by a reasoned ruling after hearing the public prosecutor.

This ruling may be challenged by a cassation appeal only where the merits are of the ruling are also challenged.

Article 291

(Law n° 78-788 of 28 July 1978 Article 22 Official Journal of 29 July 1978)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

Before the trial of each case the court proceeds to take, if necessary, the steps provided for by articles 288, 289 and 289-1. The court also orders that the names of the spouses, family members, and relations by marriage up to the degree of uncle or nephew inclusively of the accused or of his advocate be temporarily removed from the list, as amended, as well as the names of any persons who in the case are witnesses, interpreters, denunciators, experts, claimants or civil parties, or who have carried out any judicial police measures, or investigatory steps.

Article 292

(Law n° 78-788 of 28 July 1978 Article 22 Official Journal of 29 July 1978)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

Any judgment modifying the session list drafted in accordance with article 266 is notified to the accused by the clerk (without any particular formality). The accused or his advocate may then request that the opening of the hearing be delayed by a period which may not exceed of one hour.

SECTION II: FORMATION OF THE TRIAL JURY

Article 293

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

On the day announced for each case the court sits, and has the accused brought into the courtroom.

The trial jury is formed at a public hearing.

The presence of the advocate of the accused is not a formality required under penalty of nullity.

Article 294

The presiding judge asks the accused his surname, first names, date and place of birth, profession and residence.

Article 295

(Law n° 78-788 of 28 July 1978 Article 23 Official Journal of 29 July 1978)

The clerk calls the roll of the jurors who are not excused.

A card bearing their name is placed in an urn.

Article 296

(Law nº 83-466 of 10 June 1983 article 32 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 2000-516 of 15 June 2000 article 79 Official Journal of 16 June 2000 in force 1 January 2001)

The trial jury is formed of nine jurors when the court of assizes rules at first instance, and twelve jurors when it rules on appeal.

The court must make a ruling ordering, before the drawing of the list of jurors and separately from it, the drawing by lot of one or more additional jurors who attend the hearing.

Where one or more of the nine jurors are prevented from following the hearing up to the pronouncement of the assize court judgment, they are replaced by the additional jurors.

The replacement is made in the order in which the additional jurors where drawn by lot.

Article 297

(Law nº 83-466 of 10 June 1983 art. 32 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 79 Official Journal of 16 June 2000 in force 1 January 2001)

As the jurors' names are drawn from the urn, first the accused or his advocate, and then the public prosecutor challenge them as they see fit, subject to the limist provided for by article 298.

Neither the accused, not his advocate, not the public prosecutor are allowed to state their grounds for challenge.

The trial jury is formed from the moment the names of nine or twelve unchallenged jurors are drawn from the urn, as provided by the first paragraph of article 296, and the names of the additional jurors provided for by article 296.

Article 298

(Law nº 2000-516 of 15 June 2000 art. 79 Official Journal of 16 June 2000 in force 1 January 2001)

Where the assize court rules in the first instance, the accused may not challenge more than five jurors, nor the public prosecutor more than four. Where the court rules on appeal, the accused may not challenge more than six jurors, nor the public prosecutor more than five.

Article 299

If there are several accused, they may agree between themselves to exercise their challenges, or they may exercise them separately.

In either case they may not exceed the number of challenges determined for a single accused.

Article 300

If the accused do not agree between themselves to exercise their challenges, the order in which their challenges are made is determined by lot. In such a case the jurors challenged by a single accused following this order count as challenged on behalf of all of them, until the number of challenges has been exhausted.

Article 301

The accused may agree between themselves to exercise some of their challenges, the remainder following the order fixed by lot.

Article 302

The clerk drafts the official record of steps by which the trial jury is formed.

Article 303

The jurors take places next to the court in the order appointed by lot, if the arrangement of the premises allows it, and failing this, on seats separated from the public, the parties and witnesses, and facing that provided for the accused.

Article 304

(Law n° 72-1226 of 29 December 1972 Article 5 Official Journal of 30 December 1972)

(Law nº 2000-516 of 15 June 2000 art. 40 Official Journal of 16 June 2000 in force 1 January 2001)

The presiding judge gives the following address to the jurors who are standing bare-headed: "You swear and promise to examine with the most scrupulous attention the charges which will be brought against X ....; to betray neither the interests of the accused nor those of society which accuses him, nor those of the victim; to refrain from communicating with anyone until after your finding; to heed neither hatred nor malice, nor fear nor affection; to remember that the accused is presumed innocent and that he has the benefit of the doubt; to decide according to the charges and defence arguments following your conscience and your innermost conviction, with the impartiality and resolution that befit a free man of integrity, and to preserve the secrecy of deliberations, even after the end of your service."

Each juror being called individually by the presiding judge answers, raising his hand: "I swear it".

Article 305

The presiding judge declares the jury finally constituted.

Article 305-1

(Law nº 85-1407 of 30 December 1985 art. 39 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Any objection founded on a nullity other than those purged by the final referring judgment, and which vitiates the proceedings prior to the beginning of the hearing, must under penalty of extinction be raised as soon as the trial jury is finally constituted. Such a procedural objection is settled in accordance with the provisions of article 316.

CHAPTER VI: THE HEARING

SECTION I: GENERAL PROVISIONS

Article 306

(Law n° 80-1041 of 23 December 1980 Article 4 Official Journal of 24 December 1980)

(Law n° 92-1336 of 16 December 1992 Article 19 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 2002-307 of 4 March 2002 Article 9 Official Journal of 5 March 2002)

The hearing is public unless publicity would be dangerous for order or morality. In such a case, the court so declares by a ruling made in open court.

The presiding judge may nevertheless prohibit access to the courtroom for minors, or for certain minors.

In the case of a prosecution for the offences of rape or torture and acts of barbarity accompanied by sexual aggression, a hearing in camera is granted as of right where the civil party victim or one of the victims so requires; in the other cases a hearing in camera may only be ordered where the civil party victim or one of the civil party victims does not oppose it.

Where a hearing in camera has been ordered, this applies to the reading of any judgments that may be made in respect of any procedural objections considered under article 316.

The judgment on the merits must always be read in open court.

If the accused, who was a minor when the charges were brought against him, reaches his majority by the first day of proceedings, the provisions of the present article are applicable before the juvenile assize court if he requests it, unless there is another defendant who is still a minor, or was a minor when the charges were brought and has reached his majority by the first day of proceedings, and who opposes this request.

Article 307

The hearing may not be interrupted and must continue until the case is ended by the assize court judgment.

It may be suspended for the time necessary for the judges and the accused to rest.

Article 308

(Law n° 81-82 of 2 February 1981 Article 65 Official Journal of 3 February 1981)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law n° 92-1336 of 16 December 1992 Article 322 Official Journal of 23 December 1992 in force on 1 March 1994)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal 22 September 2000 in force 1 January 2002)

As soon as the hearing has begun, the use of any recording or sound making equipment, television or cinema cameras, or photographic equipment is prohibited under penalty of a € 18,000 fine which may be imposed as provided for by Title VIII of Book IV.

However, the presiding judge of the assize court may order that the hearing will be sound recorded under his supervision.

The medium of this recording is placed under official seals and deposited with the assize court court office.

The sound recording may be used before the assize court up to the reading of the judgment; if it is used in the course of deliberations, the formalities set out under the third paragraph of article 347 are applicable. The sound recording may also be used before the Court of Cassation when hearing an application for reopening the case or, after a cassation or annulment on an application for reopening, before the court to which the case is then transferred, in respect of statements made by persons no longer able to be heard.

The official seals are open by the appeal court presiding judge or a judge delegated by him in the presence of the convicted person assisted by his advocate, or when the latter has been summoned in due form, or in the presence of one of the persons mentioned under article 623 (3°), or where these have been summoned in due form.

After the presentation of the official seals, the appeal court presiding judge gets an expert to transcribe any recording which is attached to the case file.

The above provisions are not prescribed under penalty of nullity of the proceedings.

Article 309

(Law nº 93-2 of 4 January 1993 art. 83 Official Journal of 5 January 1993 in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The presiding judge maintains order in court and conducts the proceedings.

He dismisses anything which might tend to compromise their dignity or protract them without expectation of any greater degree of certainty in the outcome of the hearing.

Article 310

(Law n° 72-1226 of 29 December 1972 Article 6-i, 6-ii Official Journal of 30 December 1972)

The presiding judge is vested with a discretionary power by which he may, upon his honour and his conscience, take any measure he believes useful for the discovery of the truth. He may, if he deems it appropriate, refer to the court which rules as provided for by article 316.

He may summon in the course of the hearing, where necessary through an arrest warrant, and hear any person or have brought before him any new element which, in the light of developments at the hearing, he deems useful for the discovery of the truth.

Witnesses summoned in this way do not take an oath and their statements are only considered as a source of information.

Article 311

The assessors and the jurors may put questions to the accused and to the witnesses after asking the presiding judge for leave to speak.

They have a duty not to show their opinion.

Article 312

(Law n° 72-1226 of 29 December 1972 Article 7 Official Journal of 30 December 1972)

(Law n° 93-2 of 4 January 1993 art 84; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 5 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 36 Official Journal of 16 June 2000)

Subject to the provisions of article 309, the public prosecutor and the parties' advocates may put questions directly to the accused, the civil party, witnesses or anyone else called to testify, by asking the presiding judge for permission to speak.

The accused and the civil party may also ask questions through the intermediary of the presiding judge.

Article 313

The prosecution makes any submission it deems appropriate in the name of the law. The court must acknowledge these submissions and

rule upon them.

The prosecution's submissions made in the course of the hearing are entered by the clerk on his official record. All the decisions they have led to are signed by the presiding judge and by the clerk.

Article 314

Where the court does not accede to the prosecution's submissions, the proceedings and the trial are neither interrupted nor suspended.

Article 315

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

The accused, the civil party and their advocates may file pleadings upon which the court must rule.

Article 316

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

Any procedural objection is settled by the court after hearing the public prosecutor, the parties or their advocates.

Such rulings may not prejudice the judgment on the merits of the case.

Where the assize court considers a case on appeal, these rulings may only be challenged by a cassation application where this is made at the same time as the judgment on the merits of the case. Where the assize court examines a case at first instance, these rulings may not be the subject of an appeal, but where the judgment on the merits of the case is subject to an appeal, and the case is re-examined by another assize court, they do not count as res judicata before this court.

SECTION II: APPEARANCE OF THE ACCUSED

Article 317

The presence of a defence counsel with the accused is compulsory during the hearing.

If the defence counsel chosen or appointed in accordance with article 274 does not appear, the presiding judge appoints a defence counsel ex officio.

Article 318

The accused appears free and only in the company of guards to prevent his escape.

Article 319

If an accused refuses to appear, he is summoned in the name of the law by a bailiff appointed for this purpose with the assistance of the law enforcement authorities. The bailiff drafts an official record of the summons and of the answer of the accused.

Article 320

If the accused does not comply with the summons the presiding judge may order him to be brought forcibly before the court; he may also, after having the official record proving the accused's resistance read in court, order that despite his absence the hearing shall proceed notwithstanding.

After each hearing the clerk of the assize court reads to the defaulting accused the official record made of the hearing and a copy of the prosecution's submissions is served on him as well as a copy of the judgments made by the court, all of which are deemed to be adversarial.

Article 321

(Law n° 92-1336 of 16 December 1992 Article 322 Official Journal of 23 December 1992 in force on 1 March 1994)

Where in the course of the hearing a person present disturbs order in whatever manner, the presiding judge orders his expulsion from the courtroom.

If in the execution of this decision he resists the order or causes a commotion, he is immediately placed under a detention warrant, sentenced and punished to an imprisonment of two months to two years, without prejudice to any penalties provided in the Criminal Code for the perpetrators of contempt or violence committed on judges or prosecutors.

He is then forced to leave the courtroom by the law-enforcement authorities upon the order given by the presiding judge.

Article 322

If order is disturbed by the accused himself, the provisions of article 321 are applicable to him.

The accused who is expelled from the courtroom is guarded by the law enforcement authorities until the end of the trial, at the court's disposal; after each hearing the procedure laid down in article 320, paragraph 2 is followed.

SECTION III: PRODUCTION AND DISCUSSION OF EVIDENCE

Article 323

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-2 of 4 January 1993 art. 85 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Where the advocate for the accused is not registered with a bar, the presiding judge informs him he may not say anything against his conscience or against the respect due to the law, and that he must express himself with decency and moderation.

Article 324

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law nº 85-1407 of 30 December 1985 art. 40 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The presiding judge orders the bailiff to call the roll of the witnesses cited by the public prosecutor, by the accused and the civil party, whose names have been served in accordance with the prescriptions of article 281.

Article 325

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The presiding judge orders the witnesses to retire to the room which is intended for them. They only leave it to give evidence. The presiding judge takes as necessary any measure appropriate to prevent witnesses from conferring between themselves before they testify.

Article 326

(Law n° 93-2 of 4 January 1993 art 85 & 143; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-1354 of 30 December 2000 art. 9 Official Journal of 31 December 2000)

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

Where a cited witness fails to appear the court, on the request of the public prosecutor or of its own motion, may order this witness to be brought immediately before the court by the law-enforcement authorities in order to be heard, or it may adjourn the case to the next session.

In all cases, a witness who fails to appear in court or who refuses either to take the oath or to make his statement may, upon the submissions of the public prosecutor, be sentenced by the court to a fine of € 3,750.

An application to set aside is open to the convicted person who did not appear. The application is filed within five days of the personal service of the judgment or service at his domicile. The court rules on this application to set aside either during the current session or in the course of a later session.

Article 327

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

The presiding judge invites the accused and the jurors to listen attentively to the reading of the referring judgment, and also, when the assize court rules on appeal, to the questions put to the assize court that decided at first instance, the answers given to the questions, the judgment and the sentence pronounced.

He invites the clerk to perform this reading.

Article 328

(Law n° 93-2 of 4 January 1993 art 85 & 86; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The presiding judge interrogates the accused and receives his statements.

He has the duty not to show his opinion as to guilt.

Article 329

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The witnesses summoned by the public prosecutor or the parties are heard in the course of the debate even if they have made no statement during the judicial investigation, or even if they were not cited, provided their names have been served in accordance with the prescriptions of article 281.

Article 330

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The public prosecutor and the parties may oppose the examination of a witness whose name has not been served upon them or has been served in an irregular fashion.

The court rules on this application.

If it is found to be well grounded, these witnesses may be still be heard as a souce of information pursuant to presiding judge's discretionary power.

Article 331

(Ordinance n° 60-1067 of 6 October 1960 Article 1 Official Journal of 7 October 1960)

(Law n° 93-2 of 4 January 1993 art 85 & 87; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The witnesses make their statement independently from the others in the order determined by the presiding judge.

On the request of the presiding judge, the witnesses must state their surnames, first names, age, profession and domicile or residence, whether they knew the accused before the events mentioned in the referring judgment, whether they are family members or relations by marriage to either the accused or the civil party, and at which degree. The presiding judge asks them in addition whether they are in the employment of one or the other.

Before beginning their statements the witnesses take the oath «to speak without hatred or fear, and to tell the whole truth and nothing but the truth». This done, the witnesses make an oral statement.

Witnesses are not interrupted in the course of their statement, subject to the provisions of article 309.

Witnesses are to testify only in respect of the matters alleged against the accused, or in respect of his personality and his morality.

Article 332

(Law n° 93-2 of 4 January 1993 art 85 & 88; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

After each statement, the presiding judge may ask questions of the witnesses.

The public prosecutor and the counsel for the accused and for the civil party, the accused and the civil party have the right to do the same, under the conditions laid down by article 312.

Article 333

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 85 & 89; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The presiding judge on its his motion or upon the application of the public prosecutor or of the parties has an official record made by the clerk of any additions, changes or variations which may exist between the statement of a witness and his previous declarations. This official record is attached to the official record of the hearing.

Article 334

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

Each witness remains in the courtroom after his statement until the end of the hearing unless the presiding judge orders otherwise.

Article 335

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The following people may not give evidence under oath:

1° the father, mother or any other relative of the accused, or of one of the other defendants present at and subjected to the same hearing;

2° the son, daughter or any other descendant;

3° the accused's brothers and sisters;

4° relations by marriage with the same degree of kinship;

5° the husband or wife; this prohibition endures even after a divorce;

6° the civil party;

7° children under the age of sixteen.

Article 336

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

However, the examination under oath of the persons listed by the previous article is not a cause for nullity where neither the public prosecutor nor any other party opposed the taking of the oath.

In the event of opposition by the public prosecutor or of one or more of the parties, the witness may be heard as a source of information in accordance with the discretionary power of the presiding judge.

Article 337

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

Any person who, acting in accordance with a legal obligation or on his own initiative, brought the actions prosecuted to the attention of justice is heard as a witness, but the presiding judge apprises the assize court of this fact.

The person whose denunciation is financially rewarded by law may be heard as a witness, unless this is opposed by one of the parties or by the public prosecutor.

Article 338

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The public prosecutor as well as the civil party and the accused may request, and the presiding judge may always order, that a witness withdraw temporarily from the courtroom after his statement, to be if necessary re-admitted later and heard following other evidence, with or without a confrontation.

Article 339

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

The presiding judge may order one or more of the accused to withdraw before, during or after the hearing of a witness, and examine them separately on any circumstance of the trial. But he must take care only to resume the hearing after having informed each accused of what was done in his absence, and what has ensued from it.

Article 340

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

Judges, prosecutors and jurors may in the course of an examination take notes of what seems important to them, either in the statements of witnesses or in the defence of the accused, provided the hearing is not interrupted.

Article 341

(Law n° 93-2 of 4 January 1993 art 85 & 90; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

In the course of or after the statements, the presiding judge, if necessary, has the exhibits presented to the accused or to the witnesses and receives their observations.

The presiding judge has them presented where necessary to the assessors and jurors.

Article 342

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

If in the course of the hearing the statement of a witness appears to be false, the presiding judge may, either on his motion or upon the application of the public prosecutor or of one of the parties, make an order in respect of this witness to remain present at the hearing until its conclusion and in addition to remain in the courtroom until the reading of the assize court judgment. The presiding judge has the witness placed under temporary arrest in the event of a breach of this order.

After the reading of the assize court judgment, or in the event of an adjournment to another session, the presiding judge orders that the witness be immediately brought by the law-enforcement authorities before the district prosecutor, who causes a judicial investigation to be opened.

The clerk sends this prosecutor a copy of any official record which may have been drafted pursuant to article 333.

Article 343

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

At any stage the court, either on its own motion, or upon the application of the public prosecutor or of one of the parties, may order the adjournment of the case to the next session.

Article 344

(Law n° 72-1226 of 29 December 1972 Article 15 Official Journal of 30 December 1972)

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 110 Official Journal of 16 June 2000)

Where the accused, the civil party, or one or more witnesses do not speak French sufficiently well, or if it is necessary to translate a document produced at the hearing, the presiding judge officially appoints an interpreter aged at least twenty-one years old and gets him to take an oath to bring his assistance to justice upon his honour and his conscience.

The public prosecutor, the accused and the civil party may challenge the interpreter by stating the grounds for the challenge. The court rules on this challenge. Its decision is unappealable.

The interpreter may not be one of the court's judges, or jurors, or the clerk at the hearing, or the parties or witnesses, even with the consent of the accused or that of the public prosecutor.

Article 345

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 37 Official Journal of 16 June 2000)

If the accused is deaf, the presiding judge officially appoints a sign language interpreter, or any other qualified person who is able to talk to or communicate with deaf people, to help him during the trial. This interpreter swears an oath upon his honour and his conscience to bring his assistance to justice.

The presiding judge may also decide to use any other technical device enabling him to communicate with the deaf person.

If the accused can read and write, the presiding judge may equally communicate with him by writing.

The other provisions set out in the preceding article are applicable.

The presiding judge may proceed in the same way with any deaf witnesses or civil parties.

Article 346

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-2 of 4 January 1993 art 85; Official Journal 5 January 1993, in force 1 October 1994)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

When the investigation made in the course of the hearing is ended, the civil party or his advocate is heard. The public prosecutor makes his submissions.

The accused and his advocate present their defence arguments.

The civil party and the public prosecutor may reply, but the accused and his advocate will always have the final word.

SECTION IV: CONCLUSION OF THE HEARING AND READING OF THE QUESTIONS

Article 347

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The presiding judge declares the hearing closed.

He is not allowed to summarise the arguments of the accusation or of the defence.

He orders the case file to be deposited with the assize court clerk. However, he retains the investigating chamber judgment for the deliberation provided for by articles 355 onwards.

If during the deliberation the assize court considers it necessary to examine one or more documents in the case file, the presiding judge orders the case file to be brought to the deliberation room, where it will be opened for this purpose in the presence of the public prosecutor, the accused's advocate, and the civil party.

Article 348

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

The presiding judge reads out the questions to which the court and jury must answer. This reading is not compulsory if the questions are asked in the enacting terms of the ruling indicting the accused, or if the accused or his defence counsel waive this right.

Article 349

(Law n° 92-1336 of 16 December 1992 Article 20 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

Each principal question is asked as follows: "is the accused guilty of committing this action?"

A question is asked in respect of each charge specified in the operative part of the ruling indicting the accused.

A separate question is asked for each aggravating circumstance.

The same applies for each legal cause of exemption or reduction of penalty, where it is invoked.

Article 349-1

(Inserted by Law nº 2000-516 of 15 June 2000 art. 80 Official Journal of 16 June 2000)

Where one of the grounds for criminal irresponsibility provided for in articles 122-1 (first paragraph), 122-2, 122-3, 122-4 (first and

second paragraphs), 122-5 (first and second paragraphs) and 122-7 of the Criminal Code is cited as part of the case for the defence, the two following questions are applied to each act specified in the the indictment judgment:

"1 Did the accused commit this act?;

"2 Does the accused benefit in respect of this act from the ground of criminal irresponsibility provided for in article… of the Criminal Code, according to which the person who … is not criminally responsible?"

The presiding judge may, with the agreement of the parties, only ask one single question about the ground of irresponsibility in respect of all the charges brought against the accused.

The questions asked in application of the present article are read out, unless the accused or his defence counsel waive this right.

Article 350

Where one or more aggravating circumstance emerges at the hearing which was mentioned in the referring judgment, the presiding judge asks one or more specific questions.

Article 351

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

Where it appears from the hearing that the offence carries a different legal qualification from that given by the judgment indicting the accused, the presiding judge must ask one or more subsidiary questions.

Article 352

Where a procedural objection arises in respect of the questions, the court rules in the conditions set out in article 316.

Article 353

Before the assize court retires, the presiding judge reads out the following instruction which is also put up in large type in the most visible part of the deliberation chamber:

"The law does not ask the judges to account for the means by which they convinced themselves; it does not charge them with any rule from which they shall specifically derive the fullness and adequacy of evidence. It requires them to question themselves in silence and reflection and to seek in the sincerity of their conscience what impression has been made on their reason by the evidence brought against the accused and the arguments of his defence. The law asks them but this single question, which encloses the full scope of their duties: are you inwardly convinced?"

Article 354

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

The presiding judge orders the accused to withdraw from the courtroom.

If the accused is free, the presiding judge charges him not to leave the court building during the deliberations, indicating, as necessary, the place or places where he should stay. The head of security is asked to ensure that these commands are carried out.

The head of security is invited to ensure that the doors of the deliberation chamber are guarded, as no one may enter for any reason without the presiding judge's authorisation.

The presiding judge declares the hearing suspended.

CHAPTER VII: THE JUDGMENT

SECTION I: DELIBERATIONS OF THE ASSIZE COURT

Article 355

The judges of the court and the jurors retire to the discussion room.

They may leave it after having taken their decisions.

Article 356

(Law n° 92-1336 of 16 December 1992 Article 21 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 80 Official Journal of 16 June 2000)

The court and the jury deliberate, then vote, in writing and by separate and successive ballots, first on the principal offence and, where necessary, on the grounds of criminal irresponsibility, on each one of the aggravating circumstances, on the subsidiary questions and on each one of the elements which constitute a cause for legal exemption or reduction of the penalty.

Article 357

(Law n° 72-1226 of 29 December 1972 Article 8 Official Journal of 30 December 1972)

Each judge and juror receives for this purpose an open ballot paper bearing the stamp of the assize court which carries the following words: "Upon my honour and my conscience, my finding is .... "

He then writes or causes to be secretly written the word "yes" or "no" on a table designed in such a manner as to prevent anyone from seeing the vote written on the ballot paper. He hands the ballot paper to the presiding judge who deposits it into an urn intended for this purpose.

Article 358

(Law n° 92-1336 of 16 December 1992 Article 22 Official Journal of 23 December 1992 in force on 1 March 1994)

The presiding judge counts the votes of each ballot in the presence of the members of the court and jury, who may scrutinise the papers. He enters forthwith the result of the vote in the margin or after the question answered.

Blank voting papers or those declared void by the majority are counted as in favour of the accused.

The ballot papers are burnt immediately after the counting of each ballot.

Article 359

(Law n° 92-1336 of 16 December 1992 Article 23 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 79 Official Journal of 16 June 2000)

Any decision unfavourable to the accused is taken by a majority of at least eight votes where the assize court rules in the first instance, and by a majority of at least ten votes where the assize court rules on appeal.

Article 360

(Law nº 2000-516 of 15 June 2000 art. 79 Official Journal of 16 June 2000)

The finding, when it is positive, states that up to the majority of votes required by article 359 was reached, without otherwise stating the number of votes.

Article 361

Where two or more answers contradict each other, the presiding judge may initiate a new ballot.

Article 361-1

(Inserted by Law nº 2000-516 of 15 June 2000 art. 80 Official Journal of 16 June 2000)

If, after applying the provisions of article 349-1, the assize court has answered the first question positively and the second question negatively, it declares the accused to be guilty. If the court has answered negatively to the first question or positively to the second question, it declares the accused to be not guilty.

Article 362

(Law n° 92-1336 of 16 December 1992 Article 24 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 79 Official Journal of 16 June 2000)

Where a positive answer is made on guilt, the presiding judge reads out the provisions of articles 132-18 and 132-24 of the penal code to the jurors. The assize court then deliberates without interruption on the form of the sentence. Voting then takes place by secret ballot and separately for each person accused.

The sentencing decision is reached by an absolute majority of voters. However, the maximum custodial sentence incurred may only be imposed by a majority of at least eight votes, where the assize court rules in the first instance, and by a majority of at least ten votes where the assize court rules on appeal. If the maximum penalty applicable does not attain this majority, a sentence in excess of thirty years' criminal imprisonment may not be imposed where the penalty incurred is a life sentence, nor a sentence in excess of twenty years' felonious imprisonment where the penalty incurred is thirty years' felonious imprisonment. The same rules apply in the event of felonious detention.

If after two ballots no sentence has attained a majority of votes, a third ballot is taken during which the highest sentence suggested in the previous ballot is not considered. If no sentence attains an absolute majority of votes in this third ballot, a fourth ballot is organised, and so on, by continuing to discard the highest sentence until a sentence is imposed.

Where the assize court imposes a misdemeanour sentence, it may decide by a majority that the enforcement of the penalty will be suspended with or without probation.

The assize court also deliberates on the incidental or additional penalties.

Article 363

(Law n° 92-1336 of 16 December 1992 Article 25 Official Journal of 23 December 1992 in force on 1 March 1994)

If the matters found against the accused does not come under criminal law, or no longer come under criminal law, or if the accused is found not guilty, the assize court delivers a verdict of acquittal.

If the accused benefits from a case of exemption from penalty, the assize court declares him guilty and exempts him from his penalty.

Article 364

A note of the decisions taken is made on the question sheet, which is immediately signed by the presiding judge and by the first juror drawn by lot or, if he cannot sign, by the one appointed by the majority of the members of the assize court.

Article 365

The answers given by the assize court to the questions asked are irrevocable.

SECTION II: DECISIONS AS TO THE PUBLIC PROSECUTION

Article 366

(Law n° 75-624 of 11 July 1975 art 21; Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 92-1336 of 16 December 1992 Article 26 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 93-2 of 4 January 1993 art 126; Official Journal 5 January 1993, in force 1 March 1993)

The assize court then returns to the courtroom. The presiding judge calls the accused into court, reads out the answers given to the questions, and delivers the judgment carrying conviction, absolution or acquittal.

The legal provisions implemented are read at the hearing by the presiding judge; a note of this reading is made in the judgment.

Where a sentence is imposed or the accused is exempted from penalty, the judgment contains a ruling on civil imprisonment.

Article 367

(Law n° 92-1336 of 16 December 1992 Article 27 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 140 Official Journal of 16 June 2000)

(Law nº 2000-516 of 15 June 2000 art. 85 Official Journal of 16 June 2000)

(Law n° 2002-1138 of 9 September 2002 Article 43 Official Journal of 10 September 2002)

If the accused is acquitted or exempted from sentence, if he is sentenced to a form of punishment other than a custodial sentence, or if he is sentenced to a custodial sentence which is covered by pre-trial detention, he is immediately set free, unless he has been detained for another reason.

In all other cases, where the judgment is not final, and, during appeal proceedings if there are any, the arrest ruling is implemented or is operative until the length of detention has reached that of the prescribed sentence, without prejudice to the defendant's right to apply for his release, pursuant to the provisions of articles 148-1 and 148-2.

The assize court may, by means of a special reasoned judgment, decide that the arrest ruling be implemented against a person sent for trial for a related misdemeanour, who is not detained when the judgment is given, if the penalty imposed is of one year's imprisonment or more, and if the elements of the case in question justify a special degree of security.

The penalties incurred in accordance with articles 131-6 to 131-11 of the Criminal Code may be declared to be of immediate but provisional effect.

Article 368

No person lawfully acquitted may be re-arrested or re-accused on account of the same facts, even under a different qualification.

Article 369

Where in the course of the hearing charges are levelled at the accused by reason of other facts and where the public prosecutor has made reservations in order to prosecute, the presiding judge orders the acquitted accused to be immediately brought by the police before the district prosecutor of the seat of the assize court, who must immediately initiate a judicial investigation.

Article 370

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

Where appropriate, after pronouncing his judgment the presiding judge informs the accused of his right to lodge an appeal or an application for cassation, and informs him of the time limit for this appeal.

SECTION III: DECISIONS AS TO THE CIVIL ACTION

Article 371

After the assize court has ruled on the public prosecution, the court without the assistance of the jury rules on any claims for damages formed either by the civil party against the accused, or by the acquitted accused against the civil party, after hearing the parties and the public prosecutor.

The court may appoint one of its members to hear the parties, to examine the evidence and to make his report at a hearing where the parties may also present their observations and where the public prosecutor is then heard.

Article 372

(Law n° 92-1336 of 16 December 1992 Article 28 Official Journal of 23 December 1992 in force on 1 March 1994)

The civil party, in the case of an acquittal as well as exemption of penalty, may apply for compensation for the damage caused by the fault of the accused in so far as it derives from the matters of which he was accused.

Article 373

(Law nº 85-1407 of 30 December 1985 art. 7 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

The court may of its own motion order the return of articles under judicial safekeeping. However, if a sentence was imposed, this restitution is only made if its beneficiary proves that the convicted person has let the time limit expire without filing a cassation application, or where such an application has been made, that the case has been finally decided.

The court may refuse restitution where it presents a danger for persons or property.

Article 374

(Law n° 93-2 of 4 January 1993 art 143; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 85 Official Journal of 16 June 2000)

(Law nº 2000-1354 of 30 December 2000 art. 27 Official Journal of 31 December 2000)

Where it rules at first instance, the court may order the provisional enforcement of its decision, if this has been asked for, without prejudice to the provisions of article 380-8.

However, the provisional execution of investigative measures is granted as of right.

Article 375

(Law n° 81-82 of 2 February 1981 Article 83 Official Journal of 3 February 1981)

(Law no. 97-647 of 22 July 1996 Article 75 Official Journal of 23July 1996)

(Law n° 93-2 of 4 January 1993 art 127; Official Journal 5 January 1993, in force 1 March 1993)

The court orders the perpetrator of the offence to pay the civil party the sums it determines in compensation for the costs expended by the civil party and not paid by the State. The court takes into account considerations of equity and the financial situation of the convicted party. It may, even on its own motion, decide that for reasons related to these matters there is no case for such an order.

Article 375-1

(Inserted by Law n° 81-82 of 2 February 1981 Article 84 Official Journal of 3 February 1981)

The civil party is assimilated to a witness in respect of the payment of expenses, except where the court otherwise determines.

Article 375-2

(Law n° 92-1336 of 16 December 1992 Article 29 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 94-89 of 1 February 1994 Article 10 Official Journal of 2 February 1994 in force on 2 February 1994)

Persons convicted of the same felony are jointly liable for restitution and compensation for damage.

The court may also make a special and reasoned order ruling that the accused who surrounded himself with insolvent co-principals or accomplices is jointly liable to pay the fines imposed.

SECTION IV: THE ASSIZE COURT JUDGMENT AND OFFICIAL RECORD

Article 376

(Law n° 70-643 of 14 July 1970 art. 37 Official Journal of 19 July 1970)

(Law nº 81-82 of 2 February 1981 art. 70 Official Journal of 3 February 1981)

The clerk drafts the judgment; the texts of the statutes applied are indicated.

Article 377

The original copy of the judgment made after the deliberation of the assize court as well as the original copy of the judgments made by the court are signed by the presiding judge and by the clerk.

All these judgments mention the presence of the public prosecutor.

Article 378

The clerk drafts an official record proving the performance of the formalities prescribed, which is signed by the presiding judge and by the aforementioned clerk.

The official record is drawn up and signed within no more than three days of the judgment being read.

Article 379

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

Unless the presiding judge orders otherwise (whether of his own motion or upon the application of the public prosecutor or that of the parties), no mention is made in the official record of the answers of the accused, or of the contents of statements, without prejudice however of the implementation of article 333 in respect of additions or amendments in the statements made by witnesses.

Article 380

The original copies of the judgments made by the assize court are collected and deposited with the court office of the district court where the assize court has its seat.

However, the original copies of the judgments made by the assize court of the département where the appeal court has its seat are deposited with the court office of appeal court.

CHAPTER VIII: APPEAL FROM DECISIONS OF THE ASSIZE COURT REBDERED AT FIRST INSTANCE

SECTION I: GENERAL PROVISIONS

Article 380-1

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

Decisions by the assize court in the first instance imposing convictions may be appealed from as provided for by the present chapter.

This appeal is brought before another assize court, nominated by the criminal division of the Court of Cassation. This assize court proceeds to re-examine the case according to the terms and the conditions set out in chapters II to VII of the present title.

Article 380-2

(Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

(Law nº 2002-307 of 4 March 2002 art. 8 Official Journal of 5 March 2002)

The right to appeal belongs to:

1º The accused;

2º The public prosecutor;

3º The legally responsible person, as regards his civil interests;

4ºThe civil party, as regards his civil interests;

5º The public services, where they have prosecuted, and where the public prosecutor has lodged an appeal.

The public prosecutor may also appeal against decisions of acquittal.

Article 380-3

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

The assize court, when dealing with a prosecution on appeal, may not impose a more severe punishment on the accused where the appeal is brought by the accused alone.

Article 380-4

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

During the time limit for an appeal and during the appeal itself, execution of the decision reached in the criminal proceedings is suspended.

However, the arrest order remains in force against a convicted person sentenced to imprisonment, subject to the provisions of the second paragraph of article 367.

Article 380-5

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

Where the assize courtis not seised of an appeal against the outcome of the prosecution, any appeal lodged by one party against the decision in the civil action only is brought before the appeal division of the correctional court. Articles 380-14 and 380-15 are not applicable.

Article 380-6

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

The assize court trying a civil action on appeal may not worsen the position of the accused where it is only the accused, the person responsible under civil law or the civil party who has brought the appeal.

The civil party is not entitled to make any new claims by virtue of the appeal. However, he may ask for increased damages in respect of any harm suffered since the first judgment. Even when no appeal has been lodged against the ruling on the civil action, the victim who was on record as the civil party in the first instance may exercise the rights granted to the civil party before the assize court seised of the appeal until the closure of the proceedings. He can also ask for the provisions of the present paragraph to be applied, as well as those of article 375.

Article 380-7

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

During time limit for an appeal and during the appeal itself, execution of the judgment on the civil action is suspended, pursuant to the provisions of article 374.

Article 380-8

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

Where the assize court ruling at first instance on a civil action has ordered the provisional payment, in whole or in part, of the damages awarded, this provisional enforcement may be suspended, because of the appeal, by the senior presiding judge, ruling summarily where there is a risk of manifestly excessive consequences. The senior presiding judge may make the suspension of the provisional enforcement conditional on the provision of a guarantee, real or personal, sufficient to cover all compensation.

Where the provisional enforcement has been refused by the court ruling on the civil action, or where provisional enforcement has not been asked for, or where it has been requested and the court has failed to rule upon it, it may be granted, in appeal cases, by the first presiding judge ruling summarily.

For the application of the provisions of the present article, the competent judge is the senior presiding judge of the appeal court of the area where the assize court appointed to deal with the appeal sits.

SECTION II: TIME LIMITS AND FORMS FOR APPEALS

Article 380-9

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

An appeal is lodged within ten days of the judgment being pronounced.

However, the time limit runs only from the notification of the judgment to any party who was not present or represented at the hearing when the judgment was delivered (this being limited to cases where the party or his representative were not informed of the date when the ruling would be made).

Article 380-10

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

Where one party has appealed within the time limits defined above, the other parties have an extra five days to lodge an appeal.

Article 380-11

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

The accused may withdraw his appeal at any time before his interrogation by the presiding judge provided for in article 272.

This withdrawal renders the accompanying appeals formulated by the district prosecutor or the other parties null and void.

The withdrawal of the appeal is noted in an order by the presiding judge of the court of assizes.

The invalidation of the accused's appeal also follows where the president of the assize court takes official notice that the accused has fled and cannot be found before the opening of the hearing, or while it is taking place.

Article 380-12

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

The notice of appeal must be made to the court office of the assize court which delivered the contested judgment.

It must be signed by the clerk and the appellant himself, by an advocate, a legal officer or by an authorised representative. In the latter case, the power of proxy is annexed to the document drafted by the clerk. If the appellant cannot sign it, this fact is recorded by the clerk.

It is copied into the public register intended for this, and any person has the right to have a copy delivered to him.

Where the appeal is entered by the prosecutor general and the assize court's seat is not the same as the court of appeal's, the notice of appeal, signed by the prosecutor general, is sent forthwith, as an original or a copy, to the court office at the court of assizes. It is copied into the register provided for in the first paragraph, and appended to the document drafted by the clerk.

Article 380-13

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

(Law nº 2002-307 of 4 March 2002 art. 8 Official Journal of 5 March 2002)

Where the appellant is in custody, the appeal may be entered by means of a declaration made to the prison governor.

This declaration is certified, dated and signed by the prison governor. It is also signed by the appellant. If he cannot sign it, this is officially noted by the governor.

This document is immediately sent, as an original or a copy, to the court office at the court of assizes which delivered the challenged decision. It is also copied into the register provided for in the third paragraph of article 380-12 and appended to the document drafted by the clerk.

SECTION III: DESIGNATION OF THE ASSIZE COURTS TO HEAR CASES ON APPEAL

Article 380-14

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

As soon as the appeal has been lodged, the public prosecutor immediately sends the contested judgment to the court office of the criminal chamber of the Cassation Court, together with any observations, the challenged decision and, if necessary, the case file of the proceedings.

In the month following the receipt of the appeal, the criminal chamber appoints an assize court to rule on the appeal, after obtaining the written observations of the public prosecutor, the parties or their advocates.

Proceedings then follow as in a case of appeal following cassation.

By way of exception to the provisions of the second paragraph of article 380-1, where an appeal has been lodged against an assize court judgment delivered in one of France's overseas départements, or New Caledonia, French Polynesia or the Wallis and Fortuna Islands, the criminal chamber may appoint the the same assize court, made up of different members, to hear the appeal. The provisions of the present paragraph are equally applicable in cases where judgments given by the criminal court of Mayotte or Saint Pierre and Miquelon are appealed against. In cases of absence, inability to act, or legal incompatibility, the duties of the presiding judge of the criminal court ruling on appeal, and if necessary the judge-assessors who form the court, are carried out by designated advisers from a list drafted for each calendar year, by the senior presiding judge of the appeal court of Paris, or, for the criminal court of Mayotte, by the first presiding judge of the appeal court of Saint-Denis of Reunion Island.

Article 380-15

(Inserted by Law nº 2000-516 of 15 June 2000 art. 81 Official Journal of 16 June 2000)

If the criminal chamber of the Court of Cassation finds that the appeal was not formulated within the time limits provided for by the law or was brought against a judgment not subject to appeal, it states that there is no reason to appoint an assize court responsible for ruling on appeal.

TITLE II: THE TRIAL OF MISDEMEANOURS.

CHAPTER I: THE CORRECTIONAL COURT.

SECTION I: JURISDICTION AND APPLICATIONS MADE TO THE CORRECTIONAL COURT

Paragraph 1:General provisions

Article 381

(Law n° 85-835 of 7 August 1985 Article 7 Official Journal of 8 August 1985 in force on 1 October 1986)

(Law no. 89-469 of 10 July 1989 Article 10 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law no. 92-1336 of 16 December 1992 Article 30 Official Journal of 23 December 1992, in force on 1 March 1994)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal 22 September 2000 in force 1 January 2002)

The correctional court judges misdemeanours.

Misdemeanours are the offences the law punishes by ordinary imprisonment or by a fine in excess of € 3,750.

Article 382

(Law n° 75-701 of 6 August 1975 Article 15 Official Journal of 7 August 1975)

(Law no. 92-1336 of 16 December 1992 Article 31 Official Journal of 23 December 1992, in force on 1 March 1994)

The correctional court with jurisdiction is that of the place of commission of the offence, that of the defendant's residence or that of his arrest, even if this arrest was made for another reason.

The court within whose area jurisdiction a person is detained has jurisdiction only in the conditions set out by Title VI of Book IV.

For the trial of the misdemeanour of family desertion set out in article 227-3 of the Criminal Code, the court of the domicile or residence of the person owed the alimony, contribution, subsidies or other duties referred to in that article also has jurisdiction.

The correctional court's jurisdiction is extended to the misdemeanours and petty offences which form with the offence referred to the court an indivisible whole; it may also cover related misdemeanours and petty offences within the meaning of article 203.

Article 383

The jurisdiction in respect of a defendant extends to all his co-principals and accomplices.

Article 384

The court seised by the public prosecutor has jurisdiction to rule on all the objections raised by the defendant for his defence except where the law otherwise provides, or where the defendant claims a real right over immovable property.

Article 385

(Law n° 93-2 of 4 January 1993 art 78; Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 25; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 99-515 of 23 June 1999 Article 17 Official Journal of 24 June 1999)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The correctional court is competent to rule on any nullities in relation to the proceedings of which it is seised, except when it is seised by a decision made by the investigating judge or by the investigating chamber.

However, where the referring order or judgment has not been brought to the knowledge of the parties in the conditions set out, according to the case, by the fourth paragraph of article 183 or by article 217, or if the order was not made in accordance with the provisions of article 184, the court returns the file to the public prosecutor in order to enable him to seise once more the investigating judicial authority, with a view to regularising the proceedings.

Where the case of which it is seised was not sent by the investigation jurisdiction, the court rules upon any objections alleging the nullity of prior proceedings.

Nullity relating to service may only be decided in the conditions set out by article 565.

Objections of nullity must in every case be argued before any defence on the merits.

Article 385-1

(Law nº 83-608 of 8 July 1983 art. 6 Official Journal of 9 July 1983 in force 1 September 1983)

In the cases set out by articles 388-1 and 388-2, any objection based on a ground for nullity or on any clause of an insurance contract and aimed at exempting the insurer from the proceedings must be presented by the insurer before any defence on the merits, under penalty of foreclosure of this argument. It is only admissible where it is liable to relieve the insurer totally from his obligation to cover third parties.

An insurer who is joined in the proceedings by virtue of article 388-2 and who does not intervene in the penal proceedings is deemed to have waived any objection. However, where it is established that the damage in question is not covered by the alleged insurer, the latter is exempted from the proceedings by the court.

Article 385-2

As regards civil claims, the court, after giving notice to the parties to present their arguments on the merits, rules in a single judgment both on any objection of inadmissibility and on the merits of the case.

Article 386

A preliminary legal objection is presented before any defence on the merits.

It is only admissible where its effect is to prevent the actions for which the prosecution is brought from amounting to a criminal offence.

It is only accepted if it rests on facts or arguments which furnish a legal basis to the defendant's allegations.

If the objection is admissible, the court imposes a time limit within which the defendant must seise court that has jurisdiction. Where the defendant fails to do so within this time limit and fails to prove that this step was taken, the objection is overruled.

If the objection is not accepted the hearing is continued.

Article 387

Where the court is seised of several proceedings concerning related matters, it may order a joinder either on its own motion or upon the request of the public prosecutor, or upon the application of one of the parties.

Article 388

(Law nº 75-701 of 6 August 1975 art. 8 Official Journal of 7 August 1975)

(Law nº 81-82 of 2 February 1981 art. 48 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 23 Official Journal of 11 June 1983 in force 27 June 1983)

The correctional court is seised of offences within its jurisdiction either by the voluntary appearance of the parties, or by a citation, or by a police report summons, or by immediate hearing proceedings, or, finally, where the case is sent to it by the investigation jurisdiction.

Article 388-1

(Inserted by Law nº 83-608 of 8 July 1983 art. 7 Official Journal of 9 July 1983 in force 1 September 1983)

Any person who may be civilly liable in consequence of an offence of homicide or unintentional injuries causing damage to another person which may be covered by an insurer, must state the name and address of such insurer, as well as the number of his insurance policy. The same applies to the victim where the damage suffered could be covered by a contract of insurance. Such information is entered into the official record of the hearing.

Where criminal proceedings are initiated, the insurers called upon to cover the damage are allowed to intervene and may be joined in the proceedings before the correctional court, even at the appeal stage, where not previously so joined. They must be represented by an advocate or an attorney.

In respect of the hearing and appeal applications, the rules concerning the persons liable under civil law and civil parties are respectively applicable to the defendant's insurer and to the civil party's insurer, subject to the provisions of the paragraph above and of articles 385-1, second paragraph, 388-2 and 509, second paragraph.

Article 388-2

(Inserted by Law nº 83-608 of 8 July 1983 art. 7 Official Journal of 9 July 1983 in force 1 September 1983)

No later than ten days before the hearing, a third party notice is served on the insurer by any interested party through a bailiff or by recorded delivery letter with request for acknowledgement of receipt. This notice mentions the nature of the prosecution initiated, the identity of the defendant, of the civil party and, as the case may be, of the person liable under civil law, the numbers of the insurance policies, the amount of damages claimed or, failing this, the nature and extent of the damage, as well as the court seised, the place, date and time of the hearing.

Article 388-3

(Inserted by Law nº 83-608 of 8 July 1983 art. 7 Official Journal of 9 July 1983 in force 1 September 1983)

Any decision made in respect of civil claims may be opposed by the insurer who has intervened in the trial or who has been notified pursuant to the conditions set out in article 388-2.

Paragraph 2: Voluntary appearance and citations

Article 389

Notice served by the prosecution dispenses it from serving a citation where this is followed by the voluntary appearance of the person to whom it was made.

It states the misdemeanour prosecuted and the legal provision which punishes it.

Where the defendant is held in custody, the judgment must state the consent of the person concerned to be tried without a prior citation.

Article 390

The citation is delivered in accordance with the time limits and formalities provided for by articles 550 onwards.

Article 390-1

(Law nº 85-1407 of 30 December 1985 art. 41 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 86-1019 of 9 September 1986 art. 5 & 19 Official Journal of 10 September 1986)

A summons to appear in court served on the defendant on the instructions of the district prosecutor and within the time limits set out by article 552, which is made either by a clerk or by a judicial police officer or agent, or, if the defendant is detained, by the prison governor, is equivalent to a personal citation.

The summons states the action prosecuted, mentions the legal provision which punishes it and the court seised of the case, the place, date and time of the hearing. It also states that the defendant may be assisted by an advocate.

It is proved by an official record signed by the defendant who is given a copy.

Article 391

Every complainant is informed by the prosecution office of the date of the hearing.

Article 392

The civil party who directly summons a defendant before a correctional court specifies in the citation instrument an address for service within the area jurisdiction of the court seised of the case, unless he resides within this jurisdiction.

Article 392-1

(Law n° 93-1013 of 24 August 5 1993 art 35; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 87 Official Journal of 16 June 2000)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal 22 September 2000 in force 1 January 2002)

Where the civil party action is not joined to that of the public prosecutor, the correctional court determines with reference to the civil party's income a sum to be paid into court, which, unless he was granted legal aid, he must deposit with the court office. It also determines the time-limit within which it must be made, failing which the direct action is inadmissible. This payment into court guarantees the payment of any civil fine that may be imposed pursuant to the second paragraph.

Where the correctional court, seised of a case by a direct citation from the civil party, pronounces an acquittal, it may also, in the same ruling, at the district prosecutor's submission, condemn the civil party to the payment of a civil fine, the sum of which may not exceed € 15,000 if it considers that the direct citation was abusive or dilatory. The district prosecutor's submissions must be made before the closure of the proceedings, after the submissions of the defence, and the civil party or his advocate must be given an opportunity to reply. The provisions of the present paragraph are also applicable before the appeal court, where the correctional court has, in the first instance, acquitted the person being prosecuted and ruled on the district prosecutor's submissions in favour of condemning the civil party under the provisions of the present paragraph.

Paragraph 3: Summons by police report and immediate hearings

Article 393

(Law nº 75-701 of 6 August 1975 art. 9 Official Journal of 7 August 1975)

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

In misdemeanour cases, after having ascertained the identity of the person deferred to him, having informed him of the matters of which he is accused, and having recorded his statement if he so requests, the district prosecutor may, if he considers that a judicial investigation is not necessary, proceed as stated under articles 394 to 396.

The district prosecutor then informs the person brought before him that he has the right to the assistance of an advocate of his choice or of an advocate appointed ex officio for him. The advocate chosen, or the president of the local bar in the event of an an application for an appointment ex officio, is informed forthwith.

The advocate may consult the file immediately and freely communicate with the defendant.

Mention of these formalities is entered into the official record under penalty of nullity of the proceedings.

Article 393-1

(Inserted by Law nº 2000-516 of 15 June 2000 art. 115 Official Journal of 16 June 2000)

In the cases provided for in article 393, the victim must be informed by any possible means of the date of the hearing.

Article 394

(Law nº 75-701 of 6 August 1975 art. 10 Official Journal of 7 August 1975)

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

(Law n° 93-2 of 4 January 1993 art 203 & 224; Official Journal 5 January 1993, in force 1 March 1993)

The district prosecutor may invite the person brought before him to appear before the court within a time limit which may not be less than ten days, except where the person concerned waives this time limit in the presence of his advocate, nor longer than two months. He informs him of the facts he is charged with and also of the place, date and time of the hearing. This notification, entered into the official record with a copy immediately handed to the defendant, takes effect as a personal citation.

The advocate chosen or the president of the bar is informed, by any means available and forthwith, of the date and time of the hearing. Mention of this notice is entered into the official record. The advocate may at any time examine the case file.

If the district prosecutor considers it necessary to subject the defendant before his court appearance to one or more judicial supervision measures, he brings him at once before the court's presiding judge or a judge delegated by him, who sits in chambers assisted by a clerk. This judge may if he so requires order this measure under the conditions and pursuant to the rules set out by articles 138 and 139, after hearing the defendant, his advocate having been informed and his observations having been heard. This decision is verbally notified to the defendant and entered into the official record, of which a copy is handed to him immediately.

Article 395

(Law nº 75-701 of 6 August 1975 art. 11 Official Journal of 7 August 1975)

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 86-1019 of 9 September 1986 art. 5 Official Journal of 10 September 1986)

(Law n° 95-125 of 8 February 1995 Article 58 Official Journal of 9 February 1995)

(Law n° 2002-1138 of 9 September 2002 Article 40 Official Journal of 10 September 2002)

If the maximum term of imprisonment provided for by law is not less than two years, the district prosecutor may, if he considers that the charges brought are sufficient and that the case is ready for trial, bring the defendant immediately before the court where he believes that the facts of the case call for an immediate hearing.

In the event of a flagrant misdemeanour, if the maximum term of imprisonment provided for by law is not less than six months, the district prosecutor may bring the defendant before the court forthwith, if he believes the facts of the case call for an immediate hearing.

The defendant is held until his appearance in court, which must take place on the same day. He is brought under escort before the court.

Article 396

(Law nº 75-701 of 6 August 1975 art. 12 Official Journal of 7 August 1975)

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 84-576 of 9 July 1984 art. 16 and art. 19 Official Journal of 10 August 1984 in force 1 January 1985)

(Law nº 87-1062 of 30 December 1987 art. 18 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 89-461 of 6 July 1989 art. 21 Official Journal of 8 July 1989)

(Law nº 93-2 of 4 January 1993 art. 204 & 224 Official Journal of 5 January 1993 in force 31 March 1993)

(Law nº 96-1235 of 30 December 1996 art. 12 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 49 Official Journal of 16 June 2000 in force 1 January)

(Law n° 2002-1138 of 9 September 2002 Article 40 Official Journal of 10 September 2002)

In the case provided for by the previous article, where the court cannot be convened that same day and if the elements of the case appear to call for a pre-trial detention measure, the district prosecutor may bring the defendant before the liberty and custody judge, who rules in chambers assisted by a clerk.

After having recorded the defendant's statement, his advocate being informed of the hearing, and after if necessary carrying out the checks provided for by the sixth paragraph of article 41, the judge rules upon the prosecution's submissions for pre-trial detention, after having recorded any observations from the defendant or from his advocate. The order made is not appealable.

He may place the defendant in pre-trial detention until his appearance before the court. The order prescribing the detention is made pursuant to the rules set out in the first paragraph of article 137-3 and must include a statement of the points of law and fact considered which form the basis of the decision, referring to the provisions of points 1°, 2° and 3° of article 144. This decision states the facts charged and seises the court. It is notified verbally to the defendant and entered into the official record, a copy of which is handed to him forthwith. The defendant must appear before the court within no later than two working days. Failing this appearance, he is automatically set free.

If the judge considers that pre-trial detention is not necessary, the public prosecutor proceeds as stated under article 394.

Article 397

(Law nº 70-643 of 17 July 1970 art. 9 Official Journal of 19 July 1970)

(Law nº 75-701 of 6 August 1975 art. 13 Official Journal of 7 August 1975)

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 31 March 1993)

Where the court is seised of the case pursuant to articles 395 and 396, third paragraph, the presiding judge checks the identity of the defendant, his advocate having been informed of the hearing. He cautions the defendant that he may only be tried on the same day with his consent; but this consent may only be recorded in the presence of his advocate or, if the latter is not present, in the presence of an advocate appointed ex officio upon his request by the president of the bar asociation.

If the defendant consents to be tried there and then, this consent is entered into the records of the hearing.

Article 397-1

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 86-1019 of 9 September 1986 art. 8 Official Journal of 10 September 1986)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 31 March 1993)

(Law n° 2002-1138 of 9 September 2002 Article 40 Official Journal of 10 September 2002)

If the defendant does not consent to be tried there and then or if the case does not appear to be ready for trial, the court records the observations of the parties and of their advocates and adjourns the case to a later hearing, which must take place within a period of not less than two or more than six weeks, except where the defendant expressly waives this right.

Where the penalty incurred is greater than seven years' imprisonment, the defendant, after the extent of his rights have been explained to him, may request that the case be postponed until a hearing to take place within not less than two or more than four months.

Article 397-2

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 93-2 of 4 January 1993 art. 205 Official Journal of 5 January 1993 in force 31 March 1993)

The court may on its own motion or at the parties' request appoint by order one of its members or one of the court's investigating judges appointed in the conditions of article 83, first paragraph, to proceed with an additional investigation. The provisions of article 463 are applicable.

Article 397-3

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 84-576 of 9 July 1984 art. 16 and art. 19 Official Journal of 10 August 1984 in force 1 January 1985)

(Law nº 93-2 of 4 January 1993 art. 206 Official Journal of 5 January 1993 in force 31 March 1993)

(Law n° 94-89 of 1 February 1994 Article 17 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 96-1235 of 30 December 1996 art. 12 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 66 Official Journal of 16 June 2000 in force 1 January)

(Law n° 2002-1138 of 9 September 2002 Article 40 Official Journal of 10 September 2002, corrected JORF 24 December 2002)

In all the cases provided for in the present paragraph, the court may place or maintain the defendant under judicial supervision in accordance with the provisions of article 141-1. This decision is provisionally enforceable.

In the cases provided for by articles 395 onwards, the court may also place or maintain the defendant in pre-trial detention by making a specially reasoned decision. The decision ordering the detention is made pursuant to the rules set out in articles 135, 137-3, first paragraph, and 464-1, and is reasoned by reference to the provisions of points 1°, 2° and 3° of article 144. It is provisionally enforceable.

Where the defendant is in pre-trial detention, the judgment on the merits must be made within two months from the day of his first appearance before the court. If a decision on the merits of the case has not been made at the end of this period, the pre-trial detention is ended. The defendant is automatically set free unless he is detained for another reason.

Where the provisions of the second paragraph of article 397-1 have been applied, the time limit provided for in the previous paragraph is increased to four months.

Article 397-4

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 2000-516 of 15 June 2000 art. 67 Official Journal of 16 June 2000 in force 1 January)

(Law n° 2002-1138 of 9 September 2002 Article 40 Official Journal of 10 September 2002)

Where the defendant is sentenced to an immediate custodial sentence, the court seised pursuant to articles 395 onwards may, irrespective of the length of the penalty, order in the light of the facts of the case his placement or retention in detention, by making a specially reasoned decision. The provisions of articles 148-2 and 471, second paragraph, are applicable.

The appeal court rules within four months from the filing of an appeal against the ruling on the merits by the detained defendant, failing which the defendant is automatically set free unless he is detained for another reason.

If the court considers that an arrest warrant should be issued, the provisions of article 465 are applicable whatever the length of the penalty imposed.

Article 397-5

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

In every case provided for by the present paragraph and notwithstanding the provisions of articles 550 onwards, witnesses may be summoned forthwith and by any means available. Where they are requested verbally to do so by a judicial police oficer or agent, or by an agent belonging to the police, they are obliged to appear under the sanctions stated under articles 438 to 441.

Article 397-6

(Law nº 81-82 of 2 February 1981 art. 51-i Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 25 Official Journal of 11 June 1983 in force 27 June 1983)

The provisions of articles 393 to 397-5 are not applicable to minors, nor to press misdemeanours or political misdemeanours, nor to offences for which the prosecution procedure is provided for by a special law.

SECTION II: COMPOSITION OF THE COURT AND HOLDING OF HEARINGS

Article 398

(Law nº 75-701 of 6 August 1975 art. 6 Official Journal of 7 August 1975)

(Law nº 93-2 of 4 January 1993 art. 58 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-1013 of 24 August 1993 art. 18 Official Journal of 25 August 1993 in force 2 September 1993)

(Law n° 95-125 of 8 February 1995 Article 36 Official Journal of 9 February 1995)

(Law n° 99-515 of 23 June 1999 Article 7 Official Journal of 24 June 1999)

The correctional court is composed of a presiding judge and of two other judges.

Where a trial appears likely to lead to long hearings, the presiding judge of the district court may decide that one or more additional judges will attend the hearing. If one or more judges composing the correctional court are prevented from following the hearing up to the reading of the judgment, they are replaced by the additional judge or judges in the order of their appointment to the district court, starting by the longest serving highest-ranking judge.

However, for the trial of the misdemeanours enumerated under article 398-1, except where the maximum sentence applicable exceeds five years, taking into account the defendant's record, it is composed of a single judge who exercises the powers conferred upon the presiding judge.

The appointment of the correctional courts judges called upon to sit under the conditions set out by paragraph 3 is made by the presiding judge of the district court in accordance with the rules fixed for the distribution of judges between the various divisions of this court; if necessary, the presiding judge of the correctional court distributes the cases between these judges.

The decisions set out under the present article are administrative measures which may not be appealed against.

Article 398-1

(Law n° 72-1226 of 29 December 1972 Article 2 Official Journal of 30 December 1972

(Law nº 92-1336 of 16 December 1992 art. 32 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 95-125 of 8 February 1995 Article 37 Official Journal of 9 February 1995)

(Law n° 96-647 of 22 July 1996 Article 18 Official Journal of 23 July 1996)

(Law n° 2001-602 of 9 July 2001 Article 66 X Official Journal of 11 July 2001)

(Law n° 2002-1138 of 9 September 2002 Article 41 Official Journal of 10 September 2002)

(Law n° 2003-495 of 12 June 2003 Article 331 I Official Journal of 13 June 2003)

The following are tried in the conditions provided for by the third paragraph of article 398:

1° misdemeanours set out in articles 66 and 69 of the legislative decree of 30 October 1935 unifying the law concerning cheques and debit cards;

2° misdemeanours set out in the Traffic Code and also, where committed in the course of driving a vehicle, the misdemeanours set out in articles 222-19-1, 222-20-1, 223-1 and 434-10 of the Criminal Code;

3° misdemeanours concerning the regulation of transport by land;

4° misdemeanours set out in point 2° of article 32 of the legislative decree of 18 April 1939 fixing the rules governing weaponry and munitions;

5° misdemeanours set out in articles 222-11, 222-12 (1° to 10°), 222-13 (1° to 10°), 222-16, 222-17, 222-18, 222-32, 227-3 to 227-11, 311-3, 311-4 (1° to 8°), 313-5, 314-5, 314-6, 321-1, 322-1 to 322-4, 322-12, 322-13, 322-14, 433-3, first paragraph, 433-5, 433-6 to 433-8, first paragraph, 433-10, first paragraph and 521-1 of the Criminal Code and L. 628 of the Public Health Code;

6° misdemeanours provided for by the Rural Code concerning hunting, fishing and of the protection of flora and fauna, and the misdemeanours set out by the legislative decree of 9 January 1852 concerning sea fishing;

7° misdemeanours provided for in the Forestry Code and the Town Planning Code for the protection of woods and forests;

8° misdemeanours which do not incur a prison sentence, with the exception of press misdemeanours.

However, the tribunal must rule under the conditions set out in the first paragraph of article 398 where the defendant is in pre-trial detention when he appears at the hearing or where he is prosecuted under the procedure for immediate hearing. It also sits as provided for by the first paragraph of article 398 for the trial of the misdemeanours set out in the present article where these misdemeanours are related to other misdemeanours to which this article does not apply.

Article 398-2

(Law n° 72-1226 of 29 December 1972 Article 2 Official Journal of 30 December 1972)

(Law n° 95-125 of 8 February 1995 Article 38 Official Journal of 9 February 1995)

(Law n° 99-515 of 23 June 1999 Article 7 Official Journal of 24 June 1999)

Where the correctional court, composed as provided for by the third paragraph of article 398, ascertains that the definition given in the

instrument by which it is seised of the case does not fall under the provisions of article 398-1, it transmits the case to the correctional court composed as specified in the first paragraph of article 398.

Where the correctional court, when composed under the first paragraph of article 398, ascertains that the definition given in the instrument by which it is seised falls under the provisions of article 398-1, then subject to the provisions of the last paragraph of this article, the case may either be committed for trial before the correctional court sitting as specified in the third paragraph of article 398, or tried by the presiding judge sitting alone.

The correctional court sitting as provided by the third paragraph of article 398 may, if the complexity of the facts justifies it, decide, on its own motion or at the request of the parties or the public prosecutor, to refer the case to the correctional court sitting as provided for by the first paragraph of the same article. The provisions of the preceding article are then inapplicable. This decision constitutes a legal administrative measure which is not open to appeal.

Article 398-3

(Inserted by Law n° 95-125 of 8 February 1995 Article 38 Official Journal of 9 February 1995)

The duties of the public prosecutor attached to the correctional court are carried out by the district prosecutor or one of his deputies; those of the clerk by a clerk of the district court.

Article 399

(Law nº 81-82 of 2 February 1981 art. 42 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 18 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 87-1062 of 30 December 1987 art. 19 Official Journal of 31 December 1987 in force 1 September 1989)

(Ordinance n° 92-1149 of 2 October 1992 Article 20 Official Journal of 16 October 1992 in force on 1 January 1993)

The number and the dates of correctional court hearings are fixed at the end of each judicial year for the following judicial year by an order of the presiding judge of the district court taken after hearing the opinion of the general assembly of this court.

This order may be modified in case of necessity in the same conditions during the year.

SECTION III: PUBLICITY AND KEEPING OF ORDER AT HEARING

Article 400

(Law nº 2002-307 of 4 March 2002 art. 10 Official Journal of 5 March 2002)

The hearings are public.

The court may however order by a judgment made at a public hearing, after ascertaining in its judgment that publicity is dangerous for order or public morals, that the hearing will take place in camera.

Where a hearing in camera has been ordered, this measure is applicable to the reading of the separate judgments which may be made on incidents or objections as stated under article 459, paragraph 4.

The judgment on the merits must always be read at a public hearing.

If the defendant, who was a minor when the charges were brought against him, reaches his majority on the first day of proceedings, the provisions of the present article are applicable before the juvenile court if he requests it, unless there is another defendant who is still a minor, or was a minor when the charges were brought and has reached his majority on the first day of proceedings, and who opposes this request.

Article 401

(Law nº 93-2 of 4 January 1993 art. 91 Official Journal of 5 January 1993 in force 1 October 1993)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The presiding judge maintains order in court and conducts the proceedings.

Article 402

The presiding judge may prohibit access to the courtroom to minors, or certain minors.

Article 403

Repealed

Article 404

(Law nº 92-1336 of 16 December 1992 art. 322 Official Journal of 23 December 1992 in force 1 March 1994)

Where in the course of the hearing a person present disturbs order in any manner, the presiding judge orders his expulsion from the courtroom.

If in the execution of this decision he resists the order or causes a commotion, he is immediately placed under a detention warrant, tried and punished with two years' imprisonment, without prejudice to any penalties provided by the Criminal Code for perpetrators of contempt or violence committed against judges or prosecutors.

He is then forced to leave the courtroom by the police upon the order given by the presiding judge.

Article 405

If order at the hearing is disturbed by the defendant himself, the provisions of article 404 are applicable to him.

The defendant, even when at liberty, who is expelled from the courtroom is held at the court's disposal under guard by the law enforcement authorities until the end of the hearing. He is then brought back to the hearing where judgment is passed in his presence.

SECTION IV: THE HEARINGS

Paragraph 1: Appearance of the defendant

Article 406

(Law nº 93-2 of 4 January 1993 art. 92 Official Journal of 5 January 1993 in force 1 March 1993)

(Law n° 93-1013 of 24 August 15 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 95-125 of 8 February 1995 Article 39 Official Journal of 9 February 1995)

The presiding judge or one of the assessors designated by him ascertains the identity of the defendant and informs him of the instrument by which the court is seised. He also ascertains where necessary the presence or absence of any person liable under civil law, and of any civil party, witnesses, experts and interpreters.

Article 407

(Law n° 72-1226 of 29 December 1972 Article 4 Official Journal of 30 December 1972)

(Law nº 2000-516 of 15 June 2000 art. 110 Official Journal of 16 June 2000)

Where the defendant, the civil party or witness does not speak French sufficiently well, or if it is necessary to translate a document produced at the hearing, the presiding judge officially appoints an interpreter aged at least twenty-one, and gets him to take an oath to bring his assistance to justice upon his honour and his conscience.

The public prosecutor, the defendant and the civil party may challenge the interpreter by stating the grounds for their challenge. The court rules on this challenge and its decision is not open to any form of appeal.

The interpreter may not be chosen from the judges who make up the court, the jurors, the clerk at the hearing, the parties or witnesses, even with the consent of the defendant or of the public prosecutor.

Article 408

(Law nº 2000-516 of 15 June 2000 art. 38 Official Journal of 16 June 2000)

If the defendant is deaf, the presiding judge officially appoints a sign language interpreter, or any other qualified person who is able to talk to or communicate with deaf people, to help him during the trial. This interpreter swears an oath upon his honour and his conscience to bring his assistance to justice.

The presiding judge may also decide to use any other technical device enabling him to communicate with the deaf person.

If the defendant can read and write, the presiding judge may equally communicate with him by writing.

The other provisions set out in the preceding article are applicable.

The presiding judge may proceed in the same way with any deaf witnesses or civil parties.

Article 409

On the day fixed for his appearance at the hearing, the detained defendant is brought there by the law enforcement authorities.

Article 410

(Ordinance n° 60-529 of 4 June 1960 Official Journal of 8 June 1960)

The defendant lawfully cited in person must appear unless he produces an excuse which is acknowledged as valid by the court before which he is called. The defendant is under same obligation where it is proved that although he was not cited in person, he was apprised of the lawful citation concerning him in the cases covered by articles 557, 558 and 560.

Where these conditions are fulfilled, the defaulting and non-excused defendant is tried adversarially.

Article 410-1

(Law n° 95-125 of 8 February 1995 Article 41 Official Journal of 9 February 1995)

Where the defendant cited in accordance with the conditions set out by the first paragraph of article 410 does not appear and where the penalty for the offence in question is of two years' imprisonment or more, the court may order the adjournment of the case and, with a special and reasoned decision, issue an arrest warrant.

The defendant arrested pursuant to the warrant is brought within twenty-four hours of his arrest before the district prosecutor, who immediately interrogates him as to his identity, failing which he is automatically set free. However, if the defendant is found more than two hundred kilometres from the seat of the court which issued the warrant, he is within the same time limit brought either, with his consent, before the district prosecutor of the court which issued the summons, or before the district prosecutor of the place of arrest. In the second case, the latter interrogates him as to his identity, forthwith transmits the official record of the appearance (including a full description with all the details likely to facilitate the ascertainment of his identity) to the presiding judge of the court seised of the case and orders his transfer, which must take place no later than five days following the arrest. The defendant is brought in every case to the remand prison closest to the place of arrest.

The defendant must appear before the court which issued the warrant as soon as possible and at the latest before the expiry of the third day from his arrival at the remand prison for the seat of this court, failing which he is automatically set free. Where necessary, the court decides whether he must undergo any measure of judicial supervision or pre-trial detention until the trial hearing.

Article 411

(Law n° 99-515 of 23 June 1999 Article 18 Official Journal of 24 June 1999)

The defendant cited for an offence punishable by a fine or by a custodial sentence of less than two years' imprisonment may apply to the presiding judge to be tried in his absence, by sending a letter which will be attached to the case file.

The same thing applies to direct summonses served by the civil party, whatever the length of the sentence incurred.

In both cases the defendant's advocate is heard by the court.

However, if the court considers it necessary that the defendant appear in person, the defendant is summoned again at the public prosecutor's behest, to attend a hearing, the date of which is fixed by the court.

A defendant who does not answer this summons is tried adversarially.

He is also tried adversarially in the case set out by the first paragraph of the present article.

Article 412

If the citation was not delivered to the defendant in person, and if it is not proved that he knew of this citation, where the defendant does not appear the judgment counts as made by default.

Article 413

No-one is allowed to declare he was judged by default if he was present at the beginning of the hearing.

Article 414

The provisions of article 411, paragraphs 1 and 2, are applicable to every hearing which does not deal with the merits, and in particular where the hearing deals only with the civil claims.

Article 415

The person liable under civil law may always be represented by an advocate or attorney. Where this is the case, the judgment counts as made adversarially in respect of this person.

Article 416

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

If the defendant is not in a position to appear before the court because of his state of health, and if there are serious grounds not to delay the trial of the case, the court makes a special and reasoned decision ordering that the defendant, eventually assisted by his advocate, will be heard at his domicile or in the prison where he is detained, by a judge commissioned for this purpose accompanied by a clerk. An official record is drafted of this examination. The hearing is resumed after a new citation of the defendant and the provisions of article 411, paragraphs 1 and 2, are applicable, whatever the rate of the penalty incurred. The defendant is tried adversarially in every case.

Article 417

The defendant who appears before the court has the right to be assisted by defence counsel.

If he has not chosen a defence counsel before the hearing and if he nevertheless asks to be assisted, the presiding judge appoints a counsel ex officio.

The defence counsel may only be chosen from the advocates registered with a bar association, or from the attorneys entitled to plead before the court.

The assistance of a defence counsel is compulsory where the defendant suffers of an infirmity liable to compromise his defence, or when he is liable to the penalty of criminal supervision (criminal supervision was abolished by article 70 of the law 81-82 of 2 February 1981, published in the Official Journal of 3 February 1981).

Paragraph 2: Civil party petitions and their consequences

Article 418

Any person who, in accordance with article 2, claims to have suffered harm caused by a misdemeanour may, if he has not already done so, file a civil party petition at the hearing itself.

The assistance of an advocate is not compulsory.

The civil party may support his petition by an application for damages corresponding to the harm he suffered.

Article 419

The civil party petition is filed either before the hearing with the court office, or in the course of the hearing, by a declaration recorded by the clerk, or by the deposit of pleadings.

Article 420

Where it is made before the hearing, the civil party petition must state the offence prosecuted and include an address for service within the jurisdiction of the court seised, unless the civil party has his domicile in this jurisdiction.

It is immediately transmitted by the clerk to the public prosecutor who summons the civil party to attend the hearing.

Article 420-1

(Law nº 81-82 of 2 February 1981 art. 87 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 34 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 83-608 of 8 July 1983 art. 12 Official Journal of 9 July 1983 in force 1 September 1983)

(Law n° 93-2 of 4 January 1993 art 224; Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 111 Official Journal of 16 June 2000)

As an exception to the previous provisions, any person claming to have suffered harm may file a civil party petition directly or through his advocate, by recorded delivery letter or by fax, which must arrive at the court at least twenty-fours hours before the date of the hearing, in which he applies either for the restitution of articles seized, or for damages. He attaches to his claim any documents establishing the harm. These documents are attached to the case file forthwith.

With the public prosecutor's agreement, the claim for restitution or for damages may also be drawn up by the victim, during the police investigation, with a judicial police officer, who draws up an official record of this. This claim counts as constituting the person a civil party if a prosecution is then begun and the correctional court or police court is directly seised of the case.

In the cases set out in the two preceding paragraphs, the civil party does not need to appear in court.

In the event of a dispute over the ownership of articles of which restitution is requested, or if the court does not find sufficient grounds for making a decision in the petition or in the documents attached to it, or in the case file, the decision on the civil claims only is adjourned to a later hearing at which all the parties are cited at the public prosecutor's behest.

Article 420-2

(Law nº 81-82 of 2 February 1981 art. 87 Official Journal of 3 February 1981)

(Law nº 2000-516 of 15 June 2000 art. 133 Official Journal of 16 June 2000)

A decision made on an application for the restitution of articles seized or for damages, presented in accordance with the provisions of article 420-1, produces all the consequences of an adversarial decision. It is served on the civil party by a bailiff in accordance with the provisions of articles 550 onwards.

Article 421

(Law n° 75-624 of 11 July 1975 art 25; Official Journal 13 July 1975, in force 1 January 1976)

At the hearing, the civil party petition must under penalty of inadmissibility be made before the prosecutor's submissions as to the merits

of the case or, if the court has ordered the adjournment of the imposition of the penalty, before the prosecution's submissions as to the penalty.

Article 422

(Law nº 81-82 of 2 February 1981 art. 85 Official Journal of 3 February 1981)

The person who filed a civil party petition may not be further heard in the capacity of a witness.

The civil party is however assimilated to a witness in respect of the payment of expenses, unless the court otherwise decides.

Article 423

The court rules on the admissibility of the civil party petition and, if such is the case, declares this petition inadmissible.

Inadmissibility may also be raised by the public prosecutor, the defendant, the person liable under civil law or another civil party.

Article 424

The civil party may always be represented by an advocate or an attorney. In such a case, the judgment made is adversarial in respect of the civil party.

Article 425

The civil party who is lawfully summoned and does not appear or is not represented at the hearing is considered as having waived his civil party petition.

In such a case, and if the public prosecution was only initiated by direct citation served upon the application of the civil party, the court rules on this action only if it is requested to do so by the public prosecutor, unless the defendant applies to the court to be granted damages for abuse of direct citation, as stated under article 472.

The judgment establishing the presumed withdrawal of the civil party is served on this party by a bailiff, in accordance with the provisions of articles 550 onwards. This judgment is assimilated to a judgment in absentia, and the application to set aside is subject to the provisions of articles 489 to 495.

Article 426

(Law nº 93-2 of 4 January 1993 art. 57 Official Journal of 5 January 1993 in force 1 January 1994)

(Law nº 93-1013 of 24 August 1993 art. 18 Official Journal of 25 August 1993 in force 2 September 1993)

The withdrawal of the civil party does not preclude a civil action before a court with appropriate jurisdiction.

Paragraph 3: Administration of evidence

Article 427

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Except where the law otherwise provides, offences may be proved by any mode of evidence and the judge decides according to his innermost conviction.

The judge may only base his decision on evidence which was submitted in the course of the hearing and adversarially discussed before him.

Article 428

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Confessions, as any other type of evidence, are left to the free appreciation of the judges.

Article 429

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 41 and 96 Official Journal of 16 June 2000 in force 1 January 2001)

Any official record or report has probatory weight only if it is formally regular,and if its drafter acted in the performance of his duties and reported what he personally saw, heard or found on a subject-matter within his jurisdiction.

Every official record of an interrogation or a hearing must contain the questions which were answered therein.

Article 430

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Except where the law provides otherwise, official records and reports establishing the existence of misdemeanours only have the value of simple information.

Article 431

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

In the cases where judicial police officers, judicial police agents or the civil servants and agents entrusted with certain judicial police duties have been granted by a special legislative provision the power to establish misdemeanours by official records or reports, proof of the contrary may only be brought in writing or through witnesses.

Article 432

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Written evidence may not derive from the correspondence exchanged between the defendant and his advocate.

Article 433

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Matters covered by official records which constitute proof until challenged to be forgeries are regulated by special laws. Failing an express provision, the procedure for a challenge of grounds of forgery is regulated as stated under Title II of Book IV.

Article 434

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

If the court deems an expert report necessary, proceedings follow as stated under articles 156 to 166, 168 and 169.

Article 435

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Witnesses are cited as stated under articles 550 onwards.

Article 436

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

After having made the findings set out in article 406, the presiding judge orders the witnesses to withdraw to the room assigned for them. They leave it only to give evidence. The presiding judge takes if necessary any appropriate measure to prevent the witnesses from conferring between themselves before their statement.

Article 437

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Any person summoned to be heard as a witness is obliged to appear, to take an oath and to make a statement.

Article 438

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 2000-1354 of 30 December 2000 art. 1 Official Journal of 31 December 2000)

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

A witness who defaults or who refuses either to take the oath or to make his statement may, on the requistion of the public prosecutor, be sentenced by the court to a fine of € 3750.

Article 439

(Law nº 93-2 of 4 January 1993 art. 93 & 143 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

If the witness does not appear, and if he has not produced an excuse acknowledged as valid and legitimate, the court may upon the prosecution's submissions or on its own motion order this witness to be immediately brought before it by the law-enforcement agencies so as to be examined, or may adjourn the case to a later hearing.

Article 440

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

A witness sentenced to a fine or to costs because of his non-appearance may file an application to set this aside within a period of no more than five days from the service of the decision on him personally or at his domicile.

An appeal is open to him only against the judgment made on this application to set aside.

Article 441

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The witness sentenced for his refusal to take the oath or to make a statement may file an appeal.

Article 442

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 39 Official Journal of 16 June 2000)

The presiding judge interrogates the defendant and hears his statement before hearing the witnesses.

Article 442-1

(Inserted by Law nº 2000-516 of 15 June 2000 art. 39 Official Journal of 16 June 2000)

Subject to the provisions of article 401, the public prosecutor and the advocates for the parties may put questions directly to the defendant, the civil party, the witnesses or anyone else called to testify, by asking the presiding judge for leave to speak.

The defendant and the civil party may equally put questions through the of the presiding judge as intermediary.

Article 443

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The provisions of articles 407 and 408 are applicable where a witness is deaf-mute or does not speak French sufficiently well.

Article 444

(Ordinance n° 60-1067 of 6 October 1960 Article 2 Official Journal of 7 October 1960)

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The witnesses then separately make their statements either on the matters of which the defendant is accused or on his personality and morals

From the witnesses summoned, those called by the prosecuting parties are heard first, unless the presiding judge in his discretion, which is unappealable, himself determines the order of examination of the witnesses.

The persons suggested by the parties who are present at the beginning of the hearing without having been lawfully summoned may also be admitted to give evidence with the leave of the court.

Article 445

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Upon the request of the presiding judge, the witnesses must state their surname, first names, age, profession and domicile, and whether they are family members or relatives by marriage of the defendant, the person liable under civil law, or of the civil party, and whether they are in their service.

If necessary, the presiding judge asks them to specify what type of relations they have or have had with the defendant, the person liable under civil law, or the civil party.

Article 446

(Law nº 93-2 of 4 January 1993 art. 93 & 97 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The witnesses swears an oath to speak the whole truth and nothing but the truth before starting to give their evidence.

Article 447

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Children under the age of sixteen are heard without taking an oath.

Article 448

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The following people's statements are heard under the same conditions::

1° the father, mother or any other relative of the defendant or of one of the defendants present and involved in the same case;

2° the son, daughter, or any other descendant;

3° brothers and sisters;

4° relatives by marriage with the same degree of kinship;

5° the husband or wife; this prohibition endures even after divorce.

Article 449

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The persons covered by articles 447 and 448 may nevertheless be heard under oath where neither the public prosecutor nor any one of the parties oppose this.

Article 450

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The witness who has taken the oath is not bound to renew it if he is heard for a second time in the course of the hearing.

The presiding judge will remind him, where necessary, of the oath he has taken.

Article 451

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Any person who, whether acting pursuant to a legal obligation or on his own initiative, brought the actions prosecuted to the knowledge of the judiciary, is heard in the capacity of a witness; but the presiding judge apprises the court of this fact.

Any person whose denunciation is financially rewarded by law may also be heard as a witness, unless one of the parties or the public prosecutor opposes it.

Article 452

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

Witnesses make oral statements.

They may however exceptionally use documents to help them, with the authorisation of the presiding judge.

Article 453

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The clerk records the progress of the hearing and in particular, under the direction of the presiding judge, the statements made by the witnesses and also the answers given by the defendant.

The record of the hearing is signed by the clerk. It is signed by the presiding judge within three days at the latest after each hearing.

Article 454

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 39 Official Journal of 16 June 2000 in force 1 January 2001)

After each statement, the presiding judge and, in the terms set out in article 442-1, the public prosecutor and the parties ask the witness such questions as they consider necessary.

The witness may withdraw after his statement unless the presiding judge decides otherwise.

The public prosecutor as well as the civil party and the defendant may request and the presiding judge may always order a witness to withdraw temporarily from the courtroom after making his statement, to be brought back and reheard if necessary following other statements, with or without a confrontation.

Article 455

(Law nº 93-2 of 4 January 1993 art. 93 & 100 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

In the course of the hearing the presiding judge, has the exibits where necessary presented to the defendant or to the witnesses and he receives their observations.

Article 456

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

(Law nº 93-1013 of 24 August 1993 art. 28 Official Journal of 25 August 1993 in force 2 September 1993)

The court, either on its own motion, or upon the application of the public prosecutor, of the civil party or of the defendant, may order any inspection of premises where this is helpful for the discovery of the truth.

The parties and their advocates are called upon to attend. An official record is made of such operations.

Article 457

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 93 Official Journal of 5 January 1993 in force 1 October 1994)

If as a result of the hearing the statement of a witness appears to be false, the presiding judge has the precise words of the witness entered into the record of the hearing, either on his own motion or upon the application of the public prosecutor or of one of the parties.

He may give a special injunction to this witness to remain at the disposal of the court, which may re-examine him where necessary.

Where the judgment is to be given on the same day, the presiding judge may also have this witness guarded by the law-enforcement authorities within or without the courtroom.

After the reading of the judgment on the merits, the court orders him to be brought before the district prosecutor who initiates a judicial investigation on the ground of perjury.

After the reading of the judgment on the merits, the court immediately drafts an official record of the facts or statements in respect of which the perjury may have been committed.

This official record and a copy of the record of the hearing are sent to the district prosecutor forthwith.

Paragraph 4: The discussion by the parties

Article 458

The district prosecutor makes, in the name of the law, such written and oral submissions as he considers appropriate to the ends of justice.

Where written prosecution submissions are made, a note of these is made in the record kept by the clerk and the court is bound to respond to them.

Article 459

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1994)

The defendant, the other parties and their advocates may file pleadings.

These pleadings are signed by the presiding judge and by the clerk; the latter notes their filing in the record of the hearing.

The court is bound to answer any pleadings so regularly filed, and must deal with on the merits the incidents and objections so referred to it, and rule by a single judgment that decides first on the objections and then on the merits.

This order may only be departed from in cases of absolute impossibility, or where an immediate decision on the incident or objection is required by a legal provision which concerns public order.

Article 460

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1994)

When the investigation at the hearing is over, the civil party is heard upon his application, the public prosecutor makes his submissions, then the defendant and if necessary the person liable under civil law present their defence.

The civil party and the public prosecutor may then respond. The defendant or his advocate will always have the last word.

Article 460-1

(Law n° 81-82 of 2 February 1981 Article 89;Official Journal 3 February 1981)

(Law n° 2000-516 of 15 June 2000 Article 133; Official Journal of 16 June 2000)

Where the person claiming to have suffered damage has filed a civil party petition according to the terms set out in article 420-1, the presiding judge reads this application as soon as the investigation at the hearing is finished. The public prosecutor makes its submissions; the defendant and if necessary the person liable under civil law present their defence.

If the court considers it necessary, it may order the civil party to appear. In such a case, the entire hearing or the part of it concerning the civil claims is adjourned to a later session, the date of which is immediately fixed. The parties are bound to appear at the adjourned hearing without a further citation. The same applies to those persons invited by the court to remain at its disposal, where they have been immediately notified in writing.

Article 461

If the trial cannot be completed in the course of the same hearing, the court makes an order fixing the day upon which it will be resumed.

Any parties or witnesses who have not been examined, and those invited to remain at the disposal of the court, are bound to appear at the adjourned hearing without a further citation.

SECTION V: THE JUDGMENT

Article 462

Judgment is pronounced at the same session as the hearing, or at a later date.

In the latter case, the presiding judge informs the parties present of the date when the judgment will be read.

Article 463

(Law n° 70-643 of 17 July 1970 Article 39, Official Journal 19 July 1970)

(Law n° 93-2 of 4 January 1993 Article 207 Official Journal of 5 January 1993 in force 1 March 1993)

Where an additional investigation must be made, the court appoints by order one of its members who exercises the powers set out in articles 151 to 155.

In a case where criminal supervision is incurred, the judge concerned carries out or causes to be carried out all the steps necessary for this measure to be ordered, and in particular, the medico-psychological enquiry and examination required by article 81 (sixth and seventh paragraphs).

This additional investigation follows the rules stated in articles 114, 119, 120 and 121

The district prosecutor may obtain, if necessary through formal submissions, communication of the case file at any time during the additional investigation, provided he returns the documents within twenty-four hours.

Article 464

(Law n° 95-125 of 8 February 1995 Article 38 Official Journal of 9 February 1995)

(Law nº 2000-516 of 15 June 2000 art. 112 Official Journal of 16 June 2000)

Where it considers that the facts constitute a misdemeanour the court imposes a penalty.

It rules upon the civil action if necessary, and may order the provisional payment of the damages granted, in whole or in part.

It also has the power to grant the civil party an interim payment if it cannot rule as the case stands on the application for damages. The interim payment is enforceable despite an application to set aside or an appeal.

After ruling on the prosecution, the court may, on its own motion or at the request of the public prosecutor or the parties, postpone the case until a later date in order to rule on the civil action, even if it does not order any investigative measures, so as to allow the civil party to provide evidence in support of his claims. This adjournment is as of right when it is requested by the civil parties. The court must then fix the date of the hearing at which the civil action will be judged. The public prosecutor's presence at this hearing is not compulsory.

The provisions of the present article are applicable where the correctional court, sitting in the formation set out in the first paragraph of article 398, decides at the end of the hearing that the act of which it is seised constitutes a misdemeanour covered by article 398-1.

Article 464-1

(Law nº 70-463 of 17 July 1970 art. 10 Official Journal of 19 July 1970)

In respect of a detained defendant the court may at any time continue the detention by making a special and reasoned decision, where the circumstances of the case justify the extension of a specific safety measure. The warrant continues to have effect for the enforcement of this decision.

Article 465

(Law nº 70-463 of 17 July 1970 art. 11-i Official Journal of 19 July 1970)

(Law nº 85-1407 of 30 December 1985 art. 42 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 99-929 of 10 November 1999 art. 56 Official Journal of 11 November 1999)

In the case mentioned in article 464, first paragraph, if the offence in question is an ordinary misdemeanour or a military misdemeanour provided for in Book III of the Code of Military Law, and if the sentence imposed is an immediate custodial sentence of at least one year, where the facts of the case justify a special safety measure, the court may by a special and reasoned decision issue a committal order or an arrest warrant against the defendant.

The arrest warrant continues to be effective even if the court, upon an application to set aside, or the appeal court, upon an appeal application reduces the sentence to less than a year's imprisonment.

The committal order issued by the correctional court also remains effective where the appeal court, upon an appeal application, reduces the sentence to less than a year's imprisonment.

However, the correctional court, upon an application to set aside, or the appeal court, upon an appeal application, may alternatively cancel these warrants by making a special and reasoned decision.

In all circumstances the warrants issued in the aforementioned cases continue to be effective despite the filing of a cassation application.

In the event of an application to set the judgment aside as provided for by articles 491 and 492, the case must be brought before the court at the next hearing or at the latest within eight days of the filing of the application to set aside, failing which the defendant must be automatically released. If an adjournment is needed, the court must rule on its own motion by a reasoned decision on the continuation or cancellation of the warrant, after having heard the public prosecutor. The previous rules apply notwithstanding the option for the defendant to file an application for his release under the conditions set out by articles 148-1 and 148-2.

Article 466

If the court properly seised of a matter categorised as misdemeanour by law, considers at the outcome of the hearing that this matter constitutes a petty offence only, it imposes the penalty and rules, where necessary, on the civil action.

Article 467

If the matter is a petty offence related to a misdemeanour, the court rules by a single judgment, pending an appeal filed on the entire case.

Article 468

(Law n° 92-1336 of 16 December 1992 Article 34 Official Journal of 23 December 1992 in force on 1 March 1994)

If the defendant benefits from a legal ground exemption from penalty, the court declares him guilty and exempts him from penalty. It rules, where necessary, on the civil action, as stated under the second and third paragraphs of article 464.

Article 469

(Law n° 95-125 of 8 February 1995 Article 38 Official Journal of 9 February 1995)

If the matter of which the correctional court is seised as for a misdemeanour is liable to carry a sentence for felony, it refers the case to the public prosecutor, to proceed as he sees fit.

It may issue by the same decision a committal order or an arrest warrant against the defendant, after hearing the public prosecutor.

The provisions of the two previous paragraphs are also applicable if the correctional court, sitting in its composition provided for by the third paragraph of article 398, considers having heard the case, that the matter sent to it as one of the misdemeanours listed in article 398-1 is liable to carry a penalty for a misdemeanour not covered by this article.

Article 469-1

(Law n° 75-624 of 11 July 1975 art 24; Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 92-1336 of 16 December 1992 art. 35 Official Journal of 23 December 1992 in force 1 March 1994)

Notwithstanding the provisions of the first paragraph of article 464, the court may, after finding the defendant guilty, either exempt him from penalty, or defer imposing a penalty under the conditions set out by articles 132-59 to 132-70 of the Criminal Code and by articles 747-3 and 747-4 of the present Code. It rules if necessary on the civil action.

The exemption from penalty precludes the enforcement of the provisions setting out prohibitions, disqualifications or incapacities, whatever their nature, which would ensue automatically from the conviction.

Article 469-2

Repealed

Article 469-3

Repealed

Article 469-4

Repealed

Article 469-5

Repealed

Article 470

If the court considers that the matters prosecuted do not constitute an offence contrary to criminal law or that the matters are not proved, or that they is not imputable to the defendant, it dismisses the prosecution.

Article 470-1

(Law nº 83-608 of 8 July 1983 art. 13-i Official Journal of 9 July 1983 in force 1 September 1983)

(Law nº 96-393 of 13 Mai 1996 art. 13 Official Journal of 9 July 1983 in force 14 Mai 1996)

(Law nº 2000-647 of 10 July 2000 art. 3 Official Journal of 11 July 2000)

A court seised by the public prosecutor or by an investigatory jurisdiction of proceedings for an unintentional offence as meant by the second, third and fourth paragraphs of article 121-3 of the Criminal Code, and which orders a discharge, remains competent to grant compensation, at the civil party's or his insurer's request, filed before the conclusion of the proceedings, for any damage resulting from the matters in respect of which the prosecution was brought, pursuant to civil law rules.

However, where it is apparent that third parties bearing liability should be joined in the proceedings, the court refers the case to the competent civil court, by a decision that is not open to appeal. The civil court immediately examines the case according to a simplified procedure determined by Decree of the Council of State.

Article 471

(Law nº 70-643 of 17 July 1970 art. 12 Official Journal of 19 July 1970)

(Law n° 75-624 of 11 July 1975 art 26; Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 83-466 of 10 June 1983 art. 35-i Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 89-461 of 6 July 1989 art. 14 Official Journal of 8 July 1989 in force 1 December 1989)

(Law n° 92-1336 of 16 December 1992 Article 37 Official Journal of 23 December 1992 in force on 1 March 1994)

Notwithstanding the filing of an appeal, the detained defendant who is not sentenced to an immediate custodial sentence is set free immediately after the judgment.

The same applies where he is sentenced to a period of imprisonment when the pre-trial detention has been ordered or maintained pursuant to article 464-1 or to article 465, first paragraph, and the length of the detention equals or exceeds the sentence imposed.

Unless the court otherwise decides, judicial supervision ends when it imposes a non-suspended custodial sentence or a sentence accompanied by a suspension with probation. If security was given, the provisions of the first and second paragraphs of article 142-2 and of the second paragraph of article 142-3 are applicable.

The criminal sanctions imposed pursuant to articles 131-6 to 131-11 of the Criminal Code may be declared provisionally enforceable.

Article 472

(Law nº 92-1336 of 16 December 1992 art. 38 Official Journal of 23 December 1992 in force 1 March 1994)

In the case set out by article 470, where the civil party initiated the prosecution himself, the court rules by the same judgment on any application for damages made by the person discharged against the civil party for abuse of the right to bring a civil party petition.

Article 473

(Law n° 75-624 of 11 July 1975 art 22; Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 92-1336 of 16 December 1992 art. 39 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 128 Official Journal of 5 January 1993 in force 1 March 1993)

Any judgment of conviction also pronounces on the length of the civil imprisonment in respect of the defendant.

Article 474 and 475

Repealed.

Article 475-1

(Law nº 81-82 of 2 February 1981 art. 91 Official Journal of 3 February 1981)

(Law nº 91-647 of 10 July 1991 art. 75 Official Journal of 13 July 1991 in force 1 January 1992)

(Law nº 93-2 of 4 January 1993 art. 129 Official Journal of 5 January 1993 in force 1 March 1993)

The court orders the perpetrator of the offence to pay the civil party such sum as it determines in respect of any costs not paid by the State and incurred by the civil party. The court takes into account considerations of equity or the financial situation of the party sentenced. On account of such considerations it may also, on its own motion, rule that there is no case for such an order.

Article 476 and 477

Repealed.

Article 478

The defendant, the civil party or the person liable under civil law may ask of the court seised of the case for restitution of any articles

placed under judicial safekeeping.

The court may order such restitution on its own motion.

Article 479

Any person other than the defendant, the civil party or the person liable under civil law who claims to have a right over articles under judicial safekeeping may also make a request for their restitution from the court seised of the case.

Only the official records relating to the seizure of the articles may be communicated to the claimant.

The court rules by a separate judgment, after having heard the parties.

Article 480

If the court grants the restitution, it may take any precautionary measures to ensure the production of the articles returned until the final decision on the merits.

Article 480-1

(Law nº 92-1336 of 16 December 1992 art. 41 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 94-89 of 1 February 1994 Article 10 Official Journal of 2 February 1994 in force on 2 February 1994)

Persons sentenced for the same misdemeanour are held jointly liable for restitution and payment of damages.

In addition, the court may order in a special and reasoned decision that the defendant who surrounded himself with insolvent accomplices is jointly liable for any fines incurred.

Article 481

(Law nº 86-1019 of 9 September 1986 art. 18 Official Journal of 10 September 1986)

If the court considers that the articles under judicial safekeeping are useful for the discovery of the truth or liable to be confiscated, it defers its ruling until its decision on the merits of the case.

The court may refuse restitution where this creates a danger for persons or property.

Article 482

A judgment which dismisses an application for restitution may be appealed against by the person who made this application.

A judgment which grants restitution is liable to be appealed against by the public prosecutor and by the defendant, the person liable under civil law, or by any civil party to whom this decision would cause a prejudice.

The appeal court may be seised only after the correctional court has decided the case on the merits.

Article 483

Repealed

Article 484

(Law nº 85-1407 of 30 December 1985 art. 8 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Where the appeal court seised of the case on the merits, it has jurisdiction to decide on restitution as provided for in articles 478 to 481.

The appeal court may refuse restitution where this creates a danger for persons or property.

Article 485

(Law nº 70-643 of 17 July 1970 art. 40 Official Journal of 19 July 1970)

(Law nº 85-1407 of 30 December 1985 art. 43-1, 43-ii & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Every judgment must include reasons and enacting terms.

The reasons form the basis of the decision.

The enacting terms state the offences for which the persons cited are declared guilty or liable, and also the penalty, the legal provisions implemented and the civil award.

The judgment is read by the presiding judge or by one of the judges. This reading may be limited to the enacting terms. In the case set out by the first paragraph of article 398, it may be made even in the absence of the other judges.

Article 486

(Law nº 89-461 of 6 July 1989 art. 24 Official Journal of 8 July 1989 in force 1 December 1989)

The original draft of the judgment is dated and mentions the names of the judges who gave it. The presence of the public prosecutor at the hearing must be recorded therein.

After having been signed by the presiding judge and by the clerk, the original copy is deposited with the court office no later than three days after the reading of the judgment. This deposit is entered on the register specially kept for this purpose in the court office.

Where the presiding judge is prevented from signing, this is noted in the original draft, which is signed by the judge who reads the judgment.

SECTION VI: DEFAULT JUDGMENTS AND APPLICATIONS TO SET ASIDE.

Paragraph 1: Default judgments

Article 487

Except in the cases set out by articles 410, 411, 414, 415, 416 and 424, any person regularly cited who does not appear on the day and at the time fixed by the summons is tried by default as stated in article 412.

Article 488

The judgment made by default is served by a bailiff, in accordance with the provisions of articles 550 onwards.

Paragraph 2: Applications to set aside.

Article 489

The judgment by default is deemed non-existent in all its provisions if the defendant files an application to set aside its enforcement.

He may, however, limit this application to the civil provisions of the judgment.

Article 490

The application to set aside is brought to the attention of the public prosecutor, who must inform the civil party by a recorded delivery letter with request for acknowledgement of receipt.

Article 490-1

(Inserted by Law nº 85-1407 of 30 December 1985 art. 45 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Where the applicant is detained, the application to set aside may be made through a declaration filed with the prison governor.

This declaration is recorded, dated and signed by the prison governor. It is also signed by the applicant. If he is unable to sign, this is recorded by the prison governor.

This document is sent forthwith, in its original form or as a copy, and by any means available, to the public prosecutor attached to the court that made the contested decision.

Article 491

If the service of the judgment was made on the defendant in person, the application to set aside must be filed within the following time limits which run from the time of this service: ten days, if the defendant resides in continental France; one month if he resides outside this territory.

Article 492

(Ordinance n° 60-529 of 4 June 1960 Official Journal of 8 June 1960)

If the service of the judgment was not made on the defendant in person, the application to set aside must be filed within the following time limits, which run from the time of this service made to his domicile, the town hall or the public prosecutor: ten days if the defendant resides in continental France; one month if he resides outside this territory.

However, if the judgment is a conviction and if it does not appear either from the notice proving delivery of the recorded delivery letter set out in articles 557 and 558, paragraph 3, or by any other enforcement proceedings, or by the notice given in accordance with article 560, that the defendant knew of the notification, the application to set aside remains admissible both for the criminal sentence and any civil claims until the expiry of the prescription period applicable to criminal sentences.

In the cases considered under the previous paragraph, the time limit for the application to set aside runs from the day when the defendant was notified.

Article 493

The person liable under civil law and the civil party may file an application to set aside against any judgment by default made against

them. This must be done within the time limits fixed by article 491, which start to run from the notice of the judgment, in whatever form it was notified.

Paragraph 3: Reiterated absence

Article 494

(Law n° 72-1226 of 29 December 1972 Article 34 Official Journal of 30 December 1972)

(Law nº 85-1407 of 30 December 1985 art. 46-i, 46-ii & 94 Official Journal of 31 July 1985 in force 1 February 1986)

The application to set aside is deemed non-existent if the applicant does not appear at the date which was given to him either by the verbal notification and noted in the official record when the application was filed, or in a new summons delivered to the person concerned himself in accordance with the provisions of articles 550 onwards.

However, in the event of an immediate custodial sentence, the court may order the case to be adjourned to a later hearing without the need for new summonses to be delivered, and it may order the law-enforcement authorities to search for the applicant and bring him before the district prosecutor attached to the court, who either produces him at the adjourned hearing or summons him to appear at it.

If the applicant is found outside the area of jurisdiction of the court, he is brought before the district prosecutor of the place of arrest, who summons him to appear at the adjourned hearing.

The district prosecutor drafts an official record of his procedural steps in every case, and the applicant may not be detained for more than twenty-four hours.

If the ordered searches remain fruitless, the court declares void the application to set aside, and decides without a further adjournment.

The same applies where the applicant does not appear although lawfully summoned to do so.

Article 494-1

(Inserted by Law nº 85-1407 of 30 December 1985 art. 47 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

In the cases provided for under the first to fifth paragraphs of article 494 the court, where the particular circumstances call for it, may by a specially reasoned decision amend the judgment sought to set aside; but it may not increase the sentence.

SECTION VII: THE SIMPLIFIED PROCEDURE

Article 495

(Law n° 93-2 of 4 January 1993 Article 143 Official Journal of 5 January 1993 in force on 1 March 1993)

(Law n° 2002-1138 of 9 September 2002 Article 42 Official Journal of 10 September 2002)

Misdemeanours provided for by the Traffic Code may be subjected to the simplified procedure provided for by the present section.

This procedure is not applicable:

1° if the defendant is under 18 years of age at the time of the offence;

2° if the victim, in the course of the investigation, has lodged an application for damages or restitution, or has directly cited the defendant, before a ruling under article 495-1 has been pronounced;

3° if the misdemeanour provided for by the Traffic Code has been committed at the same time as misdemeanour of involuntary manslaughter or personal injury.

The public prosecutor may only implement this simplified procedure when the judicial police enquiry has established the matters of which the defendant is accused and has obtained enough information about his income and expenses to allow the penalty to be determined.

Article 495-1

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 42 Official Journal of 10 September 2002)

The public prosecutor who chooses the simplified procedure sends the case file and any submissions to the presiding judge of the court.

The presiding judge rules by means of a criminal order made without a hearing. This may result in a discharge or the imposition of a fine as well as, where appropriate, of one or more of the applicable additional penalties. Such penalties may be pronounced instead of a principal penalty.

If he considers that a hearing is necessary or that a prison sentence should be imposed, the judge sends the case file back to the public prosecutor.

Article 495-2

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 42 Official Journal of 10 September 2002)

The ruling mentions the surname, forenames, date and place of birth and the address of the defendant, the legal qualification, date and place of the offence, a record of the applicable texts and where there is a conviction, the penalties imposed.

The criminal order must be reasoned, in particular with respect to the provisions of the last paragraph of article 495.

Article 495-3

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 42 Official Journal of 10 September 2002)

As soon as it is pronounced, the criminal ruling is communicated to the public prosecutor who may within ten days either lodge his opposition by means of a declaration at the clerks' office of the court, or carry out the execution of the order.

This decision is communicated to the defendant by recorded delivery letter with acknowledgement of receipt.

The defendant is informed that he has forty-five days from the time of this notice to lodge an appeal and that this objection will permit the case to be the object of a hearing of the parties in public before the correctional court, in which he may be assisted by an advocate, whom he can ask to be appointed for him. The defendant is also informed that the correctional court, if it finds him to be guilty of the offences of which he is accused, has the option of imposing a prison sentence where this is applicable to the misdemeanour which was the subject of the order.

Where it is not opposed, the ruling is carried out in accordance with the regulations for the execution of correctional judgments contained in the present Code.

However, if there is no acknowledgement of receipt to prove that the defendant has received the notification letter, the order may be opposed until the end of a thirty-day period running from the date when the party concerned became aware of the conviction (whether by execution of the sentence or some other means), and of the time limit and means of opposition open to him.

The Treasury's accountant ceases to collect the fine as soon as he is notified of the opposition to the penal order by the clerks' office.

Article 495-4

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 42 Official Journal of 10 September 2002)

Where an objection is filed by the public prosecutor or the defendant, the case is dealt with by a hearing in the correctional court. Where the defendant entered the objection, a judgment given by default is not open to opposition.

The defendant may expressly abandon his objection until the opening of the hearing. The executory effect of the order then revives, and no further objection is admissible.

Article 495-5

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 42 Official Journal of 10 September 2002)

A criminal ruling which has not been opposed or brought by the public prosecutor to a hearing of the correctional court, has the effect of a final decision.

However, it does not have this effect in relation to any civil action brought in respect of damage caused by the offence.

Article 495-6

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 42 Official Journal of 10 September 2002)

The provisions of this section do not affect the injured party's right to cite the perpetrator directly before the correctional court.

The court rules only on the civil interests if the criminal order has acquired the status of a final decision.

CHAPTER II: APPEAL COURT RULINGS IN MISDEMEANOUR MATTERS

SECTION I: EXERCISE OF THE RIGHT TO APPEAL

Article 496

Judgments made in misdemeanour matters may be challenged by appeal.

The appeal is brought before the appeal court.

Article 497

(Law nº 83-608 of 8 July 1983 art. 8 Official Journal of 9 July 1983 in force 1 September 1983)

The right to appeal belongs to:

1° the defendant;

2° the person liable under civil law but in respect of civil claims only;

3° the civil party, in respect of his civil claims only;

4° the district prosecutor;

5° governmental agencies, in cases where they have prosecuted;

6° the prosecutor general attached to the appeal court.

Article 498

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 85-1407 of 30 December 1985 art. 48 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Except in the case set out in article 505, the appeal is filed within ten days from the pronouncement of any decision rendered adversarially.

However, in respect of the following, the time-limit for appeal runs only from the service of the judgment, however this was carried out:

1° any party not present or represented at the hearing when the judgment was read, but only where this party or his representative was not notified of the day when the judgment would be read;

2° any defendant who requested to be tried by default as provided for by article 411, first paragraph;

3° any defendant who failed to appear, in the circumstances mentioned in article 411, paragraph 4.

The same applies for the cases provided for in articles 410 and 494-1.

Article 499

If the judgment was made by default or after a reiterated absence, the time limit for appeal runs only from the service of the judgment, however this was done.

Article 500

In the event of an appeal filed by one of the parties within the time limits stated above, the other parties have an additional five days in which to lodge an appeal.

Article 500-1

(Law nº 2000-516 of 15 June 2000 art. 42 Official Journal of 16 June 2000)

If it takes place within a month of the appeal, the defendant's or the civil party's withdrawal of his principal appeal leads to the voiding of any incidental appeals, including that of the public public prosecutor. An incidental appeal is one filed within the time limit set out in article 500, and also an appeal filed, after a previous appeal, within the time limits provided for in articles 498 or 505, where the appellant specifies that it is an incidental appeal. In all cases, the public prosecutor may at any time withdraw an appeal filed after that of the defendant, when the latter has withdrawn his.

Article 501

(Law nº 70-463 of 17 July 1970 art. 13 Official Journal of 19 July 1970)

(Law nº 84-576 of 9 July 1984 art. 17 and 19 Official Journal of 10 July 1984)

(Law nº 85-1407 of 30 December 1985 art. 49 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Where the correctional court rules on an application for a release in accordance with articles 148-1 and 148-2, and also where it rules on a application for the cancellation or variation of judicial supervision, the appeal must be filed within twenty-four hours.

Article 502

(Law nº 85-1407 of 30 December 1985 art. 88 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

The appeal must be filed with the clerk of the court which made the contested decision.

It must be signed by the clerk and by the appellant himself, or by an attorney attached to the court which made the ruling, or by an advocate, or by an authorised legal representative; in this last case the power of attorney is attached to the act drafted by the clerk. If the appellant cannot sign, the clerk makes a note of this.

It is entered in a public register kept for this purpose and any person has the right to ask for a copy to be delivered to him.

Article 503

(Law nº 85-1407 of 30 December 1985 art. 50 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Where the appellant is detained, the appeal may be filed through a declaration made to the prison governor.

This declaration is recorded, dated and signed by the prison governor. It is also signed by the appellant. If the latter cannot sign, this is noted by the prison governor.

This original document or a copy of it is sent forthwith to the court office of the court which made the contested decision. It is transcribed into the register provided for by the third paragraph of article 502 and attached to the instrument drafted by the clerk.

Article 504

An application stating the grounds for appeal may be sent within the time limits set out for the filing of an appeal with court office. It is signed by the appellant or by an advocate registered with a bar association, or by an attorney, or by a person with a specific power of attorney.

The application is sent by the district prosecutor to the prosecutor at the appeal court, together with the procedural documents, as quickly as possible.

If the defendant is detained, he is also transferred, as quickly as possible, upon the order of the district prosecutor, to the remand prison of the place where the appeal court sits.

Article 505

(Ordinance n° 60-529 of 4 June 1960 Official Journal of 8 June 1960)

The public prosecutor files his appeal by a notification made either to the defendant, or to the person civilly liable for the misdemeanour, within two months from the day the judgment is read.

Article 506

(Law n° 70-643 of 14 July 1970 art. 14 Official Journal of 19 July 1970)

During the time limits for appealing, and during the appeal itself, the enforcement of the judgment is suspended, subject to the provisions of articles 464 (second and third paragraphs), 464-1, 471, 507, 508 and 708.

Article 507

Where the correctional court rules by a judgment separate from the judgment on the merits, an appeal is immediately admissible if this judgment puts an end to proceedings.

Where this is not so, and until the expiry of the time limit for appeal, the judgment is not enforceable and the correctional court may not rule on the merits.

If an appeal is not filed, or if before the expiry of the appeal time limit the appellant party has not deposited with the court office an application to set aside under the following paragraph, the judgment is enforceable and the correctional court rules on the merits.

The appellant party may file with the court office before the expiry of the appeal time limit an application sent to the presiding judge of the correctional appeals division with a view to having the appeal declared immediately admissible.

Article 508

The clerk informs the correctional court's presiding judge of the filing of this application. The judgment is not enforceable and the correctional court may not decide on the merits of the case until a decision has been made on such an application.

As soon as the clerk has received the appeal and the application, he sends the latter to the presiding judge of the correctional appeals division together with a certified copy of the judgment and of the appeal document.

The presiding judge rules on the application, by a non-reasoned order, within eight days from receiving the case file.

If he dismisses the application, the judgment is enforceable and the correctional court rules on the merits. No appeal is admissible against the presiding judge's order and the appeal is only heard at the same time as any appeal filed against the judgment on the merits.

If, in the interest of public order or the proper administration of justice, the presiding judge grants the application, he fixes the date upon which the appeal will be heard.

The appeal court must rule within one month from the presiding judge's order, without it being possible to raise before it any objection based on the fact that the appeal against the contested decision is not suspensive. In the latter case, execution of the judgment is suspended until the appeal court gives judgment.

Article 509

(Law nº 83-608 of 8 July 1983 art. 9 Official Journal of 9 July 1983 in force 1 September 1983)

The case is referred to the appeal court within the limits set by the appeal application and by the appellant's capacity as stated in article 515.

The insurer's appeal produces the same effect as regards the person insured in respect of the civil action. It is notified to the person insured within three days, by a recorded delivery letter with a request for acknowledgement of service which is sent by the insurer.

SECTION II: COMPOSITION OF THE CRIMINAL APPEALS DIVISION

Article 510

The correctional appeals division is composed of a presiding judge and of two appeal judges.

The duties of the public prosecutor are performed by the prosecutor general or by one of his advocates general or deputies. Those of the clerk are carried out by a clerk of the appeal court.

Article 511

(Law nº 81-82 of 2 February 1981 art. 43 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 18 Official Journal of 11 June 1983 in force 27 June 1983)

(Law no. 87-1062 of 30 December 1987 Article 20 Official Journal 31 December 1987, in force on 1 March 1998)

The number and the days for misdemeanour hearings are fixed at the end of each judicial year for the following year by an order of the president of the court of appeal, made after hearing the opinion of the appeal court's general assembly.

This order may be varied, as necessary, under the same conditions during the course of the year.

SECTION III: PROCEEDINGS BEFORE THE CORRECTIONAL APPEALS DIVISION

Article 512

The rules set out for the correctional court are applicable before the appeal court subject to the following provisions.

Article 513

(Law nº 93-2 of 4 January 1993 art. 99 & 227 Official Journal of 5 January 1993)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law n° 95-125 of 8 February 1995 Article 59 Official Journal of 9 February 1995)

(Law nº 2000-516 of 15 June 2000 art. 43 Official Journal of 16 June 2000)

The appeal is tried at a hearing following an oral report made by an appeal judge. The defendant is interrogated.

The witnesses summoned by the defendant are heard according to the rules provided for in articles 435 to 457. The public prosecutor may object if these witnesses have already been heard by the court. The court rules on this before any debates on the merits of the case.

After the appellant or his representative have briefly outlined the grounds of his appeal, the parties concerned speak in the order set out in article 460.

The defendant or his advocate will always have the last word.

Article 514

(Law nº 93-2 of 4 January 1993 art. 143 Official Journal of 5 January 1993 in force 1 March 1993)

If the appeal court considers that the appeal is out of time or irregularly filed, it declares it inadmissible.

If it considers that the appeal, although admissible, is without basis, it upholds the judgment challenged.

Article 515

(Law nº 83-608 of 8 July 1983 art. 10 Official Journal of 9 July 1983 in force 1 September 1983)

The court may, upon the appeal of the public prosecutor, either uphold the judgment or reverse it in whole or in part, whether in favour of the defendant or against him.

The court may not worsen the position of the appellant on the basis of an appeal brought only by the defendant, the person liable under civil law, the civil party, or the insurer of one of these persons.

The civil party may not put forward any additional claim in the course of an appeal. However, he may apply for an increase in the award of damages in respect of any harm occurring subsequent to the first-instance decision.

Article 515-1

(Inserted by Law nº 81-82 of 2 February 1981 art. 93 Official Journal of 3 February 1981)

Where, ruling on the civil action, the correctional court has ordered an interim payment of all or part of the compensation granted, this provisional enforcement may be stopped in case of appeal by the president of the appeal court making a summary ruling, if enforcement risks causing excessive consequences. The president of the appeal court may make the suspension of the provisional enforcement conditional on the provision of security, either real or personal, sufficient to cover any damages or restitution.

Where provisional enforcement was refused by the correctional court ruling on the civil action or where provisional enforcement was not requested, or where requested the correctional court omitted to rule on this point, in the event of an appeal it may be granted by the president of the appeal court making a summary ruling.

Article 516

If the judgment is quashed because the appeal court finds there to be no felony, misdemeanour or petty offence, or that the facts are not proved or that they are not imputable to the defendant, it dismisses the prosecution.

In such a case, if the acquitted defendant applies for damages under the conditions set out in article 472, he brings his application directly before the appeal court.

Article 517

(Law n° 92-1336 of 16 December 1992 Article 42 Official Journal of 23 December 1992 in force on 1 March 1994)

If the judgment is varied because the appeal court considers that the defendant is covered by a legal ground for exemption from penalty, the provisions of article 468 are applied.

Article 518

If the judgment is quashed because the appeal court considers that the facts constitute a petty offence only, it pronounces sentence and rules if necessary on the civil action.

Article 519

If the judgment is quashed because the appeal court considers that the facts are punishable as a felony, it declares itself incompetent. It refers the case to the public prosecutor to proceed as he sees fit.

It may issue by the same decision a committal order or an arrest warrant against the defendant, after hearing the prosecutor's submissions.

Article 520

If the judgment is quashed for breach of, or for non-corrected failure to comply with any formalities prescribed by law under penalty of nullity, the court transfers the case to itself and decides on the merits.

TITLE III: THE TRIAL OF PETTY OFFENCES.

CHAPTER I: JURISDICTION OF THE POLICE COURT

Article 521

(Law n° 85-835 of 7 August 1985 Article 7 Official Journal of 8 August 1985 in force on 1 October 1986)

(Law no. 89-469 of 10 July 1989 Article 8 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 92-1336 of 16 December 1992 Article 43 Official Journal of 23 December 1992 in force on 1 March 1994)

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

The police court tries petty offences.

Petty offences are offences which the law punishes with a fine of up to € 3000.

Article 522

(Law nº 83-466 of 10 June 1983 art. 37 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 2003-495 of 12 June 2003 art. 33 II Official Journal of 13 June 2003)

The competent court is the police court of the place where the petty offence was committed or discovered, or where the defendant lives.

In cases of a violation of the rules governing the loading or the equipping of a vehicle, or the regulations relating to road transport, the police court which has jurisdiction over the headquarters of the firm to which the vehicle is registered is also competent.

Articles 383 to 387 are applicable to the trial of offences within the jurisdiction of the police court.

Article 523

The police court is composed of the judge serving the tribunal d'instance, a prosecuting officer as stated in articles 45 onwards, and a clerk.

CHAPTER II: THE SIMPLIFIED PROCEDURE

Article 524

(Law n° 72-5 of 3 January 1972 Article 1 Official Journal of 5 January 1972 in force on 30 June 1972)

(Law n° 72-1226 of 29 December 1972 Article 62 Official Journal of 30 December 1972)

(Law n° 85-835 of 7 August 1985 Article 7 Official Journal of 8 August 1985 in force on 1 October 1986)

(Law no. 89-469 of 10 July 1989 Article 8 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 92-1336 of 16 December 1992 Article 44 Official Journal of 23 December 1992 in force on 1 March 1994)

Any petty offence, even when committed by a repeat offender, may be subjected to the simplified procedure provided for by the present chapter.

This procedure is not applicable:

1° if the petty offence is set out by the labour code;

2° if the defendant who has committed a fifth class offence was under the age of eighteen on the day of the offence.

This procedure may not be implemented where the victim of the damage caused by the petty offence has caused the defendant to be summoned directly before any order provided for by article 525 was made.

Article 525

(Law n° 72-5 of 3 January 1972 Article 1 Official Journal of 5 January 1972 in force on 30 June 1972)

(Law n° 99-515 of 23 June 1999 Article 8 Official Journal of 24 June 1999)

The public prosecutor who chooses to implement the simplified procedure sends the case file and its submissions to the police court judge

The judge rules without a prior hearing by making a criminal order; this either provides for a discharge, or imposes a fine together with, where necessary, one or more of supplementary penalties applicable.

If he considers that an adversarial debate would be useful, the judge returns the case file to the public prosecutor for it to be prosecuted with the ordinary procedural formalities.

Article 526

(Law n° 72-5 of 3 January 1972 Article 1 Official Journal of 5 January 1972 in force on 30 June 1972)

(Law n° 92-1336 of 16 December 1992 Article 45 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 93-2 of 4 January 1993 art 130; Official Journal 5 January 1993, in force 1 March 1993)

The order mentions the surname, first names, date and place of birth, and domicile of the defendant, the legal qualification, the date and the place of the matters charged, it indicates the legal provisions applicable and, in the event of a conviction, the amount of the fine.

The judge is not bound to give reasons for the criminal order.

Article 527

(Law n° 72-5 of 3 January 1972 Article 1 Official Journal of 5 January 1972 in force on 30 June 1972)

(Law n° 93-2 of 4 January 1993 art 152; Official Journal 5 January 1993, in force 1 March 1993)

The public prosecutor may within ten days of the order file an application to set aside its execution, by a declaration recorded at the court office.

If, upon the expiry of the time limit set out under the previous paragraph, the public prosecutor has not filed an application to set aside, the criminal order is notified to the defendant by a recorded delivery letter with request for acknowledement of receipt and it is enforced in accordance with the rules provided for by the present Code for the enforcement of police court judgments.

The defendant may file an application to set aside the enforcement of the order within thirty days from the date when the recorded delivery letter was sent.

Unless payment or an application to set aside is within the time limit stated above, the fine and the fixed procedural court fee are payable.

However, if it is not apparent from the receipt notice that the defendant did receive the notification letter, the application to set aside remains admissible until the expiry of a thirty-day time limit running from the day when the person concerned was apprised, first, of the conviction, whether by an enforcement step or by other means, and secondly, of the time limit and of the steps open to him to make an application to set aside.

The Treasury public accountant suspends recovery procedures as soon as he receives the notice of the application to set aside the criminal order drafted by the court office.

Article 528

(Law n° 72-5 of 3 January 1972 Article 1 Official Journal of 5 January 1972 in force on 30 June 1972)

In the event of an application to set aside filed either by the public prosecutor or the defendant, the case is listed at the police court hearing in accordance to the rules for ordinary proceedings. A judgment made by default following an application to set aside filed by the defendant, will itself not be liable to be set aside.

At any time before the opening of the hearing the defendant may expressly waive his application to set aside the order. The order then becomes enforceable once more, and a new application to set aside is inadmissible.

Article 528-1

(Inserted by Law n° 72-5 of 3 January 1972 Article 1 Official Journal of 5 January 1972 in force on 30 June 1972)

A criminal order against which no application to set aside has been filed has the effect of a judgment that has become res judicata.

However, the order does not have the effect of res judicata in respect of any civil action for compensation for any damage caused by the offence.

Article 528-2

(Inserted by Law n° 72-5 of 3 January 1972 Article 1 Official Journal of 5 January 1972 in force on 30 June 1972)

The provisions of the present chapter do not preclude the right of the injured party to have the offender directly summoned before the police court under the conditions provided for by the present Code.

Where the summons is served after a criminal order has been made for the same offence, the police court rules:

- on the public prosecution and on any civil claim if the criminal order has been challenged by an application to set aside within the time limits provided for in article 527 and at the latest at the opening of the hearing;

- on the civil claim only if no application to set aside has been filed or if the defendant has expressly stated, at the opening of the hearing at the latest, that he has waived his application to set aside or his right to file such an application. The same applies if it is established that the criminal order has been voluntarily paid.

CHAPTER II bis: FIXED FINE PROCEEDINGS

SECTION I: PROVISIONS APPLICABLE TO CERTAIN PETTY OFFENCES

Article 529

(Law n° 72-5 of 3 January 1972 Article 3 Official Journal of 5 January 1972 in force on 30 June 1972)

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law no. 89-469 of 10 July 1989 Article 1 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 95-101 of 2 February 1995 Article 87 Official Journal of 3 February 1995)

(Law n° 99-515 of 23 June 1999 Article 9 Official Journal of 24 June 1999)

For petty offences of the four first classes on the list determined by Decree of the Council of State, criminal proceedings are extinguished by the payment of a fixed fine, which also precludes implementation of the rules governing recidivism.

However, the fixed fine procedure is not applicable where the existence of several offences has been established simultaneously, where one or more of them may not be punished by means of a fixed fine.

Article 529-1

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law no. 89-469 of 10 July 1989 Article 1 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 99-515 of 23 June 1999 Article 9 Official Journal of 24 June 1999)

The amount of the fixed fine may be paid either to the agent drafting the official record at the moment of the establishment of the

existence of the offence, or to the unit mentioned in the petty offence notice within thirty days from the establishment of the existence the offence or, if this notice is sent later to the person concerned, within thirty days from its being sent.

Article 529-2

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law no. 89-469 of 10 July 1989 Article 1 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 99-515 of 23 June 1999 Article 9 Official Journal of 24 June 1999)

(Law nº 2003-495 of 12 June 2003 Article 8 III Official Journal of 13 June 2003)

The offender must pay the amount of the fixed fine within the time limit stated in the previous article, unless within the same time limit he files an application for exemption with the unit specified in the petty offence notice. In the cases provided for by article 529-10, this application must be accompanied by one of the documents required by that article. This application is transmitted to the public prosecutor.

If no payment is made and no application is filed within the thirty day time limit, the fixed fine is automatically increased and recovered by the Treasury in pursuance of an order which is put into effect by the public prosecutor.

SECTION II: PROVISIONS APPLICABLE TO CERTAIN OFFENCES AGAINST THE RULES GOVERNING LAND PUBLIC TRANSPORT

Article 529-3

(Inserted by Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

For the petty offences of the first four classes against the rules governing the public rail transport and services (whether regular or upon request) for the transport of persons, established by the duly sworn-in agents of the carrier, criminal proceedings are, by way of exception to article 521 of the present Code, extinguished by a transaction between the carrier and the offender.

However, the provisions of the previous paragraph are not applicable where several offences are established simultaneously, at least one of which may not be dealt with by way of transaction.

Article 529-4

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 93-2 of 4 January 1993 art. 153 Official Journal of 5 January 1993)

(Law nº 99-291 of 15 April 1999 art. 17 Official Journal of 16 April 1999)

A transaction is made by the payment of a fixed indemnity to the carrier together with, if necessary, the amount owed for the ticket.

I. This payment is made:

1. either immediately to the carrier's agent when the offence is discovered;

2. or, within a two-month time limit from the discovery of the offence, to the carrier's administrative department mentioned in the compromise proposal; in this last case, the expenses incurred in the creation of a case file are added to the amount due.

If the carrier's agent is not immediately paid, he is authorised to take down the offender's name and address; in case of need, he may request the assistance of a judicial police officer or agent.

The amount of the fixed indemnity and, where appropriate, the expenses incurred in creating the case file are forfeited to the carrier.

II. If the carrier's agents are not immediately paid, then provided they have been appointed by the public prosecutor and sworn in, and only when they are carrying out routine ticket inspections, they are authorised to take down the offender's name and address.

If the offender refuses or finds it impossible to prove his identity, the carrier's agent immediately lodges an account with any officer of the judicial or national police, or the Gendarmerie who has jurisdiction in this area, who may order the agent to bring him the offender forthwith. Without this order, the carrier's agent may not detain the offender. Where the judicial police officer mentioned in the present paragraph decides to carry out an identity check, under the conditions provided for in article 78-3, the time limit provided for in the third paragraph of this article runs from the establishment of identity.

If the offender then pays the fixed indemnity, the procedure provided for in the previous paragraph is immediately halted.

III. The conditions for the application of section II of the present article are fixed by Decree of the Council of State. This decree specifies in particular the conditions in which the carrier's agents must receive special training at the carrier's expense in order to obtain the district prosecutor's approval. It also defines the conditions in which the State's representative approves the organisation that the carrier approves for the purpose of ensuring the aforementioned checks and the methods of the coordination and the transmission of information between the carrier and the national police or the Gendarmerie.

Article 529-5

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 93-2 of 4 January 1993 art. 153 Official Journal of 5 January 1993)

The offender must pay the amount due in terms of the settlement within the time limit set out by the previous article, unless he files a protest with the carrier's services within two months from the discovery of the offence. This protest is transmitted to the public prosecutor with the official record of the offence.

Failing such payment or protest within the aforementioned two-month time limit, the official record of the offence is sent by the carrier to the public prosecutor and the offender becomes automatically liable to pay an increased fixed fine recovered by the Treasury, by virtue of an order enforced by the public prosecutor.

SECTION II A: PROVISIONS APPLICABLE TO CERTAIN VIOLATIONS OF THE HIGHWAY CODE

Article 529-6

Repealed

Article 529-7

(Law no. 89-469 of 10 July 1989 Article 1 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 99-515 of 23 June 1999 Article 9 Official Journal of 24 June 1999)

With the exception of those concerning parking regulations, for petty offences against the highway code of the second, third and fourth class, listed by Decree of the Council of State, the fixed fine is reduced if the offender pays it as provided for by article 529-8.

Article 529-8

(Law no. 89-469 of 10 July 1989 Article 1 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 2003-495 of 12 June 2003 art. 8 III Official Journal of 13 June 2003)

The reduced fixed fine may be paid either to the agent drafting the official ticket at the time the offence is recorded, or within three days from the recording of the offence, or if notice of commission of the offence is sent later to the person concerned, within seven days of its being sent.

Where the reduced fixed fine is not paid under the conditions set out above, the offender must pay the fixed fine.

Article 529-9

(Inserted by Law no. 89-469 of 10 July 1989 Article 1 Official Journal of 11 July 1989, in force on 1 January 1990)

The fixed fine must be paid before the expiry of a thirty day time limit following the discovery of the offence or the despatch of the petty offence notice.

The provisions of article 529-2 governing applications for exemption and automatic increases are applicable.

Article 529-10

(Inserted by Law n° 2003-495 of 12 June 2003 art. 8 V Official Journal of 13 June 2003)

When the fixed penalty notice concerning one of the offences mentioned by article L.121-3 of the Traffic Code has been sent to the person named on the vehicle registration documents or to the persons specified in the second and third paragraphs of article L.121-2 of this Code, the application for exemption under article 529-2 or the complaint provided for by article 530 is only admissible when it is sent by recorded delivery letter with acknowledgement of receipt and if it is accompanied by:

1° Either one of the following documents:

a)An official acknowledgement of the reporting of the theft or destruction of the vehicle, or a copy of the declaration of the destruction of the vehicle made in conformity with the provisions of the Traffic Code;

b)A letter signed by the author of the petition or the complaint which states the name, the address and the driving licence number of the person assumed to have been driving the vehicle when the offence was recorded;

2° Or by a document which proves that a sum equal to the fixed penalty in the case provided for by the first paragraph of article 529-2 or to that of the increased fixed penalty in the cases provided for by the second paragraph of article 530 has been provisionally deposited; such a deposit does not amount to payment of the fixed penalty and may not result in the removal of penalty points from a driving licence provided for by the fourth paragraph of article L.223-1 of the Traffic Code.

An officer attached to the public prosecutor's office ensures that the conditions of admissibility of complaints provided for by the present article are fulfilled.

Article 529-11

(Inserted by Law n° 2003-495 of 12 June 2003 art. 8 V Official Journal of 13 June 2003)

The penalty notice provided for by articles 529-1 and 529-8 may be sent following the recording of a contravention of the Traffic Code realised by means of an approved automatic testing device. Where a complaint is brought before the police court, a report from a judicial police officer recording the result of this test is drawn up.

SECTION III: COMMON PROVISIONS

Article 530

(Law nº 72-5 of 3 January 1972 art. 3 Official Journal of 5 January 1972 in force 30 June 1972)

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 154; Official Journal 5 January 1993)

(Law n° 2003-495 of 12 June 2003 art. 8 VI Official Journal of 13 June 2003)

The instrument mentioned in the second paragraph of article 529-2 or the second paragraph of article 529-5 is enforced following the rules laid down by the present Code for the enforcement of police court judgments. The sentence limitation period starts to run from the signature by the public prosecutor of the enforceable instrument, which may be individual or collective.

Within thirty days from the despatch of the notice inviting the offender to pay the increased fixed fine, the person concerned may file with the public prosecutor a reasoned complaint which has the effect of making the enforceable instrument void in respect of the fine challenged. This complaint remains admissible until the sentence is extinguished by prescription, unless it appears from an enforcement step or other piece of evidence that the person concerned was informed of the increased fixed fine. In cases of violation of the Traffic Code, the complaint is no longer admissible at the end of 3 months when the increased fixed penalty notice is sent by recorded delivery letter to the address which appears on the vehicle's registration certificate, unless the offender can prove that he informed the vehicle licensing agency of his change of address before the end of this period.

The notice relating to the fine in question must be attached to the complaint, and in addition, in cases provided for in article 529-10, by one of the documents required by this article. Without this, the enforcement notice is not invalidated.

Article 530-1

(Law nº 72-5 of 3 January 1972 art. 3 Official Journal of 5 January 1972 in force 30 June 1972)

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 155 Official Journal 5 January 1993)

(Law n° 2003-495 of 12 June 2003 art. 8 VII Official Journal 13 June 2003)

On an application made pursuant to the first paragraph of article 529-2 of a protest filed pursuant to the first paragraph of article 529-5 or a complaint made under the second paragraph of article 530, the public prosecutor may either discontinue the prosecution or proceed in accordance with articles 524 to 528-2 and with articles 531 onwards, or inform the person concerned of the inadmissibility of any complaint presented without a stated reason or with no notice attached.

The fine imposed in the event of a conviction may not be less than the amount of the fixed fine or indemnity in the cases provided for by the first paragraph of article 529-2 and the first paragraph of article 529-5, nor be less than the amount of the increased fixed fine in the cases provided for by the second paragraph of article 529-2 and the second paragraph of article 529-5.

In the cases provided for by article 529-10, where proceedings are discontinued or after an acquittal, money has been deposited under the terms of that article, it is repaid on request to the person who received the fixed penalty payment notice or against whom the proceedings were instituted. In the event of a conviction, the fine imposed may not be less than the amount provided for by the preceding paragraph plus 10%.

Article 530-2

(Law nº 72-5 of 3 January 1972 art. 3 Official Journal of 5 January 1972 in force 30 June 1972)

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Procedural objections made in respect of the execution of the enforceable instrument and the rectification of any material errors it may include are brought before the police court, which rules in accordance with the provisions of article 711.

Article 530-2-1

(Inserted by Law nº 2003-495 of 12 June 2003 art. 8 VII Official Journal 13 June 2003)

When increased fixed penalty notices are addressed to those who reside abroad, the time limits provided for in articles 529-1, 529-2. 529-8, 529-9 and 530 are increased by a month.

The provisions of articles 529-10 and 530 of the present code and of articles L.121-2 and L.121-3 of the Traffic Code relating to the holders of the vehicle's registration documents apply to those persons whose identities appear on the equivalent documents issued by the authorities abroad.

Article 530-3

(Law nº 85-1407 of 30 December 1985 art. 51 & 94 Official Journal of 31 December 1985 in force 1 October 1986)

(Law no. 89-469 of 10 July 1989 Article 2 Official Journal of 11 July 1989, in force on 1 January 1990)

A Decree of the Council of State fixes the amount of the fixed fines and indemnities, of the reduced and increased fixed fines and also of the expenses for the creation of a case file, and specifies rules for the implementation of the present chapter by determining in particular the conditions pursuant to which the agents accredited to establish the existence of offences are sworn in and collect fixed fines and sums due under settlements.

CHAPTER III: SEISIN OF THE POLICE COURT

Article 531

The police court is seised of offences falling within its jurisdiction either by reference made by the investigating jurisdiction, or by the voluntary appearance of the parties, or by summons served directly on the defendant and on the person liable under civil law of the offence.

Article 532

Notice served by the public prosecutor renders a summons unnecessary where it followed by the voluntary appearance of the person to whom it was sent.

It states the offence prosecuted and cites the law which punishes it.

Article 533

(Law nº 83-608 of 8 July 1983 art. 41 Official Journal of 9 July 1983 in force 1 September 1983)

(Law n° 93-2 of 4 January 1993 art 79Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 94-89 of 1 February 1994 Article 17 Official Journal of 2 February 1994 in force on 2 February 1994)

Articles 388-1, 388-2, 388-3 and 390 to 392-1 are applicable before the police court.

CHAPTER IV: TRIAL OF CASES BEFORE THE POLICE COURT

Article 534

Before the day of the hearing, the presiding judge upon the application of the public prosecutor or of the civil party may assess damages or cause them to be assessed, draft official records or cause them to be drafted, and take or cause to be taken any step requiring speedy action.

Article 535

The provisions of articles 400 to 405, and 406 to 408 are applicable to procedure before the police court.

However, the sanctions set out by article 404, paragraph 2, may only be imposed by the correctional court, seised by the public prosecutor by means of an official record relating the incident drafted by the police court judge.

Article 536

(Law n° 93-2 of 4 January 1993 art 101 Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 93-1013 of 24 August5 1993 art 28; Official Journal 25 August 1993, in force 2 September 1993)

Also applicable are the rules laid down by articles 418 to 426 concerning the civil party petition; by articles 427 to 457 in respect of the presentation of evidence, subject to what is provided by article 537; by articles 458 to 461 concerning discussion by the parties; by article 462 in respect of the judgment.

Article 537

(Law n° 78-788 of 28 July 1978 Article 10 Official Journal of 29 July 1978)

Petty offences are proved either by official records or reports, or by witness statements in the absence of official reports or records, or in support of them.

Except where the law otherwise provides, official records or reports drafted by judicial police officers, agents or assistant agents, or by civil servants or agents entrusted with certain judicial police functions to whom the law has granted the power to establish the existence of petty offences, are prima facie authentic evidence.

Proof of the contrary may only be established by writing or by witnesses.

Article 538

(Law n° 93-2 of 4 January 1993 art 208 Official Journal 5 January 1993, in force 1 March 1993)

Where an additional investigation is required, it is made by the police court judge in accordance with articles 114, 119, 120 and 121.

The provisions of article 463, paragraph 3, are applicable.

Article 539

(Law n° 92-1336 of 16 December 1992 Article 46 Official Journal of 23 December 1992 in force on 1 March 1994)

If the police court considers the matter in question constitutes a petty offence, it imposes a penalty, subject to the provisions of articles 132-59 to 132-70 of the criminal code and of articles 747-3 and 747-4 of the present Code.

It rules if necessary on the civil action in accordance with the provisions of article 464, paragraphs 2 and 3.

Article 540

If the police court considers the matter in question constitutes a felony or a misdemeanour, it declines jurisdiction. It refers the case to the public prosecutor who then proceeds as he sees fit.

Article 541

(Law nº 83-608 of 8 July 1983 art. 14 Official Journal of 9 July 1983 in force 1 September 1983)

If the police court considers the matter in question does not constitute an offence against criminal law or that the facts are not proved, or that they are not imputable to the defendant, it dismisses the prosecution.

The provisions of article 470-1 are applicable.

Article 542

(Law n° 92-1336 of 16 December 1992 Article 48 Official Journal of 23 December 1992 in force on 1 March 1994)

If the defendant is granted the benefit of a statutory ground for exemption from penalty, the police court declares him guilty and exempts him from penalty. It rules where necessary on the civil action as stated in article 539.

Article 543

(Law n° 93-2 of 4 January 1993 art 131 Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 92-1336 of 16 December 1992 Article 49 Official Journal of 23 December 1992 in force on 1 March 1994)

Articles 473 to 486 are applicable to proceedings before the police court relating to legal costs and expenses, the restitution of articles held under judicial safekeeping and the form of judgments.

However, the provisions of article 480-1 are applicable only to persons convicted of fifth class petty offences.

CHAPTER V: JUDGMENTS BY DEFAULT AND APPLICATIONS TO SET ASIDE

Article 544

The provisions of articles 410 to 415 governing the appearance and the representation of the defendant and of the person liable under civil law are applicable before the police court.

However, where the petty offence prosecuted is punishable only by a fine, the defendant may be represented by an advocate or by a person with a special power of attorney.

Article 545

The provisions of articles 487 and 488 governing judgments by default, and 489 and 495 governing applications to set aside are also applicable.

CHAPTER VI: APPEALS AGAINST POLICE COURT JUDGMENTS

Article 546

(Law n° 72-1226 of 29 December 1972 Article 63 Official Journal of 30 December 1972)

(Law n° 79-1131 of 20 December 1979 Article 6 Official Journal of 29 December 1979 in force on 1 October 1980)

(Law n° 85-835 of 7 August 1985 Article 7 Official Journal of 8 August 1985 in force on 1 October 1986)

(Law n° 92-1336 of 16 December 1992 Article 50 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 94-89 of 1 February 1994 Articles 10 & 14 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law n° 99-515 of 23 June 1999 Article 10 Official Journal of 24 June 1999)

The right to appeal is open to the defendant, the person liable under civil law, the district prosecutor, the prosecutor general and the prosecuting officer attached to the police court, where the fine incurred is that provided for petty offences of the fifth class, where the penalty provided by point 1° of article 131-16 of the criminal code has been imposed, or where the fine imposed is higher than the maximum fine incurred for petty offences of the second class.

Where damages have been awarded, the right to appeal is also open to the defendant and to the person liable under civil law.

In every case, this option is open to the civil party in respect of his civil claims only.

In cases prosecuted on the application of the water and forestry administration an appeal is always possible for any party involved, whatever the type and level of the sentence.

Article 547

Appeals from police court judgments are filed with the appeal court.

The appeal is filed within the time limits provided for in articles 498 to 500.

This appeal is investigated and tried in the same form as appeals filed against judgments made in misdemeanour matters.

Articles 502 to 504, paragraphs 1 and 2, are applicable to appeals filed against police court judgments.

Article 548

(Ordinance n° 60-529 of 4 June 1960 Article 8 Official Journal of 8 June 1960)

The prosecutor general files his appeal by serving it within two months from the day the judgment is passed either upon the defendant or upon the party liable under civil law for the offence.

Article 549

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

The provisions of articles 506 to 509 and 510 to 520 are applicable to judgments passed by police courts.

When seised of a police court judgment in excess of jurisdiction, the court of appeal, if it finds that the matters prosecuted constitute a misdemeanour, imposes the penalty and rules if necessary on damages.

TITLE IV: SUMMONSES AND NOTIFICATIONS

Article 550

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 92-1336 of 16 December 1992 Article 51 Official Journal of 23 December 1992 in force on 1 March 1994)

Except where statutes or regulations otherwise provide, summonses and service are made by a process served by a bailiff.

Notifications are made through administrative channels.

The bailiff may not act for himself, his spouse, for his family members or relations by marriage, or those of his spouse in direct line and ad infinitum, nor for his collateral family members and relations by marriage up to the degree of cousin born of first cousin inclusively.

The summons or notification process includes the identification of the requesting party, the date, the surname, first names and address of the bailiff, as well as the surname, first names and address of the addressee or, if the addressee is a legal person, its denomination and its registered office.

The person who receives a copy of the process signs the original copy; if this person refuses or cannot sign, this fact is noted by the bailiff.

Article 551

The summons is served upon the application of the public prosecutor, of the civil party, and of any administration which is accredited to do so by law. The bailiff must defer forthwith to their request.

The summons states the fact prosecuted and quotes the legal provision that punishes it.

It indicates the court referred to, the place, time and date of the hearing, and specifies the position of the defendant, the person liable under civil law, or witness of the person cited.

If it is served upon the application of the civil party, it mentions the latter's surname, first names, profession and official or elected domicile.

A summons served on a witness must also mention that non-appearance, refusal to testify and perjury are punished by law.

Article 552

(Law n° 75-1257 of 27 December 1975 Official Journal 29 December 1975)

(Law n° 93-2 of 4 January 1993 art 146 Official Journal 5 January 1993)

The time between the date when the summons is served and the date fixed for the appearance before the correctional court or police court is at least ten days if the party cited resides in a département of continental France or if, when he is a resident in an overseas département, he is cited before a court of that département.

This period is extended to one month if the party cited before the court of an overseas département resides in another overseas département, in an overseas territory, in Saint-Pierre-et-Miquelon or Mayotte or in continental France, or if, when cited before a court located in a département of continental France, he resides in an overseas département or territory, or in Saint Pierre et Miquelon or Mayotte.

If the party cited resides abroad, the period is extended to two months.

Article 553

If the periods prescribed by the previous article have not been complied with, the following rules are applicable:

1° where the party cited does not appear, the summons must be declared void by the court;

2° where the party appears, the summons is not void but the court must order an adjournment to a later hearing if the party cited so requires.

This request must be made before any defence on the merits, as stated in article 385.

Article 554

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

Notification of decisions, where it is required, is made upon the application of the public prosecutor or of the civil party.

Article 555

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 92-1336 of 16 December 1992 Article 52 Official Journal of 23 December 1992 in force on 1 March 1994)

The bailiff must take any step necessary to achieve the service of his process to the addressee in person or, if the addressee is a legal person, to its legal representative, to the latter's agent or to any person accredited for that purpose. He hands over a copy of the process to the person concerned.

Where the notification is made to a legal person, the bailiff must also forthwith inform it by ordinary mail of the notification made, of the name of the requesting party and also of the identity of the person to whom the copy was served.

Article 556

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

If the person concerned by the process is absent from his domicile, the copy is served on a family member, relation by marriage, servant or to a person residing at this domicile.

The bailiff notes on the process document the capacity declared by the person to whom notification is made.

Article 557

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 92-1336 of 16 December 1992 Article 53 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 95-125 of 8 February 1995 Article 43 Official Journal of 9 February 1995)

If the copy was served on someone residing at the domicile of the person concerned by the process, the bailiff informs forthwith this person of this notification by a recorded delivery letter with receipt notice. Where it is apparent from the receipt notice signed by the person concerned that he has received the bailiff's recorded delivery letter, the process delivered at the domicile produces the same effect as if it had been served in person.

The bailiff may also send the person concerned a copy of the process by ordinary mail, with a receipt the addressee is invited to return by

post or to deposit in the bailiff's office after signature. Where this receipt is returned signed, the process served at the domicile produces the same effect as if it had been served in person.

The domicile of a legal person is taken to be its registered office.

Article 558

If the bailiff does not find anybody at the domicile of the person concerned by the process, he immediately verifies the accuracy of the address of this domicile.

Where the domicile indicated is fact that of the person concerned, the bailiff notes his actions and findings in the process document, then hands a copy of this process document to the mayor at the town hall, or in his absence, to a deputy-mayor or delegated municipal councillor, or to the town clerk.

Of this notification he forthwith notifies the person concerned by recorded delivery letter with notice of receipt, cautioning him that he must immediately collect the copy of the process from the town hall indicated. If the process is the notification of a judgment made following a reiterated absence, the recorded delivery letter mentions the type of the instrument served and the time limit for filing an appeal.

Where it is apparent from the receipt notice signed by the person concerned that he has received the bailiff's recorded delivery letter, the process delivered at the town hall produces the same effect as if it had been served in person.

The bailiff may also send the person concerned a copy of the instrument by ordinary mail, with a receipt the addressee is invited to return by post or to deposit at the bailiff's office after signature. Where this receipt has been returned, the process served at the town hall produces the same effect as if it had been served in person.

If the process is a summons to appear in court, it will only produce the effect set out in the previous article if the period between the day when the receipt notice was signed by the person concerned and the day indicated for the appearance before the correctional court or police court was at least equal to the period determined by article 552, taking into account the distance of the person's domicile.

Article 559

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 92-1336 of 16 December 1992 Article 54 Official Journal of 23 December 1992 in force on 1 March 1994)

If the person concerned by the process does not have a known domicile or residence, the bailiff hands a copy of the process to the office of the district prosecutor for the court seised of the case.

The previous provisions are applicable to the service of documents to a legal person whose registered office is unknown.

Article 560

(Law nº 85-1407 of 30 December 1985 art. 65 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 95-125 of 8 February 1995 Article 54 Official Journal of 9 February 1995)

Where it is not proved that the person concerned has received the letter sent to him by the bailiff in accordance with the provisions of articles 557 and 558, or where the process was delivered to the prosecution office, the district prosecutor may require a judicial police officer or agent to proceed to inquiries aimed at discovering the address of the person concerned. Where the latter is discovered, the judicial police officer or agent apprises him of the process, which is then effective as if it had been served in person.

The judicial police officer or agent drafts in every case an official record of his inquiries and sends it forthwith to the district prosecutor.

Where the summons is directed to a defendant, the district prosecutor may also order the police to search for the person concerned. Where the latter is discovered, the prosecutor is immediately informed and may send by any means available a copy of the process for service by a judicial police officer or agent. This notification amounts to a notification in person. Where a defendant concerned by a summons could not be found before the date fixed for the hearing, the search order may be extended. If he is found, the district prosecutor may have a court summons notified to the person concerned pursuant to article 390-1.

The district prosecutor may also require of any administration, undertaking, institution or organ of any kind under the supervision of administrative authorities to impart to him any information at its disposal in order to discover the address of the defendant's domicile or residence, no opposition on grounds of professional secrecy being admissible.

Article 561

(Law n° 92-1336 of 16 December 1992 Article 55 Official Journal of 23 December 1992 in force on 1 March 1994)

In the cases set out in articles 557 and 558, the copy is delivered in a closed envelope which does not bear any indication apart from, on one side, the surname, first names and address of the person concerned or, if the addressee is a legal person, its denomination and address, and, on the other side, the stamp of the bailiff's office affixed to the flap of the envelope.

Article 562

(Law n° 92-1336 of 16 December 1992 Article 56 Official Journal of 23 December 1992 in force on 1 March 1994)

If the person resides abroad, he is cited at the public prosecutor's office of the district prosecutor attached to the court seised of the case. The district prosecutor signs the original instrument and sends a copy to the Minister for Foreign Affairs or to any authority determined by international Conventions.

The provisions of the previous paragraph are applicable to legal persons which have a registered office abroad.

Article 563

In all cases, the bailiff must note on the original copy of the process and in his official record the steps he has taken and also the answers given to his various inquiries.

The district prosecutor may order the bailiff to make further inquiries of if he considers those made to be incomplete.

The original copy of the process must be sent within twenty-four hours to the person upon whose application it was served.

Furthermore, if the process was served at the district prosecutor's request, a copy of the process must be attached to the original.

Article 564

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

Bailiffs are compelled to state the cost of this process at the foot of the original and the copy of the process, under penalty of a civil fine of € 3 to € 15. This fine is imposed by the presiding judge of the court to which the case is referred.

Article 565

A process may only be declared void where the irregularity has the effect of harming the interests of the person concerned, subject to the provisions of article 553, 2° in respect of the time limits for summonses.

Article 566

Where a process is declared void through the fault of the bailiff, the latter may be ordered to pay the costs of the process and of the proceedings declared void, and to pay damages to party damages to any party who may have suffered harm.

The court which declares the nullity has jurisdiction to impose these orders.

BOOK III

SPECIAL REMEDIES

TITLE I: CASSATION APPLICATIONS.

CHAPTER I: DECISIONS LIABLE TO BE CHALLENGED AND CONDITIONS OF THE APPLICATION

Article 567

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Judgments made by the investigating chamber and judgments rendered by courts of final instance in felony, misdemeanour or petty offence matters may be quashed in the event of a violation of the law upon a cassation application filed by the public prosecutor or by the party adversely affected, pursuant to the following distinctions.

The application is brought before the criminal division of the Court of Cassation.

Article 567-1

(Law nº 75-701 of 6 August 1975 art. 18 Official Journal of 7 August 1975)

(Law nº 89-461 of 6 July 1989 art. 7 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 93-2 of 4 January 1993 art. 80 Official Journal of 5 January 1993 in force 1 March 1993)

If the presiding judge of the criminal division ascertains that an application has been filed against a decision against which no remedy is open, he rules it inadmissible. His decision is not open to any form of challenge.

Article 567-2

(Law nº 81-82 of 2 February 1981 art. 44 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 38 Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 85-1407 of 30 December 1985 art. 52-i, 52-ii & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-1013 of 24 August 5 1993 art 46; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Where the criminal division is seised of an application against an investigating chamber judgment made in pre-trial detention matters, it must rule within three months from the receipt of the case file by the Court of Cassation, failing which the accused is automatically set free.

The cassation applicant or his advocate must, under penalty of disqualification, file his statement explaining the grounds for cassation within one month from the receipt of the case file, unless, exceptionally, the president of the criminal division extends the time limit by eight days. No new grounds may be raised by the applicant and no statement may be filed after the expiry of this time limit.

The president of the criminal division fixes the date of the hearing as soon as the statement is filed.

Article 568

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

The public prosecutor and all the parties have five full days from the day when the contested decision was made to file a cassation application.

However, the time limit for the application runs only from the service of the judgment, by whatever mode:

1° against any party who, after an adversarial hearing, was not present or represented at the hearing when the judgment was read, if he was not informed as stated in article 462, paragraph 2;

2° against any defendant who asked to be tried in his absence under the conditions set out in article 411, paragraph 1;

3° against any defendant who has not appeared in the cases set out in articles 410 and 411, paragraph 4;

4° against any defendant tried after a reiterated absence.

The time limit for the filing of a cassation application against first-instance or appeal judgments by default only runs against the defendant from the day when they are no longer liable to be challenged by an application to set aside. The time limit runs against the public prosecutor from the expiry of a ten-day time limit following the service of the judgment.

Article 569

(Law nº 70-643 of 17 July 1970 art. 15 Official Journal of 19 July 1970)

(Law nº 89-461 of 6 July 1989 art. 14 Official Journal of 8 July 1989 in force 1 December 1989)

(Law nº 92-1336 of 16 December 1992 art. 57 Official Journal of 23 December 1992 in force 1 March 1994)

During the cassation application time limits, and until the reading of the Court of Cassation judgment if an application has been filed, the enforcement of the appeal court judgment is suspended; except in respect of any civil judgment, and unless the appeal court upholds the warrant issued by the first instance court pursuant to article 464-1 or article 465, first paragraph, or unless the Court of Cassation itself issues a warrant under the same conditions and according to the same rules.

Judicial supervision ends, unless the appeal court otherwise decides, when imposing a non-suspended custodial sentence or a suspended custodial sentence with probation. Where security has been given, the provisions of the first and second paragraphs of article 142-2 and of the second paragraph of article 142-3 are applicable.

In the event of an acquittal or an exemption from penalty, or the imposition of either a custodial sentence subject to ordinary suspension, or suspension with probation, or a fine, the detained defendant is immediately set free after the judgment, notwithstanding the filing of any cassation application.

The same applies in the case of a custodial sentence, where pre-trial detention was ordered or maintained under the conditions set out by paragraph 1, once the length of the detention equals that of the sentence imposed.

Article 570

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 93-1013 of 24 August 5 1993 art 41; Official Journal 25 August 1993, in force 2 September 1993)

Where the first-instance or appeal court rules by a judgment separate from the judgment on the merits, the cassation application is immediately admissible if this ruling put an end to the proceedings. If the presiding judge of the criminal division finds that a decision was erroneously considered by the party concerned as putting an end to the proceedings, he rules whether the application must nevertheless be accepted in the interest of public order or for the proper administration of justice, or whether on the contrary it ought not to be accepted, and of his own motion he makes to this end an order of admissibility or inadmissibility.

Where the decision did not put an end to proceedings and until the expiry of the time limit for a cassation application, the appeal judgment is not enforceable and the appeal court may not rule on the merits.

If no cassation application was filed, or if before the expiry of the time limit for such an application the applicant has not filed with the court office the petition provided for by the following paragraph, the first-instance or appeal judgment is enforceable and the first-instance or appeal court rules on the merits. The same applies notwithstanding the provisions of the following paragraph in the event of a judgment passed upon an appeal filed against an order made by the investigating judge pursuant to articles 81, ninth paragraph, 82-1, second paragraph, 156, second paragraph, or 167, fourth paragraph, or because of the absence of such an order by the investigating judge. In such cases, if the proceedings have nevertheless been sent to the Court of Cassation, the president of the criminal division orders them to be sent back to the court seised of the case.

The cassation applicant may file with the court office before the expiry of the time limit for a cassation application a petition sent to the presiding judge of the criminal division of the Court of Cassation, with a view to having his application declared immediately admissible.

Article 571

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 93-1013 of 24 August 5 1993 art 41; Official Journal 25 August 1993, in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The clerk informs the presiding judge of the first instance or the presiding judge of the appeal court of the filing of such a petition. The first-instance or appeal judgment is not enforceable and no ruling on the merits may be given until a decision is made in respect of the petition.

As soon as the clerk has received the cassation application and the petition, he sends them to the president of the criminal division with a copy of the first-instance or appeal judgment and a copy of the cassation application.

The president of the criminal division rules on the petition by making an order within eight days of the reception of this case file.

If he dismisses the petition, the first-instance or appeal judgment is enforceable and the first-instance or appeal court rules on the merits. No appeal is admissible against the presiding judge's order and the cassation application is then only decided at the same time as any application filed against the first-instance or appeal judgment made on the merits.

If the presiding judge endorses the petition in the interest of public order or the proper administration of justice, he fixes the date upon which the cassation application will be ruled upon.

The criminal division must rule within two months from the president's order, without it being possible to raise before it any objection based on the fact that the cassation application filed against the contested decision is not suspensive. The enforcement of the first-instance or appeal judgment is suspended until the criminal division's judgment.

The provisions of article 570 and of the present article are applicable to cassation applications filed against preparatory, interlocutory or investigatory judgments made by investigating chambers, with the exception of judgments mentioned in the third paragraph of article 570.

Where the president of the criminal division declares immediately admissible a cassation application filed against an investigating chamber judgment made pursuant to article 173, he may order the investigating judge in charge of the case to suspend his judicial investigation except in respect of urgent steps.

Article 571-1

(Inserted by Law nº 85-1407 of 30 December 1985 art. 53 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

The withdrawal of the cassation application is proved by an order made by the president of the criminal division.

Article 572

Acquittal decisions rendered by the assize court may only be challenged by a cassation application based on the sole interest of the law and may not prejudice the party acquitted.

Article 573

(Law nº 92-1336 of 16 December 1992 art. 57 Official Journal of 23 December 1992 in force 1 March 1994)

Rulings made by the assize court either after an acquittal under the conditions provided for in article 371, or after an acquittal or an exemption from penalty under the conditions laid down by article 372, may nevertheless be challenged by a cassation application filed by the parties adversely affected.

The same applies for the judgments ruling on restitution, as stated in article 373.

Article 574

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The investigating chamber judgment committing the defendant to the correctional court or the police court may only be challenged before the Court of Cassation where it rules, either on its own motion or after an objection by the parties, on jurisdiction, or where it makes

dispositions which the court seised of the case has no power to amend.

Article 574-1

(Law nº 81-82 of 2 February 1981 art. 60-i Official Journal of 3 February 1981)

(Law nº 85-1407 of 30 December 1985 art. 66 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Where the criminal division is seised of a cassation application against a decision to indict, it must rule within three months from the reception of the case file at the Court of Cassation.

Under penalty of disqualification the cassation applicant or his advocate must file his statement of case stating the grounds for cassation within one month from the reception of the case file at the Court of Cassation, unless the president of the criminal division exceptionally extends the time limit by a week. No new grounds may be raised by the applicant and no statement of case may be filed after the expiry of this time limit.

If no ruling is made within the time limit set out under the first paragraph, the defendant is automatically set free.

Article 575

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 70-643 of 14 July 1970 art. 18 Official Journal of 19 July 1970)

(Law n° 93-1013 of 24 August 5 1993 art 46; Official Journal 25 August 1993, in force 2 September 1993)

(Law n° 92-1336 of 16 December 1992 Article 58 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The civil party may file a cassation application against the judgments of the investigating chamber only where the public prosecutor has filed such an application.

His sole application is however admissible in the following cases:

1° where the judgment of the investigating chamber has stated there was no cause for a judicial investigation;

2° where the judgment has declared the civil party's action inadmissible;

3° where the judgment has endorsed an objection putting an end to the public prosecution;

4° where the judgment has ruled, either on its own motion or upon an objection made by the parties, that the court seised of the case did not have jurisdiction;

5° where the judgment omitted to rule on one of the counts of accusation;

6° where the judgment does not formally comply with the essential conditions of its legal existence.

7° in the area of violations of individual rights as defined in articles 224-1 to 224-5 and 432-4 to 432-6 of the Criminal Code.

CHAPTER II: FORMALITIES OF THE CASSATION APPLICATION

Article 576

The application for cassation must be filed with the clerk of the court which made the contested decision.

It must be signed by the clerk and by the cassation applicant himself, or by an attorney attached to the court which made the decision, or by an agent with a special power of attorney. In this last case, the application is attached to the record drafted by the clerk. If the applicant cannot sign, the clerk records this.

The application is entered into a public register opened for this purpose and any person has a right to obtain a copy of the application.

Article 577

(Law nº 85-1407 of 30 December 1985 art. 67 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Where the cassation applicant is detained, the application may be filed by a declaration recorded by the prison governor.

This declaration is recorded, dated and signed by the prison governor. It is also signed by the applicant; if the latter cannot sign, a record of this is made by the prison governor.

This document is sent forthwith as an original or ordinary copy to the court office of the court which made the contested decision; it is transcribed into the register provided for by the third paragraph of article 576 and attached to the instrument drafted by the clerk.

Article 578

The cassation applicant must within three days notify his application to the public prosecutor and to the parties, by a recorded delivery letter with request for acknowledgement of receipt.

Article 579

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

A party who has not received the notification provided for by article 578 has the right to file an application to set aside the judgment made by the Court of Cassation, by a declaration at the office of the court which made the decision, made within five days of the service provided for by article 614.

Article 580 to 582

Repealed

Article 583

Repealed

Article 584

The cassation applicant may, either when he makes his declaration or within ten days thereafter, file with the office of the court which made the decision a statement signed by him which states his grounds for cassation. The clerk delivers him a receipt.

Article 585

After the expiry of this time limit, the applicant sentenced to a criminal conviction may send his statement directly to the office of the Court of Cassation; the other parties may not take advantage of the present provision without the assistance of an advocate attached to the Court of Cassation.

In every case, the statement must be accompanied by as many copies as there are parties to the proceedings.

Article 585-1

(Law n° 93-1013 of 24 August 5 1993 art 42; Official Journal 25 August 1993, in force 2 September 1993)

The statement of an applicant sentenced to a criminal conviction must reach the office of the Court of Cassation no later than one month after the date of the application, except where an exemption is granted by the president of the criminal division.

The same applies to the declaration of the advocate who is instructed to appear in the name of the cassation applicant.

Article 586

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

Under penalty of a civil fine of € 7.5 imposed by the Court of Cassation, the clerk numbers and initials the documents of the case file, to which he attaches a copy of the contested decision, a copy of the appeal and, where appropriate, the applicant's statement, within a maximum of twenty days from the cassation application declaration . He drafts an inventory of the whole file.

Article 587

When the case file is thus made ready, the clerk hands it to the public prosecutor who sends it immediately to the prosecutor general attached to the Court of Cassation. The latter transmits it in turn to the court office of the criminal division.

The presiding judge of this division appoints a reporting judge.

Article 588

If one or more advocates have been instructed to appear, the reporting judge fixes a time limit for the filing of the statements with the clerk of the criminal division.

Article 589

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

Any party interested by the cassation application who has not received a copy of the statements filed to support the application may apply to set aside the judgment made by the Court of Cassation, by a declaration made to the court office of the court which made the decision, within five days from the service provided for in article 614.

Article 590

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

Statements of case include the grounds for cassation and cite the statutory provisions which are alleged to have been breached.

They are written on stamped paper except where the applicant has been given a sentence for a felony.

They must be filed within the stated time limit. No additional statement of case may be attached to them after the appointed judge has deposited his report. The belated filing of a statement putting forward additional grounds may bring about its inadmissibility.

CHAPTER III: GROUNDS FOR CASSATION

Article 591

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

When made in the form prescribed by law, judgments of the investigating chamber and also decisions made at final instance by competent courts may only be quashed for a violation of the law.

Article 592

(Law n° 72-1226 of 29 December 1972 Article 33 Official Journal of 30 December 1972)

These decisions are declared void when they are not made by the prescribed number of judges or when they were made by judges who did not attend all the hearings of the case. Where several hearings were devoted to the same case, it is presumed that the judges who took part in the decision took part in all these hearings.

CHAPTER IV: INVESTIGATION OF CASSATION APPLICATIONS AND CASSATION HEARINGS

Article 593

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Judgments of the investigating chamber and judgments given at last-instance are declared void if they do not include reasons or if their reasons are insufficient and do not enable the Court of Cassation to exercise its supervision and to verify whether the law was respected in the order resulting from them.

The same applies where a ruling was omitted or refused, whether in respect of one or more applications of the parties, or in respect of one or more of the public prosecutor's submissions.

Article 594

(Law nº 2000-516 of 15 June 2000 art. 83 & 136 Official Journal of 16 June 2000)

In felony matters, the investigating chamber's referring judgement, when it has become final, fixes the jurisdiction of the assize court and covers all procedural errors, should any exist, arising from the previous proceedings.

Article 595

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law n° 93-2 of 4 January 1993 art 81 Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Where the investigating chamber is deciding on the closure of a case, all the arguments based on the nullities of the investigation must be submitted to it, failing which the parties are not admitted to state such grounds, except where they would have been unable to know of them; this is without prejudice of the power of the Court of Cassation to raise any argument on its own motion.

Article 596

Where the accused has been sentenced in a felony case and the judgment has imposed a sentence other than one that the law provides for this type of felony, the annulment of the judgment may be sought by both the public prosecutor and the party sentenced.

Article 597

The same action is open to the public prosecutor against the judgments of acquittal mentioned in article 363, if the decision was made on the basis that a criminal law did not exist, which really did exist.

Article 598

Where the sentence imposed is the same as that provided for the law applicable to the offence, no one may apply for the annulment of the judgment under the pretext that a mistake was made in the citation of the legal provision.

Article 599

(Law nº 85-1407 of 30 December 1985 art. 68 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

In misdemeanour matters, the defendant is not admitted to present as a ground for cassation any nullities committed at first-instance if he did not raise them before the appeal court, with the exception of a nullity for absence of jurisdiction where an appeal has been brought by the public prosecutor.

In felony matters, the accused is not permitted to put forward as grounds for cassation any nullities he did not raise before the assize court ruling on appeal, as provided for by article 305-1.

Article 600

In no case may anyone avail himself as against the party prosecuted of any violation or omission in relation to any rule established to ensure the latter's defence.

Article 601

The rules governing the publicity, the order and the discipline of hearings must be complied with before the Court of Cassation.

Article 602

The reports are given at the hearing. The observations of the parties' advocate are heard after the report, where necessary. The public prosecutor presents his submissions.

Article 603

When the court deliberates, the opinions are received by the presiding judge in order of seniority of appointment, starting with the most senior judge.

The reporting judge always gives his opinion first and the presiding judge last.

Article 603-1

(Inserted by Law n° 67-523 of 3 July 1967 art 21 Official Journal 4 July 1967 in force 1 January 1968)

Judgments of the Court of Cassation given in criminal matters mention the name of the presiding judge, of the reporting judge, of the other judges who took part in them, of the advocate general and also of the advocates who took part in proceedings and in addition the surname, first names, profession, domicile of the parties and the arguments advanced.

Article 604

The Court of Cassation may rule on an application in any felonious, misdemeanour or petty offence matter as soon as a ten day time limit has expired from the day of the reception of the case file at the Court of Cassation.

It must rule urgently and by priority, and invariably before the expiry of a three-month time limit starting from the reception of the case file at the Court of Cassation in the following cases:

1° where the application is filed against a judgment committing a case to the assize court;

[2° when it is made against a decision of the assize court pronouncing the death penalty] (the death penalty was abolished by law no. 81-908 of 9 October 1981 published in the Official Journal of 10 October 1981).

3° in the cases provided by article 571 this time limit is reduced to two months.

CHAPTER V: JUDGMENTS MADE BY THE COURT OF CASSATION. (Art. 605 to 619)

Article 605

The Court of Cassation, before ruling on the merits, verifies whether the application was properly made. If it considers that the legal conditions were not complied with, it makes an order of inadmissibility or of disqualification, according to the case.

Article 606

Where the application has become purposeless, the Court of Cassation gives judgment stating that there is no cause for a ruling.

Article 607

Where the application is admissible, the Court of Cassation makes a dismissal judgment if it considers it groundless.

Article 608

(Law nº 81-759 of 6 August 1981 art. 3-ii Official Journal of 7 August 1981)

(Law nº 93-2 of 4 January 1993 art. 143 Official Journal of 5 January 1993 in force 1 March 1993)

Judgment taking formal note of the withdrawal of a party is recorded free of charge, unless the Court of Cassation otherwise decides.

Article 609

Where the Court of Cassation annuls a judgment made in misdemeanour or petty offence matters, it sends the case and the parties to a court of the same order level as the one which made the decision annulled.

Article 609-1

(Law nº 93-1013 of 24 August 1993 art. 43 Official Journal of 25 August 1993 in force 2 September 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2000-1354 of 30 December 2000 art. 18 Official Journal of 31 December 2000)

Where the Court of Cassation annuls the judgment of an investigating chamber ruling on an appeal against a closing order, it sends the case and the parties to another investigating chamber which then becomes competent for the continuation of the entire proceedings.

Where the Court of Cassation annuls an investigating chamber judgment other than those considered under the previous paragraph, the jurisdiction of the investigating chamber referred to is restricted, unless the Court of Cassation decides otherwise, to resolving the dispute which led to the cassation application and, after a final decision and subject to the provisions of the first paragraph of article 207, the case file is returned to the investigating chamber originally seised, for the purposes, where appropriate, stated by the second paragraph of article 207 or by the third paragraph of article 206.

Article 610

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2000-1354 of 30 December 2000 art. 19 Official Journal of 31 December 2000)

In felony matters, the Court of Cassation orders the transfer of the trial as follows:

- to an investigating chamber other than the one that decided the indictment, if the decision quashed was made by an investigating chamber;

- to an assize court other than the one that gave the judgment, if the judgment is quashed because of a nullity commited at the assize court;

- to a court of appeal other than that of the seat of the assize court that gave the judgment, if the judgment is anulled only as regards the civil claims.

Article 611

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Where the transfer is made to an investigating chamber, the latter appoints, if necessary, the trial court within its area of jurisdiction. However, the Court of Cassation may appoint in advance the criminal court before which the accused will be eventually committed for trial, which may be in another area.

Article 612

In misdemeanour or petty offence matters, if the appeal judgment and the proceedings are annulled for absence of jurisdiction, the Court of Cassation refers the trial to the judges who ought to hear it and appoints them to do so.

Where the nullity invalidates only one or some of its provisions, the Court of Cassation may annul the decision in part only.

Article 612-1

(Inserted by Law n° 93-1013 of 24 August 15 1993 art 26 Official Journal 25 August 1993, in force 2 September 1993)

In any matter where public order or the proper administration of justice so require, the Court of Cassation may order that the annulment it pronounces shall operate in respect of parties to the proceedings who have not filed a cassation application.

Article 613

In every case where the Court of Cassation is allowed to choose an appeal court or first instance court for the trial of a case that it sends back, this choice may only be the result of a special deliberation taken immediately in chambers. A mention thereof is made in the cassation judgment.

Article 614

A copy of the judgment which granted the cassation application and which ordered the case to be referred to another court is delivered to the prosecutor general attached to the Court of Cassation within three days. This copy is sent with the case file to the prosecutor in charge of the office attached to the first-instance or appeal court to which the case is referred.

The Court of Cassation judgment is served by a bailiff to the parties at the suit of this prosecutor.

A copy is also sent by the prosecutor general attached to the Court of Cassation to the prosecutor in charge of the office attached to the first-instance or appeal court which made the judgment annulled.

Article 615

Where a first-instance or appeal judgment is annulled for a violation of substantial formalities prescribed by law, a copy of the decision is sent to the Minister of Justice.

Article 616

Repealed

Article 617

A judgment dismissing a cassation application, or granting cassation without referring the case back, is delivered within three days to the prosecutor general attached to the Court of Cassation in the form of a copy signed by the clerk. This copy is sent to the prosecutor in charge of the office attached to the first-instance or appeal court which made the first-instance or appeal judgment contested.

It is notified to the parties, at the prosecutor's behest, by a recorded delivery letter with request for acknowledgement of receipt.

Article 618

Where a cassation application is dismissed, the party who filed it may not file a cassation application against the same first-instance or appeal judgment under any pretext or by any means whatsoever.

Article 618-1

(Law nº 2000-516 of 15 June 2000 art. 113 Official Journal of 16 June 2000 in force 1 January 2001)

The court sentences the offender to pay the civil party a sum fixed by the court, in respect of costs not paid by the State, as set out by the civil party. The court takes the convicted person's financial status and equity into account. It may, even on its own motion, decide that for similar reasons that there are no grounds for such an order.

Article 619

(Law n° 79-9 of 3 January 1979 Articles 6 & 8 Official Journal of 4 January 1979 in force on 1 January 1979)

Where, after the initial final-instance judgment has been quashed, the second judgment or decision given on the same case between the same parties acting in the same capacity is challenged on the same grounds, the case is brought before the full bench of the Court of Cassation following the formalities set out by articles L. 131-2 and L. 131-3 of the Code of Judicial Organisation.

CHAPTER VI: CASSATION APPLICATIONS IN THE INTEREST OF THE LAW

Article 620

Where, upon the express orders given to him by the Minister of Justice, the prosecutor general attached to the Court of Cassation reports to the criminal division judicial acts, first-instance or appeal judgments violating the law, these acts or judgments may be annulled .

Article 621

Where an appeal or assize court, a correctional court or a police court has made a final judgment that is liable to cassation, and despite this, none of the parties has filed a cassation application within the given time limit against it, the prosecutor general attached to the Court of Cassation may file an application against the judgment on his own motion and notwithstanding the expiry of the time limit, but solely in the interest of the law. The Court rules on the amissibility and the merits of this application. Where the application is granted, cassation is pronounced, but the parties may not avail themselves of the cassation, nor oppose the enforcement of the decision thereby quashed.

TITLE II: APPLICATIONS FOR RETRIAL

Article 622

(Law nº 89-431 of 23 June 1989 art. 1 Official Journal of 1 July 1989 in force 1 October 1989)

The retrial of a final criminal decision may be applied for in the interest of any person found guilty of a felony or misdemeanour where:

1° after a conviction for homicide, documents are presented which are liable to raise a suspicion that the alleged victim of the homicide is still alive;

2° after a sentence imposed for a felony or misdemeanour, a new first-instance or appeal judgment has sentenced for the same offence another accused or defendant and where, because the two sentences are irreconcilable, their contradiction is the proof of the innocence of one or the other convicted person;

3° since the conviction, one of the witnesses examined has been prosecuted and sentenced for perjury against the accused or defendant; the witness thus sentenced may not be heard in the course of the new trial;

4° after the conviction, a new fact occurs or is discovered which was unknown to the court on the day of the trial, which is liable to raise doubts about the guilt of the person convicted.

Article 623

(Law nº 89-431 of 23 June 1989 art. 2 Official Journal of 1 July 1989 in force 1 October 1989)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

Retrial may be applied for:

1° by the Minister of Justice;

2° by the person convicted or, in the event of an incapacity, by his legal representative;

3° after the death or the declared absence of the person convicted, by his spouse, children, parents, universal legatees or part universal legatees, or by the persons to whom he has given this express mission.

The application for retrial is sent to a commission composed of five Court of Cassation judges, appointed by the general assembly of this Court and one of whom, chosen from the members of the criminal division, acts as president. Five alternate judges are appointed following the same formalities. The office of the public prosecutor is exercised by the general prosecutor general's office attached to Court of Cassation.

After having made directly or through rogatory letters all appropriate inquiries, examinations, confrontations and investigations and received the written or oral observations of the applicant or of his advocate and those of the public prosecutor, this commission refers any application it considers admissible to the criminal division, which rules as a retrial court. The commission makes a reasoned decision which is not open to any form of challenge. This decision is read at a public hearing upon the application of the applicant or of his advocate.

Where the application is based on the last paragraph (4°) of article 622, the commission takes into account all new or unknown matters; these may have been used to support applications previously dismissed.

Article 624

(Law nº 89-431 of 23 June 1989 art. 3 Official Journal of 1 July 1989 in force 1 October 1989)

The commission seised of an application for retrial may at any time order the suspension of the enforcement of the conviction.

The same applies to the retrial court where it is seised of the case.

Article 625

(Law nº 89-431 of 23 June 1989 art. 4 Official Journal of 1 July 1989 in force 1 October 1989)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

If the retrial court considers that the case is not ready for trial, it proceeds as stated in the penultimate paragraph of article 623.

Where the case is ready for trial, the court examines it on the merits and rules by an unappealable reasoned judgment at the close of a public hearing, during which are heard the oral or written observations of the applicant or of his advocate, those of the public prosecutor as well as, if he takes part in the proceedings after having been duly notified, those of the civil party constituted at the trial in respect of which a retrial is petitioned, or the latter's counsel. The court dismisses the application if it considers it unfounded. If, on the contrary, it considers it meritorious, it quashes the conviction imposed. It decides whether it is possible to proceed with a new adversarial hearing. In the affirmative, it refers the accused or defendants to a court of the same order and level, but different from that which made the decision quashed.

If it is impossible to proceed with a new hearing, in particular in case of amnesty, death, insanity, contumacy or the absence of one or more of the convicted persons, non-liability for legal reasons, expiry of the time-limit relating to prosecution or sentence, the retrial court, after having expressly stated this impossibility, rules on the merits in the presence of the civil parties, if any attend the trial, and of the curators it appoints in memory of each of the deceased parties. In this case it quashes only those of the convictions which appear not justified and clears the memory of the deceased, where there is occasion to do so.

If the impossibility of proceeding to a new hearing appears only after the decision made by the retrial court quashing the first-instance or appeal conviction and ordering the transfer of the case, the court, upon the submission of the public prosecutor, cancels its appointment of the designated court and rules as stated in the previous paragraph.

If the annulment of a first-instance or appeal judgment made in respect of a living, convicted person leaves no matter outstanding against him which could be qualified as a felony or misdemeanour, no transfer of the case is made.

The annulment of the conviction entails the cancellation of the relevant entries in the criminal records.

Article 625-1

(Inserted by Law nº 89-431 of 23 June 1989 art. 5 Official Journal of 1 July 1989 in force 1 October 1989)

For the application of articles 623 and 625, the applicant may be represented or assisted by an advocate to the Council of State and to the Court of Cassation or by an advocate lawfully registered with a bar association.

Article 626

(Law nº 89-431 of 23 June 1989 art. 6 Official Journal of 1 July 1989 in force 1 October 1989)

(Law nº 93-2 of 4 January 1993 art. 143 Official Journal of 5 January 1993 in force 1 March 1993)

(Law n° 99-515 of 23 June 1999 Article 25 Official Journal of 24 June 1999)

(Law nº 2000-1354 of 30 December 2000 art. 6 Official Journal of 31 December 2000)

Without prejudice to the provisions of the second and third paragraphs of article L.781-1 of the Judicial Organisation Code, a person who has been convicted but is then recognised to be innocent, under the provisions of the present title, has the right to full compensation for the material and moral damage that the conviction caused him. However, no compensation is due if the person was wrongly convicted on charges that he freely and deliberately admitted in order to enable the real perpetrator to evade justice.

Any person who can prove that this conviction caused him damage may also request compensation under the same conditions.

At the request of the party concerned, the damage is evaluated on expert opinions for both sides obtained under the conditions set out in articles 156 onwards.

The compensation is granted by the senior presiding judge of the appeal court from the juridiction in which the party concerned lives, following the procedure provided for in articles 149-2 to 149-4. If the person requests it, the compensation may also be granted in the judgment which establishes his innocence. In the assize court, the compensation is granted, as in civil matters, by the court sitting without jurors.

This compensation is payable by the State, subject to its action against any civil party, informer, or lying witness who may be responsible for the conviction. It is paid as legal costs in felony, misdemeanour or petty offence matters.

If the applicant so requests, the retrial judgment establishing the innocence of the convicted person is posted up in the town where the conviction was imposed, in the municipality where the felony or misdemeanour was committed, in the municipality where the retrial applicants live, in their place of birth, and where the victim of the miscarriage of justice last resided, if he is deceased. In the same conditions, it is ordered that the decision be inserted into the Official Journal, and that extracts be published in five newspapers chosen by the court which made the decision.

The cost of the publicity provided for above is borne by the Treasury.

TITLE III: RECONSIDERATION OF A CRIMINAL RULING AS A RESULT OF A DECISION OF THE EUROPEAN COURT OF HUMAN RIGHTS

Article 626-1

(Law nº 2000-516 of 15 June 2000 art. 89 Official Journal of 16 June 2000)

The reconsideration of a final criminal decision may be requested for the benefit of any person judged guilty of an offence, where this conviction is held, in a judgment given by the European Court of Human Rights, to have been declared in violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, or its additional Protocols, and where the declared violation, by its nature or seriousness, has led to harmful repercussions for the convicted person, which the "just satisfaction" granted under article 41 of the Convention cannot bring to an end.

Article 626-2

(Law nº 2000-516 of 15 June 2000 art. 89 Official Journal of 16 June 2000)

The re-examination can be requested by:

-the Minister of Justice;

-the prosecutor general of the Court of Cassation;

-the convicted person, or in cases of incapacity, his legal representative;

-the legal successors of the convicted person, if the latter is deceased.

Article 626-3

(Law nº 2000-516 of 15 June 2000 art. 89 Official Journal of 16 June 2000)

(Law nº 2002-307 of 4 March 2002 art. 11 Official Journal of 5 March 2002)

The request for a re-examination is sent to a commission made up of seven judges from the Court of Cassation, appointed by the general assembly of that court; each of the chambers is represented by one of its members, with the exception of the criminal chamber which is represented by two judges, one of whom acts as president of the commission. Seven additional judges are appointed in the same conditions. The public prosecutor's duties are carried out by the prosecutor general's office attached to the Court of Cassation.

The re-examination request must be formulated within a year of judgment delivered by the European Court of Human Rights.

The commission's decision is issued at the end of a public hearing, during which written or oral observations made by the applicant or his advocate and the public prosecutor are received. This decision may not be subject to appeal.

Article 626-4

(Inserted by Law nº 2000-516 of 15 June 2000 art. 89 Official Journal of 16 June 2000)

If it considers the request to be justified, the commission proceeds according to the following provisions:

--If re-examination of the convicted person's application for cassation, carried out in conformity with the provisions of the Convention, is such as to remedy the violation found by the European Court of Human Rights, the commission refers the case to the Court of Cassation, which rules in a plenary session.

--In all other cases, the commission transfers the case to another court of the same type and level as the one which delivered the disputed judgment, subject to the application of the provisions of the third and fourth paragraphs of article 625.

Article 626-5

(Inserted by Law nº 2000-516 of 15 June 2000 art. 89 Official Journal of 16 June 2000)

Suspension of the execution of the sentence may be pronounced at any point during the reconsideration proceedings by the commission or the Court of Cassation.

Article 626-6

(Inserted by Law nº 2000-516 of 15 June 2000 art. 89 Official Journal of 16 June 2000)

For the application of the provisions of the present title, the applicant may be represented or assisted by an advocate attached to the Council of State or the Court of Cassation, or by an advocate who is lawfully registered with a bar association.

Article 626-7

(Inserted by Law nº 2000-516 of 15 June 2000 art. 89 Official Journal of 16 June 2000)

If, at the end of the proceedings, the convicted person is found innocent, the provisions of article 626 are applicable.

BOOK IV

SOME SPECIFIC PROCEEDINGS

TITLE I

CO-OPERATION WITH THE INTERNATIONAL CRIMINAL COURT

CHAPTER I

JUDICIAL CO-OPERATION

SECTION 1: MUTUAL JUDICIAL ASSISTANCE

Article 627

(Ordinance nº 60-259 of 4 June 1959 art. 8 Official Journal of 8 June 1960)

(Law nº 2000-1354 of 30 December 2000 art. 28 Official Journal of 31 December 2000)

(Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

For the application of the International Criminal court statute of 18 July 1998, France participates in the punishment of offences and co-operates with this court under the conditions determined by the present title.

The provisions which follow apply to any person prosecuted by the International Criminal Court or convicted by this court of acts which constitute genocide, crimes against humanity or war crimes, in the sense of articles 6 to 8 and 25 of the statute.

Article 627-1

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Requests for mutual assistance issued by the International Criminal Court are sent to the competent authorities in accordance with article 87 of the statute. The original document or a certified copy may be sent, accompanied by supporting evidence.

These documents are sent to the district prosecutor of Paris, who takes appropriate action.

In urgent cases, these documents may be sent directly to him, by any available means. They are then sent on in the forms provided for in the previous paragraphs.

Article 627-2

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Requests for mutual assistance are carried out, according to the case, by the district prosecutor or the investigating judge of Paris, who act on behalf of the whole French territory, if necessary in the presence of the prosecutor of the International Criminal Court or his representative, or any other person mentioned in the International Criminal Court's request.

The official records made during the carrying out of these requests are sent to the International Criminal Court by the competent authorities, in accordance with article 87 of the statute.

In urgent cases, certified copies of the official records may be sent directly to the International Criminal Court. The official records are sent on afterwards in the forms provided for in the previous paragraphs.

Article 627-3

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

The implementation of the protective measures, described in section k of paragraph 1 of article 93 of the statute, over the whole of the French territory at the Treasury's expense and in accordance with the methods set out in the new Code of Civil Procedure, is ordered by the district prosecutor of Paris. These measures may only remain in place for a maximum of two years. They may be renewed under the same conditions before the expiry of this period at the International Criminal Court's request.

The district prosecutor of Paris transmits to the competent authorities, under article 87 of the statute, any difficulty relating to the execution of these measures, in order that the consultations provided for in articles 93, paragraph 3, and 97 of the statute may take place.

SECTION II: ARRESTS AND TRANSFERS

Article 627-4.

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Arrest applications for the purpose of transfer are delivered to the competent authorities, either in original form or as certified copies accompanied by the appropriate proofs, in accordance with article 87 of the Statute. After ensuring that they are in proper form, these authorities then send them to the prosecutor general of the Appeal Court of Paris, whilst implementing them at the same time over the whole French territory.

In cases of urgency, these requests may also be sent directly, by any available means, to the district prosecutor who is territorially competent. They are then sent on in the forms provided for by the previous paragraph.

Article 627-5

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Any person who is apprehended in accordance with an application for arrest for the purpose of transfer must be handed over within twenty-four hours to the district prosecutor who is territorially competent. During this period, the provisions of articles 63.-1 to 63-5 apply to him.

After checking the person's identity, prosecutor informs him, in a language that he understands, that he is named in an arrest application for the purpose of transfer, and that he must appear before the public prosecutor of the Appeal Court of Paris within five days at the latest. The district prosecutor also informs him that he may be assisted by an advocate of his choice, or failing this, by an advocate officially appointed by the bâtonnier of the order of advocates, who is immediately informed by any available means. The arrested person is also informed by the district prosecutor that he may speak to the appointed advocate immediately.

This information is noted in the official record, which is sent to the public prosecutor of the Appeal Court of Paris as soon as possible.

The district prosecutor orders that the apprehended person be sent to prison.

Article 627-6

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

The apprehended person is transferred, if necessary, and imprisoned in the prison for the area of the Appeal Court of Paris. The transfer must be made within five days at the latest from the time of his appearance before the district prosecutor, failing which the apprehended person is immediately set free on the order of the presiding judge of the investigating chamber of the Appeal Court of Paris, unless the transfer was delayed by insuperable circumstances.

The public prosecutor of the same court informs the apprehended person, in a language that he understands, of the application for arrest for the purpose of transfer, and also of the charges brought against him

If the person apprehended has already requested the presence of an advocate, who has been duly sent for, the public prosecutor hears his statement.

In all other cases, the prosecutor reminds him of his right to choose an advocate or to ask for one to be officially nominated for him. The chosen advocate, or in case of a request for one to be officially nominated the bâtonnier of the order of advocates, is informed at once by any means available. The advocate may look at the case file straight away, and may freely communicate with the apprehended person. The public prosecutor hears the latter's statement after informing him that he is free to not make one. This notification is recorded in the official record.

Article 627-7

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

The proceedings are immediately transferred to the investigating chamber. The wanted person appears before the investigating chamber within a week of his presentation to the public prosecutor. At the request of the latter or of the wanted person, an additional period of a week may be granted before the proceedings. An interrogation is then carried out, of which an official record is made.

The hearing takes place and the judgment is given in open court, unless a public presence would be harmful to the course of the proceedings, the interests of a third party or to human dignity. In these cases the investigating chamber rules by an order made in chambers, on its own motion or at the request of the public prosecutor or the wanted person. This judgment is only open to appeal at the same time as the decree concerning the transfer provided for in article 627-8.

The public prosecutor and the wanted person are heard, the latter assisted by his advocate if there is one and, if necessary, an interpreter.

Article 627-8

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Where the investigating chamber finds that there is no obvious error, it orders that the wanted person be handed over and, if the latter is free, his imprisonment for this purpose. All other questions submitted to the investigating chamber are sent to the International Criminal Court, which takes the appropriate action.

The investigating chamber rules within fifteen days of the wanted person's appearance before it. Where an appeal is lodged, the criminal chamber of the Court of Cassation rules within two months of the Court of Cassation's receipt of the case file.

Article 627-9

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

The investigating chamber of the Appeal Court of Paris can be requested to grant the detainee's release at any time, and proceeds in accordance with article 59 of the Statute and the procedure provided for in articles 148-1 onwards of the present Code.

The investigating chamber rules in a decree given in open court, justified by reference to the provisions of paragraph 4 of the aforementioned article 59.

Article 627-10

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

The International Criminal Court is notified, by any available means, of the decree made by the investigating chamber and, if appropriate, the place and date of the transfer of the wanted person, as well as the length of time the person has been detained in order to effect this transfer, by the competent authorities in accordance with article 87 of the statute.

The wanted person is handed over within a month from the day this decision becomes final, failing which he is immediately released on the ruling of the presiding judge of the investigating chamber, unless the transfer was delayed by insuperable circumstances.

Article 627-11

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

The provisions of articles 627-4 to 627-10 are also applicable if the wanted person has been prosecuted or convicted in France on charges other than the ones specified in the International Criminal Court's application. However, in these circumstances the detainee cannot benefit from being released in accordance with articles 627-6, 627-9 and the second paragraph of article 627-10.

The transfer of proceedings before the International Criminal Court suspends the prescription of the prosecution and the sentence in relation to the person concerned.

Article 627-12

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Transit through French territory is sanctioned by the competent authorities in accordance with article 87 of the statute

Article 627-13

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Where the court seeks an extension to the conditions of the transfer granted by the French authorities, the request is sent to the competent authorities, in accordance with article 87 of the Statute, who communicate it to the investigating chamber of the Appeal Court of Paris together with all the evidence and any statement of the party concerned.

If, after examining the submitted documents and, where appropriate, the explanations of the advocate for the party concerned, the investigating chamber finds that there is no obvious error, it grants the requested extension.

Article 627-14

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

A person who has been taken into preventative custody under the conditions provided for in article 92 of the statute may, if he consents to this, be handed over to the International Criminal Court, in accordance with article 87 of the statute, before the competent authorities have been seised of an official request for the transfer on the part of the international court.

The transfer decision is made by the investigating chamber of the Appeal Court of Paris after the latter has informed the person concerned of his right to an official transfer procedure, and has obtained his consent.

During his hearing before the investigating chamber, the person concerned may be assisted by an advocate of his choice, or failing this, an advocate officially nominated by the bâtonnier of the order of advocates and, if necessary, an interpreter.

A person who has been taken into preventative custody under the conditions provided for in article 92 of the statute, and has not consented to be handed over to the court may be freed if the competent authorities in accordance with article 87 do not receive the official transfer request within the time limit set out by the international court's regulations governing procedure and evidence.

Release is decided by the investigating chamber on an application made by the party concerned. The investigating chamber rules within eight days of the arrested person's appearance before it.

Article 627-15

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Any person detained on French territory may, if they agree, be transferred to the International Criminal Court in order to be identified or heard, or for any other investigative act to be carried out. The transfer is authorised by the Minister of Justice.

CHAPTER II: THE EXECUTION OF SENTENCES AND COMPENSATION IN FAVOUR OF VICTIMS

SECTION I: THE EXECUTION OF FINES AND CONFISCATION ORDERS AND COMPENSATION IN FAVOUR OF VICTIMS

Article 627-16

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Where the International Criminal Court so requests, the enforcement of fines and seizures or decisions relating to compensation pronounced by that court is authorised by the correctional court of Paris, which is seised of the case by the district prosecutor. The procedure followed in the correctional court follows the rules contained in the present Code.

The court is bound by the International Criminal Court's decision, including orders affecting the rights of third parties. However, in cases where a confiscation order is carried out, it may order any measures designed to ensure recovery of the value of the product, assets or holding that the court has ordered to be confiscated, where it appears that the confiscation order cannot be carried out. The court hears the convicted person as well as any other person who has rights over these assets, if necessary by letters rogatory. These persons may be represented by an advocate.

Where the court finds that the enforcement of a confiscation or compensation order could harm a bona fide third party who cannot appeal against the order, it informs the district prosecutor for the purpose of sending the matter back to the International Criminal Court, which takes the necessary action.

Article 627-17

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

The authorisation for execution which the correctional court orders under the previous article involves, in accordance with the decision of the International Criminal Court, the transfer of the value of the fines and the confiscated assets or the proceeds of their sale to the court or to a fund for victims. These assets or sums may also be awarded to the victims, if the court so decides and has so designated them.

Any challenge concerning the allocation of the proceeds of the fines, assets or the proceeds of their sale is sent to the International Criminal Court, which takes the necessary action.

SECTION II: THE EXECUTION OF PRISON SENTENCES

Article 627-18

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

Where, in accordance with article 103 of the statute, the Government has agreed to take in a person convicted by the International Criminal Court in order for him to serve his prison sentence in French territory, the sentence imposed is immediately enforceable from the transfer of this person onto French soil, for the part of the sentence that remains to be served.

Subject to the provisions of the statute and the present section, the enforcement and the application of the sentence are governed by the provisions of the present Code, with the exception of articles 713-1 to 713-7.

Article 627-19

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

On his arrival on French territory, the transferred person is presented to the district prosecutor of the area he arrives in, who interrogates him to establish his identity, this being noted in an official record. However, if the interrogation cannot be carried out immediately, the person is taken to prison, where he may be detained for a period not exceeding twenty-four hours. At the end of this period, he is automatically taken before the district prosecutor, as arranged by the head of the prison.

After considering the documents stating the agreement between the French government and the International Criminal Court relating to the transfer of the person concerned, a certified copy of the conviction judgment, and a court notification of the start date for the enforcement of the sentence and the length of time that remains to be served, the district prosecutor orders the immediate imprisonment of the convicted person.

Article 627-20

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

If the convicted person lodges a request to be placed abroad, or for partial liberty, reduction in his sentence, for his sentence to be suspended or to be served in parts, for placement under electronic surveillance or for release on parole, his request is sent to the public prosecutor at the appeal court for the area where the convicted person is imprisoned. The district prosecutor sends this request on to the Minister of Justice.

The latter sends the request to the International Criminal Court as soon as possible, together with all the relevant documents.

The International Criminal Court decides if the convicted person may or may not benefit from the considered measure. Where the Court's decision is negative, the government indicates to the court whether it agrees to keep the convicted person on French territory or if it intends to request his transfer to another State appointed by the court.

TITLE IA: CONTUMACIES

Article 627-21

(Inserted by Law nº 2002-268 of 26 February 2002 art. 1 Official Journal of 27 February 2002)

When, after an indictment decision, the accused has neither appeared nor been arrested within ten days of the notification being made to his home, or when after appearance or arrest he then escapes, the presiding judge of the assize court or, in his absence, the presiding judge of the court where the assizes are held, or the judge who replaces him, makes a ruling that he is obliged to appear again within a new time limit of ten days, failing which he will be declared a rebel against the law, his rights as a citizen will be suspended, his assets will be impounded during the investigation of the contumacy, legal proceedings of all kinds will be barred to him during the same period, that proceedings will continue against him, and any person who knows of his whereabouts will be obliged to make them known.

This ruling also contains a reference to the felony and the arrest order.

Article 628

This order is inserted within a week in one of the newspapers of the département and posted on the door of the domicile of the accused, on that of the town hall of his municipality and on that of the courtroom of the assize court.

The prosecutor general sends a copy of this order to the head of the public domain services of the contumacious person's home.

Article 629

The trial of the contumacious person proceeds after a delay of ten days.

Article 630

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2002-268 of 26 February 2002 art. 2 Official Journal of 27 February 2002)

No advocate or attorney may present himself for the contumacious accused. However, if the accused is completely unable to obey the command contained in the order provided for by article 627, his family members or his friends may offer his excuses.

Article 631

If the court considers the excuse legitimate, it orders the trial of the accused to be stayed and, where appropriate, the sequestration of his property to be stayed during a period of time determined in the light of the nature of the excuse and the distance of the location.

Article 632

(Ordinance nº 60-259 of 4 June 1959 art. 8 Official Journal of 8 June 1960)

(Law n° 94-89 of 1 February 1994 Article 10 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 2000-1354 of 30 December 2000 art. 29 Official Journal of 31 December 2000)

(Law nº 2002-268 of 26 February 2002 art. 2 Official Journal of 27 February 2002)

Except in this case, the committal decision is read to the assize court, as are the service of the process intended to secure the presence of the contumacious person, and the official records drafted to prove its publication and posting.

After this reading, the court, on the prosecutor general's submissions, rules upon the contumacy.

If any of the formalities prescribed by articles 627-21 and 628 were omitted, the court declares the contumacy procedure void and orders it to be resumed starting from the first illegal step.

If this is not the case, the court rules on the accusation without the assistance of jurors. It then rules on the civil claims.

Article 633

If the contumacious person is convicted, his property is kept sequestered unless it is confiscated, and, once the conviction has become irrevocable on the expiry of the period available for the retrial of the contumacy, account of the sequestration is rendered to whoever is then is entitled to it.

Article 634

An extract of the conviction is inserted as quickly as possible at the order of the prosecutor general in one of the newspapers of the département of the last known domicile of the convicted person.

It is also posted on the door of his last domicile, on the door of the town hall of the municipality where the felony was committed and on that of the courtroom of the assize court.

The same extract is sent to the head of the public domain services of the domicile of the person contumaciously sentenced.

Article 635

From the moment the publicity measures prescribed by the previous article are implemented, the convicted person is subjected to all the disabilities provided for by law.

Article 636

A cassation application is not open to a person sentenced contumaciously.

Article 637

Under no circumstance may the contumacy of an accused suspend or delay as of right the investigation made in respect of his co-accused who are present.

After the trial of the latter, the court may order the restitution of any articles deposited at the court office as exhibits, when these are claimed by the owners or beneficiaries. Where appropriate, it may also order such restitution only on condition that they are represented.

This restitution is preceded by an official record of description drafted by the clerk.

Article 638

During the sequestration, relief may be granted to the wife, children and ascendants of the person sentenced contumaciously if they are in want.

An order is made by the presiding judge of the district court of the domicile of the person sentenced contumaciously, after hearing the opinion of the head of the public domain services.

Article 639

If the person sentenced contumaciously gives himself up or if he is arrested before the sentence is extinguished by limitation, the judgment and the proceedings made subsequently to the order to appear are automatically void and proceedings in respect of him continue in the ordinary manner.

Where the sentenced imposed on conviction included confiscation in favour of the State, the measures taken to enforce this penalty

remain valid. If the decision which is made after the eventual reappearance of the person sentenced contumaciously does not uphold the confiscation, the net product of the sale of any property sold and any assets not liquidited, in the state they are then in, are returned to the person concerned.

Article 640

In the case set out in the previous article, if for any reason certain witnesses are unable to appear at the hearing, their written statements and if necessary the written answers of the other persons accused of the same felony are read at the hearing. The same applies to any other evidence which the presiding judge considers to be useful for the discovery of the truth.

Article 641

(Law nº 93-2 of 4 January 1993 art. 132 Official Journal of 5 January 1993 in force 1 March 1993)

The court may order that the publicity measures prescribed by article 634 shall apply to any judicial decision made in favour of the the person sentenced contumaciously.

TITLE II: FORGERY

Article 642

Where the district prosecutor is informed that a document which is alleged to be a forgery is listed in a public depository or is proved to be in a public depository, the district prosecutor may go to such depository in order to proceed with all necessary examinations and inspections.

The district prosecutor may not delegate the powers given above to a judicial police officer.

The district prosecutor may in case of urgency order the removal of the suspect documents to the court office.

Article 643

In the course of every judicial investigation concerning forgery of written documents, the investigating judge orders the document alleged to be a forgery to be deposited at the court office as soon as is it produced before him, or is placed under judicial safekeeping. He affixes his signature to it, as does the clerk, who drafts a deposit instrument which describes the state of the document.

However, the investigating judge may order that the document be duplicated by photography or by any other means before it is deposited at the court office.

Article 644

The investigating judge may receive information from any person he considers to be appropriate, and may seize any documents for the purpose of comparison. These documents are signed by the judge and the clerk, who prepares a description of these documents as stated in the previous article.

Article 645

On the order of the investigating judge, any public depository of documents alleged to be forgeries or to have been used as the basis for forgeries is bound to hand over to him any such documents and, as appropriate, to supply for comparison documents that are in his possession.

If the documents thus handed over by a public officer or seized when in his hands are authenticated instruments, he may ask to be left with a copy certified true by the clerk, or a reproduction made by photography or other means.

The copy or reproduction is filed with the original office copies until the return of the original document.

Article 646

If in the course of a first-instance or appeal court hearing a document in the file or a document produced is alleged to be a forgery, the court decides, after having heard the observations of the public prosecutor and the parties, whether the case should be stayed until the court with jurisdiction has ruled on the forgery.

If criminal liability for the offence of forgery is extinguished or proceedings cannot be instituted, and where it does not appear that the person who produced the document had used a forged document knowingly, the first-instance or appeal court seised of the case rules on the nature of the document alleged to be a forgery as in interlocutory matters.

Article 647

(Law n° 67-523 of 3 July 1967 art 20-i Official Journal 4 July 1967 in force 1 January 1968)

A forgery application made against a document produced before the Court of Cassation is sent to the presiding judge of the Court of Cassation. It is filed with the court office. It is signed by the applicant or by an advocate to the Council of State and to the Court of Cassation or by an agent with a special power of attorney. In this last case, the power of attorney is attached to the instrument drafted by the clerk. If the person who files the application cannot sign, the clerk makes a note of this.

Article 647-1

(Inserted by Law n° 67-523 of 3 July 1967 art 20-ii Official Journal 4 July 1967 in force 1 January 1968)

The Presiding judge of the Court of Cassation rules within one month from the filing of the application with the court office, after hearing the opinion of the public prosecutor.

He makes a dismissal order or an order granting leave to file a forgery application.

In the event of a dismissal the applicant, unless he is expressly granted an exemption, is ordered to pay a fine the rate of which is determined by Decree.

Article 647-2

(Inserted by Law n° 67-523 of 3 July 1967 art 20-ii Official Journal 4 July 1967 in force 1 January 1968)

The order granting leave to file a forgery application is served on the respondent within fifteen days with a summons requiring him to state whether he intends to use the document alleged to be a forgery.

A copy of the application and of the order granting the permission to file a forgery application is attached to this summons.

Article 647-3

(Inserted by Law n° 67-523 of 3 July 1967 art 20-ii Official Journal 4 July 1967 in force 1 January 1968)

The respondent must state within fifteen days whether or not he intends to make use of the document alleged to be a forgery.

This statement is served on the applicant.

Article 647-4

(Inserted by Law n° 67-523 of 3 July 1967 art 20-ii Official Journal 4 July 1967 in force 1 January 1968)

Where the respondent intends to use the document alleged to be a forgery, the Presiding judge of the Court of Cassation must order the parties to apply to the court he designates for the trial of the interlocutory forgery procedure in accordance with the law.

TITLE III: PROCEEDINGS IN THE EVENT OF DISAPPEARANCE OF DOCUMENTS OF A FILE

Article 648

Where through any extraordinary circumstance original copies of judgments made in felony, misdemeanour or petty offence matters and not yet enforced, or where proceedings are pending and the copies made in accordance with article 81 have been destroyed, removed or lost and where it has not been possible to restore them, the following procedure applies.

Article 649

If a copy or authenticated copy of the first-instance or appeal judgment exists, it is considered as the original copy and consequently handed over by any public officer or any depositary to the court office of the court which made the decision, on an order given to him by the presiding judge of this court.

This order counts as a discharge from his duty.

Article 650

Where in felony matters no copy nor authenticated copy of the judgment exist, but the finding of the court and jury entered on the question sheet as stated in article 364 is still in existence, a new judgment is drafted on the basis of this finding.

Article 651

Where the finding of the court and jury cannot be produced, or where the case was tried contumaciously and no such documents exist, the investigation is resumed starting from the point from which documents are missing.

The same applies in any matter where no copy or authenticated copy of the decision remain in existence.

TITLE IV: THE WAY IN WHICH THE STATEMENTS OF MEMBERS OF THE GOVERNMENT AND THOSE OF REPRESENTATIVES OF FOREIGN POWERS ARE RECEIVED

Article 652

(Law nº 2000-516 of 15 June 2000 art. 35 Official Journal of 16 June 2000 in force 1 January 2001)

The Prime Minister and the other members of the Government may appear as witnesses only after being authorised to do so by the Council of Ministers, upon the report of the Minister of Justice.

This authorisation is granted by a decree.

The provisions of this article do not apply to members of the Government who are heard as assisted witnesses.

Article 653

Where an appearance takes place pursuant to the authorisation provided for under the previous article, the statement is recorded with the ordinary formalities.

Article 654

Where an appearance has not been requested or has not been authorised, a statement is taken in writing at the residence of the witness by the president of the appeal court, or by the presiding judge of the district court where he resides, if the witness resides outside the town which is the seat of the appeal court.

The court seised of the case will send for this purpose to the judge designated above a statement of the facts of the case, together with a list of requests and questions upon which the testimony is required.

Article 655

The witness statement thus received is immediately handed to the court office or sent under a closed and sealed envelope to the court office of the requesting court and communicated forthwith to the public prosecutor as well as to the parties concerned.

It is read publicly and subjected to debate at the assize court hearing.

Article 656

The written statement of the representative of a foreign power is requested through the intermediary of the Minister for Foreign Affairs. If the application is granted, the statement is received by the president of the appeal court or by a judge delegated by him.

Matters then proceed in the manner set out in articles 654, paragraph 2, and 655.

TITLE V: SETTLING OF JURISDICTIONAL CONFLICTS

Article 657

(Law nº 85-1407 of 30 December 1985 art. 69, 87, 94 Official Journal of 31 December 1985 in force 1 February 1986)

Where two investigating judges belonging to the same court or to different courts are simultaneously seised of the same offence, the public prosecutor may in the interests of the proper administration of justice request that one judge divest himself of the case in favour of the other. This divestment only takes place if the two judges agree. Where the conflict of jurisdiction continues, the matter proceeds where necessary under the provisions of articles 84, 658 or 659.

Article 658

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Where two correctional courts, two investigating judges or two police courts belonging to the same appeal court jurisdiction are simultaneously seised of the same case, the conflict of jurisdiction is settled by the investigating chamber, which rules on the application made by the public prosecutor or by the parties. This decision may be challenged by a cassation application.

Article 659

(Ordinance nº 60-259 of 4 June 1959 art. 2 Official Journal of 8 June 1960)

(Law nº 93-2 of 4 January 1993 art. 209 Official Journal of 5 January 1993 in force 1 March 1993)

All other jurisdictional conflicts are brought before the criminal division of the Court of Cassation, which is seised of the case by an application made by the public prosecutor or by the parties. The Court of Cassation, when seised of an application for cassation, may also settle a conflict of jurisdiction on its own motion, or even in advance. It may rule on all the decisions made by the court it relieves of the case.

Article 660

(Ordinance nº 60-259 of 4 June 1959 art. 2 Official Journal of 8 June 1960)

The criminal division may order the application to be communicated to the parties before settling the conflict of jurisdiction. In this case the file documents are transmitted together with the observations of the persons concerned to the Court within the time limit it determines, and the proceedings are stayed.

Article 661

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

The ruling settling the jurisdictional conflict is served on the parties concerned. Except where communication of the application was ordered, the parties may file an application to set aside this decision by filing a declaration at the court office of the place where one of the conflicting courts has its seat, following the formalities and time limits for a cassation application.

The application to set aside has a suspensive effect if the criminal division so decides.

The application to set aside is ruled upon within fifteen days from the arrival of the documents at the court office at the Court of Cassation. If the application is dismissed, the criminal division may sentence the applicant to a € 15 civil fine.

TITLE VI: TRANSFERS FROM ONE COURT TO ANOTHER

Article 662

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 89-461 of 6 July 1989 art. 15 Official Journal of 8 July 1989 in force 1 December 1989)

(Law n° 93-2 of 4 January 1993 art 103Official Journal 5 January 1993, in force 1 March 1993)

In felony, misdemeanour and petty offence matters, the criminal division of the Court of Cassation may relieve any investigation or trial court and transfer the case to another court of the same level for grounded suspicion of bias.

The application for a transfer may be presented either by prosecutor general attached to the Court of Cassation, or by the public prosecutor attached to the court referred to, or by the parties.

The application must be served on all the parties concerned, who have ten days in which to file a statement of case with the court office of the Court of Cassation.

The presentation of the application does not have a suspensive effect unless the Court of Cassation orders otherwise.

Article 663

(Law nº 85-1407 of 30 December 1985 art. 70, 87 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 210Official Journal 5 January 1993, in force 1 March 1993)

Where two investigating judges belonging to the same court or to different courts are simultaneously seised of related offences, or different offences for which the same person or persons are under judicial examination, the public prosecutor may in the interests of the proper administration of justice, and notwithstanding the provisions of articles 43, 52 and 382, request that one of the judges divest himself of the case in favour of the other. The divestment takes place if the two judges agree. In the event of a disagreement the provisions of article 664 are applied if necessary.

Where a person convicted of a custodial sentence is detained at the seat of the court which imposed the conviction, whether final or not, the district prosecutor, the investigating judge, the first-instance and appeal courts of this place of detention are competent to deal with all other offences imputed to him, subject to the rules prescribed by articles 43, 52 and the first paragraph of article 382.

Article 664

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 75-701 of 6 August 1975 art. 16 Official Journal of 7 August 1975)

(Law nº 85-1407 of 30 December 1985 art. 71 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 211Official Journal 5 January 1993, in force 1 March 1993)

Where the person under judicial examination or a defendant is held in custody in pursuance of a decision ordering pre-trial detention, or by reason of the enforcement of a sentence, the public prosecutor may in the interests of the proper administration of justice, and in particular to avoid the detainee being transferred, request the transfer of the proceedings from the investigation or trial court seised of the case to that of the place of detention. The matter then proceeds as for the settlement of a conflict of jurisdiction.

Article 665

(Law n° 93-2 of 4 January 1993 art 104Official Journal 5 January 1993, in force 1 March 1993)

The transfer of a case from one court to another may be ordered by the criminal division on public security grounds, but only upon the application of the prosecutor general attached to the Court of Cassation.

The transfer may also be ordered in the interests of the proper administration of justice by the criminal division either upon the application of the prosecutor general attached to the Court of Cassation, or upon the application of the prosecutor general attached to the appeal court within whose jurisdiction the court seised of the case has its seat, either on his own initiative or upon the application of the parties.

If he does not endorse it, the prosecutor general attached to the appeal court informs the applicant of the reasons for his decision within

ten days from the reception of the application. The latter may then file an appeal before the prosecutor general attached to the Court of Cassation who, if he does not refer the case to the criminal division, notifies him of the reasons for his decision.

The criminal division rules within a week from the application.

Article 665-1

(Law n° 93-2 of 4 January 1993 art 105Official Journal 5 January 1993, in force 1 March 1993)

The transfer may also be ordered by the criminal division if the court normally competent cannot be lawfully composed, or if the course of justice is otherwise interrupted.

The application for a transfer may be presented either by the prosecutor general attached to the Court of Cassation, or by the public prosecutor attached to the court seised of the case.

The application must be served on all the parties concerned, who have ten days in which to file a statement of case with the court office of the Court of Cassation.

The criminal division rules within fifteen days of the application.

Article 666

(Law n° 93-2 of 4 January 1993 art 107Official Journal 5 January 1993, in force 1 March 1993)

Any decision ruling on a transfer application for one of the causes mentioned above will be served on the parties concerned at the suit of the prosecutor general attached to the Court of Cassation.

Article 667

(Law n° 93-2 of 4 January 1993 art 106Official Journal 5 January 1993, in force 1 March 1993)

A decision dismissing a transfer application made for public security grounds, for the reasons stated under the first paragraph of article 665-1, for a grounded suspicion of bias or in the interests of the proper administration of justice does not preclude a renewed transfer application based on events occurring subsequently.

Article 667-1

(Law n° 99-515 of 23 June 1999 Article 26 Official Journal of 24 June 1999)

If the normally competent court cannot be composed due to incompatibilities provided for by law, the senior presiding judge of the appeal court may order a transfer to the neighbouring court within the jurisdiction of this appeal court, and appointed in the ruling provided for by the last paragraph of the present article.

The transfer request is presented by the district prosecutor of the court seised of the case.

All the parties concerned are notified of this request, and have ten days within which to present their remarks to the senior presiding judge.

The senior presiding judge rules within fifteen days of the request. His decision constitutes a judicial administrative measure which may not be subject to appeal.

Every year, after hearing the views of the presiding judges of the first instance courts concerned and of the district prosecutor, the senior presiding judge makes a ruling for each of the courts within his jurisdiction, indicating the court before which proceedings are liable to be transferred in accordance with the provisions of the present article. This order cannot be modified during the course of the year.

TITLE VII: CHALLENGES

Article 668

Any first-instance or appeal judge may be challenged on the grounds stated below:

1° if the judge or his spouse are family members or relations by marriage to one of the parties, or of his spouse, up to the degree of cousin born of first cousin inclusively;

The challenge may be brought against the judge even in the case of divorce or death of the spouse, if the judge was related by marriage to one of the parties up to the second degree inclusively;

2° if the judge or his spouse, or any persons for whom he acts as guardian, deputy guardian, trustee or judicial counsel, or any companies or associations in the administration or supervision of which he is involved, have an interest in the dispute;

3° if the judge or his spouse are family members of, or related by marriage to, the guardian, deputy-guardian, trustee or judicial counsel of one of the parties or of an administrator, director or manager of a company party to a dispute, up to the degree stated above;

4° if the judge or his spouse are in a situation of dependency in relation to one of the parties;

5° if the judge was involved in the case in the capacity of judge or prosecutor, arbitrator or counsel or if he made a witness statement as to the facts of the case;

6° if legal proceedings have taken place between the judge, his spouse, their family members or relations by marriage in direct line, and any of the parties, his spouse or family members or relations by marriage in the same line;

7° if the judge or his spouse are involved in proceedings in which one of the parties is a judge;

8° if the judge or his spouse, their family members or relations by marriage in direct line are involved in a dispute on a question similar to that in dispute between the parties;

9° if anything has taken place between the judge or his spouse and one of the parties sufficiently serious to put his impartiality in question.

Article 669

(Law n° 93-2 of 4 January 1993 art 212Official Journal 5 January 1993, in force 1 March 1993)

The person under judicial examination, the defendant, the accused and any party to the case who wishes to challenge an investigating judge, a police court judge, or one or more or all of the judges of the correctional court, of the appeal court or the assize court, must under penalty of nullity file an application with the president of the appeal court.

The members of the public prosecutor's office may not be challenged.

The application must identify by name the judge or judges challenged and include a statement of the grounds alleged together with any relevant evidence in support of the application.

A party who has voluntarily referred a case to an appeal court, a first instance court or an investigating judge is only permitted to challenge the court by reason of circumstances which appeared subsequently, and which are of a kind liable to constitute a cause for recusation.

Article 670

The president of the appeal court communicates the application filed with him by administrative channels to the presiding judge of the court to which the challenged judge belongs.

The application does not entail the replacement of the judge whose recusation is sought. However, the president of the appeal court may, after hearing the opinion of the public prosecutor, order a stay in the investigation, the hearing, or the giving of judgment.

Article 671

The president of the appeal court receives the applicant's additional statement of case, where appropriate, and that of the judge whose recusation is proposed. He takes the advice of the public prosecutor and rules on the application.

No remedy is open against the order ruling on the challenge. It comes into effect as of right.

Article 672

Any request for recusation brought against the president of the appeal court must be made in the form of an application sent to the senior presiding judge of the Court of Cassation who, after hearing the opinion of the prosecutor general attached to this Court, makes a ruling that is not open to any type of recourse. The provisions of article 670 are applicable.

Article 673

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

Any order dismissing a challenge application carries a civil fine for the applicant of between €75 and €750.

Article 674

None of the first-instance or appeal judges specified in article 668 may recuse themselves on their own motion without the authorisation of the presiding judge of the appeal court, whose decision, made after hearing the opinion of the public prosecutor, is not open to any type of recourse.

Article 674-1

(Inserted by Law n° 67-523 of 3 July 1967 art 22 Official Journal 4 July 1967 in force 1 January 1968)

An application directed against a Court of Cassation judge seised of a criminal case must be reasoned. It is filed with the court office. The assistance of an advocate is not compulsory.

Article 674-2

(Inserted by Law n° 67-523 of 3 July 1967 art 22 Official Journal 4 July 1967 in force 1 January 1968)

The competent division rules within one month from the filing of the application with the court office, after receiving the observations of the judge challenged.

For the rest of the procedure, the provisions of Book II, Title XX, of the civil procedure code are applicable.

[Note: see the New Code of Civil Procedure, Book I, title X, chapter II.]

TITLE VIII: TRIAL OF OFFENCES COMMITTED IN THE COURSE OF COURT HEARINGS

Article 675

(Law n° 82-506 of 15 June 1982 art 7Official Journal 16 June 1982)

(Law n° 93-2 of 4 January 1993 art 107Official Journal 5 January 1993, in force 1 March 1993)

Subject to the provisions of articles 342 and 457, offences committed during a hearing are dealt with by the court, either own motion or upon the submissions of the public prosecutor, in accordance with the following provisions and any particular rules as to competence or procedure notwithstanding.

Article 676

If a petty offence is committed during a hearing , the court drafts an official record of the facts, hears the defendant, the witnesses, the public prosecutor and (as may be) the defence counsel, and imposes immediately the penalties provided for by law.

Article 677

(Law n° 93-2 of 4 January 1993 art 108Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 94-89 of 1 February 1994 Article 10 Official Journal of 2 February 1994 in force on 2 February 1994)

If the offence committed during the hearing of a correctional or appeal court is a misdemeanour, proceedings may be taken as under the previous article. If in such a case the sentence imposed is in excess of one month imprisonment, a committal order may be issued.

If the offence qualified as a misdemeanour is committed at a hearing of a police court, the presiding judge drafts an official record thereof which he transmits to the district prosecutor; he may, if the sentence incurred is in excess of six months imprisonment, order the arrest of the perpetrator and his immediate appearance before the district prosecutor.

As an exception to the previous provisions, where in the course of a hearing of a court the misdemeanour of contempt set out by article 434-24 of the Criminal Code was committed, the presiding judge drafts an official record thereof which he transmits to the district prosecutor. The judges who took part in the hearing during the commission of the misdemeanour may not form part of the court before which the prosecution takes place.

Article 678

If the offence committed is a felony, the court interrogates the perpetrator after having him arrested and drafts an official record of the facts; this court transmits the documents and orders the immediate appearance of the perpetrator before the competent district prosecutor who initiates a judicial investigation.

TITLE IX: Repealed

Article 679

(Repealed by law n° 93-2 of 4th January 1993)

Article 680 to 688

Repealed

TITLE IX: OFFENCES COMMITTED OUTSIDE THE TERRITORY OF THE REPUBLIC

CHAPTER I: JURISDICTION OF FRENCH COURTS

Article 689

(Law n° 75-624 of 11 July 1975 art 11 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 92-1336 of 16 December 1992 art. 60 & 61 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

Perpetrators of or accomplices to offences committed outside the territory of the Republic may be prosecuted and tried by French courts either when French law is applicable under the provisions of Book I of the Criminal Code or any other statute, or when an international Convention gives jurisdiction to French courts to deal with the offence.

Article 689-1

(Law n° 75-624 of 11 July 1975 art 12 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 92-1336 of 16 December 1992 art. 60 & 61 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

In accordance with the international Conventions quoted in the following articles, a person guilty of committing any of the offences listed by these provisions outside the territory of the Republic and who happens to be in France may be prosecuted and tried by French courts. The provisions of the present article apply to attempts to commit these offences, in every case where attempt is punishable.

Article 689-2

(Law nº 85-1407 of 30 December 1985 art. 72-i & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 92-1336 of 16 December 1992 art. 60 & 61 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

For the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10th December 1984, any person guilty of torture in the sense of article 1 of the Convention may be prosecuted and tried in accordance with the provisions of article 689-1.

Article 689-3

(Law nº 87-541 of 16 July 1987 art. 1 Official Journal of 18 July 1987)

(Law nº 92-1336 of 16 December 1992 art. 60 & 61 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

For the implementation of the European Convention on the Suppression of Terrorism, signed in Strasbourg on 27th January 1977, and the Dublin agreement of 4th December 1979, made between the member states of the European Communities concerning the implementation of the European Convention for the Suppression of Terrorism, any person guilty of any of the following offences may be prosecuted and tried in accordance with the provisions set out in article 689-1:

1° intentional offences against life, torture and acts of barbarity, violence which caused death, mutilation or permanent infirmity or, if the victim is a minor, total incapacity to work for more than eight days, abduction and sequestration punished by Book II of the Criminal Code, and also threats as covered by articles 222-17, paragraph 2, and 222-18 of that Code where the offence is committed against a person entitled to an international protection including diplomatic agents;

2° offences against freedom of movement defined in article 421-1 of the Criminal Code or any other felony or misdemeanour entailing the use of bombs, grenades, rockets, automatic fire weapons, booby-trapped letters or parcels, insofar as this use creates a danger for persons, where the felony or misdemeanour is in relation to an individual or collective undertaking aimed at seriously breaching public order by intimidation or terror.

Article 689-4

(Law no. 89-434 of 30 June 1989 Article 2 Official Journal of 1 July 1989)

(Law nº 92-1336 of 16 December 1992 art. 60 & 61 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

For the implementation of the Convention on the Physical Protection of Nuclear Material, open for signature in Vienna and New York on 3rd March 1980, any person guilty of any of the following offences may be prosecuted and tried in accordance with the provisions of article 689-1:

1° the misdemeanour set out by article 6-1 of law n° 80-572 of 25th July 1980, concerning the protection and control of nuclear substances,

2° the misdemeanours of unlawful appropriation set out by article 6 of the above mentioned law n° 80-572 of 25th July 1980, intentional assault against the life or physical integrity of a person, theft, extortion, blackmail, embezzlement, breach of trust, receiving stolen goods, destruction, defacement or damage or threat to commit an offence against persons or property, as defined by Books II and III of the Criminal Code, where the offence was committed with the use of nuclear materials falling within the scope of articles 1 and 2 of the Convention, or was committed in relation to these substances.

Article 689-5

(Law n° 90-1143 of 21 December 1990 Article 4 Official Journal of 26 December 1990)

(Law nº 92-1336 of 16 December 1992 art. 60 & 61 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

For the implementation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Procotol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf signed in Rome on 10th March 1988, any person guilty of any of the following offences may be prosecuted and tried in accordance with the provisions set out in article 689-1:

1° felonies defined in articles 224-6 and 224-7 of the Criminal Code;

2° intentional offences against life or physical integrity, destruction, defacement or damage, threats to commit an offence against persons or property punished by books II and III of the Criminal Code, or the misdemeanours defined by article 224-8 of that Code and by article L. 331-2 of the Maritime Harbours Code, if the offence endangers or is liable to endanger the safety of maritime navigation or of a fixed platform on the continental shelf;

3° intentional offences against life, torture and acts of barbarity or acts of violence punished by Book II of the Criminal Code, if the offence is related either to the offence defined under point 1°, or one or more offences liable to endanger the safety of sea-lanes or of a platform specified under point 2°.

Article 689-6

(Law nº 92-1336 of 16 December 1992 art. 60 & 61 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

For the implementation of the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16th December 1970, and of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23rd September 1971, any person guilty of the following offences may be prosecuted and tried in accordance with the provisions set out in article 689-1:

1° highjacking of an aircraft not registered in France and any other act of violence directed against the passengers or crew, and committed by the presumed perpetrator of the hijacking, when directly connected with this offence,

2° any offence concerning an aircraft not registered in France and listed among those enumerated by a), b) and c) of point 1° of article 1 of the above-mentioned Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Article 689-7

(Law nº 92-1336 of 16 December 1992 art. 60 & 61 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

For the implementation of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24th February 1988, as a complement to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed in Montreal on 23rd September 1971, any person guilty of the following offences committed with the use of a device, a substance or a weapon may be prosecuted and tried in accordance with the provisions set out in article 689-1:

1° if the offence breaches the safety or tends to breach the safety of an airport assigned to international civil aviation:

a) intentional attacks on life, torture and acts of barbarity, acts of violence causing death, mutilation or permanent infirmity or, if the victim is a minor, a total incapacity to work in excess of eight days, punished by book II of the Criminal Code, when the offence has been committed in an airport assigned to international civil aviation,

b) destruction, defacement and damage punished by book III of the Criminal Code, where the offence has been committed against the installations of an airport assigned to international civil aviation or an aircraft standing in the airport and not in use,

c) the misdemeanour set out in paragraph four (point 3°) of article L. 282-1 of the Civil Aviation Code, where the offence has been committed against the installations of an airport assigned to international civil aviation or an aircraft standing in the airport and not in use,

2° of the offence set out in paragraph 6 (point 5°) of article L. 282-1 of the Civil Aviation Code, where it has been committed against the services of an airport assigned to international civil aviation.

Article 689-8

(Law nº 2000-595 of 30 June 2000 art. 4 Official Journal of 1 July 2000)

For the application of the Protocol to the Convention on the Protection of the Communities' Financial Interests made in Dublin on 27th September 1996 and of the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union made in Brussels on 26th May 1997, the following can be prosecuted and judged under the conditions provided for in article 689-1:

1° Any community civil servant working for one of the European Communities' institutions or for an organisation created in accordance with the treaties instituting the European Communities and having its seat in France, who is guilty of the misdemeanour provided for in article 435-1 of the Criminal Code or of an offence which damages the financial interests of the

European Communities, in the sense of the Convention on the Protection of the Communities' Financial Interests made in Brussels on 26th July 1995;

2°Any French person or any other member of the French civil service guilty of any of the misdemeanours provided for in articles 435-1 and 435-2 of the Criminal Code or of an offence which damages the financial interests of the European Communities in the sense of the Convention on the Protection of the Communities' Financial Interests made in Brussels on 26th July 1995;

3° Any person guilty of the misdemeanour provided for in article 435-2 of the Criminal Code or of an offence which damages the financial interests of the European Communities in the sense of the Convention on the Protection of the Communities' Financial Interests made in Brussels on 26th July 1995, where these offences are committed against a French national.

Article 689-9

(Inserted by Law nº 2000-516 of 15 June 2000 art. 138 Official Journal of 16 June 2000)

For the application of the International Convention for the Suppression of Terrorist Bombings, opened for signture in New York on 12th January 1998, any person guilty of a felony or a misdemeanour constituting a terrorist act defined by articles 421-1 and 421-2 of the Criminal Code or of a misdemeanour of belonging to a terrorist group provided for by article 421-2-1 of the same Code, and where the offence was committed using an explosive or deadly device defined by article 1 of the aforesaid Convention, may be prosecuted and tried under the conditions provided for in article 689-1.

Article 689-10

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 33 Official Journal of 16 November 2001)

For the application of the International Convention for the Suppression of the Financing of Terrorism, opened for signature in New York on 10 January 2000, where this offence constitutes financing terrorist acts in the sense of article 2 of the aforesaid Convention, any person guilty of a felony or a misdemeanour defined by articles 421-1 to 421-2-2 of the Criminal Code may be prosecuted and judged under the conditions provided for in article 689-1.

Article 690 and 691

Repealed

CHAPTER II: INITIATION OF PROSECUTION AND COURTS WITH AREA JURISDICTION

Article 692

(Law nº 93-2 of 4 January 1993 art. 213 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 92-1336 of 16 December 1992 art. 63 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

In the cases set out in the preceding chapter, no prosecution may be initiated against a person who proves that he has been finally tried abroad for the same matters and, in the case of conviction, that the sentence has been served or extinguished by limitation.

Article 693

(Law nº 92-1336 of 16 December 1992 art. 63 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

(Law nº 2000-595 of 30 June 2000 art. 5 Official Journal of 1 July 2000)

The court with jurisdiction is the one where the accused resides, that of his last known residence, that of the place where he was found, that of the residence of the victim or, if the offence was committed aboard or against an aircraft, that of the place where the aircraft landed. These provisions do not preclude the eventual application of the specific rules of jurisdiction set out in articles 697-3, 705, 706-1 and 706-17.

Where the provisions of the previous paragraph cannot be implemented, the court with jurisdiction is that of Paris, unless the case is sent for trial by the Court of Cassation to a court nearer to the place of the offence, upon the application of the public prosecutor or the request of the parties.

TITLE X: INTERNATIONAL JUDICIAL CO-OPERATION

Article 694

(Law n° 75-624 of 11 July 1975 art 13 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 92-1336 of 16 December 1992 art. 64 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

Requests for mutual assistance coming from foreign judicial authorities are enforced, according to the origin of the request or the nature

of the proceedings sought, in the forms provided for by the present Code for inquiry, investigation or trial hearing.

The request for mutual assistance must be enforced in the forms set out for judicial investigation, where it requires particular procedural acts which may only be ordered or carried out by an investigating judge.

The request for mutual assistance must be enforced in the forms set out for trial hearing where it must be carried out in open court after due hearing of the parties. It is then entrusted, if necessary, to the correctional court, sitting in the formation provided for in the third paragraph of article 398, or to the police court.

Article 695

(Law nº 92-1336 of 16 December 1992 art. 64 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

For the application of article 53 of the Convention signed at Schengen on 19th June 1990, the prosecutor general of the court of appeal area is responsible for sending the requests for mutual assistance to the competent judicial authorities, and ensuring the return of the enforcement documents.

Article 696

(Law n° 75-624 of 11 July 1975 art 14 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 82-621 of 21 July 1982 art. 2 Official Journal of 22 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 64 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

For the urgent return of the enforcement documents between the French judicial authorities and the other states who are part of the Convention signed at Schengen on 19th June 1990, the powers conferred on the Minister of Justice by paragraph 2 of article 15 of the European Convention on Mutual Assistance in Criminal Matters, made in Strasbourg on 20th April 1959 are exercised by the prosecutor general of the court of appeal area.

Article 696-1

(Inserted by Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

Judicial authorities seeking an urgent act of mutual assistance in criminal matters may, in the context of the Conventions in force, submit the matter to the competent authorities of the requested state, in order to obtain the return of the documents relating to the requested act as soon as possible.

Article 696-2

(Inserted by Law n° 99-515 of 23 June 1999 Article 30 Official Journal of 24 June 1999)

Judicial authorities seised of a request for mutual assistance in international criminal matters which in their view if implemented could damage national security, public order or other fundamental national interests, take the necessary steps to permit the competent authorities to assess what action to take.

TITLE XI: MILITARY FELONIES AND MISDEMEANOURS, AND FELONIES AND MISDEMEANOURS AGAINST THE FUNDAMENTAL INTERESTS OF THE NATION

CHAPTER I: THE PROSECUTION, INVESTIGATION AND TRIAL OF MILITARY FELONIES AND MISDEMEANOURS IN TIME OF PEACE

SECTION I: JURISDICTION

Article 697

(Ordinance nº 60-259 of 4 June 1959 art. 2 Official Journal of 8 June 1960)

(Law nº 82-621 of 21 July 1982 art. 2 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

Within the jurisdictional area of each appeal court, a first instance court is competent for the investigation and, in the case of misdemeanours, the trial of the offences mentioned in article 697-1.

Judges are appointed to the trial benches of this court specialised in military matters after hearing the opinion of the general assembly.

An assize court has jurisdiction in the same area for the trial of the felonies mentioned in article 697-1.

A Decree taken after the joint report of the Minister of Justice and the Minister of Defence fixes the list of these courts.

Article 697-1

(Law nº 82-621 of 21 July 1982 art. 3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

The courts specified in article 697 try the military offences set out by Book III of the Military Justice Code. They also try the ordinary felonies and misdemeanours committed in the performance of their duties by the military, as defined by articles 61 to 63 of the Military Justice Code.

These courts have jurisdiction in respect of all adults, perpetrators and accomplices, who have taken part in the offence.

By way of exception to the provisions of the first paragraph above, these courts may not try ordinary offences committed by the military members of the Gendamerie in the performance of their judicial police or administrative police duties. They nevertheless retain jurisdiction in respect of these persons for offences committed in the upholding of law and order.

If the correctional court specified in article 697 declares itself incompetent to try the matters of which it is seised, it refers the case to the public prosecutor, who proceeds as he sees fit. It may, after hearing the public prosecutor's submissions, issue by the same decision a committal order or an arrest warrant against the defendant.

Article 697-2

Repealed

Article 697-3

(Law nº 82-621 of 21 July 1982 art. 3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

The territorial jurisdiction of the courts mentioned in article 697 is determined in accordance with articles 43, 52, 382 and 663. The courts of the place of posting or embarkation also have jurisdiction. In addition, the court with territorial jurisdiction for the staff on board ships under escort is the one to which the personnel of the escorting ship would be referred.

SECTION II: PROCEDURE

Article 698

(Law nº 63-22 of 15 January 1963 art. 1 Official Journal of 16 January 1963)

(Law nº 81-737 of 4 August 1981 art. 1 Official Journal of 5 August 1981)

(Law nº 82-621 of 21 July 1982 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 99-929 of 10 November 1999 art. 58 Official Journal of 11 November 1999)

The offences which fall under the jurisdiction of the courts mentioned in article 697 are investigated and tried acccording to the rules of the present Code, subject to the particular provisions enacted by articles 698-1 to 698-9.

However, the competent district prosecutor pursuant to article 43 has the authority to carry out or oversee the carrying out of emergency procedural steps and to request the investigating judge of his seat of office for this purpose. The provisions of articles 698-1 to 698-5 are then applicable.

Article 698-1

(Law nº 82-621 of 21 July 1982 art. 3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

Subject to the implementation of article 36, prosecution is initiated by the district prosecutor with area jurisdiction, who assesses what action to take in respect of matters brought to his attention, in particular by denunciation made by the Minister of Defence or by the military authority he delegates. In the absence of such denunciation, the district prosecutor must apply for the opinion of the Minister of Defence or the military authority accredited by him prior to any prosecution step, except in the event of a flagrant felony or misdemeanour. Except where the case is urgent, this opinion is given within one month. The opinion is sought by any means available, of which a mention is entered into the case file.

Under penalty of nullity, the denunciation or opinion is attached to the case file, except where this opinion was not given within the aforementioned time limit, or in case of urgency.

The military authority mentioned under the first paragraph of the present article is accredited by a decision of the Minister of Defence.

Article 698-2

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 99-929 of 10 November 1999 art. 59 Official Journal of 11 November 1999)

Civil action for compensation for damage caused by any of the offences mentioned under the first paragraph of article 697-1 is open to the persons who have personally suffered from harm directly caused by the offence. Criminal proceedings may be instituted by the injured party under the conditions determined by articles 85 onwards.

Article 698-3

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

Where the district prosecutor, the investigating judge and judicial police officers are led either to establish the existence of offences within military premises, or to search such premises for persons or articles in relation to these offences, they must send a submission for permission to enter the premises to the military authority.

Except in case of necessity, the submissions must state the nature and grounds for the investigations considered necessary. The military authority is compelled to submit to them and is represented during the operations.

The district prosecutor, the investigating judge and the judicial police officers observe the prescriptions governing military secrets, together with the accredited representative of the military authority. The representative of the military authority is bound to observe the secrecy of inquiries and judicial investigation.

Article 698-4

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

His hierarchical superiors must grant the application made by the judicial police officers requesting that a serviceman on the active list be placed at their disposal where the requirements of the investigation, the execution of a rogatory letter or of a judicial warrant require this measure.

Article 698-5

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 214 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 99-929 of 10 November 1999 art. 60 Official Journal of 11 November 1999)

Articles 73 to 77, 93, 94, 137, 204, 349, 357, 366, 368, 369, 371, 373, 374, 375, 377 and the second paragraph of article 384 of the Military Justice Code are applicable. In accordance with article 135 of this same Code, the person under judicial examination, the defendant or the convicted serviceman must be detained in separate premises.

Article 698-6

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 & 67 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 136 Official Journal of 16 June 2000)

(Law nº 2000-1354 of 30 December 2000 art. 20 Official Journal of 31 December 2000)

By way of exception to the provisions of Title I of Book II, and in particular to articles 240 and 248, first paragraph, and subject to the provisions of article 698-7, the assize court provided for in article 697 is composed of a presiding judge together with, when the court rules in the first instance, six assessors, or when the court rules on appeal, eight assessors. These assessors are appointed as stated under paragraphs 2 and 3 of article 248 and articles 249 to 253.

The court thus composed enforces the provisions of Title I of Book II subject to the following reservations:

1° no account is taken of the provisions mentioning the jury or jurors;

2° the provisions of articles 254 to 267, 282, 288 to 292, 293, paragraphs 2 and 3, 295 to 305 are not applicable;

3° for the implementation of articles 359, 360 and 362, the decisions are taken by a majority vote.

By way of exception to the provisions of the second paragraph of article 380-1, in cases where a decision made by the assize court, made

up as stated in the present article, is appealed against, the criminal division of the Court of Cassation may appoint the same assize court, but made up of different members, to hear the appeal.

Article 698-7

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The provisions of article 698-6 are applicable only for the trial of ordinary felonies committed in the course of the performance of their duties by military personnel where there exists a risk that national defence secrets will be disclosed.

Where placement under judicial examination is made pursuant to article 214, first paragraph, the investigating chamber states if necessary that a risk of disclosure of national defence secrets exists, and orders that the assize court seised of the case be composed in accordance with the provisions of article 698-6.

Article 698-8

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

The courts with jurisdiction to try the offences specified by Book III of the Military Justice Code may also impose the military penalties of dismissal and loss of rank.

Article 698-9

(Law nº 99-929 of 10 November 1999 art. 61 Official Journal of 11 November 1999)

By stating in their decision that publicity risks divulging a national defence secret the trial courts mentioned in article 697 may rule, in a decision given in open court, that the proceedings will take place in camera. Where this has been ordered, it also applies to the pronouncement of any separate decisions on points of law or exceptions.

The decision on the merits of the case is always pronounced in open court.

CHAPTER II: COURTS WITH JURISDICTION IN TIMES OF WAR, OF MOBILISATION, OF STATE OF SIEGE OR URGENCY

Article 699

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 63-22 of 15 January 1963 art. 1 Official Journal of 16 January 1963)

(Law nº 74-631 of 5 July 1974 art. 13 Official Journal of 7 July 1974)

(Law nº 81-737 of 4 August 1981 art. 2 Official Journal of 5 August 1981)

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

Military courts are immediately established in times of war.

Until their effective establishment, the cases falling within their jurisdiction are brought before the courts mentioned in article 697. These courts transfer such cases to the military courts as soon the latter requests this.

Article 699-1

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

Where the Government decides to implement measures relating to mobilisation or alert as provided for by legislative order n° 59-147 of 7th January 1959 governing the general organisation of defence, the provisions of the Military Justice Code for times of war may be made applicable by a decree taken by the Council of ministers on the report of the Minister of Justice and the Minister of Defence.

Article 700

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 63-22 of 15 January 1963 art. 1 Official Journal of 16 January 1963)

(Law nº 81-737 of 4 August 1981 art. 2 Official Journal of 5 August 1981)

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

Where there is a state of siege or a state of emergency, a decree taken by the Council of Ministers on the report of the Minister of Justice and of the Minister of Defence may set up territorial military courts under the conditions provided for by the Military Justice Code.

The jurisdiction of such courts derives from the provisions of the Military Justice Code for times of war and of the special provisions of the laws governing the state of siege or the state of emergency.

As far as procedure in concerned, the laws governing the state of siege and the state of emergency are only applicable where compatible with military criminal procedure provisions applicable in times of war.

CHAPTER III: FELONIES AND MISDEMEANOURS COMMITTED AGAINST THE FUNDAMENTAL INTERESTS OF THE NATION

Article 701

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 63-22 of 15 January 1963 art. 1 Official Journal of 16 January 1963)

(Law nº 81-737 of 4 August 1981 art. 2 Official Journal of 5 August 1981)

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65 Official Journal of 23 December 1992 in force 1 March 1994)

In times of war, felonies and misdemeanours against the fundamental interests of the nation and their related offences are investigated and tried by the military courts as stated in the Military Justice Code.

However, the district prosecutor is competent to take or to cause to be taken any steps required in emergency and to seise to this end the investigating judge of his seat of office. The provisions of articles 698-1 to 698-5 are then applicable.

He must divest himself of the case or request the investigating judge to be relieved of the case as soon as the emergency has ended.

Article 702

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 63-22 of 15 January 1963 art. 1 Official Journal of 16 January 1963)

(Law nº 81-737 of 4 August 1981 art. 2 Official Journal of 5 August 1981)

(Law nº 82-621 of 21 July 1982 art.3 Official Journal of 3 July 1982 in force 1 January 1983)

(Law nº 92-1336 of 16 December 1992 art. 65, 68 & 69 Official Journal of 23 December 1992 in force 1 March 1994)

In times of peace, felonies and misdemeanours against the fundamental interests of the nation are investigated and tried by the ordinary courts and in accordance with the rules of the present Code.

Where the actions prosecuted constitute a felony or a misdemeanour set out and punished by articles 411-1 to 411-11 and 413-1 to 413-12 of the Criminal Code or a related offence, jurisdiction is given to the courts provided for by articles 697 and 698-6.

If the correctional court mentioned in article 697 declares itself incompetent to judge the matters referred to it, it sends the case back to the public prosecutor to proceed as he sees fit. It may, after hearing the public prosecutor, issue by the same decision a committal order or an arrest warrant against the defendant.

TITLE XII: APPLICATIONS MADE FOR THE LIFTING OF PROHIBITIONS, DISQUALIFICATIONS OR INCAPACITIES OR PUBLICITY MEASURES

Article 702-1

(Law nº 92-1336 of 16 December 1992 art. 70 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 94-475 of 10 June 1994 art. 90 Official Journal of 11 June 1994 in force 1 October 1994)

(Law nº 2000-516 of 15 June 2000 art. 52 and 96 Official Journal of 16 June 2000 in force 1 January 2001)

Any person punished by a prohibition, disqualification or incapacity or publicity measure whatsoever, following automatically from a criminal sentence or imposed on conviction as an additional sentence, may apply to the court which imposed the conviction or, in the event of a plurality of convictions, to the court which last decided, in order to be relieved in whole or in part of this prohibition, disqualification or incapacity, including in respect of its length. If the conviction was imposed by an assize court, the court with jurisdiction to decide on the application is the investigating chamber within whose area jurisdiction the assize court has its seat.

Where the application is made in respect of a disqualification, prohibition or incapacity imposed pursuant to article 201 of law n° 85-98 of

25th January 1985 governing the judicial reconstruction and liquidation of businesses, the court may only grant relief if the person concerned has made sufficient contribution to the payment of the liabilities of the debtor. The court may grant under the same conditions relief from any prohibitions, disqualifications and incapacities deriving from fraudulent bankruptcy convictions imposed pursuant to articles 126 to 149 of law n° 67-563 of 13th July 1967 governing judicial reconstruction, asset liquidation, personal and fraudulent bankruptcies.

Except where the measure stems automatically from a criminal sentence, the application may only be filed with the competent court at the end of a six month period running from the initial conviction. Where this initial application is refused, a further application may only be filed six months after this refusal. The same applies to any subsequent applications.

The provisions of the second paragraph (1°) of article 131-6 of the Criminal Code which allow suspension of a driving licence to be limited to driving outside professional activities are applicable where the request for a relief of prohibition or incapacity concerns the suspension of a driving licence.

Article 703

(Law nº 63-22 of 15 January 1963 Official Journal of 16 January 1963)

(Law n° 72-1226 of 29 December 1972 Article 47 Official Journal of 30 December 1972)

(Law n° 75-624 of 11 July 1975 art 42 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 92-1336 of 16 December 1992 art. 71 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 143 Official Journal of 5 January 1993 in force 1 March 1993)

Any application made by a person convicted in order to be relieved of a prohibition, disqualification or incapacity or publicity measure pursuant to the provisions of the first paragraph of article 702-1 states the date of the conviction as well as the places where the applicant has resided since his conviction or release.

It is sent according to the case either to the district prosecutor or to the prosecutor general who collects any relevant information, obtains where necessary the opinion of the post-sentencing judge and refers the case to the competent court.

The court seised of the case rules in chambers, on the submissions of the public prosecution and after hearing the applicant or his counsel who are summoned in due form. If it appears necessary to hear a detained convicted person, the provisions of article 712 of the present Code may be applied.

When it is made without the applicant or his counsel being present, the decision is served on the application of the public prosecutor. It may, according to the case, be appealed against or referred to the Court of Cassation.

A note of the decision by which a convicted person is relieved in whole or in part of a prohibition, disqualification or incapacity or publicity measure is made in the margin of the conviction judgment and in the criminal records.

TITLE XIII: PROSECUTION, INVESTIGATION AND TRIAL OF OFFENCES IN ECONOMIC AND FINANCIAL MATTERS

Article 704

(Law n° 75-701 of 6 August 1975 Article 3 Official Journal of 7 August 1975)

(Law n° 94-89 of 1 February 1994 Article 2 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 96-392 of 13 Mai 1996 art. 3 Official Journal of 14 Mai 1996)

(Law nº 2000-595 of 30 June 2000 art. 4 Official Journal of 1 July 2000)

(Law nº 2003-706 of 1 August 2003 art. 15 Official Journal of 2 August 2003)

In the jurisdictional area of each appeal court, one or more district courts are competent under the conditions provided for in the present Title for the prosecution, investigation and, in the case of misdemeanours, the trial of the following offences in the cases which are or appear to be of great complexity:

1° misdemeanours under articles 222-38, 313-1, 313-2, 313-4, 313-6, 314-1, 314-2, 324-1, 324-2, 432-10 to 432-15, 433-1, 433-2, 434-9, 435-1 and 435-2 of the Criminal Code;

2° misdemeanours under law n° 66-537 of 24 July 1966 on commercial companies;

3° misdemeanours under law n° 85-98 of 25 January 1985 governing the judicial consolidation and liquidation of businesses;

4° misdemeanours under the Construction and Housing Code;

5° misdemeanours under the Intellectual Property Code;

6° misdemeanours under articles 1741 to 1753 bis A of the General Tax Code;

7° misdemeanours under the Customs Code;

8° misdemeanours under the Urban Planning Code;

9° misdemeanours under the Consumer Code;

10° misdemeanours under law n° 84-46 of 24 January 1984 governing the operations and the supervision of money-lending institutions;

11° Repealed

12° misdemeanours under law n° 83-628 of 12 July 1983 governing games of chance;

13° misdemeanours under the law of 28 March 1885 on forward transactions markets;

14° misdemeanours under law n° 88-1201 of 23 December 1988 governing institutions for the collective investment of securities and creating common debt funds;

15° misdemeanours under law n° 86-897 of 1 August 1986 reforming the legal rules governing the press;

16° misdemeanours under ordinance n° 86-1243 of 1 December 1986 governing the freedom of prices and competition.

This jurisdiction extends to related offences.

A decree fixes the list and the jurisdictional area of these courts. Judges are appointed to the investigation and trial divisions specialised in economic and financial matters, made on the advice of the general assembly of these courts.

Article 704-1

(inserted by Law nº2003-706 of 1 August 2003 Article 15 I Official Journal of 2 August 2003)

Only the district court in Paris is competent to investigate and try misdemeanours provided for by articles L.465-1 and L.465-2 of the Financial and Monetary Code. This jurisdiction extends to connected offences. The public prosecutor and Paris's investigating judge exercise their powers over the whole of the territory of the French Republic.

Article 705

(Law n° 75-701 of 6 August 1975 Article 3 Official Journal of 7 August 1975)

(Law n° 90-614 of 12 July 1990 Article 21 Official Journal of 14 July 1990)

(Law nº 92-1336 of 16 December 1992 art. 71 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 94-89 of 1 February 1994 Article 2 Official Journal of 2 February 1994 in force on 2 February 1994)

For the prosecution, the investigation and, in the case of misdemeanours, the trial of the offences set out in article 704 and their related offences, the district prosecutor, the investigating judge and the specialised correctional court bench specified in the same article have a jurisdiction that is concurrent with that deriving from articles 43, 52, 382, 663 (second paragraph) and 706-42.

Where they hold jurisdiction for the prosecution and investigation of offences falling within the scope of article 704, the district prosecutor and the investigating judge exercise their duties over the whole territorial area determined pursuant to article 704.

The court seised of the case remains competent whatever the offences specified in the closing order or by the judgment made in the case, subject to the implementation of the provisions of articles 181 and 469. If the matters in question constitute a petty offence, the investigating judge orders the case to be sent to the competent police court pursuant to article 522.

Article 706

(Law n° 75-701 of 6 August 1975 Article 17 Official Journal of 7 August 1975)

(Law n° 94-89 of 1 February 1994 Article 5 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law n° 98-546 of 2 July 1998 Article 91 Official Journal of 3 July 1998)

Category A or B civil servants as well as graduates from a four-year university course in economics, finance, law or sociology who fulfil the conditions of entry into the civil service and who have at least four years' work experience may work as specialist assistants in one or more appeal or first instance courts mentioned in article 704.

Specialist assistants help the judges under whom they are placed with the running of the proceedings, but are not competent to act of their own accord.

They have access to the case file in order to carry out their duties and are subject to professional secrecy, which, if disregarded, carries the penalties set out in article 226-13 of the Criminal Code.

The mode of application of the present article, and in particular the length of time for which the specialist assistants are appointed and the way they take their oath, is set out in a Decree of the Council of State.

Article 706-1

(Law n° 75-701 of 6 August 1975 Article 17 Official Journal of 7 August 1975)

(Law n° 93-2 of 4 January 1993 art 215 Official Journal 5 January 1993, in force 1 March 1993)

(Law n° 94-89 of 1 February 1994 Article 5 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 2000-595 of 30 June 2000 art. 5 Official Journal of 1 July 2000)

For the public prosecution, investigation and trial of the offences set out in articles 435-3 and 435-4 of the Criminal Code, the district prosecutor for Paris, the investigating judge and the Paris correctional court exercise a concurrent jurisdiction to the one which results from the application of articles 43, 52, 282, the second paragraph of article 663 and article 706-42.

Where they are competent to investigate and prosecute the offences provided for in articles 435-3 and 435-4 of the Criminal Code, the district prosecutor and the investigating judge for Paris exercise their remit over the whole national territory.

Article 706-2

(Law n° 75-701 of 6 August 1975 Article 17 Official Journal of 7 August 1975)

(Law n° 94-89 of 1 February 1994 Article 5 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law n° 2002-303. of 4 March 2002 Article 4 Official Journal of 5 March 2002)

The territorial jurisdiction of a district court may be enlarged to the jurisdiction of one or more appeal courts for the prosecution, investigation and, in misdemeanour cases, trial of the offences set out below in cases involving health products as defined by article L.5311-1 of the Public Health Code, or food products intended for humans or animals, where these are or appear to be particularly complex:

- attacks on human life, in the sense of Title II of Book II of the Criminal Code;

-offences provided for by the Public Health Code;

-offences provided for by the Rural Code or the Consumer Code;

The provisions of the last two paragraphs of article 704 and 705 are applicable to the specialist divisions for investigation and judgment provided for by the present title.

II. Under the conditions set out in article 706, category A or B civil servants working for the ministers responsible for health, research and agriculture, as well as persons who hold a professional qualification defined by decree and with a minimum of four years' professional experience may carry out the duties of specialist assistants in health matters.

TITLE XIV: INDEMNITY PROCEEDINGS OPEN TO CERTAIN VICTIMS OF DAMAGES CAUSED BY OFFENCES

Article 706-3

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law nº 83-608 of 8 July 1983 art. 15 Official Journal of 9 July 1983 in force 1 September 1983)

(Law nº 85-1407 of 30 December 1985 art. 73 & 94 Official Journal of 31 July 1985)

(Law n° 90-589 of 6 July 1990 Article 2 Official Journal of 11 July 1990)

(Law nº 92-1336 of 16 December 1992 art. 73 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 2000-1257 of 23 December 2000 Article 53 Official Journal of 24 December 2000)

Any person who has suffered harm caused by an intentional or non intentional action which has the material characteristics of an offence may obtain full compensation for the damage deriving from offences against the person when the following cumulative conditions exist:

1° these offences do not fall under the scope of article 53 of the law for the financing of social security for 2001 (n2000-1257 of 23rd December 2000), L. 126-1 of the Insurance Code, or of chapter I of law n° 85-677 of 5th July 1985 for the improvement of the situation of traffic accident victims and the acceleration of compensation procedures, and were not caused by hunting or destroying vermin;

2° these actions:

- either have brought about death, permanent incapacity or total incapacity for work for more than one month;

- or are set out and punished by articles 222-22 to 222-30 and 227-25 to 227-27 of the Criminal Code;

3° the person injured is a French national; or if this is not the case, the actions were committed on the national territory and the person injured is:

- either a citizen from one of the Member States of the European Economic Community;

- or, subject to the provisions of international treaties and agreements, a regular resident on the day of the offence or of the application.

Compensation may be refused or its amount reduced if the victim is at fault.

Article 706-4

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law nº 83-608 of 8 July 1983 art. 16 Official Journal of 9 July 1983 in force 1 September 1983)

(Law n° 92-665 of 16 July 1992 Article 36 Official Journal of 17 July 1992)

The compensation is awarded by a commission set up within the jurisdiction of each first instance court. This commission is in the nature of a civil court ruling at first instance.

The commission is composed of two judges of the first instance court and a person with French nationality and holding full civic rights, who has distinguished himself by the interest he shows for victims' problems. It is presided over by one of the judges.

The members of the commission and their deputies are appointed for a three- year term by the general assembly of the judges of the court.

The public prosecutor's duties are exercised by the district prosecutor or one of his deputies.

Decree of the Council of State determines the rules of implementation of the present article.

Article 706-5

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law nº 81-82 of 2 February 1981 art. 95 Official Journal of 3 February 1981)

(Law nº 83-608 of 8 July 1983 art. 17 Official Journal of 9 July 1983 in force 1 September 1983)

(Inserted by Law n° 90-589 of 6 July 1990 Article 3 Official Journal of 11 July 1990)

(Law nº 2000-516 of 15 June 2000 art. 117 Official Journal of 16 June 2000 in force 1 January 2001)

Under sentence of foreclosure, the indemnity application must be filed within three years from the date of the offence. This time limit is extended where criminal proceedings have been initiated and only expires one year after the decision of the court which made a final ruling on the public prosecution or on the civil action brought before the criminal court. Where the perpetrator of an offence mentioned in articles 706-3 and 706-14 is sentenced to pay damages, the one-year time limit runs from the time of notification given by the court applying article 706-15. However, the commission relieves the applicant from the foreclosure where he was not in a position to enforce his rights within the stated time limit, or where the harm he suffered has worsened, or for any other legitimate ground.

Article 706-6

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law nº 83-608 of 8 July 1983 art. 18 Official Journal of 9 July 1983 in force 1 September 1983

(Law n° 90-589 of 6 July 1990 Article 4 Official Journal of 11 July 1990)

The commission or its president may carry out or oversee the carrying out of any appropriate hearings and investigations, and professional secrecy may not be raised against them. In particular, they may require to be sent to themselves a copy of the official record of the offence or any documents relating to the criminal proceedings, even when they are still continuing. They may also request:

1° any person or administration, to communicate information about the professional, financial, fiscal or social situation of the persons liable to answer for the damage caused by the offence or of the applicant;

2° any State service, public body, social security institution, benefit agency or insurance company liable to indemnify all or part of the damage, to communicate information in respect of their eventual obligations.

The information thus collected may not be used for any purpose other than the investigation of the indemnity application, and its disclosure is prohibited.

The president of the commission may grant one or more interim payments at any stage of the proceedings. A ruling is made within one month of the application for an interim payment.

Article 706-7

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law n° 90-589 of 6 July 1990 Article 5 Official Journal of 11 July 1990)

Where a criminal prosecution is initiated, the commission's decision may be made before the outcome of the prosecution is decided.

The commission may for the implementation of the final paragraph of article 706-3 stay its ruling until the final decision of the criminal court. It must stay its ruling in every case when the victim so requests.

The hearing takes place and the decision is made in chambers.

Article 706-8

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law n° 90-589 of 6 July 1990 Article 6 Official Journal of 11 July 1990)

Where the court ruling on the civil claims has granted compensation which is higher than the indemnity granted by the commission, the victim may apply for further compensation. He must file his application within one year from the day when the decision ruling on the civil claims became final.

Article 706-9

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law nº 83-608 of 8 July 1983 Official Journal of 9 July 1983 in force 1 September 1983)

(Law n° 90-589 of 6 July 1990 Article 7 Official Journal of 11 July 1990)

The commission takes the following into account when calculating the sum granted to the victim as compensation for his harm:

- any allowances paid by organisations, institutions and services managing a compulsory social security regime and by those mentioned in articles 1106-9, 1234-8 and 1234-20 of the Rural Code;

- any allowances listed under point II of article 1 of legislative order n° 59-76 of 7th January 1959 governing actions for civil indemnification against the State and certain other public bodies;

- any sums paid out for the refund of medical treatment and rehabilitation expenses;

- any salaries and allowances accessory to the salary maintained by the employer during the period of inactivity following the event which caused the damage;

- any daily allowances for illness and invalidity benefits paid by mutualist associations governed by the Mutual Insurance System Code.

It also takes into account indemnities of any kind received or to be received of other persons responsible for the same damage.

The sums granted are paid by the guarantee fund for the victims of terrorist acts and other offences.

Article 706-10

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law nº 83-608 of 8 July 1983 Article 19 Official Journal of 9 July 1983 in force 1 September 1983)

(Law n° 90-589 of 6 July 1990 Article 8 Official Journal of 11 July 1990)

Where, after the payment of the indemnity has been made, the victim receives any of the allowances or indemnities mentioned in article 706-9 on the basis of the same harm, the fund may apply to the commission which granted the indemnity to order the total or part refund of the indemnity or interim payment.

Article 706-11

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977)

(Law nº 83-608 of 8 July 1983 Official Journal of 9 July 1983 in force 1 September 1983)

(Law n° 90-589 of 6 July 1990 Article 9 Official Journal of 11 July 1990)

The fund is subrogated to the rights of the victim, to obtain from the persons responsible for the damage caused by the offence or bound for any reason to make total or partial indemnification for it, the refund of any indemnity or interim payment it has paid, to the extent that these persons may be liable.

The fund may exercise its rights through any appropriate action, including by filing a civil party petition before the criminal court, and may commence them even in the course of appeal proceedings. Where it files a civil party petition by a recorded delivery letter, the fund may apply for the refund of the sums charged to it without being subject to a limit, notwithstanding the provisions of article 420-1.

For the implementation of the provisions of article 706-9 and of the present article, the fund may apply to the district prosecutor to request any person or administration to communicate information on the professional, financial, fiscal or social situation of the persons answerable for the damage. The district prosecutor may not be met by a claim of professional secrecy. The information thus collected may not be used for other purposes than those provided for by the present article. Its disclosure is prohibited.

Article 706-12

(Law nº 77-5 of 3 January 19877 Official Journal of 4 January 1977 in force 4 March 1977)

If the victim or his beneficiaries file a civil party petition with the criminal court or if they initiate an action against the persons responsible for the damage, they must state, whatever the stage of the proceedings, whether they have applied to the commission set up by article 706-4 and, where applicable, whether the commission has granted them an indemnity.

Failing such indication, the nullity of the judgment in respect of its civil provisions may be petitioned by any person concerned, within two years from the day when said judgment became final.

Article 706-13

Repealed

Article 706-14

(Law nº 81-82 of 2 February 1981 art. 98 Official Journal of 3 February 1981)

(Inserted by Law n° 90-589 of 6 July 1990 Article 10 Official Journal of 11 July 1990)

(Law nº 91-647 of 10 July 1991 art. 74 Official Journal of 13 July 1991 in force 1 January 1992)

(Law nº 2000-516 of 15 June 2000 art. 118 Official Journal of 16 June 2000 in force 1 January 2001)

Any person who is the victim of theft, fraud, a breach of trust, extorsion of money, or of the destruction or damage of an asset belonging to him, and cannot obtain the reparation or an effective and sufficient indemnification of his harm on any basis, and consequently finds himself in a serious financial or psychological situation, may be granted an indemnity under the conditions of articles 706-3 (3° and last paragraph) to 706-12, where his income is lower than the maximum for being granted partial legal aid provided for by article 4 of law n° 91-647 of 10th July 1991 governing legal aid, account being taken, where appropriate, of his family expenses.

The maximum of the indemnity is three times the monthly amount of this income limit.

These provisions are also applicable to any persons specified in article 706-3 who, as victims of offences against the person, as set out in that article, are not allowed to claim the full compensation for their damage on this basis, because the facts that brought it about have caused a total incapacity to work of less than one month's duration.

Article 706-15

(Law nº 81-82 of 2 February 1981 art. 99 Official Journal of 3 February 1981)

(Law nº 85-1407 of 30 December 1985 art. 74 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 90-589 of 6 July 1990 Article 17 Official Journal of 11 July 1990)

(Law nº 2000-516 of 15 June 2000 art. 116 Official Journal of 16 June 2000 in force 1 January 2001)

Where a court sentences the perpetrator of an offence mentioned in articles 706-3 and 706-14 to pay damages to the civil party, the court notifies the latter of the option to refer the case to the commission for the compensation of the victims of crime.

TITLE XV: PROSECUTION, INVESTIGATION AND TRIAL OF TERRORIST OFFENCES

Article 706-16

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 & 75 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 96-647 of 22 July 1996 Articles 8 & 9 Official Journal of 23 July 1996)

The terrorist offences punishable by articles 421-1 to 421-5 of the Criminal Code, and also their related offences, are prosecuted, investigated and tried according to the rules of the present Code, subject to the provisions of the present title.

These provisions are also applicable to the prosecution, investigation and trial of terrorist offences committed abroad where French law is applicable, pursuant to the provisions of section 2, chapter III, title I of Book I of the Criminal Code.

SECTION I: JURISDICTION

Article 706-17

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2001-1062 of 15 November 2001 art. 33 Official Journal of 16 November 2001)

For the prosecution, investigation and trial of offences falling under the scope of article 706-16, the Paris public prosecutor, investigating judge, correctional court and assize court hold a concurrent jurisdiction to that deriving from articles 43, 52, 382 and 663, second paragraph.

In respect of minors, the Paris public prosecutor, investigating judge, juvenile court judge, juvenile court and juvenile assize court hold a concurrent jurisdiction to that deriving from the provisions of legislative order no. 45-174 of 2nd February 1945 governing juvenile delinquency.

Where they hold jurisdiction for the prosecution and investigation of offences falling under the scope of article 706-16, the Paris public prosecutor and investigating judge exercise their authority over the whole national territory.

The investigation of terrorist acts, defined in sections 5–7 of article 421-1 and in article 421-2-2 of the Criminal Code may be entrusted, if necessary under the conditions provided for in the second paragraph of article 83, to a judge from the first instance court of Paris, appointed to one of the groups specialising in economic and financial matters, pursuant to the provisions of the last paragraph of article 704.

Article 706-17-1

(Inserted by Law nº 97-1273 of 29 December 1997 art. 1 Official Journal of 31 December 1997)

For the trial of the misdemeanours and felonies falling within the scope of article 706-16, the senior presiding judge of the Paris court of appeal may, upon the public prosecutor's submissions, and after hearing the views of the presiding judges of the first instance courts concerned, the president of the Paris bar association and, where appropriate, the presiding judge of the Paris assize court, decide that the hearings of the Paris correctional court or correctional appeals division, or of the Paris assize court will exceptionally, and for safety reasons, be held in some place within the jurisdictional area of the appeal court other than where these courts usually sit.

The order made pursuant to the previous paragraph is brought to the knowledge of the courts concerned by the public prosecutor. It is a judicial administration measure which is not open to any form of recourse.

Article 706-18

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 216 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

The public prosecutor attached to a first instance court other than that of Paris may, in respect of the offences falling under the scope of article 706-16, request that the investigating judge cede an investigation in favour of the Paris judicial investigation authorities. The parties are informed and invited to make their observations known prior to this transfer. The judge's order is not earlier than eight days after such notice.

The order by which the judge relinquishes the case only takes effect upon the expiry of the five-day time limit set out in article 706-22. Where an appeal is lodged pursuant to this article, the investigating judge remains in charge until he is notified of the decision of the criminal division of the Court of Cassation.

As soon as the order becomes final, the district prosecutor sends the case file to the district prosecutor of Paris.

The provisions of the present article are applicable to the investigating chamber.

Article 706-19

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 217 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Where it appears to the investigating judge of Paris that matters of which he has been seised do not constitute any of the offences falling under the scope of article 706-16 and that they do not come under his jurisdiction pursuant to any other provision, this judge declares himself without jurisdiction either upon the application of the district prosecutor, or, after hearing the latter's opinion, on his own motion or upon an application of the parties. Any parties who did not make the application are informed beforehand and invited to make their observations known. The order is made no earlier than a week after this notice.

The provisions of the second paragraph of article 706-18 are applicable to the order by which the investigating judge of Paris declares himself without jurisdiction.

As soon as the order becomes final, the district prosecutor of Paris sends the case file to the district prosecutor with territorial jurisdiction.

The provisions of the present article are applicable where the Paris investigating chamber has to decide whether it is competent to act.

Article 706-20

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

Where the correctional court or juvenile court of Paris declares itself without jurisdiction for the reasons set out in article 706-19, it refers the case to the public prosecutor to proceed as he sees fit. It may, after hearing the public prosecutor's submission, issue a committal order or an arrest warrant against the defendant.

Article 706-21

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

In the cases set out in articles 706-18 to 706-20 the committal order or arrest warrant remains enforceable. The formal steps in investigation and prosecution, and any formalities carried out before the decision on transfer or incompetence to act became final, need not be renewed.

Article 706-22

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 218 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Any order made on the basis of article 706-18 or article 706-19 whereby an investigating judge rules on his relinquishment of a case or the Paris investigating judge rules on his jurisdiction may, to the exclusion of any other appeal route, be referred to the criminal division of the Court of Cassation within five days of its pronouncement, at the request of the public prosecution or the parties. Within eight days of receiving the case file, the criminal division of the Court of Cassation nominates the investigating judge responsible for continuing the investigation.

Where criminal division of the Court of Cassation rules that the investigating judge of the first instance court of Paris does not have jurisdiction, it may nevertheless rule that in the interests of the proper administration of justice the investigation shall be continued in that court.

The criminal division's judgment is brought to the attention of the investigating judge and of the public prosecutor and notified to the parties.

The provisions of the present article are applicable to an order made on the basis of article 706-18 and article 706-19, by which an investigating chamber rules on its competence to act or on its relinquishing a case.

SECTION II: PROCEDURE

Article 706-23

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 49 Official Journal of 16 June 2000 in force 1 January 2001)

For the implementation of articles 63, 77 and 154 , where the requirements of the inquiry or investigation in respect of one of the offences falling under the scope of article 706-16 call for it, the police custody of an adult may be extended by a further forty-eight hours. This extension is granted either at the request of the district prosecutor or of the liberty and custody judge, or, in the cases set out in articles 72 and 154, by the investigating judge.

The person concerned must be produced to the authority ruling upon the extension before his decision is made.

Where the extension is granted, a medical examination is granted as of right. The public prosecutor or, in the cases under articles 72 and 154, the investigating judge, has jurisdiction to designate the doctor charged with this examination.

Article 706-24

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 96-647 of 22 July 1996 Article 10 Official Journal of 23 July 1996)

(Law nº 96-1235 of 30 December 1996 art. 16 Official Journal of 1 January 1997 in force 31 March 1997)

(Law nº 2000-516 of 15 June 2000 art. 49 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2001-1062 of 15 November 2001 art. 24 Official Journal of 16 November 2001)

By way of exception to the rules set out in article 76, where the needs of the inquiry relating to one of the offences falling under the scope of article 706-16 call for it, the first instance court's presiding judge or the judge delegated by him may, upon the district prosecutor's application, decide that searches, house searches and seizures of exhibits may be made without the assent of the person in whose residence they take place. If these operations do not involve private dwellings, the liberty and custody judge may authorise them to take place outside the hours provided for in article 59.

(The three first paragraphs of article 10 were declared to be not in accordance with the Constitution in a decision made by the Constitutional Council n96-377 DC of 16th July 1996, insofar as they apply to the preliminary enquiry.)

Where the needs of a flagrancy enquiry call for it, (Provisions declared to be not in accordance with the Constitution in a decision made by the Constitutional Council n96-377 DC of 16th July 1996) visits, searches and seizures may be made outside the hours defined by article 59.

The operations provided for in the previous paragraph must, under sentence of nullity, be authorised upon the application of the district prosecutor by the first instance court presiding judge or his delegate. (Provisions declared to be not in accordance with the Constitution in a decision made by the Constitutional Council n96-377 DC of 16th July 1996). Authorisations are given for precisely determined searches. Each authorisation takes the form of written decision, stating the legal qualification of the offence the evidence of which is searched for, as well as the address of the premises within which the visits, searches and seizures may be made, and is reasoned by reference to the factual elements establishing that such operations are necessary. These operations are made under the supervision of the judge who has authorised them, and who may himself inspect the premises to ensure that the legal provisions are respected.

These operations may not, under penalty of nullity, have any objectives other than the search and demonstration of offences falling under the scope of article 706-16.

For the implementation of the provisions of the present article, the liberty and custody judge of the first instance court is the liberty and custody judge of the first instance court in whose jurisdiction the operations are carried out, or the liberty and custody judge of Paris. The latter exercises his authority over the whole of the national territory.

Article 706-24-1

(Inserted by Law nº 96-1235 of 30 December 1996 art. 16 Official Journal of 1 January 1997 in force 31 March 1997)

In urgent cases, if the requirements of the judicial investigation call for it, visits, searches and seizures necessary to discover and establish acts of terrorism under article 706-16 and punished by a sentence of at least 10 years' imprisonment may be made outside the hours provided for in article 59:

1° where the offence is a flagrant felony or misdemeanour;

2° where there is an immediate risk of the disappearance of evidence or material clues,

3° where there are grounds to believe that one or more persons who are within the premises where the search is due to take place are preparing to commit renewed acts of terrorism.

Under penalty of nullity, such operations must be prescribed by a reasoned order from the investigating judge stating the type of offence for which the evidence is sought, as well as the address of the premises in which such operations are to be carried out, including a statement of the considerations of fact and law which constitute the basis of such a decision with reference to the sole conditions under points 1°, 2° and 3° of the present article.

The district prosecutor is notified of this order by any available means. It may not be appealed against.

The provisions of the fourth paragraph of article 706-24 are applicable.

Article 706-24-2

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 33 Official Journal of 16 November 2001)

Where an investigation has been opened into an offence which comes under the scope of article 706-16, and in order to guarantee the payment of the fines incurred as well as the implementation of the confiscation provided for by article 422-6 of the Criminal Code, the liberty and custody judge may, at the district prosecutor's request, and at the Treasury's expense, according to the forms set out by the civil procedure code, order protective measures relating to the property of the person under judicial examination.

Conviction confirms the protective seizures and allows the final registration of sureties.

The dismissal of a case, a discharge or an acquittal automatically leads to the withdrawal of the ordered measures. The same occurs when criminal liability is extinguished.

For the application of the provisions of the present article, the liberty and custody judge has jurisdiction over the whole of the national territory

Article 706-24-3

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 46 Official Journal of 10 September 2002)

To investigate the misdemeanour of criminal association under article 421-5 of the Criminal Code, the total duration of the pre-trial detention provided for by the second paragraph of article 145-1 is extended to three years.

Article 706-25

(Law n° 86-1020 of 9 September 1986 Article 1 Official Journal of 10 September 1986)

(Law nº 86-1322 of 30 December 1986 art. 1 Official Journal of 31 December 1986)

(Law nº 92-1336 of 16 December 1992 art. 74 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 49 Official Journal of 16 June 2000 in force 1 January 2001)

For the trial of adults, the rules governing the composition and functioning of the assize court are determined by the provisions of article 698-6.

For the application of the previous paragraph, the investigating judge or the investigating chamber which pronounces the indictment verifies that the facts fall within the scope of article 706-16.

Article 706-25-1

(Law n° 95-125 of 8 February 1995 Article 52 Official Journal of 9 February 1995)

The power to prosecute for the felonies mentioned in article 706-16 is extinguished after thirty years. The sentence imposed on conviction for one of these felonies lapses thirty years after the day the sentence became final.

The limitation period for the misdemeanour mentioned in article 706-16 is twenty years. The sentence imposed on conviction for the misdemeanour lapses twenty years after the day the sentence became final.

TITLE XVI: PROSECUTION, INVESTIGATION AND TRIAL OF DRUG TRAFFICKING OFFENCES

Art. 706-26

(Inserted by Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

The offences set out by articles 222-34 to 222-39 of the Criminal Code, and also the misdemeanour of participation in a criminal conspiracy, set out by article 450-1 of the same Code, when directed towards the commission one of these offences, are prosecuted, investigated and tried following the rules of the present Code, subject to the provisions of the present title.

Article 706-27

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

In the jurisdictional area of each appeal court, one or more assize courts listed by a Decree hold jurisdiction to try the crimes considered in article 706-26 and offences connected with them. The rules governing the composition and operations of the assize court are fixed by the provisions of article 698-6 for the trial of adults.

For the enforcement of the previous paragraph, when it orders the indictment in accordance with the first paragraph of article 214, the investigating chamber verifies that the facts fall within the scope of article 706-26.

Article 706-28

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 96-647 of 22 July 1996 Article 11 Official Journal of 23 July 1996)

(Law nº 2000-516 of 15 June 2000 art. 49 Official Journal of 16 June 2000 in force 1 January 2001)

For the detection and establishment of the offences considered in article 706-26, the visits, searches and seizures provided for in article 59, carried out on premises where a collective use of narcotics is made or where narcotics are illicitly produced, altered or stocked, may take place outside the hours that this article prescribes

The operations set out under the previous paragraph must be authorised, under penalty of nullity , upon the application of the district

prosecutor, by the liberty and custody judge where they have to be carried out in a house or flat, unless they are authorised by the investigating judge. Each authorisation takes the form of a written decision stating the qualification of the offence for which the evidence is sought as well as the address of the premises on which the visits, searches and seizures may be carried out, and it must be reasoned with reference to the factual elements which make such operations necessary. These operations are supervised by the judge who authorised them and who may inspect the scene to ensure that the legal provisions are complied with.

Under penalty of nullity, the actions provided for in the present article must have no objective other than the detection and establishment of the offences mentioned in article 406-26.

Article 706-29

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 49 Official Journal of 16 June 2000 in force 1 January 2001)

For the implementation of articles 63, 77 and 154, where in relation to one of the offences considered in article 706-26 the inquiry or investigation so requires, the length of time a person may be held in police custody may be extended by an extra forty-eight hours.

This extension is granted at the request of the district prosecutor, the liberty and custody judge or by the investigating judge in the cases set out by articles 72 and 154.

The person in police custody must be brought before the authority ruling upon the extension prior to this decision. In exceptional cases, the extension may be granted by means of a written and reasoned decision without a prior presentation.

At the start of the detention, the district prosecutor or the investigating judge must appoint a medical expert, who examines the person held in custody every twenty-four hours. This medical expert issues a reasoned medical certificate after each examination, which is attached to the case file. The person detained is informed by the judicial police officer of his right to request other medical examinations. These medical examinations are granted as of right. A note of this information is made on the official record and initialed by the person concerned. Where the person refuses to sign, this is indicated in the record.

Article 706-30

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 94-89 of 1 February 1994 Article 10 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 2001-420 of 15 Mai 2001 art.47 Official Journal of 16 Mai 2001)

(Law n° 2003-239 of 18 March 2003 Article 39 Official Journal of 19 March 2003)

Where an investigation has been opened into an offence under articles 222-34 to 222-38, 324-1 and 324-2 of the Criminal Code and in order to guarantee the payment of the fines incurred as well as the implementation of confiscation under the second paragraph of article 222-49 and in section 12 of article 324-7 of the Criminal Code, the liberty and custody judge may, at the district prosecutor's request, and at the Treasury's expense, according to the forms set out by the Civil Procedure Code, order protective measures relating to the property of the person under judicial examination.

Conviction confirms the protective seizures and allows the final registration of sureties.

A discharge or acquittal decision automatically entails the cancellation of the measures ordered, at the Treasury's expense. The same applies where the public prosecution is extinguished.

For the application of the provisions of the present article, the liberty and custody judge has jurisdiction over the whole of the territory of the French Republic.

Article 706-30-1

(Inserted by Law n° 99-515 of 23 June 1999 Article 24 Official Journal of 24 June 1999)

Where the provisions of the third paragraph of article 99-2 are applied to drugs seized during the course of the proceedings, the investigating judge must keep a sample of these drugs so that they can be analysed if necessary. This sample is placed under seal.

The investigating judge or a judicial police officer acting under letters rogatory must weigh the seized substances before they are destroyed. This weighing must be carried out in the presence of the person in whose possession they were found, or failing this, in the presence of two witnesses called upon by the investigating judge or the judicial police officer, and who must not be under their authority. The weighing may also be carried out, under the same conditions, during a flagrancy investigation or a preliminary inquiry, by a judicial police officer, or during a customs investigation by a category A or B customs officer.

The official record of the weighing process is signed by the persons mentioned above. If anyone refuses, this is noted in the official record.

Article 706-31

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 95-125 of 8 February 1995 Article 52 Official Journal of 9 February 1995)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal 22 September 2000 in force 1 January 2002)

Criminal liability for the crimes mentioned in article 706-26 lapses after thirty years. The sentence imposed in the event of a conviction for one of these crimes lapses thirty years after the date when the conviction became final.

Criminal liability for the misdemeanours mentioned in article 706-26 lapses after twenty years. The sentence imposed in the event of a conviction for one of these misdemeanours lapses twenty years after the date when the conviction became final.

By way of exception to the provisions of article 750, the length of the civil imprisonment is fixed at two years where the fines and financial sanctions imposed for one of the offences considered under the previous paragraph and for related customs offences exceed € 75,000.

Article 706-32

(Inserted by Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

After informing the district prosecutor, in order to establish the existence of the offences provided in articles 222-34 to 222-38 of the Criminal Code, to identify the perpetrators and accomplices and to carry out the seizures provided for by the present Code, judicial police officers and, under their authority, judicial police agents may monitor the transport of narcotics or the proceeds of the commission of these offences.

They are not criminally liable when, to this end, and with the authorisation of the district prosecutor or of the investigating judge in charge of the case, who informs the public prosecutor's office beforehand, they purchase, hold, transport or deliver these drugs or proceeds, or put at the disposal of the perpetrators of the offences mentioned in the previous paragraph means of a legal character as well as transport, deposit, storage, preservation and communication facilities. The authorisation may only be granted for actions which do not involve committing the offences specified in the first paragraph.

The provisions of the previous two paragraphs are applicable for the same purposes to substances used for the unlawful production of narcotics, of which a list is fixed by Decree, as well as to equipment used for their manufacture.

Article 706-33

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Where a prosecution is initiated in respect of one of the offences specified by article 706-26, the investigating judge may order the provisional closure for a maximum term of six months of any hotel, furnished house, pension, bar, restaurant, club, dance hall, place of entertainment or of its outbuildings, or of any premises open to or used by the public, where these offences were committed by the operator or with his complicity.

This closure may be renewed according to the same formalities for a maximum term of three months for each renewal, whatever its initial length.

The decisions provided for under the previous paragraphs and those ruling on the applications for cancellation may be appealed against before the investigating chamber within twenty-four hours of their enforcement or of the notification made to the parties concerned.

Where a trial court is seised of the case, the lifting of the closure measures or their renewal for a maximum term of three months on each occasion, are decided in accordance with the rules fixed by the second to fourth paragraphs of article 148-1.

TITLE XVII: PROSECUTION, INVESTIGATION AND TRIAL OF PROCURING OFFENCES OR OF MAKING USE OF THE PROSTITUTION OF MINORS

Article 706-34

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2002-305 of 4 March 2002 art. 13 Official Journal of 3 March 2002)

The offences set out by articles 225-5 to 225-12-4 of the Criminal Code, and also the misdemeanour of participation in a criminal conspiracy set out by article 450-1 of the same code when it is aimed at the commission of one of these offences, are prosecuted, investigated and tried following the rules of the present Code, subject to the provisions of the present title.

Article 706-35

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2002-305 of 4 March 2002 art. 13 Official Journal of 3 March 2002)

For the investigation and discovery of the offences considered in article 706-34, the visits, searches and seizures provided for by article 59 may be made at any hour of the day or night within the premises of any hotel, furnished house, pension, bar, club, dance hall, place of entertainment and in any other premises open to or used by the public, where it is established that persons indulging in prostitution are regularly accepted in such premises.

Under penalty of nullity, the actions provided for in the present article may not be implemented for any objective other than the investigation and discovery of the offences specified by article 706-34.

Article 706-36

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

(Law nº 2002-305 of 4 March 2002 art. 13 Official Journal of 3 March 2002)

Where a prosecution is initiated in respect of one of the offences considered in article 706-34, the investigating judge may order the temporary closure, complete or partial, for a maximum term of three months, of the following buildings:

1° premises considered under points 1° and 2° of article 225-10 of the Criminal Code, where the occupier, manager or employee is prosecuted;

2° any hotel, furnished house, pension, bar, restaurant, club, dance hall, place of entertainment or its outbuildings open to or used by the public, inside which a prosecuted person, in the course of the prosecution, has been found to be knowingly offered assistance from the management or personnel to destroy evidence, exercise pressure on witnesses or encourage the continuation of his unlawful activities.

This closure may be renewed along the same formalities for a maximum term of three months for each renewal, whatever its initial length.

The decisions provided for under the previous paragraphs and those ruling on the applications for cancellation may be appealed against before the investigating chamber within twenty-four hours of their enforcement or of their notification to the parties concerned.

Where a trial court is seised of the case, the cancellation of the closure measures enforced or their renewal for a maximum term of three months on each occasion, are decided in accordance with the rules fixed by the second to fourth paragraphs of article 148-1.

Article 706-36-1

(Inserted by Law n° 2003-239 of 18 March 2003 Article 40 Official Journal of 19 March 2003)

Where an investigation has been opened into an offence covered by article 706-34, then in order to guarantee the payment of the fines incurred and also, where necessary, confiscation under article 225-25 of the Criminal Code, the liberty and custody judge may, at the district prosecutor's request, and at the Treasury's expense, according to the forms set out by the civil procedure code, order protective measures relating to the property of the person under judicial examination.

Conviction confirms the protective seizures and allows the final registration of sureties.

A discharge or acquittal decision automatically entails the cancellation of the measures ordered, at the Treasury's expense. The same applies where the public prosecution is extinguished.

The liberty and custody judge has jurisdiction over the whole of the territory of the French Republic for the application of the provisions of the present article.

Article 706-37

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2002-305 of 4 March 2002 art. 13 Official Journal of 3 March 2002)

The public prosecutor informs the owner of the building, the lessor and the owner of the business where a business is run within which the offences specified by section 2 or article 225-10 of the Criminal Code have been committed. He ensures this information is recorded in the trade register and in the registers in which sureties are recorded. The rules of implementation of the present article are fixed by Decree of the Council of State.

Article 706-38

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2002-305 of 4 March 2002 art. 13 Official Journal of 3 March 2002)

Where the licence holder of the bar or restaurant or business from inside which one of the companies described in section 2of article 225-10 of the Criminal Code is run, is not prosecuted, the additional penalties provided for in article 225-22 of the Criminal Code may only be imposed, by a special and reasoned decision, if it is proved that this person was cited at the suit of the public prosecution with an indication as to the nature of the prosecution initiated and the court's power to impose these penalties.

The person specified in the previous paragraph may present or have his observations read out by his advocate during the hearing. If he uses this option, he may file an appeal against the decision imposing one of the penalties set out in article 225-22 of the Criminal Code.

Article 706-39

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2002-305 of 4 March 2002 art. 13 Official Journal of 3 March 2002)

A decision which pursuant to article 225-22 of the Criminal Code imposes the confiscation of the business orders the expulsion of any person who, directly or through an intermediary, holds, manages, operates, runs, finances or contributes to the financing of the business.

This same decision entails the transfer of the ownership of the confiscated business to the State and the subrogation to the State in all the rights of the owner of the business.

Article 706-40

(Law nº 92-1336 of 16 December 1992 art. 77 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2002-305 of 4 March 2002 art. 13 Official Journal of 3 March 2002)

In the event of an offence provided for in point 3 of article 225-10 of the Criminal Code, the occupant and the person indulging in prostitution are jointly liable for any damages which may be awarded in respect of disturbance to the neighbourhood. Where the acts described in this article are practiced habitually, the judge in chambers may order termination of the lease and the expulsion of the tenant, subtenant or occupant who indulges in prostitution or tolerates it, at the behest of the public prosecution, the owner, the main tenant, the occupants or neighbours in the building. The owners or lessors of these premises are informed, at the suit of the public prosecutor, that these premises are places for prostitution.

TITLE XVIII: PROSECUTION, INVESTIGATION AND TRIAL OF THE OFFENCES COMMITTED BY LEGAL PERSONS

Article 706-41

(Inserted by Law nº 92-1336 of 16 December 1992 art. 78 Official Journal of 23 December 1992 in force 1 March 1994)

The provisions of the present Code are applicable to the prosecution, investigation and trial of offences committed by legal persons, subject to the provisions of the present title.

Article 706-42

(Inserted by Law nº 92-1336 of 16 December 1992 art. 78 Official Journal of 23 December 1992 in force 1 March 1994)

Subject to the jurisdictional rules applicable where a natural person is also suspected or prosecuted, the following hold jurisdiction:

1° the district prosecutor and the courts of the place of the offence;

2° the district prosecutor and the courts of the place where the legal person has its registered office.

These provisions do not preclude the eventual implementation of the specific jurisdictional rules set out by articles 705 and 706-17 in respect of economic and financial offences and of terrorist offences.

Article 706-43

(Law nº 92-1336 of 16 December 1992 art. 78 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-647 of 10 July 2000 art. 9 Official Journal of 11 July 2000)

Criminal proceedings are initiated against the legal person in the form of the person of its legal representative at the time of the prosecution. The latter represents the legal person at all the stages of the proceedings. However, where a prosecution is initiated against the legal representative for the same actions or for connected offences, the representative may seise the presiding judge of the district court for the purposes of appointing a judicial proxy to represent the legal person.

The legal person may also be represented by any person granted a power of attorney for this purpose in accordance with the law or its articles of association.

The person responsible for representing the legal person pursuant to the second paragraph must make his identity known to the court seised of the case, by sending a recorded delivery letter with a request for acknowledgement of receipt.

The same applies in the event of a change of legal representative in the course of proceedings.

Where no one is authorised to represent the legal person in the conditions set out by the present article, the presiding judge of the district court appoints a judicial agent to represent him at the request of the public prosecutor, the investigating judge or the civil party.

Article 706-44

(Inserted by Law nº 92-1336 of 16 December 1992 art. 78 Official Journal of 23 December 1992 in force 1 March 1994)

The representative of the legal person prosecuted may not be subjected, in this capacity, to any coercive measure other than those applicable to witnesses.

Article 706-45

(Law nº 92-1336 of 16 December 1992 art. 78 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 2001-504 of 12 June 2001 Article 23 Official Journal of 13 June 2001)

The investigating judge may place the legal person under judicial supervision in the conditions set out in articles 139 and 140 by imposing one or more of the following obligations:

1° depositing a security of which the amount and payment time limits, whether made in one or more instalments, are determined by the investigating judge;

2° the creation of personal or real sureties designed to guarantee the victim's rights, within a time limit, for a length of time and an amount determined by the investigating judge;

3° a prohibition to draw cheques other than those which permit the withdrawal of funds by the drawer from the drawee or of those which are certified, and a prohibition to use credit cards;

4° a prohibition on exercising certain professional or social activities, where the offence was committed during the carrying out, or at the time of these activities, and where it is feared that a new offence may be committed;

5° placement under the supervision of a judicial proxy appointed by the investigating judge for a renewable six-month period, in respect of the activity in the course of which the offence was committed.

The prohibitions provided for by sections 3 and 4 may be ordered by the investigating judge only insofar as they are available against the legal person as a penalty. The measure provided for in 5 cannot be ordered by the investigating judge if the legal person cannot be sentenced to the penalty provided for in section 3 of article 131-39 of the Criminal Code.

In the event of a violation of the judicial supervision, articles 434-43 and 434-47 of the Criminal Code are applicable, where relevant.

Article 706-46

(Law nº 92-1336 of 16 December 1992 art. 78 Official Journal of 23 December 1992 in force 1 March 1994)

The specific provisions applicable to the service of documents on legal persons are fixed by Title IV of Book II.

TITLE XIX: SPECIAL PROCEDURE APPLICABLE TO SEXUAL OFFENCES AND TO THE PROTECTION OF JUVENILE VICTIMS

Article 706-47

(Inserted by Law nº 98-648 of 17 June 1998 art. 28 Official Journal of 18 June 1998)

Persons prosecuted for the murder or assassination of a minor preceded or accompanied by a rape, torture or acts of barbarity, or for any of the offences considered in articles 222-23 to 222-32 and 227-22 to 227-27 of the Criminal Code must undergo a medical expert opinion before any judgment is made on the merits of the case. The expert is asked whether a medical treatment injunction is appropriate within the framework of socio-judicial surveillance.

This medical expert opinion may be ordered by the district prosecutor as early as the inquiry stage.

This expert opinion is transmitted to the penitentiary administration in the event of a custodial sentence, in order to facilitate the medical and psychological surveillance during detention provided for in article 718

Article 706-47-1

(Inserted by Law n° 2003-239 of 18 March 2003 Article 40 Official Journal of 19 March 2003)

A judicial police officer, acting during an enquiry or under letters rogatory, may compel any person against whom there is strong or corroborating evidence that they have committed rape or sexual assault under articles 222-23 to 222-26 and 227-25 to 227-27 of the Criminal Code, to undergo a medical examination and a blood test in order to determine whether this person has a sexually transmitted disease.

The doctor, nurse or other person permitted by the provisions of the Public Health Code to carry out the tasks normally assigned to these professionals, and who is required to do this by a judicial police officer, must endeavour to obtain the consent of the person concerned.

At the victim's request, or when it is justified by the victim's interests, this procedure may be carried out without the consent of the person concerned on the written instructions of the public prosecutor or the investigating judge, which are recorded in the case-file.

The results of the tests are made known to the victim or, if the victim is a minor, to his legal representatives or to the ad hoc administrator nominated according to the provisions of article 706-50, as soon as possible and through a doctor as intermediary.

Refusal to undergo the testing provided for by the present article is punishable by a year's imprisonment and by a fine of €15,000. Notwithstanding the provisions of articles 132-2 to 132-5 of the Criminal Code, these penalties are cumulative with those liable to be imposed for the crime or misdemeanour in connection with which the samples were taken, and may not run concurrently.

Article 706-48

(Inserted by Law nº 98-648 of 17 June 1998 art. 28 Official Journal of 18 June 1998)

Minors who are victims of any of the offences specified in article 706-47 may undergo a medical and psychological expert analysis designed to evaluate the nature and scope of the harm suffered and to establish whether this harm calls for appropriate treatment or care.

This medical expert opinion may be ordered by the district prosecutor as early as the inquiry stage.

Article 706-49

(Inserted by Law nº 98-648 of 17 June 1998 art. 28 Official Journal of 18 June 1998)

The district prosecutor or the investigating judge inform the juvenile court judge forthwith of the existence of proceedings concerning a minor who is a victim of the offences considered in article 706-47, and transmits to him any relevant element of the file, where an educational assistance measure has been initiated in respect of the juvenile victim of this offence.

Article 706-50

(Inserted by Law nº 98-648 of 17 June 1998 art. 28 Official Journal of 18 June 1998)

The district prosecutor or the investigating judge seised of intentional offences committed against a minor appoint an ad hoc administrator where the protection of the interests of the minor is not completely ensured by his legal representatives or by one of them. The ad hoc administrator ensures the protection of the interests of the minor and exercises if necessary in the latter's name the rights open to a civil party. In the event of a civil party petition, the judge has an advocate appointed officially for the minor if none has been already chosen.

The previous provisions are applicable before the trial court.

Article 706-51

(Inserted by Law nº 98-648 of 17 June 1998 art. 28 Official Journal of 18 June 1998)

The ad hoc administrator appointed in pursuance of the previous article is chosen by the competent judge or prosecutor either from among the child's next of kin, or from a list of personalities drawn up along rules fixed by Decree of the Council of State. This Decree also specifies the conditions of their indemnification.

Article 706-52

(Law nº 98-648 of 17 June 1998 art. 28 Official Journal of 18 June 1998)

(Ordinance n° 2000-916 of 19 September 2000; Article 3 Official Journal 22 September 2000 in force 1 January 2002)

In the course of an inquiry or judicial investigation, the questioning of a minor who is a victim of one of the offences considered in article 706-47 is recorded by audio-visual means with his consent or, if he is incapable of giving it, with that of his legal representative.

The recording provided for by the previous paragraph may, if the minor or his legal representative so requests, be a sound recording only.

Where the district prosecutor or the investigating judge decide not to resort to this recording, this decision must be reasoned.

The district prosecutor, the investigating judge, or the judicial police officer in charge of the inquiry or acting upon a rogatory letter may require any qualified person to proceed with this recording. The provisions of article 60 are applicable to such a person, who is bound by professional secrecy under the conditions stated by article 11.

A copy of the recording is also made so as to make its consultation easier later in the course of proceedings. This copy is attached to the case file. The original recording is placed under closed official seals.

The recording may be viewed or listened to in the course of proceedings upon the investigating judge's decision. The copy of the recording may however be viewed and listened to by the parties, their advocates or the experts, in the presence of the investigating judge or court clerk.

The last eight paragraphs of article 114 of the criminal procedure code are not applicable to the recording. The copy of this recording may however be viewed by the advocates of the parties at the court in conditions which guarantee that this consultation remains confidential.

Any person who distributes a recording or a copy made pursuant to the present article is punished by one year imprisonment and a fine of € 15,000.

Five years after the expiration of the limitation period for prosecution, the recording and its copy are destroyed within a month.

Article 706-53

(Law nº 98-648 of 17 June 1998 art. 28 Official Journal of 18 June 1998)

In the course of the inquiry or judicial investigation, the examinations or confrontations of a minor who is a victim of one of the offences specified by article 706-47 are made upon the decision of the district prosecutor or investigating judge or, as the case may be upon the

request of the minor or of his legal representative, in the presence of a psychologist or of a physician specialized in childhood questions, or of a member of the family of the minor, or of the ad hoc administrator appointed pursuant to article 706-50, or of a person entrusted with a mandate given by the juvenile court judge.

TITLE XX: THE NATIONAL COMPUTERISED GENETIC INFORMATION BANK

Article 706-54

(Law nº 98-648 of 17 June 1998 art. 28 Official Journal of 18 June 1998)

(Law nº 2001-1062 of 15 November 2001 art. 56 Official Journal of 16 November 2001)

(Law n° 2003-239 of 18 March 2003 Article 29 Official Journal of 19 March 2003)

The national automated data bank of genetic fingerprints, placed under the supervision of a judge, is designed to centralise the genetic fingerprints resulting from biological traces, as well as the genetic fingerprints of persons convicted of the offences outlined in article 706-55, in order to facilitate the identification of and the search for the perpetrators of these offences.

The genetic fingerprints of persons against whom there is serious or corroborating evidence rendering it likely that they have committed one of the offences mentioned in article 706-55 are also stored in this data bank by order of the judicial police officer either automatically or at the request of the district prosecutor or of the investigating judge. This decision is recorded in the case file. These prints are erased on the district prosecutor's instructions, either on his own initiative or at the request of the person concerned, where keeping them no longer appears necessary given the purpose of the file. Where he has been seised by the party concerned, the district prosecutor informs him of the outcome of his application. If he has not ordered that the fingerprints be erased, the party concerned may to this end transfer the case to the liberty and custody judge, whose decision may be contested before the presiding judge of the investigating chamber.

Judicial police officers may also, on their own initiative or at the request of the public prosecutor, compare the genetic fingerprints of any person against whom there exist one or more plausible reasons to suspect that they have committed a felony or a misdemeanour, with any data in the data bank; but these fingerprints may not be stored.

The data bank provided for by the present article also contains genetic fingerprints resulting from biological traces collected during investigative proceedings into causes of death or searches into the causes of disappearances provided for by articles 74, 74-1 and 80-4 as well as genetic fingerprints corresponding to or likely to correspond to deceased or missing persons.

The genetic fingerprints recorded in this data bank may only be taken from uncoded segments of deoxyribonucleic acid, with the exception of the segments corresponding to the sex markers.

A Council of State decree made after taking advice from the National Commission for Data Protection determines the terms of implementation of the present article. This decree notably determines the length of time this data may be retained.

Article 706-55

(Law nº 2001-539 of 25 June 2001 art. 26 Official Journal of 25 June 2001)

(Law nº 2001-1062 of 15 November 2001 art. 56 Official Journal of 16 November 2001)

(Law n° 2003-239 of 18 March 2003 Article 29 Official Journal of 19 March 2003)

The national automated data bank for genetic fingerprints centralises genetic fingerprints and traces relating to the following offences:

1° offences of a sexual nature, described in article 706-47;

2° crimes against humanity, felonies involving intentional attacks on human life, torture and acts of barbarity, intentional violent acts, threatening personal violence, drug trafficking, offences against human liberty, human trafficking, procuring, the exploitation of begging, and the endangerment of minors, provided for by articles 221-1 to 221-5, 222-1 to 222-18, 222-34 to 222-40, 224-1 to 224-8, 225-4-1 to 225-4-4, 225-5 to 225-10, 225-12-1 to 225-12-3, 225-12-5 to 225-12-7 and 227-18 to 227-21 of the Criminal Code;

3° felonies and misdemeanours which constitute theft, extortion, fraud, destruction, damage and threats to attack property provided for by articles 311-1 to 311-13, 312-1 to 312-9, 313-2 and 322-1 to 322-14 of the Criminal Code;

4° violations of the fundamental interests of the nation, terrorist acts, forging currency, and criminal associations provided for in articles 410-1 to 413-12, 421-1 to 421-4, 442-1 to 442-5 and 450-1 of the Criminal Code;

5° felonies and misdemeanours provided for by article 2 of the Law of 24 May 1834 on bearing arms, or munitions, article 3 of the Law of 19 June 1871 which repealed the Decree of 4 September 1870 on the manufacture of weapons of war, and under articles 24 to 35 of the Decree of 18 April 1939 determining regulations relating to weaponry and munitions;

6° offences relating to handling or laundering the proceeds of any of the offences set out under sections 1 to 5, provided for by articles 321-1 to 321-7 and 324-1 to 324-6 of the Criminal Code.

Article 706-56

(Law nº 2001-539 of 25 June 2001 art. 26 Official Journal of 25 June 2001)

(Law nº 2001-1062 of 15 November 2001 art. 56 Official Journal of 16 November 2001)

(Law n° 2003-239 of 18 March 2003 Article 29 Official Journal of 19 March 2003)

I.- A judicial police officer may obtain or supervise the obtaining of a biological sample from persons mentioned in the first, second and third paragraphs of article 706-54 to permit DNA profiling. Before carrying out this procedure, he may check or get a judicial police officer to check that the genetic profile of the person concerned is not already stored, for the purposes of his civil status only, in the national automated data bank of genetic fingerprints.

In order to carry out this profiling, the judicial police officer may commission any person authorised under the conditions fixed by article 16-12 of the Civil Code, without it being necessary for the person to be officially registered on a list of judicial experts; in these circumstances, the person then takes the oath in writing provided for by the second paragraph of article 60 of the present Code.

On the orders of the judicial police officer or the district prosecutor, or the investigating judge, the persons authorised in accordance with the previous paragraph may carry out the procedure to record the genetic profile in the national automated data bank of genetic fingerprints, by using any available means, including telecommunication.

II. The refusal of person to allow the taking of a biological sample provided for by the first paragraph of section I is punished by a year's imprisonment and by a fine of € 15, 000.

Where the offences have been committed by a person convicted of a felony, the penalty is two years' imprisonment and a fine of € 30, 000.

Notwithstanding the provisions of articles 132-2 to 132-5 of the Criminal Code, these penalties are cumulative with those liable to be imposed for the crime or misdemeanour in connection with which the samples were taken, and may not run concurrently.

TITLE XXI: THE PROTECTION OF WITNESSES

Article 706-57

(Law nº 2001-539 of 25 June 2001 art. 26 Official Journal of 25 June 2001)

(Law nº 2001-1062 of 15 November 2001 art. 57 Official Journal of 16 November 2001)

(Law n° 2002-307 of 4 March 2002 Article 2 Official Journal of 5 March 2002)

Persons against whom there is no plausible reason to suspect that they have committed or have attempted to commit an offence and who are in a position to bring useful pieces of evidence to the proceedings can declare their registered address to be that of the police station or gendarmerie.

The addresses of such persons are then recorded in a classified, initialled register, which is opened for this purpose.

Article 706-58

(Law nº 2001-539 of 25 June 2001 art. 26 Official Journal of 25 June 2001)

(Law nº 2001-1062 of 15 November 2001 art. 57 Official Journal of 16 November 2001)

(Law n° 2002-1138 of 9 September 2002 Article 39 Official Journal of 10 September 2002)

In proceedings brought in respect of a felony or a misdemeanour punished by at least three years' imprisonment, where the hearing of a person described in article 706-57 is liable to put his life or health or that of his family members or his close relatives in serious danger, the liberty and custody judge, seised of the case in a reasoned application by the district prosecutor or the investigating judge, may authorise, in a reasoned decision, that this person's statements will be recorded without his identity appearing in the case file for the proceedings. This decision may not be appealed against, subject to the provisions of the second paragraph of article 706-60. The liberty and custody judge may himself decide to carry out the witness's hearing.

The liberty and custody judge's decision, which makes no mention of the person's identity, is attached to the official record of the witness's hearing, from which the person's signature is also omitted. The person's identity and address are written in another official record signed by him, which is put in a case file separate from the case file of the proceedings, and which also holds the application provided for in the previous paragraph. The identity and address of the person are written in a classified, initialled register, which is opened for this purpose in the district court.

Article 706-59

(Law nº 2001-539 of 25 June 2001 art. 26 Official Journal of 25 June 2001)

(Law nº 2001-1062 of 15 November 2001 art. 57 Official Journal of 16 November 2001)

Under no circumstance will the identity or the address of a witness who has benefitted from the provisions of articles 706-57 or 706-58 be revealed, outside the case provided for in the last paragraph of article 706-60.

The disclosure of the identity or the address of a witness who has benefited from the provisions of articles 706-57 or 706-58 is punished by five years' imprisonment and a fine of € 75,000.

Article 706-60

(Law nº 2001-539 of 25 June 2001 art. 26 Official Journal of 25 June 2001)

(Law nº 2001-1062 of 15 November 2001 art. 57 Official Journal of 16 November 2001)

The provisions of article 706-58 are not applicable if, when the circumstances in which the offence was committed or the witness's personality are taken into account, knowledge of the person's identity is essential to the case for the defence.

Within ten days of being informed of the content of a hearing carried out under the conditions provided for in article 706-58, the person under judicial examination may challenge, before the presiding judge of the investigating chamber, the recourse to the proceedings provided for in this article. After considering the evidence of the proceedings and that included in the case file mentioned in the second paragraph of article 706-58, the presiding judge of the investigating chamber rules, in a reasoned decision that is not open to appeal. If he finds the challenge justified, he orders the nullification of the hearing. He may also rule that the witness's identity be revealed, on the condition that the witness expressly makes it known that he agrees to waive his anonymity.

Article 706-61

(Law nº 2001-539 of 25 June 2001 art. 26 Official Journal of 25 June 2001)

(Law nº 2001-1062 of 15 November 2001 art. 57 Official Journal of 16 November 2001)

A person who has been placed under judicial examination or sent back to the trial court may ask to be confronted with a witness heard in accordance with the provisions of article 706-58, through the agency of a technical device allowing the witness to be heard from a distance. He may also get his advocate to interrogate this witness in the same way. The witness's voice is then rendered unidentifiable using the appropriate technical processes.

Article 706-62

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 57 Official Journal of 16 November 2001)

No conviction may be pronounced on the sole basis of statements recorded under the conditions set out in articles 706-58 and 706-61.

Article 706-63

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 57 Official Journal of 16 November 2001)

A Decree of the Council of State stipulates, so far as necessary, the requirements for the application of the provisions of the present title.

Article 706-64

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 55 Official Journal of 16 November 2001)

Criminal courts, with the exception of investigating jurisdictions and assize courts, may seek advice from the Court of Cassation pursuant to article L.151-1 of the Code of Judicial Organisation. However, no request for advice can be presented when, in the case in question, a person has been remanded in custody or placed under judicial supervision.

Article 706-65

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 55 Official Journal of 16 November 2001)

Where the judge contemplates seeking the Court of Cassation's advice pursuant to article L.151-1 of the Code of Judicial Organisation, he informs the parties and the public prosecutor. Within a time limit that he fixes, he receives any written submissions made by the parties and the conclusions of the public prosecutor unless these observations and conclusions have already been sent.

When he receives these submissions and conclusions, or at the expiry of the time limit, the judge may, in a decision that is notopen to challenge, seek the Court of Cassation's advice by formulating a question of law that he submits to the court. He stays his ruling until he has received this advice, or until the time limit mentioned in article 706-67 has expired.

Article 706-66

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 55 Official Journal of 16 November 2001)

The decision seeking the advice is sent, with the conclusions and any written remarks, from the court clerk to the court office at the Court of Cassation.

The parties are notified of this decision, as well as of the date for the sending of case file, by recorded delivery letter (with request for acknowledgement of receipt).

The district prosecutor of the court is informed, as is the senior presiding judge of the court of appeal and the prosecutor general where the request for advice does not come from the court of appeal.

Article 706-67

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 55 Official Journal of 16 November 2001)

The Court of Cassation delivers its judgment within three months of receiving the case file.

Article 706-68

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 55 Official Journal of 16 November 2001)

The case is sent to the prosecutor general at the Court of Cassation. He is informed of the date of the session.

Article 706-69

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 55 Official Journal of 16 November 2001)

The advice may mention that it will be published in the Official Journal of the French Republic.

Article 706-70

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 55 Official Journal of 16 November 2001)

The advice is sent to the court which requested it, to the public prosecutor of this jurisdiction, to the senior presiding judge of the appeal court and the prosecutor general, when the request did not come from the court of appeal.

The parties are notified by the court office at the Court of Cassation.

TITLE XXIII: THE USE OF MEANS OF TELECOMMUNICATION DURING PROCEEDINGS

Article 706-71

(Inserted by Law nº 2001-1062 of 15 November 2001 art. 32 Official Journal of 16 November 2001)

(Inserted by Law n° 2002-1138 of 9 September 2002 art. 35 Official Journal of 10 September 2002)

Where the inquiry or the investigation justify it, the hearing or the interrogation of a person, and also any confrontation between one or more persons, may be carried out in one or more different parts of the French national territory which are linked by means of telecommunication which guarantee the confidentiality of the transmission. Under the same conditions, applications for the purposes of extending a period of detention may be made using audiovisual equipment. In each of these places, an official record is drawn up of the processes which have been carried out there. These processes may be the subject of video or audio recording. The provisions of the fourth to ninth paragraphs of article 706-52 are therefore applicable.

Where necessary because an interpreter is unable to travel, the help of an interpreter during a hearing, interrogation or confrontation may also be provided through the agency of telecommunication.

The provisions of the present article also apply to the enforcement of requests for mutual assistance carried out simultaneously on French national territory and a place situated elsewhere, issued by foreign judicial authorities, or acts of mutual assistance carried out abroad at the French judicial authorities' request.

A Council of State decree specifies, so far as necessary, the manner of application of the present article.

TITLE XXIV: PROVISIONS APPLICABLE TO THE COMMUNITY COURT

Article 706-72

(Inserted by Law n° 2002-1138 of 9 September 2002 art. 10 Official Journal of 10 September 2002)

(Law n° 2003-495 of 12 June 2003 art. 8 IX Official Journal of 13 June 2003)

The community court is competent to judge the list of petty offences determined by Council of State decree. It then rules according to the procedure applicable in a police court, in accordance with the provisions of articles 521 to 549.

The community court may also validate the criminal mediation measures provided for in articles 41-2 and 41-3 when appointed to do so by the presiding judge of the district court.

For the trial of petty offences mentioned in the first paragraph which belong to the first four classes, the district prosecutor's powers are exercised by a prosecuting official in accordance with the provisions of articles 45 to 48.

For the trial of the offences mentioned in the first paragraph, and notably for petty offences under the Traffic Code, the territorial competence of the community court is that of the police court, including that of first instance courts exclusively competent in criminal matters under the provisions of article L.623-2 of the Judicial Organisation Code.

BOOK V

EXECUTION PROCEDURES

TITLE I: THE EXECUTION OF CRIMINAL SENTENCES

Article 707

The public prosecutor and the parties prosecute the execution of the decision to the extent that each of them is concerned.

However, proceedings for the recovery of fines and confiscations are undertaken by the tax collector in the district prosecutor's name.

Article 708

(Law n° 75-624 of 11 July 1975 art 36 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 92-1336 of 16 December 1992 art. 79 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2003-495 of 12 June 2003 art. 5 X Official Journal of 13 June 2003)

Execution takes place upon application made by the public prosecutor after the decision has become final.

However, the appeal time limit open to the public prosecutor by articles 505 and 548 does not prevent the execution of the penalty.

The execution of a penalty imposed for a petty offence or of a non-custodial misdemeanour penalty may be suspended or divided for serious medical, family, professional or social reasons. The decision is made either by the public prosecutor, or on the suggestion of the public prosecutor by the correctional court or police court in a hearing in chambers, according to whether the sentence must be suspended for less or more than three months. It is not, however, possible to suspend or divide the suspension of a driving licence in misdemeanour cases or for offences for which the law or the regulations provide that this penalty may not be limited to driving outside professional activities.

Where the trial court has decided that the execution of a fine, day-fine, or suspension of a driving licence should be divided pursuant to article 132-28 of the Criminal Code, such a decision may be varied pursuant to the conditions stated in the previous paragraph.

Article 709

The district prosecutor and public prosecutor have the right to directly request the assistance of police to ensure the execution of the sentence.

Article 709-1

(Law n° 72-1226 of 29 December 1972 Article 36 Official Journal of 30 December 1972)

(Law no. 87-1062 of 30 December 1987 Article 24 Official Journal 31 December 1987, in force on 1 March 1998)

(Ordinance n° 92-1149 of 2 October 1992 Article 20 Official Journal of 16 October 1992 in force on 1 January 1993)

(Law nº 2000-516 of 15 June 2000 art. 123 Official Journal of 16 June 2000)

Within each district court, one or more judges carry out the duties of the post-sentencing judge.

These judges are appointed by a Decree made after hearing the opinion of the High Council for the Judiciary. Their duties may also be ended in the same way.

If a post-sentencing judge is temporarily unable to perform his duties, the district court appoints another judge to replace him.

Article 710

(Law nº 92-1336 of 16 December 1992 art. 80 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Any procedural objections concerning the execution of penalties are filed with the court or appeal court which has imposed the sentence. This court may also rectify any purely clerical errors included in its decisions. It decides on any petition for the concurrence of penalties presented pursuant to article 132-4 of the Criminal Code.

In felony cases, the investigating chamber of the appeal court deals with any rectifications and incidents of execution that may arise from the judgments made by the assize court.

Article 711

The district or appeal court, upon application made by the public prosecution or the party concerned, decides in chambers after having heard the public prosecutor, the counsel of the party if he so requests and, if necessary, the party himself, subject to the provisions of article 712.

The execution of the disputed decision is suspended if the court or appeal court so orders.

The decision on the objection is served, upon the application of the public prosecutor, to the parties concerned.

Article 712

In every case where the examination of a detained convicted person appears necessary, the court seised of the case may send a rogatory letter to the presiding judge of the district court nearest to the place of detention.

This judge may delegate to one of the court's judges, who then proceeds with the examination of the detainee and drafts an official record of such examination.

Article 713-1

(Inserted by Law n° 84-1150 of 21 December 1984 Article 1 Official Journal of 22 December 1984)

Where, pursuant to an international Convention or agreement, a person detained for the execution of a sentence imposed by a foreign court is transferred to French territory to serve in France the remainder of the sentence, the execution of the penalty is prosecuted in accordance with the provisions of this Code, and specially articles 713-2 to 713-6.

Article 713-2

(Law n° 84-1150 of 21 December 1984 Article 1 Official Journal of 22 December 1984)

(Law n° 87-432 of 22 June 1987 Article 5-ii Official Journal of 23 June 1987)

As soon as he arrives on French soil, the detained convicted person is presented to the district prosecutor of the place of arrival, who then interrogates him as to his identity and drafts an official record thereof. However, if the interrogation cannot take place immediately, the convicted person is sent to the remand prison where he may not be detained more than twenty-four hours. At the end of this period, he is brought automatically before the district prosecutor by the prison warden.

Upon seeing the documents establishing the agreement of the States for the transfer and the consent of the person concerned, as well as the original or a copy of the foreign sentence accompanied, if necessary, by an official translation, the district prosecutor orders the immediate incarceration of the convicted person.

Article 713-3

(Inserted by Law n° 84-1150 of 21 December 1984 Article 1 Official Journal of 22 December 1984)

The penalty imposed on the foreigner is directly and immediately enforceable on the national territory in respect of the part remaining to be served in the foreign State, in consequence of the international Convention or agreement.

However, where the penalty imposed is more severe in kind or in length than the penalty provided by French law for the same offence, the correctional court of the place of detention, to which the district prosecutor or the convicted person refers the case, replaces it with the closest-corresponding penalty in French law, or reduces this penalty to the enforceable legal maximum. It determines in respect of it, as appropriate, the type and, within the limit of the part remaining to be served in the foreign State, the length of the sentence to be executed.

Article 713-4

(Law n° 84-1150 of 21 December 1984 Article 1 Official Journal of 22 December 1984)

(Law nº 93-2 of 4 January 1993 art. 224 Official Journal of 5 January 1993 in force 1 March 1993)

The court decides in open court, after hearing the public prosecutor, the convicted person, and, as the case may be, the counsel chosen by him or appointed officially upon his request. The judgment is immediately enforceable despite the filing of an appeal.

Article 713-5

(Inserted by Law n° 84-1150 of 21 December 1984 Article 1 Official Journal of 22 December 1984

The time taken for the transfer is deducted in its entirety from the length of the sentence executed in France.

Article 713-6

(Inserted by Law n° 84-1150 of 21 December 1984 Article 1 Official Journal of 22 December 1984

Any procedural objections made in respect of the execution of the remainder of the custodial sentence to be served in France are filed before the correctional court of the place of detention.

The provisions of article 711 of the present Code are applicable.

Article 713-7

(Inserted by Law n° 84-1150 of 21 December 1984 Article 1 Official Journal of 22 December 1984

The enforcement of the sentence is governed by the provisions of the present Code.

Article 713-8

(Inserted by Law n° 84-1150 of 21 December 1984 Article 1 Official Journal of 22 December 1984

No criminal prosecution may be initiated or continued and no sentence may be executed for the same offence against a convicted person serving in France a custodial sentence imposed by a foreign court, pursuant to an international Convention or agreement.

TITLE II: DETENTION

CHAPTER I: THE EXECUTION OF PRE-TRIAL DETENTION

Article 714

(Law nº 93-2 of 4 January 1993 art. 219 Official Journal of 5 January 1993 in force 1 March 1993)

Persons under judicial examination, and defendants and accused persons subjected to pre-trial detention, serve it in a remand prison.

There is a remand prison attached to each district court, appeal court and each assize court, except those district and appeal courts listed by Decree. In this last case, the Decree specifies the remand prison or prisons where are detained the defendants, appellants or accused under the jurisdiction of each of these courts.

Article 715

(Law nº 87-1062 of 30 December 1987 art. 11 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

The investigating judge, the presiding judges of the investigating chamber and of the assize court, and also the district prosecutor and public prosecutor, may give all the orders necessary, whether for the judicial investigation or for the trial, which have to be carried out in the remand prison.

Article 716

(Law nº 93-2 of 4 January 1993 art. 220 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 68 Official Journal of 16 June 2000 in force 1 January 2001)

Persons under judicial examination, defendants and accused subjected to pre-trial detention are placed under the rules governing individual imprisonment by day and night. Exceptions to this principle may only be made at their request or, if the persons concerned are authorised to work, by reason of the organisational constraints of the work.

For the exercise of their defence, persons under judicial examination, defendants and the accused are granted all means of communication and all facilities compatible with the requirements of discipline and safety of the prison.

CHAPTER II: EXECUTION OF CUSTODIAL SENTENCES.

SECTION I: GENERAL PROVISIONS

Article 716-1

(Law nº 92-1336 of 16 December 1992 art. 81 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

A sentence of one day's imprisonment constitutes twenty-four hours. That of one month means of thirty days. That of more than one month is calculated from the starting date in the first month to the corresponding date a month later.

Article 716-2

(Law nº 92-1336 of 16 December 1992 art. 81 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

The length of any custodial sentence is completed from the day when the inmate is detained on the basis of a final conviction.

Article 716-3

(Law nº 92-1336 of 16 December 1992 art. 81 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

The convicted person whose incarceration should end on an official holiday or a Sunday will be released on the previous working day.

Article 716-4

(Law nº 92-1336 of 16 December 1992 art. 81 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

(Law nº 2000-516 of 15 June 2000 art. 66 Official Journal of 16 June 2000)

Where pre-trial detention has been served at any stage of the proceedings, this detention is deducted in its entirety from the duration of

the sentence imposed or, if necessary, from the total length of the sentence to serve after concurrence of penalties. The same applies to any time spent in pre-trial detention ordered in the context of proceedings relating to the same charges as those resulting in conviction, if those proceedings have subsequently been quashed.

The provisions of the previous paragraph are also applicable to detention in order to carry out a summons or an arrest warrant, to detention outside France following an extradition warrant, and to detention pursuant to articles 741-2 and 741-3.

Article 717

(Law nº 70-643 of 17 July 1970 art. 24 Official Journal of 19 July 1970)

(Law n° 87-432 of 22 June 1987 Article 5-iii Official Journal of 23 June 1987)

(Law n° 95-125 of 8 February 1995 Article 60 Official Journal of 9 February 1995)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

(Law N° 2002-1138 of 9 September 2002 art. 50 Official Journal of 10 September 2002)

Convicted persons serve their sentence in penal establishments.

Persons sentenced to imprisonment for up to a year may, however, in exceptional cases, be held in a remand prison and incarcerated, in this case, in a specific area, where the conditions dictated by the preparation for their release, their family circumstances or their personality justify it.

Convicted prisoners who have less than a year left to serve may, in exceptional cases, be transferred to a remand prison.

Article 718

(Law n° 94-89 of 1 February 1994 Article 7 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

The distribution of prisoners between the prisons created for serving custodial sentences is made according to their criminal category, their age, their state of health and their personality.

Pursuant to the conditions provided for by Decree of the Council of State, persons sentenced for the murder or assassination of a minor of less than fifteen years of age, preceded or accompanied by rape, torture or acts of barbarity, or for any offence specified by articles 222-23 to 222-32 and 227-25 to 227-27 of the Criminal Code, serve their sentence within penitentiary institutions which afford the appropriate medical and psychological supervision.

Article 719

(Law n° 87-432 of 22 June 1987 Article 5-iv Official Journal of 23 June 1987)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

Prisoners in remand prisons are subjected to an individual imprisonment by day and by night, and, in other prisons, to night isolation only, eventually after spending an observation period in a cell.

Exceptions to this principle may only be made by reason of the interior distribution of detention premises, or of their temporary overcrowding, or because of work organisation requirements.

Article 720

(Law n° 75-624 of 11 July 1975 art 61 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 87-432 of 22 June 1987 Article 5-v Official Journal of 23 June 1987)

(Law n° 90-9 of 2 January 1990 Article 9 Official Journal of 4 January 1990)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

(Law n° 2002-1138 of 9 September 2002 Article 51 Official Journal of 10 September 2002 in force 1 January 2003)

Working and professional training activities are taken into account for the evaluation of the evidence of social reintegration and of the prisoners' good behaviour.

All arrangements are made within prisons to offer work to those inmates who desire it.

The inmates' working relationships are not set out in an employment contract. Exceptions may be made to this rule for activities exercised outside the prisons.

The rules governing the distribution of the income generated by the inmates' work are determined by a Decree.

Deductions from the income of prisoners' labour may not be made in respect of the cost of their upkeep in prison.

Article 720-1-A

(Law nº 2000-516 of 15 June 2000 art. 129 Official Journal of 16 June 2000)

Members of Parliament and senators are authorised to visit police custody premises, detention centres, waiting zones and prisons at any time.

Article 720-1-AA

(Inserted by Law n° 2002-1138 of 9 September 2002 Article 46 Official Journal of 10 September 2002)

With the permission of the prison governor, prisoners may work for their own profit.

SECTION II: SUSPENSION AND DIVISION OF CUSTODIAL SENTENCES

Article 720-1

(Law n° 75-624 of 11 July 1975 art 37 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 92-1336 of 16 December 1992 art. 82 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 221 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

(Law nº 2000-516 of 15 June 2000 art. 125 Official Journal of 16 June 2000 in force 1 January 2001)

In misdemeanour cases, where the person sentenced has no more than a year's imprisonment left to serve and in the event of a serious problem of a medical, familial, professional or social nature, this sentence may be suspended or divided into fractions for a length of time not in excess of three years, none of these fractions being shorter than two days. The decision is taken by the post-sentencing judge under the conditions provided for in article 722.

Where the division of the execution of a custodial sentence was decided by the trial court pursuant to article 132-27 of the Criminal Code, this decision may be varied following the conditions provided for in the previous paragraph.

Article 720-1-1

(Inserted by Law nº 2002-303 of 4 March 2002 Article 10 Official Journal of 5 March 2002)

Suspension may also be ordered, whatever the type of penalty incurred and the length left to be served, and for an unspecified length of time, where it is established that prisoners are suffering from fatal illnesses, or that their state of health is incompatible in the long term with being kept in prison; but this does not apply to persons hospitalised and held in mental institutions.

Suspension may only be ordered if two independent expert reports concur in establishing that the convicted person falls into one of the categories outlined in the previous paragraph.

Where the custodial sentence incurred is of a duration of ten years or less, or where regardless of the sentence initially pronounced, the length of the sentence left to serve is less than or equal to three years, this suspension is ordered by the post-sentencing judge in accordance with the conditions set out in article 722.

In all other cases, it is ordered by the regional parole court pursuant to the conditions provided for by article 722-1.

At any stage, the post-sentencing judge may order the expert medical examination of a prisoner who has benefited from measures suspending his sentence in accordance with the present article and may rule that the suspension is revoked if its conditions are no longer being met.

The provisions of article 720-2 are not applicable where the provisions of the present article apply.

SECTION III: SAFETY TERM

Article 720-2

(Law nº 78-1097 of 22 November 1978 art. 1 Official Journal of 23 November 1978)

(Law nº 81-82 of 2 February 1981 art. 35 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 6-i Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 92-1336 of 16 December 1992 art. 83 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

The provisions governing the suspension or division of the sentence, non-custodial postings, temporary leaves, semi-detention and parole

are not applicable during the length of the safety term set out in article 132-23 of the Criminal Code.

Except where otherwise decided by the terms of a pardon, the commutation or remission of a custodial sentence carrying a safety term automatically entails the continuation of this term for a global length corresponding to half of the sentence resulting from this commutation or remission, without however being allowed to exceed the length of the safety term attached to the sentence imposed.

Article 720-3

Repealed

Article 720-4

(Law nº 78-1097 of 22 November 1978 art. 1 Official Journal of 23 November 1978)

(Law nº 83-466 of 10 June 1983 art. 6-iv Official Journal of 11 June 1983 in force 27 June 1983)

(Law nº 86-1019 of 9 September 1986 art. 12 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 85 Official Journal of 23 December 1992 in force 1 March 1994)

(Law n° 94-89 of 1 February 1994 Article 6 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Where the convicted person shows serious signs of social readaptation, the post-sentencing judge may exceptionally, and pursuant to the conditions of article 722, refer the case to the court of the place of detention of the same level as the court which passed the sentence, to have an end put to the enforcement of all or part of the provisions of article 720-2, or so that the length of the safety term be shortened. If the sentence was imposed by an assize court, the court competent to decide on the application is the investigating chamber of the area in which the convicted person is detained. However, where the assize court decided to carry the length of the safety term to thirty years pursuant to the last paragraph of articles 221-3 and 221-4 of the Criminal Code, the investigating chamber may only be seised of the case after the convicted person has served a period at least equal to two thirds of the safety term.

Where the assize court has decided that none of the measures enumerated in article 132-23 of the Criminal Code could be granted to a person sentenced to life imprisonment, the post-sentencing judge may upon expiry of a thirty year term from the date of the conviction, refer the case to a panel of three experts chosen by the council of the Court of Cassation from the list of the experts accredited to that Court. This panel states its opinion as to the danger of the convicted person.

A commission composed of five Court of Cassation judges decides after hearing the opinion of this panel whether it is appropriate to put an end to the implementation of the assize court's decision mentioned in the previous paragraph. The members of this commission are appointed by the Court of Cassation general assembly. One of their number, chosen from the members of the criminal division, acts as president of the commission.

By way of exception to the third paragraph of article 732, the assistance and supervision measures which may be attached to a later parole decision may be fixed without a limit in time.

Article 720-5

(Law nº 86-1019 of 9 September 1986 art. 14 Official Journal of 10 September 1986)

(Law nº 92-1336 of 16 December 1992 art. 86 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

(Law nº 2000-1354 of 30 December 2000 art. 21 Official Journal of 31 December 2000)

In the event of a conviction to which is attached a safety term in excess of fifteen years, no parole may be granted before the convicted person has been placed for a period of between one and three years in a semi-detention regime. The semi-detention regime is then ordered by the regional parole court under the conditions provided for in article 722-1, except where the convicted person has less than three years of his sentence left to serve.

SECTION IV: REMISSION OF PENALTIES

Article 721

(Law nº 70-643 of 17 July 1970 art. 25 Official Journal of 19 July 1970)

(Law n° 72-1226 of 29 December 1972 Article 45 Official Journal of 30 December 1972)

(Law nº 85-1407 of 30 December 1985 art. 75 & 94 Official Journal of 31 December 1985 in force 1 February 1986)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

Remission of sentence may be granted to prisoners detained to serve one or more custodial sentences if they have shown sufficient

evidence of good behaviour.

This remission is granted by the post-sentencing judge, after hearing the opinion of the post-sentencing commission. It may not exceed three months per year of incarceration and seven days per month for a shorter term of incarceration.

It is decided once and for all where the imprisonment is less than one year, and otherwise by annual fractions. However, for imprisonment served under the rules governing pre-trial detention, it is decided, where appropriate, within two-months from the date of the sentence becoming final.

In the year following its granting, the remission of sentence may, in the event of the inmate' bad behaviour, be withdrawn in all or in part by the post-sentencing judge, after hearing the opinion of the post-sentencing commission.

For the application of the present article, the situation of each convicted person is considered at least once a year.

Article 721-1

(Law nº 75-6241 of 11 July 1975 art. 38 Official Journal of 13 July 1975)

(Law nº 86-1021 of 9 September 1986 art. 1 Official Journal of 10 September 1986)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

(Law n°98-468 of 17 June 1998, art. 6 & 7 Official Journal of 18 June 1998)

(Law nº 2000-516 of 15 June 2000 art. 119 Official Journal of 16 June 2000 in force 1 January 2001)

After one year of detention, additional remission may be granted to inmates who show serious signs of social readjustment, especially where they successfully sit for a school, university or professional examination demonstrating the acquisition of new knowledge or justifying real progress within the framework of tuition or training, or by making efforts to compensate their victims. Unless the post-sentencing judge decides otherwise after considering the views of the post-sentencing commission, those persons sentenced to judicial supervision with a compulsory medical treatment order who refuse treatment during their imprisonment are not considered to show genuine efforts towards social readjustment.

This remission is granted by the post-sentencing judge after hearing the opinion of the post-sentencing commission, and if the convicted person is in the legal situation of a recidivist, may not exceed one month per year of incarceration, or two days per month where the length of incarceration remaining to be served is less than one year. If the convicted person is not in the legal situation of a recidivist, these limits are respectively extended to two months and four days. The provisions of the third paragraph of article 721 are applicable.

Unless the post-sentencing judge decides otherwise having considered the post-sentencing commission's views, the provisions of the present article are not applicable to persons convicted of any of the offences mentioned in article 706-47 if, when their sentence became final, a conviction for such an offence was noted in their criminal record.

SECTION V: ATTRIBUTIONS OF THE POST-SENTENCING JUDGE AND OF THE POST-SENTENCING COMMISSION

Article 722

(Law n° 72-1226 of 29 December 1972 Article 37 Official Journal of 30 December 1972)

(Law n° 78-788 of 28 July 1978 Article 25-i & 25-ii Official Journal of 29 July 1978)

(Law n° 78-1097 of 22 November 1978 Article 2 Official Journal of 23 November 1978)

(Law nº 81-82 of 2 February 1981 art. 36-i & 86-ii Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 6-i & 6-ii Official Journal of 11 June 1983 in force 27 June 1983)

(Law n° 94-89 of 1 February 1994 Article 8 Official Journal of 2 February 1994 in force on 2 February 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

(Law n°98-468 of 17 June 1998, art. 29 & 30 Official Journal of 18 June 1998)

(Law nº 2000-516 of 15 June 2000 art. 125 & 140 Official Journal of 16 June 2000 in force 1 January 2001)

(Law n° 2002-1138 of 9 September 2002 Article 44 Official Journal of 10 September 2002)

The post-sentencing judge attached to each penitentiary institution determines for each convictedperson the main terms of the penitentiary treatment. Within the limits and conditions set out by law, he grants non-custodial postings, semi-detentions, remissions, divisions and suspensions of penalties, permission for escorted leave, temporary leave, parole, postings under electronic supervision, or he refers the case to the competent court to adapt the enforcement of the sentence. Except in urgent cases, he rules after hearing the opinion of the post-sentencing commission for the granting of remissions of sentence, authorisations for escorted leave, and temporary leave.This commission is deemed to have given an opinion if this has not been done within one month from the date an application is made to it.

The post-sentencing judge also states his opinion on the transfer of convicted persons from one institution to another, except in urgent cases.

The post-sentencing commission is chaired by the post-sentencing judge; the district prosecutor and prison governor are members as of right.

The measures enumerated in the first paragraph, with the exception of sentence remissions which do not lead to an immediate release and permissions for escorted leave, may not be granted without prior psychiatric expert opinion to any person sentenced for the murder or assassination of a minor, accompanied by rape, torture or acts or barbarity, or convicted for one of the offences listed in articles 222-23 to 222-32 and 227-25 to 227-27 of the Criminal Code. The expert opinion is given by three experts when the person was convictedof murder, assassination or rape of a minor of less than fifteen years.

The measures for outside placements, semi-detention, divided and suspended sentences, placement under electronic surveillance and release on parole are granted, postponed, refused, withdrawn or revoked by a reasoned decision from the post-sentencing judge, seised automatically of the case, at the request of the defendant or on the district prosecutor's submission. This decision is made after consulting the representative from the prison administration, after a debate held in chambers, during which the post-sentencing judge hears the public prosecutor's submissions and the convicted person's observations as well as, where appropriate, those of his advocate. This decision may be challenged by means of an appeal by the convictedperson, the district prosecutor and the public prosecutor, within ten days of its notification. The appeal is brought before the local court of appeal.

The post-sentencing judge may, with the agreement of the district prosecutor and the defendant or his advocate, grant one of the measures set out in the preceding paragraph without holding an adversarial hearing.

The post-sentencing judge's decisions are provisionally enforceable. However, when within 24 hours of notification, the public prosecutor's appeal is lodged against a decision granting one of the measures provided for in the sixth paragraph, he suspends the enforcement of this decision until the court has ruled. The case must come before the appeal court no later than two months following the public prosecutor's appeal, failing which the latter is nullified.

A decree determines the mode of enforcement of the two previous paragraphs. This decree stipulates the localisation of the debates that the post-sentencing judge must hold, where they relate to convicted persons held in prison.

Article 722-1

(Law nº 2000-516 of 15 June 2000 art. 125 & 140 Official Journal of 16 June 2000 in force 1 January 2001)

(Law nº 2000-1354 of 30 December 2000 art. 22 Official Journal of 31 December 2000)

Parole measures which do not come under the post-sentencing judge's jurisdiction are granted, deferred, refused or withdrawn by a reasoned decision from the regional parole court, which is seised of the convicted person's request or the district prosecutor's submissions, and decides after consulting the parole commission's views.

This court, set up in each appeal court, is composed of a presiding judge or an appeal court judge, who presides, and two post-sentencing judges from the area of the court of appeal. For decisions granting, adjourning or refusing parole, this is the court for the area in which is situated the prison in which the convicted person is held.

The public prosecutor's duties are carried out by the district prosecutor or by one of his general advocates or his replacements. The duties of the clerk are carried out by a clerk from the appeal court.

The regional parole court rules in a reasoned decision, at the end of a debate held in chambers, during which the submissions of the public prosecutor are heard, the observations of the prisoner and, where appropriate , those of his advocate.

The court's decisions may be appealed against, within ten days of their being made known by the convicted person or the public prosecutor, before the national parole court. These decisions are provisionally executory. However, where the public prosecutor's appeal is made within twenty-four hours from the notification, it suspends the enforcement of the decision until the national court has ruled. The case must be examined by the national court within no longer than two months from the appeal being filed, failing which it is void.

The national parole court is made up of the senior presiding judge of the Court of Cassation or other judge of this court representing him, and who presides, two other judges from the court, and in addition one official from the national societies for the reintegration of prisoners and another from the national societies for victim support. The duties of the public prosecutor are carried out by the prosecutor general at the Court of Cassation. The national court decides, in a reasoned decision, which is not open to appeal, of whatever sort. The proceedings take place and the decision is delivered in chambers, after the convicted person's advocate's observations have been heard.

A Decree specifies the mode of application of the present article. This Decree determines the localisation of the debates that the regional parole court must hold, where they are concerned with convicted persons held in prison.

Article 722-1-1

(Inserted by Law nº 2000-1354 of 30 December 2000 art. 32 Official Journal of 31 December 2000)

In France's overseas territories and administrative divisions, in New Caledonia, French Polynesia, and territory belonging to Mayotte, St Pierre and Miquelon, the regional parole court provided for in article 722-1 is composed of a judge from the appeal court, who presides, a judge from the appeal court and a post-sentencing judge, who act as assessors.

Where the hearing of the regional parole court, established in Fort de France, takes place in the administrative division of Guyana, the senior presiding judge of the appeal court of Fort de France may, by decree, appoint the presiding judge of the detached chamber or one of his councillors to exercise the duties of the presiding judge, and an advisor from the detached chamber to carry out the assessor's duties.

Article 722-2

(Inserted by Law nº 2000-516 of 15 June 2000 art. 125 Official Journal of 16 June 2000 in force 1 January 2001)

Where a prisoner who has benefited from one of the measures described in articles 722 or 722-1 fails to fulfil the obligations for which he is responsible, the post-sentencing judge may serve him with a summons.

If the convicted person has absconded or lives abroad, the judge may serve an arrest warrant.

The provisions of articles 122 to 124 and 126 to 134 are then applicable and the investigating judge's duties are exercised by the post-sentencing judge.

SECTION VI: NON-CUSTODIAL POSTING, SEMI-DETENTION, TEMPORARY LEAVE AND PERMISSION FOR ESCORTED LEAVE

Article 723

(Law nº 70-643 of 17 July 1970 art. 26 Official Journal of 19 July 1970)

(Law n° 78-1097 of 22 November 1978 Article 3 Official Journal of 23 November 1978)

(Law nº 85-1407 of 30 December 1985 art. 86 & 84 Official Journal of 31 December 1985 in force 1 February 1986)

(Law n° 92-1336 of 16 December 1992 Article 87 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

A non-custodial posting enables the convicted person to find employment outside penitentiary premises by taking part in work supervised by the penitentiary administration.

The rules governing semi-detention are set out by article 132-26 of the Criminal Code.

A Decree fixes the conditions pursuant to which these various measures are granted and implemented.

Article 723-1

(Law nº 70-643 of 17 July 1970 art. 27 Official Journal of 19 July 1970)

(Law nº 85-1407 of 30 December 1985 art. 57 & 84 Official Journal of 31 December 1985 in force 1 February 1986)

(Law n° 92-1336 of 16 December 1992 Article 88 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

The post-sentencing judge may decide that the sentence is to be served under a semi-detention regime, either when the inmate has to serve one or more sentences the total length of which does not exceed one year, or where the convicted person was paroled on condition of being subjected whilst on probation to the rules governing semi-detention.

Article 723-2

(Law nº 70-643 of 17 July 1970 art. 27 Official Journal of 19 July 1970)

(Law n° 72-1226 of 29 December 1972 Article 60-i Official Journal of 30 December 1972)

(Law n° 92-1336 of 16 December 1992 Article 89 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

Where the provisions of article 132-25 of the Criminal Code have been resorted to and the conditions which enable the court to decide that the sentence would be served under the rules governing semi-detention are not fulfilled, or if the convicted person does not abide by the obligations which were imposed on him, or if he demonstrates bad behaviour, the benefit of semi-detention may be withdrawn by the district court upon a report made by the post-sentencing judge. This court is that of the place of execution of the decision or, if the convicted person is detained, of the place of detention.

The post-sentencing judge may suspend the implementation of semi-detention in case or urgency.

In this last case, the court must decide on the continuation or withdrawal of this regime within five days.

Article 723-3

(Law n° 78-1097 of 22 November 1978 Article 4 Official Journal of 23 November 1978)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

Temporary leave authorises a convicted person to take leave of a penitentiary institution for a given length of time, which will be deducted from the length of the sentence being served.

Its objectives are to prepare the social and professional reintegration of the convicted person, to maintain family links or to enable him to perform a formality for which his presence is required.

Article 723-4

Repealed

Article 723-5

(Law n° 78-1097 of 22 November 1978 Article 4 Official Journal of 23 November 1978)

(Law nº 92-1336 of 16 December 1992 art. 90 Official Journal of 23 December 1992 in force 1 March 1994)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

Without prejudice to the application of article 434-29 of the Criminal Code, the court may decide that the convicted person will lose the advantage of the sentence remissions previously granted, in the event of a conviction for an intentional crime or a misdemeanour committed during temporary leave.

Article 723-6

(Law n° 78-1097 of 22 November 1978 Article 5 Official Journal of 23 November 1978)

(Law nº 97-1159 of 19 December 1997 art. 1 Official Journal of 20 December 1997)

Any convicted person may be granted an authorisation for escorted leave pursuant to the conditions of article 722 in exceptional cases.

SECTION VII: PLACEMENT UNDER ELECTRONIC SURVEILLANCE

Article 723-7

(Law n° 97-1159 of 19 December 1997, Articles 1 and 2 Official Journal of 20 December 1997)

(Law n° 2000-516 of 15 June 2000 Article 130 Official Journal 16 June 2000, in force 1 January 2001)

(Law n° 2002-1138 of 9 September 2002 Article 49 Official Journal of 10 September 2002)

Where a person is sentenced to one or more custodial sentences the total length of which does not exceed one year, or where there remain for him to serve one or more custodial sentences the total length of which does not exceed one year, the post-sentencing judge may decide, on his own motion, or upon the application of the district prosecutor or of the convicted person, that the penalty shall served under the regime of placement under electronic supervision. The decision to resort to placement under electronic supervision may only be made after obtaining the consent of the person concerned. Where the convicted person does not choose an advocate to assist him, an advocate is appointed officially by the president of the Bar. A decision to place an unemancipated minor under electronic surveillance may only be taken, subject to the same conditions, with the agreement of those entitled to exercise parental authority.

When the place designated by the post-sentencing judge is not the place where the convicted person lives, the decision to place him under electronic surveillance may be taken only with the consent of the person in charge of that place, unless it is a public one.

Placement under electronic supervision may also be ordered under the terms set out in the previous paragraph as probation for parole, and for a period not excess of one year.

For the convicted person, electronic supervision entails prohibition to leave his domicile or other place designated by the post-sentencing judge, other than at the times he determines. The terms and places are determined by taking into account:

the performance of any professional activity by the convicted person; any training or education being received by him, or the fact that has an internship or holds temporary employment with a view to his social integration; his participation in family life; and the requirements of any medical treatment.

For the convicted person, placement under electronic supervision also involves the obligation to appear when requested to do so by any public authority determined by the post-sentencing judge.

Article 723-8

Supervision of the execution of the measure is ensured through a device which makes it possible to detect at a distance the presence or absence of the convicted person from the place chosen by the post-sentencing judge for each given term. The implementation of these proceedings may lead to the person being required to carry a device incorporating a transmitter during daytime electronic supervision.

The device used is accredited for such use by the Minister of Justice. Its implementation must ensure respect for the dignity, integrity and private life of persons.

Article 723-9

(Law n° 97-1159 of 19 December 1997, Articles 1 and 2 Official Journal of 20 December 1997)

(Law n° 2002-1138 of 9 September 2002 Article 49 Official Journal of 10 September 2002)

The person under electronic supervision is placed under the supervision of the post-sentencing judge within whose area of jurisdiction he is so placed.

Supervision of placement under electronic supervision from a distance is carried out by officials of the prison service who are authorised, for the performance of this duty, to handle computerised personal data.

The implementation of the device permitting supervision at a distance may be entrusted to a private legal person authorised under conditions laid down by a decree of the Council of State.

During the periods designated by the electronic supervision decision, the prison officials in charge of supervision may go to the area of placement and ask to meet the convicted person. However, they may not enter any home where the placement is carried out without obtaining the consent of those whose home it is. The officials immediately report to the post-sentencing judge the steps that they have taken.

The police and the gendarmerie may at any time officially note the improper absence of the convicted person and report this to the post-sentencing judge.

Article 723-10

The post-sentencing judge may also impose upon the person under electronic supervision the measures set out by articles 132-43 to 132-46 of the Penal Code.

Article 723-11

The post-sentencing judge may, on his own motion or upon the application of the convicted person, and after hearing the opinion of the district prosecutor, vary the execution conditions of the electronic supervision provided for by the third paragraph of article 723-7, and also measures the provided for by article 723-10.

Article 723-12

The post-sentencing judge may at any time appoint a doctor to check that the implementation of the device mentioned in the first paragraph of article 723-8 does not present a danger for the convicted person's health. This is done as of right wherever the convicted person so requests. The medical certificate is attached to the case file.

Article 723-13

After having heard the convicted person in the presence of his counsel, the post-sentencing judge may withdraw the decision placing him under electronic supervision in case of failure to observe the restrictions or obligations imposed by the last paragraph of article 723-7, for notorious misconduct, for non-compliance with measures imposed pursuant to article 723-10, in the case of a new conviction, of a refusal by the convicted person of any necessary modification of the execution conditions, or upon the request of the convicted person.

The decision is taken in chambers after an adversarial debate during which the post-sentencing judge hears the district prosecutor's submissions and the observations of the convicted person, as well as those of his counsel, if there is one. It is provisionally enforceable. It may be appealed against within ten days to the correctional appeal court, sitting to deal with the enforcement of penalties

Where the electronic supervision decision is withdrawn, the convicted person serves all or part of the sentence that remained for him to serve on the day of his placement under electronic supervision, according to the provisions stated in the withdrawal decision. The time during which he was placed under electronic supervision does however count towards the execution of his sentence.

Article 723-14

A Decree of the Council of State determines the implementation conditions of the present section.

CHAPTER III: PROVISIONS COMMON TO THE VARIOUS PENITENTIARY INSTITUTIONS

Article 724

(Law nº 70-643 of 17 July 1970 art. 28 Official Journal of 19 July 1970)

Prisons receive persons undergoing pre-trial detention or sentenced to serve a custodial sentence.

An imprisonment record is drafted for every person brought to a prison or who freely presents himself there.

The conditions of implementation of the present article are determined by a Decree.

Article 724-1

(Law nº 98-349 of 11 Mai 1998 art. 38 Official Journal of 12 Mai 1998)

The prison opens an individual file for each prisoner, which includes information of a criminal and penitentiary character, which it keeps up to date.

The prison services communicate with the competent administrative authorities in order to acquire any information relating to the identity of the person detained, his place of incarceration, his criminal situation and his date of release, where such information is necessary to carry out the duties of the said authorities.

In particular, they communicate any information of this type relating to foreign detainees against whom a measure of removal from the French territory has been or will be passed to the centralised or decentralised services of the Ministry of the Interior.

Article 725

(Law nº 70-643 of 17 July 1970 art. 28 Official Journal of 19 July 1970)

(Law nº 87-1062 of 30 December 1987 art. 11 Official Journal of 31 December 1987 in force 1 September 1989)

(Law nº 89-461 of 6 July 1989 art. 21 Official Journal of 8 July 1989 in force 1 December 1989)

No prison administration officer may, under penalty of prosecution and sentence for arbitrary detention, receive or retain a person except in accordance with a sentencing judgment, an arrest warrant upon indictment, a detention or arrest warrant, or a summons when this warrant must be followed by provisional detention, or an arrest order drafted in accordance with the law, and without drafting the imprisonment record provided for by article 724.

Article 726

If an inmate uses threats, insults or violence, or commits a breach of discipline, he may be locked up alone in a cell provided for this purpose, or even be subjected to means of coercion in the event of a serious bout of fury or violence, without prejudice to any prosecution that may be initiated against him.

Article 727

(Law n° 72-1226 of 29 December 1972 Article 38 Official Journal of 30 December 1972)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The post-sentencing judge, the investigating judge, the presiding judge of the investigating chamber as provided for in article 222, the district prosecutor and the prosecutor general visit prisons.

A supervision commission is created for each prison, the composition and the powers of which are determined by a Decree.

This Decree also fixes the conditions pursuant to which certain persons may be allowed to visit inmates.

Convicted persons may continue to communicate in the same conditions as non-convicted defendants with the defence counsel who assisted them during the proceedings.

Article 728

(Law n° 87-432 of 22 June 1987 Article 5-vi Official Journal of 23 June 1987)

A Decree determines the organisation and in-house regulations of prisons.

CHAPTER IV: INMATES' MONETARY ASSETS

Article 728-1

(Inserted by Law n° 90-589 of 6 July 1990 Article 11 Official Journal of 11 July 1990)

Inmates' financial assets are entered into in an account opened in their name by the prison and divided into three parts: the first, against which only civil parties and persons entitled to alimony may exercise their rights; the second is assigned as compulsory savings for when the prisoner is released, and which may not be subject to any execution measure; the third is left at the inmate's free disposal.

The amounts destined for the compensation of civil parties are paid out to them directly by the penitentiary institution upon request made by the district prosecutor, subject to the rights of any persons entitled to alimony.

The nature of monetary assets, the respective size of the three parts, and the terms of management of the nominative account are determined by Decree.

TITLE III: PAROLE

Article 729

(Law n° 72-1226 of 29 December 1972 Article 39 Official Journal of 30 December 1972)

(Law n° 75-624 of 11 July 1975 art 39 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 81-82 of 2 February 1981 art. 69 Official Journal of 3 February 1981)

(Law n° 92-1336 of 16 December 1992 Article 91 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 126 Official Journal of 16 June 2000 in force 1 January 2001)

The aim of parole is the social reintegration of prisoners and the prevention of re-offending. Convicted persons who have to serve one or more custodial sentences may be granted parole if they show serious efforts towards social reintegration, especially if they can prove that they work, or prove their regular attendance at teaching or training courses, or work experience or a temporary job with regard to their social reintegration, or their essential participation in family life, or of their need to undergo treatment or their efforts with regard to compensating their victims.

Subject to the provisions of article 132-23 of the Criminal Code, parole may be granted when the length of the sentence served by the convicted person is at least equal to the length of the sentence remaining to be served. However, prisoners in the legal situation of recidivists in the meaning of articles 132-8, 132-9 or 132-10 of the Criminal Code may only be paroled if the length of the sentence served is at least twice the length of the sentence remaining to be served. In the situations covered by the present paragraph, the probation term may not be in excess of fifteen years.

The probation term is fifteen years for persons sentenced to life imprisonment.

Article 729-1

(Law nº 86-1021 of 9 September 1986 art. 2 Official Journal of 10 September 1986)

(Law n° 92-1336 of 16 December 1992 Article 92 Official Journal of 23 December 1992 in force on 1 March 1994)

A reduction of the probation term necessary for obtaining parole may be granted to prisoners sentenced to felonious life imprisonment pursuant to the forms and conditions set out by articles 721 and 721-1. However, the total length of such reductions may not exceed twenty days, or one month per year of incarceration, according to whether the convicted person is in the legal situation of a recidivist or not. The reductions, where there is one, are apply only to the part of the sentence beyond the safety term provided for by article 132-23 of the Criminal Code.

Article 729-2

(Law n° 78-1097 of 22 November 1978 Article 7 Official Journal of 23 November 1978)

(Law nº 86-1021 of 9 September 1986 art. 3 Official Journal of 10 September 1986)

(Law n° 95-125 of 8 February 1995 Article 46 Official Journal of 9 February 1995)

Where an alien sentenced to a custodial sentence is subject to banishment from French territory, to an order escorting him back to the border, expulsion or extradition, his parole is subject to the execution of this measure. It may be decided without his consent.

Article 729-3

(Inserted by Law nº 2000-516 of 15 June 2000 art. 32, 82, 83 & 132 Official Journal of 16 June 2000)

Parole may be granted to any person sentenced to a prison term of four years or less, or for whom the amount of time left to serve is of four years or less, where this person has parental rights over a child of less than ten years, who habitually lives with this parent.

The provisions of the present article are not applicable to those convicted of a felony or a misdemeanour committed against a minor.

Article 730

(Law n° 72-1226 of 29 December 1972 Article 40 Official Journal of 30 December 1972)

(Law nº 93-2 of 4 January 1993 art. 156 Official Journal of 5 January 1993 in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 125 Official Journal of 16 June 2000 in force 1 January 2001)

Where a prison sentence imposed is of ten years or less, or where, regardless of the length of the sentence initially imposed the time left to serve is of three years or less, parole is granted by the post-sentencing judge according to the conditions set out in article 722.

In all other cases, parole is granted by the regional parole court, in accordance with the conditions provided for in article 722-1.

For the implementation of the present article, the situation of each convicted person is examined at least once a year, when the time limit conditions provided for in article 729 are fulfilled.

A Decree determines the terms of implementation of the present article.

Article 731

(Law n° 72-1226 of 29 December 1972 Article 41 Official Journal of 30 December 1972)

(Law nº 2000-516 of 15 June 2000 art. 123 Official Journal of 16 June 2000 in force 1 January 2001)

The granting of parole may be subjected to special conditions and also to assistance and supervision measures designed to facilitate and verify the social reintegration of the released convicted person.

These measures are arranged by the post-sentencing judge with the assistance of the prison department for integration and probation, and, if necessary, with the contribution of the institutions authorised for this purpose.

A Decree determines the terms of implementation of the measures set out in the present article, the composition and attributions of the probation services and the accreditation conditions of the institutions mentioned under the previous paragraph. It also fixes the funding conditions necessary for the implementation of such measures and for the operations of the probation services.

Article 732

(Law n° 72-1226 of 29 December 1972 Article 42 Official Journal of 30 December 1972)

(Law n° 92-1336 of 16 December 1992 Article 93 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 123 & 125 Official Journal of 16 June 2000 in force 1 January 2001)

The parole decision fixes the terms of execution and the conditions to which the granting or the continuation of liberty are subject, as well as the kind and period of the assistance and supervision measures. If the decision is made by the regional parole court, the latter may provide that the release shall take place on a day nominated by the post-sentencing judge falling between two determined dates.

Where the sentence is a fixed term sentence, this period may not be less than the length of the part of the sentence remaining to be served on the day of the release. It may be longer by a maximum of one year. The total length of assistance and supervision measures may however not exceed ten years.

Where the sentence served is a life sentence, the length of the assistance and supervision measures is fixed for a term which may not be less than five years, nor more than ten years.

The provisions of the parole decision may be varied at any time during the entire length of parole pursuant to the distinctions made by article 730, after hearing the opinion of the prison department of integration and probation, by the post-sentencing judge competent to implement this decision, or, at this judge's suggestion, by the regional parole court.

Article 733

(Law n° 72-1226 of 29 December 1972 Article 43 Official Journal of 30 December 1972)

(Law nº 2000-516 of 15 June 2000 art. 123 & 125 Official Journal of 16 June 2000 in force 1 January 2001)

In the event of a new conviction, of notorious misconduct, of violation of the conditions or of a non-observance of the measures determined by the parole decision, this decision may be revoked pursuant to the provisions of article 730, either by the post-sentencing judge competent to implement this decision, having heard the opinion of the members of the prison department for integration and probation, or, at this judge's request, by the regional parole court. The post-sentencing judge who has taken a decision granting parole may withdraw it if it has not yet been implemented.

In urgent cases, the post-sentencing judge of the place where the liberated prisoner is may order his temporary arrest, having heard the public prosecutor, where there is cause to seise the competent authority with a view to revoking the parole.

After the revocation, the convicted person must serve all or part of the period of the sentence which remained on the day of parole according to the provisions of the revocation decision, cumulatively if necessary with any new sentence he may have incurred; but any time during which he was under provisional arrest counts towards the execution of his sentence.

If revocation has not been ordered before the expiry of the time limit set out by the previous article, the release is final. In this case, the sentence is treated as completed from the date of parole.

Article 733-1

(Law n° 78-1097 of 22 November 1978 Article 8 Official Journal of 23 November 1978)

(Law nº 86-1021 of 9 September 1986 art. 4 Official Journal of 10 September 1986)

(Law nº 2000-516 of 15 June 2000 art. 125 Official Journal of 16 June 2000 in force 1 January 2001)

The decisions mentioned in the first paragraph of article 722, other than those mentioned in the sixth paragraph of this article, are judicial administration measures. Except for matters relating to permission to leave, these decisions may be referred to the correctional court, at the district prosecutor's request, only as being in breach of the law. The correctional court rules in chambers after carrying out all the necessary hearings, and hearing the observations of the convicted person and the civil, if they so requested.

The reference is filed within twenty-four hours of either the day of the decision if it was made in the presence of the district prosecutor, or if not, within twenty-four hours of the day of service on the district prosecutor. It suspends the execution of the decision until the court has ruled.

The post-sentencing judge may not sit with the court to which one of his decisions is referred, under penalty of nullity .

The case must be heard by the correctional court at the next hearing or within eight days at the latest from the day of the district prosecutor's application, failing which the application is cancelled.

If the convicted person is serving a sentence imposed by a court for juveniles and has not yet reached the age of majority, the correctional court's duties are performed by the juvenile court.

The correctional court or juvenile court's decision may only be attacked by way of cassation; an application for cassation is not suspensive.

TITLE IV: SUSPENSION AND DEFERMENT

Article 734

(Law nº 70-643 of 17 July 1970 art. 29 Official Journal of 19 July 1970)

(Law n° 92-1336 of 16 December 1992 Articles 94 & 95 Official Journal of 23 December 1992 in force on 1 March 1994)

The court which imposes a sentence may order its execution to be suspended in the cases and pursuant to the conditions set out by articles 132-29 to 132-57 of the Criminal Code.

The court may also defer the imposition of the sentence in the cases and pursuant to the conditions set out by articles 132-60 to 132-70 of the same Code.

The terms of implementation of suspended and deferred sentences are determined by the present Title.

CHAPTER I: ORDINARY SUSPENSION

Article 735

(Law nº 70-643 of 17 July 1970 art. 29 Official Journal of 19 July 1970)

(Law n° 75-624 of 11 July 1975 art 29 Official Journal 13 July 1975, in force 1 January 1976)

(Law nº 81-82 of 2 February 1981 art. 6 & 7 Official Journal of 3 February 1981)

(Law n° 92-1336 of 16 December 1992 Articles 94 & 97 Official Journal of 23 December 1992 in force on 1 March 1994)

Where the trial court has not explicitly ruled on the exemption of a revocation of suspension pursuant to article 132-38 of the Criminal Code, the convicted person may later apply to be granted such an exemption. This application is then examined and determined in accordance with the jurisdiction and procedure rules fixed by articles 702-1 and 703 of the present Code.

Article 736

(Law nº 70-643 of 17 July 1970 art. 29 Official Journal of 19 July 1970)

(Law n° 92-1336 of 16 December 1992 Articles 94 & 98 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 93-2 of 4 January 1993 art. 133 Official Journal of 5 January 1993 in force 1 March 1993)

(Law n°98-468 of 17 June 1998, art. 41 Official Journal of 18 June 1998)

The suspension of a sentence does not extend to the payment of damages.

Nor does it extend to any forfeitures, prohibitions and disqualifications deriving from the conviction.

However, these forfeitures, prohibitions and disqualifications will end on the day when, pursuant to the provisions of article 132-35 of the Criminal Code, the sentence will be deemed cancelled. This provision does not apply to the socio-judicial supervision provided for in article 131-36-1 of the Criminal Code or to the penalty of a ban from working in a paid or a voluntary capacity that entails frequent contact with minors.

Article 737

Repealed

Article 738

Repealed

CHAPTER II: SUSPENSION WITH PROBATION

Article 738

Repealed

Article 739

Where a conviction is suspended with probation, the convicted person is placed under the supervision of the post-sentencing judge in the jurisdictional area where he normally resides or, if he does not have an usual residence in France, under the supervision of the post-sentencing judge in the jurisdictional area where the sentencing court has its seat.

The convicted person must comply during the probation term with all the supervision measures set out by article 132-44 of the Criminal Code, and with any specific obligations provided for in article 132-45 of the same Code which are specially imposed on him, whether by the sentence, or by a decision made at any time by the post-sentencing judge.

Where a specific obligation is ordered by the post-sentencing judge, it is provisionally enforceable. However, it may be referred to the correctional court by the convicted person within one month from the day of being notified of this decision. The correctional court may endorse, quash or amend the decision. If the court imposes a different obligation from that planned by the post-sentencing judge, its decision is substituted for that made by the post-sentencing judge, with effect from the date of notification to the person concerned.

The post-sentencing judge may in addition amend or cancel at any time the special obligations to which the convicted person is subject, by means of a decision that is immediately enforceable.

Article 740

In the course of the probation term, the post-sentencing judge under whose supervision the convicted person is placed ensures, either personally or through any qualified person, that the the measures of supervision and assistance, and the obligations imposed upon the convicted person, are carried out.

Where the actions necessary for this purpose must made outside the boundaries of his territorial jurisdiction, the judge delegates the post-sentencing judge with territorial jurisdiction to cause them to be performed.

Article 741

The convicted person is bound to appear before the post-sentencing judge under whose supervision he is placed whenever he is summoned to do so.

If the convicted person does not comply with his order the judge may, if the convicted person is located within his jurisdiction, order the convicted person to be brought before him by the police in order to be immediately interrogated. If the convicted person is not within his jurisdiction, the judge may ask the post-sentencing judge in whose jurisdiction the convicted person then is to have him produced by the police and to proceed with his examination.

Article 741-1

If the convicted person has escaped, the post-sentencing judge may issue a search warrant. The convicted person concerned by this order is brought before the post-sentencing judge of the place where he is found, or if this judge is unable to proceed immediately with his examination, before the district prosecutor. Where the convicted person is not brought before the post-sentencing judge who ordered the search, an official record of his statement is immediately sent to this judge.

Article 741-2

Where the convicted person does not comply with the supervision measures or the special obligations imposed under article 739, the post-sentencing judge may decide, after hearing him or having him heard, by a reasoned order made upon the submissions of the public prosecutor, that the convicted person shall be provisionally detained in the nearest penitentiary institution.

This decision may be taken upon delegation by the post-sentencing judge in whose jurisdictional area the convicted person is found.

Article 741-3

The measures set out in article 741-2 require an application to the correctional court for a decision as to the enforceability of the provisions of article 742.

The case must be heard at the next hearing or within five days of the incarceration at the latest, failing which the convicted person must be released automatically. If an adjournment is necessary, the court must make a reasoned decision in order to maintain the convicted person in detention.

Article 742

The correctional court may extend the probation term:

1° when the convicted person does not comply with the supervision and assistance measures or special obligations imposed under article 739;

2° when he has committed an offence followed by a conviction, on the occasion of which revocation of the suspension was not imposed;

3° where he has intentionally evaded his obligation to contribute to family expenses, to regularly pay alimonies, to hand over his children to the persons to whom custody has been entrusted by a judicial decision, or to repair the damage caused by the offence.

The court may also revoke all or part of the suspension pursuant to the conditions set out in articles 132-49 to 132-51 of the Criminal Code.

Article 742-1

When the correctional court extends the probation term, this term may not exceed three years in all. The court may in addition, by a special and reasoned decision, order the provisional enforcement of this measure.

Article 743

If the convicted person complies with the supervision and assistance measures and the special obligations imposed pursuant to article 739, and if his reintegration seems to be achieved, the correctional court may cancel the conviction imposed upon him.

An application to the court may be made for this purpose only after the expiry of a one-year time limit from the date when the sentence became final.

The court's decision may be appealed against by the public prosecutor and by the convicted person.

Article 744

The correctional court with jurisdiction to decide in the cases provided for by articles 739, third paragraph, 741-3, 742 and 743 is the one in whose the jurisdiction the convicted person normally resides, or, if the convicted person does not have a usual residence in France, the one within the jurisdictional area of the court that imposed the sentence. However, if the provisions of article 741-2 have been resorted to, the court competent to take the measures set out in article 742 is the court within whose jurisdiction the convicted person was found.

The correctional court is seised either by the post-sentencing judge, or by the district prosecutor. It may also be seised by the convicted person seeking the application of article 743 in his favour.

The convicted person is summoned upon the application of the public prosecutor pursuant to the conditions set out by articles 550 to 566. He may also appear in the conditions provided for by article 389, first and third paragraphs.

The court decides in chambers. Where the post-sentencing judge does not take part in the decisions, the court decides on the basis of his written report.

Article 744-1

Decisions made on the grounds of the previous articles are liable to incur applications to set aside, appeals or cassation applications, under the conditions set out under Books II and III of the present Code.

However, the decision taken by the court on the basis of article 132-51 of the Criminal Code takes effect despite an application to set aside, an appeal or cassation application.

In the event of an application to set aside, the case must be heard at the next hearing, or at the latest within eight days from the application, failing which the convicted person must be set free automatically. If an adjournment is necessary, the court must decide on its own motion, by a reasoned decision, whether to continue the detention or to terminate it.

The provisions of the present article are applicable when the revocation of the suspension is decided by the trial court pursuant to article 132-48 of the Criminal Code.

Article 744-2

Where the convicted person is placed under probation by the decision of a court specialised in dealing with juveniles, the juvenile court judge and the juvenile court within whose jurisdictional area the minor usually resides perform the functions of the post-sentencing judge and the correctional court under articles 739 to 744-1, until the expiry of the probation term.

Article 744-3

Repealed

Article 745

Repealed

Article 745-1

Repealed

Article 746

The suspension of the penalty does not extend to the payment of damages.

Nor does it extend to any forfeitures, prohibitions and disqualifications entailed by the conviction.

However, such forfeitures, prohibitions and disqualifications will come to an end on the day when the conviction is declared or deemed non-existent pursuant to the provisions of article 743 of the Criminal Procedure Code or of article 132-52 of the Criminal Code.

Article 747

The provisions governing the consequences of a suspension with probation are determined by articles 132-52 and 132-53 of the Criminal Code.

CHAPTER III: SUSPENSION WITH THE OBLIGATION TO PERFORM COMMUNITY SERVICE

Article 747-1

(Law nº 81-82 of 2 February 1981 art. 9 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 4 Official Journal of 11 June 1983 in force 27 June 1983)

(Law n° 92-1336 of 16 December 1992 Articles 94 & 109 Official Journal of 23 December 1992 in force on 1 March 1994)

Suspension with the obligation to perform community service work follows the same rules as those set out for suspension with probation, subject to the following adaptations:

1° the obligation to perform community service work is assimilated to a special obligation;

2° the supervision measures are those enumerated by article 132-55 of the Criminal Code;

3° the time limit set out by article 742-1 is lowered to eighteen months;

4° article 743 is not applicable.

Article 747-2

(Law nº 81-82 of 2 February 1981 art. 9 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 4 Official Journal of 11 June 1983 in force 27 June 1983)

(Law n° 92-1336 of 16 December 1992 Articles 94 & 110 Official Journal of 23 December 1992 in force on 1 March 1994)

In the case provided for by article 132-57 of the Criminal Code, the court is seised by the post-sentencing judge by a report stating that, having been informed of his right to refuse to perform community service work, the convicted person has explicitly stated he waives this right. The report may only be made if the custodial sentence is not being served. Its filing has the effect of suspending the execution of the sentence until the decision of the court seised of the case.

The court rules in chambers on the submission made by the public prosecution, the convicted person and his counsel being summoned, and heard if they appear. If the person for whom a suspension is requested is detained, the provisions of article 712 are followed.

The decision is immediately brought to the knowledge of the post-sentencing judge; it is notified by this judge to the convicted person, if it was made outwith his presence. It may only be attacked by a cassation application, the effect of which is not suspensive.

CHAPTER IV: DEFERMENT

Article 747-3

(Law nº 81-82 of 2 February 1981 art. 9 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 4 Official Journal of 11 June 1983 in force 27 June 1983)

(Law n° 92-1336 of 16 December 1992 Articles 94 & 112 Official Journal of 23 December 1992 in force on 1 March 1994)

Where the trial court defers sentence under article 132-63 of the Criminal Code, the defendant is placed under the supervision of the post-sentencing judge in whose jurisdictional area he lives. The post-sentencing judge ensures either directly or through any qualified person that the measure is executed. The provisions of the second paragraph of article 740 and those of article 741 are applicable to the supervision exercised over the defendant.

The correctional court may upon the application of the post-sentencing judge vary or cancel the special obligations imposed upon the defendant, or it may prescribe new obligations.

If the defendant does not comply with the supervision and assistance measures or special obligations, the post-sentencing judge may apply to the court before the expiry of the probation term for a decision to be made as to sentence.

The provisions of articles 741-1 and 741-2, of the second paragraph of article 741-3 and of the third paragraph of article 744 are applicable. The appearance of the defendant before the court in the case set out by the third paragraph of the present article cancels the fixation of the adjourned hearing date by the deferment decision.

Where a deferment decision has been made by a court competent for juveniles, the powers of the post-sentencing judge are exercised by the juvenile court judge in whose area of jurisdiction the minor resides.

Article 747-4

(Law nº 81-82 of 2 February 1981 art. 9 Official Journal of 3 February 1981)

(Law nº 83-466 of 10 June 1983 art. 4 Official Journal of 11 June 1983 in force 27 June 1983)

(Law n° 92-1336 of 16 December 1992 Articles 94 & 112 Official Journal of 23 December 1992 in force on 1 March 1994)

Where the trial court defers sentence pursuant to article 132-66 of the Criminal Code, the post-sentencing judge in whose area the defendant resides ensures either directly or through any qualified person that the prescriptions enumerated by the court's order are carried out. The provisions of the second paragraph of article 740 are applicable, so far as relevant.

TITLE V: ASCERTAINING THE IDENTITY OF CONVICTED PERSONS

Article 748

Where after an escape followed by capture, or in any other circumstances, the identity of a convicted person is challenged, this issue is settled according to the rules set out for enforcement objections. The hearing is, however, held in public.

If the dispute arises due to and in the course of a new prosecution, it is settled by court that is seised of the new prosecution.

TITLE VI: CIVIL IMPRISONMENT

Article 749

(Law nº 85-1407 of 30 December 1985 art. 76 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law n° 93-2 of 4 January 1993 art 135 Official Journal 5 January 1993, in force 1 March 1993)

Where a sentence to pay a fine or any other sum in favour of the Public Treasury, not being in the nature of civil damages, is imposed for a non-political offence which does not carry a life sentence, the period of civil imprisonment to served in the case of non-payment falls within the limits determined by article 750.

This length is calculated, if necessary, by taking into account the cumulative amount of the non-executed sentences.

Article 750

(Law nº 85-1407 of 30 December 1985 art. 76 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal 22 September 2000 in force 1 January 2002)

The length of civil imprisonment is fixed as follows:

1° five days, where the fine and other financial sanctions are at least € 150 and not more than € 450;

2° ten days, where they are more than € 450 but not more than € 1,500;

3° twenty days, where they are more than € 1,500 but not more than € 3,000;

4° one month, where they are more than € 3,000 but not more than € 6,000;

5° two months, where they are more than € 6,000 but not more than € 12,000;

6° four months where they are in excess of € 12,000.

Article 751

(Law nº 74-631 of 5 July 1974 art. 13 Official Journal of 7 July 1974)

(Law nº 85-1407 of 30 December 1985 art. 76 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Civil imprisonment may not be imposed on persons who were minors at the time of the offence, or on persons aged sixty-five or over at the time of the conviction.

Article 752

(Law nº 85-1407 of 30 December 1985 art. 76 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Civil imprisonment may not be executed against convicted persons who prove their impecuniosity by producing:

1° a certificate from the tax-collector of their place of domicile proving that they are not taxable,

2° a certificate from the mayor or of the police superintendent of their municipality.

Proof that the convicted person is in fact solvent may be established by any means.

Article 753

Civil imprisonment may not be enforced simultaneously against husband and wife, even for the recovery of sums relating to different convictions.

Article 754

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

(Law nº 85-1407 of 30 December 1985 art. 77-i & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Civil imprisonment may be executed only five days after a formal notice sent to the convicted person on the application of the prosecuting party.

Where the sentencing judgment has not already been served on the debtor, the notice carries at its head an abstract of the judgment which includes the names of the parties and the enacting terms.

On the application of the prosecuting party, the district prosecutor, having seen the service instrument relating to the formal notice, sends the necessary orders to the police and to the other civil servants charged with the execution of court orders. The prosecutor's order for incarceration is only valid as long as the penalty is not time-barred. Once the penalty becomes time-barred, any civil imprisonment which has not begun then ceases to be enforceable.

If, before the prosecutor's order for incarceration has been signed, more than a year has lapsed since the formal notice, the notice must be repeated.

Article 755

(Ordinance n° 60-529 of 4 June 1960 Article 2 Official Journal of 8 June 1960)

The rules governing the execution of judicial warrants fixed by articles 124, 132 other than the reference to article 133, and 134, paragraphs 1 and 2, are applicable to civil imprisonment.

Article 756

(Law nº 85-1407 of 30 December 1985 art. 78 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Ordinance n° 92-1149 of 2 October 1992 Article 20 Official Journal of 16 October 1992 in force on 1 January 1993)

If the debtor requests the case to be referred to the court, he is immediately brought before the presiding judge of the district court of the place where the arrest was made. This judge in summary form, except where he orders as necessary an adjournment pursuant to the forms and conditions of articles 710 and 711.

The same rights belongs to any detained debtor, who is immediately brought before the presiding judge of the district court of the place of detention.

Article 757

If the debtor detained does not apply to the court, or if he does so and the application is refused, incarceration takes place following the forms set out for the execution of custodial sentences.

Article 758

(Law nº 85-1407 of 30 December 1985 art. 79 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

Civil imprisonment is served in a remand prison in a special division set up for this purpose.

Article 759

Persons against whom civil imprisonment has been ordered may prevent its execution or bring its consequences to an end either by paying or depositing a sufficient sum for the payment of their debt, or by offering a security accepted as good and valid.

The security is received by the tax collector. In the event of a dispute it is verified if necessary and declared good and valid by the presiding judge of the district court, proceeding summarily.

The security must be paid within one month, failing which the imprisonment may be executed.

Where full payment has not been made, then subject to the provisions of article 760, civil imprisonment may be sought again in respect of the amount remaining due.

Article 760

Where civil imprisonment has ended for any given reason, it may not be executed again, whether for the same debt, or in respect of penalties imposed prior to its execution, except where by reason of their size these penalties carry a period of civil imprisonment longer than that already served, in which case the first incarceration must always be deducted from the new one.

Article 761

The debtor detained is subject to the same rules as convicted persons, except for being forced to work.

Article 762

The convicted person who has served civil imprisonment is not thereby absolved of liability for penalties for which the civil imprisonment was imposed.

TITLE VII: AREA BANISHMENT

Article 762-1

(Law n° 92-1336 of 16 December 1992 Article 113 Official Journal of 23 December 1992 in force on 1 March 1994)

A person sentenced to area banishment under article 131-31 of the Criminal Code may be subjected by the sentencing decision to one or more or of the following supervision measures:

1° to appear periodically before the police units or authorities appointed by the sentencing court,

2° to inform the post-sentencing judge of any travel beyond the limits fixed by the sentencing court

3° to answer the summons sent by any authority or qualified person appointed by the sentencing court.

Article 762-2

(Inserted by Law n° 92-1336 of 16 December 1992 Article 113 Official Journal of 23 December 1992 in force on 1 March 1994)

A person sentenced to area banishment is obliged to inform the post-sentencing judge under whose supervision he is placed of any change of residence.

Articles 741 and 741-1 are applicable to any person sentenced to area banishment.

Article 762-3

(Inserted by Law n° 92-1336 of 16 December 1992 Article 113 Official Journal of 23 December 1992 in force on 1 March 1994)

The assistance measures set out in article 131-31 of the Criminal Code are designed to facilitate the social integration of the convicted person.

Article 762-4

(Inserted by Law n° 92-1336 of 16 December 1992 Article 113 Official Journal of 23 December 1992 in force on 1 March 1994)

The post-sentencing judge in whose jurisdiction the convicted person has declared his fixed residence to be ensures the implementation of the assistance measures, and ensures compliance with the supervision measures prescribed by the sentence.

The post-sentencing judge may at any time during area banishment, after hearing the convicted person and the opinion of the district prosecutor, vary the list of the places prohibited and the supervision and assistance measures. His decision is provisionally enforceable. It may be referred to the correctional court by the convicted person or the public prosecution under the conditions provided for by the third paragraph of article 739.

Article 762-5

(Inserted by Law n° 92-1336 of 16 December 1992 Article 113 Official Journal of 23 December 1992 in force on 1 March 1994)

The post-sentencing judge may also decide to temporarily suspend the execution of the area banishment. However, where the execution of the measure is to be suspended for more than three months, the decision is taken in chambers by the correctional court, on the post-sentencing judge's proposition.

In urgent cases, temporary authorisation to reside in a prohibited locality may be granted by the district prosecutor of this locality for a period not exceeding eight days. The district prosecutor immediately informs the post-sentencing judge with area jurisdiction of his decision.

The time during which the convicted person was granted a suspension counts towards the period of area banishment, except where the decision ordering the suspension otherwise provides.

Article 763

(Inserted by Law n° 92-1336 of 16 December 1992 Article 113 Official Journal of 23 December 1992 in force on 1 March 1994)

Where a sentence imposed for a felony becomes time-barred, the convicted person is automatically and finally the subject of area banishment in respect of the district where the victim of the felony or his direct heirs reside.

TITLE VII A: SOCIO-JUDICIAL SURVEILLANCE

Article 763-1

(Law n°98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

(Law nº 2000-516 of 15 June 2000 art. 123 Official Journal of 16 June 2000)

A person sentenced to a socio-judicial surveillance as provided for in articles 131-36-1 to 131-36-8 of the Criminal Code is placed under the supervision of the post-sentencing judge in whose area of jurisdiction he normally resides or, if he has no usual residence in France, of the post-sentencing judge attached to the court within whose area of jurisdiction the court which ruled at first instance has its seat. The post-sentencing judge may appoint the prison department for integration and probation to ensure that the obligations imposed upon the convicted person are respected. The provisions of article 740 are applicable.

Article 763-2

(Inserted by Law n°98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

A person sentenced to a socio-judicial surveillance is required to prove to the post-sentencing judge he has satisfied the obligations imposed upon him.

Article 763-3

(Inserted by Law n°98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

The post-sentencing judge may in the course of the socio-judicial surveillance, after hearing the convicted person and the opinion of the district prosecutor, amend or add to the measures set out in articles 131-36-2 and 131-36-3 of the Criminal Code.

His decision is provisionally enforceable. It may be referred to the correctional court by the convicted person or by the district prosecutor under conditions set out in the third paragraph of article 739. Under penalty of nullity, the post-sentencing judge may not sit in a court that is seised of one of his decisions,.

The post-sentencing judge may also impose a medical treatment injunction, if a medical opinion ordered after the sentence establishes that the person required to undergo socio-judicial surveillance is treatable. This medical opinion is drafted by two experts in the event of a sentence for murder or assassination of a minor preceded or accompanied by rape, torture or acts of barbarity. The post-sentencing judge warns the convicted person that no treatment may be initiated without his consent, but that if he refuses the medical attention, the custodial sentence imposed pursuant to the third paragraph of article 131-36-1 of the Criminal Code may be enforced. The provisions of the previous paragraph are then applicable.

Article 763-4

(Inserted by Law n°98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

Where the person sentenced to socio-judicial surveillance entailing a medical treatment injunction must undergo this measure after serving a custodial sentence, the post-sentencing judge may order a medical expert examination of the person concerned before he is released. Such an expert opinion is compulsory if the sentence was imposed more than two years previously.

The post-sentencing judge may also, at any stage of the socio-judicial surveillance and notwithstanding the provisions of article 763-6, order on his own motion or upon the application of the district prosecutor, any expert opinion necessary to inform him of the medical or psychological state of the person convicted .

The expert opinions provided for by the present article are given by a single expert, unless the post-sentencing judge makes a reasoned decision to the contrary.

Article 763-5

(Inserted by Law n°98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

Where the obligations specified by articles 131-36-2 and 131-36-3 of the Criminal Code or of the medical treatment injunction are not complied with, the post-sentencing judge may, on his own motion or upon the application of the district prosecutor, order by a reasoned decision the enforcement of the imprisonment imposed by the trial court under the third paragraph of article 131-36-1 of the Criminal Code. The enforcement may operate on all or part of this sentence. This decision is made in chambers after an adversarial debate during which the post-sentencing judge hears the submissions of the district prosecutor and the observations of the convicted person, and also those of his counsel. This decision is provisionally enforceable. It may be appealed against within ten days to the correctional appeal court, which rules within one month.

In case of failure to comply with the obligations or the medical treatment, the post-sentencing judge may deliver a summons to the convicted person.

If the person has absconded or lives abroad, the judge may issue an arrest warrant.

The provisions of articles 122 to 124 and 126 to 134 are then applicable, the functions of the investigating judge being carried out by the post-sentencing judge.

Where imprisonment for failure to observe the obligations of socio-judicial surveillance is served, this does not release the convicted person from the socio-judicial surveillance.

In the event of further breaches by the convicted person of his obligations, the post-sentencing judge may again order imprisonment to be served, for a period which, when cumulated with the period already served, may not exceed the period imposed by the trial court.

Article 763-6

(Law n°98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Any person sentenced to socio-judicial supervision may apply to the court which imposed the sentence or, in the event of a plurality of convictions, to the last court which involved, for this measure to be cancelled. If the sentence was imposed by an assize court, the court with jurisdiction to rule on the application is the investigating chamber within whose area of jurisdiction the assize court has its seat.

The application may be filed with the competent court only upon the expiry of a one-year time limit running from the day of the sentence. Where this first application is dismissed, a renewed application may only be filed after one year from this dismissal. The same applies in the event of subsequent applications.

The application for cancellation is sent to the post-sentencing judge, who orders a medical expert's opinion and sends the application to the competent court, together with the conclusions of the expert and with his own reasoned opinion.

Where the sentence was imposed for murder or assassination of a minor preceded or accompanied by rape, torture or acts of barbarity, the expert opinion is given by two experts.

The court decides in accordance with the conditions set out by the third, fourth and fifth paragraphs of article 703.

The court may decide to relieve the convicted person of his obligations in part only.

These provisions are not applicable when the socio-judicial surveillance is imposed as a principal penalty.

Article 763-7

(Inserted by Law n°98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

Where a person sentenced to socio-judicial surveillance entailing an injunction to undergo medical treatment must serve a custodial sentence, he serves the sentence in a prison provided for in the second paragraph of article 718, which guarantees him the appropriate medical and psychological surveillance.

He is immediately informed by the post-sentencing judge of the possibility of receiving medical treatment. If he does not consent to treatment, this information is repeated at least once every six months.

The obligations of socio-judicial surveillance apply in the event of a suspension or division of the penalty, or of a non-custodial posting or semi-detention measure.

Article 763-8

(Law n°98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Where the socio-judicial surveillance is imposed by a juvenile court, the juvenile court judge, the juvenile court and the special division for juveniles exercise the powers conferred by the present title on the post-sentencing judge, the correctional court and the correctional appeal court until the end of the socio-judicial surveillance measure, unless the juvenile court judge transfers the case to the post-sentencing judge.

The juvenile court judge appoints a unit of the public youth protection service to oversee compliance with the obligations imposed upon the convicted person. When the latter comes of age, the juvenile court judge may appoint for this purpose the prison department for integration and probation. He may also transfer the case to the post-sentencing judge.

Article 763-9

(Law n° 98-468 of 17 June 1998, art. 8 Official Journal of 18 June 1998)

A Council of State Decree determines the mode of enforcement of the provisions of the present title.

TITLE VII: LIMITATION OF PENALTIES

Article 764

Repealed

Article 765

Repealed

Article 765-1

Repealed

Article 766

Repealed

Article 767

Repealed

TITLE VIII: CRIMINAL RECORDS

Article 768

(Law n° 67-563 of 13 July 1967 art 153 & 164 Official Journal 14 July 1967)

(Law n° 72-1226 of 29 December 1972 Article 62 Official Journal of 30 December 1972)

(Law n° 75-624 of 11 July 1975 art 47 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 79-1131 of 20 December 1979 Article 62 Official Journal of 29 December 1972 in force on 1 October 1980)

(Law n° 80-2 of 1 April 1980 Article 1 Official Journal of 5 January 1981)

(Law n° 84-1150 of 21 December 1984 Article 2 Official Journal of 22 December 1984)

(Law n° 85-98 of 25 January 1985 Articles 219-i & 243 Official Journal of 26 January 1985)

(Law n° 85-835 of 7 August 1985 Article 7 Official Journal of 8 August 1985 in force on 1 October 1986)

(Law no. 89-469 of 10 July 1989 Article 8 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 92-1336 of 16 December 1992 Article 114 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 94-475 of 10 June 1994 art. 93 Official Journal of 11 June 1994 in force 1 October 1994)

(Law nº 2002-1138 of 9 September 2002 Articles 15 & 36 Official Journal of 10 September 2002)

The national automated criminal records service may consist of one or more processing centres and is run under the authority of the Minister of Justice. It receives the following information in respect of persons born in France, after a check of their identity through the national identification register for natural persons has been made. The identification number may in no case be used as the basis for an identity check:

1° convictions after adversarial hearings or convictions made by contumacy, and any convictions by default not challenged by application to set aside, imposed for a felony, a misdemeanour or a petty offence of the fifth class, as well as declarations of guilt accompanied by an exemption from penalty or a deferment of sentence, except where the entry of the decision on certificate n° 1 has expressly been excluded pursuant to article 132-59 of the Criminal Code;

2° adversarial convictions, and convictions by default unchallenged by application to set aside, for petty offences of the first four classes where a prohibition, disqualification or incapacity has been imposed either as a main or additional penalty;

3° the decisions imposed by application of articles 8, 15, 15-1, 16, 16 bis and 28 of Ordinance n° 45-174 of 2 February 1945, amended, governing juvenile delinquents ;

4° disciplinary decisions imposed by the judiciary or by an administrative authority when they entail or impose a disqualification ;

5° judgments ordering ordinary bankruptcy for a natural person, personal bankruptcy or the prohibition provided by article 192 of law n° 85-98 of 25 January 1985 governing the judicial consolidation and liquidation of businesses;

6° All judgments ordering the prohibition from exercising paternal power or the withdrawal of any or all of the rights attached to it;

7° expulsion decisions taken against aliens;

8° convictions imposed by foreign courts which, pursuant to an international convention or agreement, which have been notified to French authorities or have been enforced in France after the transfer of the convicted persons.

9° criminal mediation of which the execution has been certified by the district prosecutor.

Article 768-1

(Inserted by Law n° 92-1336 of 16 December 1992 Article 115 Official Journal of 23 December 1992 in force on 1 March 1994)

The national automated criminal records service receives the following information in respect of legal persons, after a check of their identity through the national register of businesses and undertakings:

1° adversarial convictions and the convictions by default not challenged by application to set aside, imposed for a felony, a

misdemeanour or a petty offence of the fifth class by any penal court;

2° adversarial convictions, or convictions by default unchallenged by application to set aside, for petty offences of the first four classes where a prohibition, disqualification, incapacity or a measure restricting rights has been imposed either as a main or additional penalty;

3° declarations of guilt with exemption from penalty or deferment of the imposition of the penalty, with or without an injunction;

4° convictions imposed by foreign courts which, pursuant to an international convention or agreement, have been notified to French authorities.

The implementation rules of the present article are fixed by a Council of State Decree.

Article 769

(Law n° 75-624 of 11 July 1975 art 48 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 84-1150 of 21 December 1984 Article 3 Official Journal of 22 December 1984)

(Law n° 92-1336 of 16 December 1992 Article 116 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 94-475 of 10 June 1994 art. 91 Official Journal of 11 June 1994 in force 1 October 1994)

(Law nº 2002-1138 of 9 September 2002 Article 36 Official Journal of 10 September 2002)

(Law nº 2003-495 of 12 June 2003 Article 4 VI Official Journal of 13 June 2003)

The following are entered on the criminal record cards: the penalties or exemptions from penalties imposed after deferment of sentence, pardons, commutations or penalty remissions, decisions suspending or ordering the enforcement of a first conviction, decisions taken pursuant to the second paragraph of article 713-3 or to the first paragraph of article 713-6, parole and revocation decisions, penalty suspension decisions, decisions adjourning or suspending expulsion orders, and also the date of expiry of the penalty and that of the payment of the fine.

The following are withdrawn from the criminal records: record cards concerning sentences erased by an amnesty, by rehabilitation by operation of law or judicial ruling, or amended in accordance with a criminal record rectification decision. The same applies to record cards concerning convictions imposed over forty years ago and which have not been followed by a new sentence imposing a felonious or misdemeanour penalty.

The following are also withdrawn from the criminal records:

1° judgments ordering the personal bankruptcy or the prohibition set out by article 192 of the aforementioned law n° 85-98 of January 25, 1985 when these measures are erased by a judgment ending the proceedings because of the payment of outstanding debts, by a rehabilitation or upon the expiry of the five-year time limit from the day when these convictions became unappealable; and also judgments ordering judicial liquidation against a natural person, upon the expiry of a five-year time limit from the day this judgment became unappealable, or after the pronouncement of a judgment which entails a rehabilitation.

However, where the length of the personal bankruptcy or prohibition exceeds five years, the sentence ordering these measures remains entered on the criminal record cards for the same length of time;

2° disciplinary decisions erased by rehabilitation;

3° convictions which are granted the benefit of full or partial suspension, with or without probation, upon expiry of the time limits set out by articles 133-13 and 133-14 of the Criminal Code calculated from the day when the convictions are to be considered to be non existent;

4° exemptions from penalties, upon the expiry of a three-year time limit starting from the day when the conviction became unappealable;

5° convictions for petty offences, upon the expiry of a three-year time limit starting from the day when these convictions became unappealable; this time limit is extended to four years when the petty offence is one the repetition of which constitutes a misdemeanour;

6° entries relating to criminal mediation upon the expiry of a three-year period from the day of its recorded execution, provided that the offender has not, within this period, been sentenced for a felony or a misdemeanour, or been subject to another criminal mediation.

Article 769-1

(Inserted by Law n° 92-1336 of 16 December 1992 Article 117 Official Journal of 23 December 1992 in force on 1 March 1994)

The amendment decisions provided for in the first paragraph of article 769 are entered on the record cards of the criminal records of legal persons.

The second paragraph of article 769 is applicable to convictions imposed upon legal persons.

Article 769-2

(Inserted by Law n° 92-1336 of 16 December 1992 Article 118 Official Journal of 23 December 1992 in force on 1 March 1994)

The following are withdrawn from the (Law n° 2002-1138 of 9 September 2002 Article 15 Official Journal of 10 September 2002)

The following are withdrawn from the criminal records:

1° the record cards concerning the measures imposed pursuant to articles 8, 15, 15-1,16, 16 bis and 28 of legislative order n° 45-174 of 2 February 1945 governing juvenile delinquents, on the date of expiry of the measure and in any case when the minor reaches the age of majority;

2° the record cards concerning convictions imposing fines and custodial sentences not in excess of two months upon minors, when the person concerned reaches the age of majority;

3° the record cards concerning other suspended criminal convictions, with or without probation, imposed by juvenile courts, or when they are granted with suspension entailing the obligation to perform community service, upon the expiry of the probation term.

Article 770

(Law nº 70-643 of 17 July 1970 art. 31 Official Journal of 19 July 1970)

Where, after a decision has been made in respect of a minor of 18 years of age, the re-education of this minor appears to be achieved, the juvenile court may, upon expiry of a period of three-years from the date of the decision which may be after the minor has reached the age of majority, order the removal from the criminal records of the card mentioning the decision in question, either on application made by the minor or by the public prosecutor, or on its own motion.

The juvenile court's decision is final. Where the removal of the record card has been ordered, the entry concerning the initial decision may not remain on the minor's criminal record. The card relating to the decision in question is destroyed.

The court of the initial place of prosecution, that of the minor's current domicile, and that of his place of birth are competent to decide the application.

The removal of a record card concerning a conviction imposed for an offence committed by a person aged between eighteen and twenty-one may also be decided upon the expiry of three-years from the date of the conviction if the social reinsertion of the convicted person appears to be achieved. This removal may however only be granted after any custodial sentences have been served and any fine payed and, if additional penalties have been imposed for a given period, after the expiry of this period.

In the case provided by the previous paragraph, the removal from the criminal records of the card proving the conviction is requested by an application made in accordance with the jurisdiction and procedure rules determined by the second and third paragraphs of article 778.

Article 771

(Law n° 80-2 of 1 April 1980 Article 2 Official Journal of 5 January 1981)

The national automated criminal records service also receives convictions, decisions, first-instance or appeal judgments and judgments mentioned in article 768 of the present Code, where these concern persons born abroad and persons whose birth certificates have not been found or whose identity is doubtful.

Article 772

The military authorities are informed by the sending of a copy of the criminal record card of any convictions or decisions liable to modify the enlistment conditions for those persons subject to military service.

The same authorities are also informed of any alteration made to the record card or criminal record pursuant to articles 769 and 770.

Article 773

(Law n° 80-2 of 1 April 1980 Article 3 Official Journal of 5 January 1981)

(Law n° 85-669 of 11 July 1985 Article 10-i Official Journal of 12 July 1985)

The national automated criminal records service communicates the identity of the persons who have incurred a decision entailing the forfeiture of their electoral rights to the National Institute of Statistics and Economic Analysis.

Article 773-1

(Law n° 80-2 of 1 April 1980 Article 2 Official Journal of 5 January 1981)

A copy of each record card proving a custodial sentence imposed for a felony or misdemeanour is sent to the forensic police record kept by the Minister for the Interior. The consultation of this record is exclusively reserved to judicial authorities and to the police and Gendarmerie services.

Convictions erased by an amnesty or by rehabilitation, whether by operation of law or judicial decision, cease to be recorded in the forensic police record.

Article 774

(Law nº 70-643 of 17 July 1970 art. 31 Official Journal of 19 July 1970)

(Law n° 75-624 of 11 July 1975 art 49 Official Journal 13 July 1975, in force 1 January 1976)

The full statement of the criminal record cards applicable to the same person is entered on a certificate called certificate n° 1.

Certificate n° 1 is delivered only to judicial authorities.

Where no record cards exist in the criminal records, certificate n° 1 carries the indication 'Nil'

Article 774-1

(Inserted by Law n° 92-1336 of 16 December 1992 Article 119 Official Journal of 23 December 1992 in force on 1 March 1994)

The full statement of all the criminal record cards applicable to the same legal person is entered on certificate n° 1, which is delivered to national judicial authorities only, except where a reciprocal agreement exists.

Where no record cards exist in the criminal records, certificate n° 1 carries the indication 'Nil'.

Article 775

(Law nº 70-643 of 17 July 1970 art. 31 Official Journal of 19 July 1970)

(Law n° 85-98 of 25 January 1985 Articles 219-ii & 243 Official Journal of 26 January 1985)

(Law nº 85-1407 of 30 December 1985 art. 80 & 94 Official Journal of 31 July 1985 in force 1 February 1986)

(Law nº 89-461 of 6 July 1989 art. 13 Official Journal of 8 July 1989 in force 1 December 1989)

(Law n° 92-1336 of 16 December 1992 Article 120 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n°98-468 of 17 June 1998, art. 41 Official Journal of 18 June 1998)

Certificate n° (Law n° 2002-1138 of 9 September 2002 Articles 15 & 36 Official Journal of 10 September 2002)

Certificate n° 2 is a statement of all the criminal record cards applicable to the same person, with the exception of those concerning the following decisions:

1° decisions imposed in pursuance of articles 2, 8, 15, 15-1, 16, 16 bis,18 and 28 of legislative order n° 45-174 of 2 February 1945 as amended, governing juvenile delinquents;

2° convictions the entry of which has been expressly excluded from certificate n° 2 pursuant to article 775-1;

3° convictions imposed for petty offences;

4° suspended sentences with or without probation, after they are deemed non-existent; however, if the socio-judicial surveillance provided for in article 131-36-1 of the Criminal Code or the penalty of a ban from paid or voluntary work involving habitual contact with minors has been imposed, the decision continues to appear on certificate n° 2 for the duration of the measure;

5° Repealed

6° convictions to which the provisions of article 343 of the Military Justice Code are applicable;

7° Repealed

8° Repealed

9° provisions which pronounce the loss of parental rights;

10° repealed or revoked expulsion orders;

11° sentences imposed without suspension pursuant to articles 131-5 to 131-11 of the Criminal Code, upon the expiry of a five-year time limit from the day when they became final. The time limit is reduced to three years where the sentence is a day-fine.

However, if the length of the ban, disqualification or incapacity imposed pursuant to articles 131-10 and 131-11 is in excess of five years, the conviction remains registered on certificate n° 2 during the same period;

12° declarations of guilt accompanied by an exemption from penalty or a deferment of sentence;

13° convictions imposed by foreign courts;

14° criminal mediation described in article 768.

Examples of certificate n° 2 produced in the event of a dispute concerning the registration on electoral rolls include only those decisions involving disqualification from the exercise of voting rights.

Where there are no cards relating to decisions to be noted on certificate n° 2 in the criminal records, it is marked 'Nil'.

N°7 was repealed by article 120 of Law N° 92-1336 of 16 December 1992, in force on 1 March 1994, but it was nevertheless amended by article 93 of Law N° 94-475 of 10 June 1994, in force at the latest on 1 October 1994.

Article 775-1-A

(Law n° 92-1336 of 16 December 1992 Article 121 Official Journal of 23 December 1992 in force on 1 March 1994)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal 22 September 2000 in force 1 January 2002)

The certificate n° 2 of a legal person is the statement of the cards which are applicable to it, with the exception of those concerning the following decisions:

1° convictions, the indication of which on any abstract from the records has been expressly excluded pursuant to article 775-1;

2° convictions imposed for petty offences, and sentences involving fines of up to € 30,000;

3° suspended sentences after they are deemed non-existent;

4° declarations of guilt accompanied by an exemption from penalty or a deferment of sentence;

5° convictions imposed by foreign courts.

Where there are no cards relating to decisions to be noted on certificate n° 2 in the criminal records, it is marked 'Nil'.

Article 775-1

(Law n° 75-624 of 11 July 1975 art 51 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 92-1336 of 16 December 1992 Article 122 Official Journal of 23 December 1992 in force on 1 March 1994)

The court may expressly exclude a conviction from appearing on certificate n° 2, either at the time of conviction, or by a ruling made at a later date upon the application of the convicted person, which is investigated and decided according to the jurisdiction and procedure rules fixed by articles 702-1 and 703.

The exclusion of a reference to a conviction from certificate n° 2 carries with it the removal of all bans, disqualifications or incapacities which result from this conviction, whatever their kind.

Article 775-2

(Inserted by Law n° 88-828 of 20 July 1988 Article 34 Official Journal of 21 July 1988)

Persons sentenced to a penalty which does not carry rehabilitation as of right may, upon their simple application, obtain the removal of their conviction from certificate n° 2, according to the jurisdiction rules fixed by the previous article, upon the expiry of a period of twenty-years from the date of their final release, or of their parole when this was not cancelled, provided they have not been sentenced since release to a felonious or misdemeanour penalty.

Article 776

(Law n° 85-98 of 25 January 1985 Articles 219-iii & 243 Official Journal of 26 January 1985)

(Law n° 2002-3 of 3 January 2002 Article 12 Official Journal of 4 January 2002)

Certificate n° 2 of the criminal records is delivered:

1° to the «prefects» and to the State public administrations dealing with public employment applications, for proposals for honours or for bids for public works or public tenders, for disciplinary proceedings or in connection with the opening of a private school, and in connection with requests for certification, in order to enable violations of the criminal law to be established by means of official report;

2° to military authorities for conscripted classes, for maritime registration and for persons making a application for voluntary enlistment, and to the public authorities with jurisdiction in the event of a dispute in respect of the exercise of electoral rights or of the existence of an incapacity to exercise a public elective office set out by article 194 of the aforementioned law n° 85-98 of January 25, 1985;

3° to the administrations and legal persons of which a list is determined by the Council of State Decree provided for in article 779;

4° to the presiding judges of commercial courts so as to be attached to bankruptcy and judicial settlements, and to the judges in

charge of supervising the commercial registry upon application to be entered on the commercial register.

Article 776-1

(Inserted by Law n° 92-1336 of 16 December 1992 Article 123 Official Journal of 23 December 1992 in force on 1 March 1994)

Certificate n° 2 of the criminal records of legal persons is delivered;

1° to the «prefects», the State administrations and territorial public bodies dealing with proposals or bids for the adjudication of public works or tenders;

2° to the administrations charged with the purging of agricultural, commercial, industrial or artisanal professions;

3° to the presiding judges of commercial courts in the event of bankruptcy and judicial settlements, and to the judges in charge of supervising the commercial registry upon application to be entered on the commercial register.

4° to the commission for the supervision of stock exchange operations in respect of any legal persons making public appeals for the deposit of savings.

Article 777

(Law nº 70-663 of 17 July 1970 art. 31 Official Journal of 19 July 1970)

(Law n° 75-624 of 11 July 1975 art 52 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 92-1336 of 16 December 1992 Article 124 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n°98-468 of 17 June 1998, art. 41 Official Journal of 18 June 1998)

Certificate n° 3 is the statement of the following convictions imposed for a felony or a misdemeanour, where they are not excluded from certificate n° 2:

1° custodial sentences in excess of two years which are not suspended or which have to be served in their entirety as a consequence of a revocation of their suspension;

2° custodial sentences of the kind considered under point 1° above and not in excess of two years, where the court has ordered their mention on certificate n° 3;

3° sentences imposing immediate bans, disqualifications or incapacities, pursuant to articles 131-6 to 131-11 of the Criminal Code, for the duration of these bans, disqualifications or incapacities;

4° decisions imposing the socio-judicial surveillance provided for by article 131-36-1 of the Criminal Code, or sentences by which a ban from paid or voluntary work involving habitual contact with minors has been imposed, for the duration of the measure;

Certificate n° 3 may be requested by the person it concerns. It must under no circumstance be delivered to a third party.

Article 777-1

(Law n° 72-1226 of 29 December 1972 Article 51 Official Journal of 30 December 1972)

(Law n° 75-624 of 11 July 1975 art 53 Official Journal 13 July 1975, in force 1 January 1976)

The recording of a conviction on certificate n° 3 may be excluded pursuant to the conditions specified by the first paragraph of article 775-1.

Article 777-2

(Law n° 80-2 of 1 April 1980 Articles 5 & 10 Official Journal of 5 January 1981)

(Law n° 92-1336 of 16 December 1992 Article 125 Official Journal of 23 December 1992 in force on 1 March 1994)

Any person proving his identity may have communicated to him the full statement of the entries made in the criminal records which concern him, by making an application sent to the district prosecutor attached to the district court in the area of jurisdiction of which he resides.

Where it concerns a legal person, the application is sent to the district prosecutor attached to the district court in the jurisdictional area in which the legal person has its registered office, by the person's legal representative who proves his capacity.

If the person resides or has its registered office abroad, the information is supplied via the competent diplomatic agent or consul.

This information does not amount to a service of any decisions which are not final, and does not cause to run any time limit for appeal.

No copy of this full statement may be delivered.

The provisions of the present article are also applicable to the forensic police record.

Article 777-3

(Law n° 80-2 of 1 April 1980 Articles 4 & 10 Official Journal of 5 January 1981)

(Law n° 92-1336 of 16 December 1992 Article 127 Official Journal of 23 December 1992 in force on 1 March 1994)

No comparison, nor any interconnection, in the meaning of article 19 of law n° 78-17 of 6th January 1978 governing computer equipment, files and liberties, may be made between the national automated criminal records and any other computerised file or nominative data bank managed by any person or by a State administration not under the authority of the Ministry of Justice.

No computerised file or nominative data bank managed by any person or by any State administration not under the authority of the Ministry of Justice may record first-instance or appeal sentences, except in the cases and pursuant to the conditions set out by law.

A criminal conviction may however always be invoked before a court by the victim of the offence.

Any violation of the preceding provisions will be punished by the penalties incurred for the misdemeanour provided for by article 226-21 of the Criminal Code.

Article 778

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

Where in the course of any proceedings the district prosecutor or the investigating judge discovers that a person was sentenced under a false identity or has usurped a civil status, the necessary rectifications are made automatically and at once, before the closing of proceeding, on the initiative of the district prosecutor.

The rectification is requested in an application made to the presiding judge of the court which imposed the sentence. If the decision was made by an assize court, the application is referred to the investigating chamber.

The presiding judge transmits the application to the public prosecutor and appoints a reporting judge. The hearing and the judgment take place in chambers. The court may order the person who is the subject of the conviction to be summoned.

If the application is granted, the costs are paid by the person responsible for the entry identified as erroneous if he was summoned to the proceedings. If he was not, or where he is insolvent, they are borne by the public Treasury.

Any person wishing to have an entry on his criminal record corrected may act in the same way. Where the application is dismissed, the applicant is ordered to pay the costs.

An indication of the decision is entered into the margin of the judgment affected by the application for rectification.

The same procedure is applicable in the event of a dispute as to rehabilitation as of right, or for difficulties raised by the interpretation of an amnesty law, pursuant to the conditions set out by article 769, paragraph 2.

Article 779

(Law n° 80-2 of 1 April 1980 Articles 7 & 8 Official Journal of 5 January 1981)

(Law n° 92-1336 of 16 December 1992 Article 126 Official Journal of 23 December 1992 in force on 1 March 1994)

A regulation issued by the public administration determines the measures necessary for the implementation of articles 768 to 778, and in particular the conditions pursuant to which certificates n° 1, 2 and 3 of the criminal records may be requested, drafted and delivered.

This regulation also determines the conditions pursuant to which the information registered by the national automated criminal record may be used for the enforcement of criminal convictions.

It also organises the rules for the transmission of information between the national automated criminal records and the persons or services who have access to it.

The aforementioned public administration regulation is made after hearing the opinion of the National Commission for Information Technology and Civil Liberties.

Article 780

Repealed

Article 781

(Law n° 85-835 of 7 August 1985 Article 7 Official Journal of 8 August 1985 in force on 1 October 1986)

(Law no. 89-469 of 10 July 1989 Article 8 Official Journal of 11 July 1989, in force on 1 January 1990)

(Law n° 92-1336 of 16 December 1992 Article 129 Official Journal of 23 December 1992 in force on 1 March 1994)

(Ordinance n° 2000-916 of 19 September 2000 Article 3 Official Journal 22 September 2000 in force 1 January 2002)

Any person who has been issued with a copy of a third party's criminal records by assuming a false name or false authority is punished by a € 7,500 fine.

Any person who has given false identity information which has caused or could have caused erroneous entries to be made into the criminal records incurs the same penalty.

Any person who has procured the delivery by the party concerned of all or any of the notes of the full statement specified by article 777-2 of the present Code incurs the same penalty.

TITLE IX: REHABILITATION OF CONVICTED PERSONS

COMMON PROVISIONS

Article 782

(Law nº 70-643 of 17 July 1970 art. 32 Official Journal of 19 July 1970)

Every person sentenced by a French court to a penalty for a felony, misdemeanour or petty offence may be rehabilitated.

Article 783

(Law n° 92-1336 of 16 December 1992 Article 130 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

Rehabilitation may be acquired as of right pursuant to the conditions provided for in articles 133-13 onwards of the Criminal Code, or be granted by the investigative chamber in the circumstances provided for in the present title.

In every case it entails the consequences set out under article 133-16 of the Criminal Code.

Article 784

Repealed.

CHAPTER I: PROVISIONS APPLICABLE TO NATURAL PERSONS

Article 785

(Law n° 75-624 of 11 July 1975 art 55 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

Rehabilitation may only be requested from a court during the life of the convicted person by that person, or, if he is judicially interdicted, by his legal representative. In the event of death and if the legal conditions are fulfilled, the application may be continued by his spouse or by his descendants and may even be instituted by them, but only within a period of one year from his death.

The application must cover all convictions imposed which have not been erased by a prior rehabilitation .

Article 786

(Law nº 70-643 of 17 July 1970 art. 14 Official Journal of 19 July 1970)

(Law n° 75-624 of 11 July 1975 art 56 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

The rehabilitation application may only be made after a five-year time limit for persons sentenced for a felony, a three-year time limit for persons sentenced for a misdemeanour, and a one-year time limit for persons sentenced for a petty offence.

The time limit starts running for persons sentenced to a fine from the day the sentence became irrevocable and, for persons sentenced to a custodial sentence, from the day of their final release or, in accordance with the provisions of article 733, fourth paragraph, from the day of their parole when this was not followed by a revocation. [For those sentenced to criminal guardianship, it runs from the day that this terminated.

The time limit starts to run from the expiry of the sanction in respect of persons sentenced to any criminal sanction other than imprisonment or a fine, where this was imposed as a main penalty.

Article 787

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

Convicted persons in the situation of legal recidivism, those who have incurred a new conviction after having achieved rehabilitation, those who, after having been sentenced in a adversarial trial or by contumacy to a penalty for a felony, have seen the execution of the penalty extinguished by limitation, are only admissible to apply for their rehabilitation after a ten-year time limit has expired since their release or since the limitation.

However, recidivists who have incurred no penalty for a felony and persons rehabilitated who have only incurred a sentence to a misdemeanour penalty are admissible to apply for rehabilitation after a six-year time limit has expired from their release.

Persons sentenced following an adversarial trial or by default to a misdemeanour penalty and in respect of whom the execution of the penalty has been extinguished by limitation are also admissible to apply for rehabilitation after the expiry of a six-year time limit since the limitation.

Persons convicted after an adversarial trial, by contumacy or by default and in respect of whom the penalty has been extinguished by limitation are required to prove, in addition to the conditions stated below, they have not incurred during the limitation period any conviction for offences qualified as felonies or misdemeanours and that they have behaved irreproachably.

Article 788

(Law n° 75-624 of 11 July 1975 art 57 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 93-2 of 4 January 1993 art 136 Official Journal 5 January 1993, in force 1 March 1993)

Unless they have become time-barred, the convicted person must prove the payment of any fine or damages, or that they have been granted exemption.

Failing such proof, he must demonstrate that he has served the civil imprisonment term determined by the law or that the public treasury has waived this means of execution.

If he was sentenced for fraudulent bankruptcy, he must prove the payment of the liabilities of the bankruptcy in capital, interest and expenses, or that he has been granted exemption.

In the event of a joint conviction, the court fixes the share of damages or liabilities which must be paid by the applicant.

If the injured party cannot be found of if he refuses to receive the amount due, this sum is paid to the Caisse des Dépôts et Consignations as is done for offers of payment and payments into court. If the party does not appear within five years to ask to be paid the sum deposited, this sum is returned to the depositor upon his simple application.

Article 789

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 93-2 of 4 January 1993 art 137 Official Journal 5 January 1993, in force 1 March 1993)

If the convicted person has rendered outstanding services to the country since the offence, the rehabilitation application is not subjected to any time limit or penalty execution condition. In this case, the court may grant the rehabilitation even if the fine and the damages have not been paid.

Article 790

(Law n° 75-624 of 11 July 1975 art 58 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

The convicted person files the rehabilitation application with the district prosecutor of his current residence, or, if he lives abroad, with the district prosecutor of his last residence in France or, failing this, with the district prosecutor of the place of conviction.

This application states:

1° the date of the conviction;

2° the places where the convicted person has resided since his release.

Article 791

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

The district prosecutor collects any relevant information from the various places where the convicted person may have resided.

He also seeks the opinion of the post-sentencing judge.

Article 792

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

The district prosecutor asks to be delivered:

1° a copy of the judgments imposing the convictions;

2° an abstract of the register of the places of detention where the penalty was served stating how the convicted person conducted himself;

3° certificate n° 1 from criminal records.

He sends the documents with his opinion to the prosecutor general.

Article 793

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

The court is seised of the case by the prosecutor general.

The applicant may submit any relevant document directly to the court.

Article 794

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law n° 93-2 of 4 January 1993 art 224 Official Journal 5 January 1993, in force 1 March 1993)

The court decides within two months on the submissions of the prosecutor general, the party or his advocate being heard or summoned in due form.

Article 795

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

(Law nº 2000-516 of 15 June 2000 art. 83 Official Journal of 16 June 2000)

The judgment of the investigative chamber may be referred to the Court of Cassation pursuant to the formalities set out by the present Code.

Article 796

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

In the case specified by article 789, the cassation application filed against any judgment dismissing the rehabilitation application is examined and decided without fine or costs. All the procedural steps are signed for stamp duty and registered free of charge.

Article 797

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

In the event of a dismissal of the application, a new application may be filed only after the expiry of two years, unless the dismissal of the first application was grounded on the insufficient length of the probationary term. In this case the application may be renewed as soon as the term has expired.

Article 798

(Law nº 70-643 of 17 July 1970 art. 32 Official Journal of 19 July 1970)

(Law n° 75-624 of 11 July 1975 art. 59 Official Journal 13 July 1975, in force 1 January 1976)

(Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

A note of the judgment ordering the rehabilitation is made in the margin of the conviction judgments.

The rehabilitated person may have an exemplified copy of the rehabilitation judgment and copy of the criminal records delivered to him free of charge.

CHAPTER II: PROVISIONS APPLICABLE TO LEGAL PERSONS

Article 798-1

(Inserted by Law n° 92-1336 of 16 December 1992 Article 133 Official Journal of 23 December 1992 in force on 1 March 1994)

Where the person convicted is a legal person, the rehabilitation application is filed by its legal representative.

The application may only be filed after a two-year time limit from the expiry of the term of the sanction served. It must first state the date of the conviction for which a rehabilitation is asked for and, secondly, any transfer of the registered office of the legal person which may have taken place since the conviction.

The legal representative files the rehabilitation application with the district prosecutor of the registered office of the legal person, or, if the legal person has its registered office abroad, with the district prosecutor attached to the court which imposed the sentence.

The district prosecutor has an exemplified copy of the judgments imposing a conviction served on the legal person and a certificate n° 1 of its criminal record delivered to him. He sends these documents with his opinion to the prosecutor general.

The provisions of article 788, with the exception of those in the second and fourth paragraphs, and the provisions of articles 793 to 798, are applicable in the event of a rehabilitation application by a convicted legal person. However, the time limit set out by article 797 is reduced to one year.

Article 799

Repealed

TITLE X: JUDICIAL COSTS

Article 800

A Council of State Decree determines the costs which are included under the denomination of felony, misdemeanour and petty offences judicial costs; it sets out their tariff, organises their payment and recovery, determines the means of recourse, fixes the conditions the parties concerned must fulfil and settles generally all issues relating to felony, misdemeanour and petty offences judicial costs .

Article 800-1

(Law n° 93-2 of 4 January 1993 art 120 Official Journal 5 January 1993, in force 1 March 1993)

Notwithstanding any provision to the contrary, felony, misdemeanour and petty offences judicial costs are paid by the State and may not be recovered from persons convicted.

Article 800-2

(Inserted by Law nº 2000-516 of 15 June 2000 art. 88 Official Journal of 16 June 2000)

At the request of the party concerned, any court pronouncing a dismissal, a discharge or an acquittal may grant an indemnity to the defendant, which is calculated as the costs not paid by the State, as presented by the State.

This indemnity is payable by the State. However, the court may order that it be paid by the civil party where the prosecution was set in motion by the civil party.

A Council of State Decree determines the conditions of application of the present article.

GENERAL PROVISIONS

Article 801

(Law n° 75-701 of 6 August 1975 Article 19 Official Journal of 7 August 1975)

(Law nº 89-461 of 6 July 1989 art. 23 Official Journal of 8 July 1989 in force 1 December 1989)

Any time limit imposed by a provision of criminal procedure for the performance of a step or a formality ends on the last day at 12 p.m. Any time limit which would normally expire on a Saturday, Sunday, public holiday or on a non-working day is extended until the next working day.

Article 802

(Law n° 75-701 of 6 August 1975 Article 19 Official Journal of 7 August 1975)

(Law n° 93-2 of 4 January 1993 art 82 Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 93-1013 of 24 August 1993 art. 27 Official Journal of 25 August 1993 in force 2 September 1999)

In the event of a violation of formalities prescribed by law under penalty of nullity or in the event of a non-observance of substantial formalities, any court, the Court of cassation included, which is seised of an application for annulment, or which raises such an irregularity on its own motion, may pronounce the nullity only where this has had the effect of damaging the interests of the party concerned.

Article 803

(Law n° 93-2 of 4 January 1993 art 60 Official Journal 5 January 1993, in force 1 March 1993)

(Law nº 2000-516 of 15 June 2000 art. 93 Official Journal of 16 June 2000)

No one may be forced to wear handcuffs or shackles unless he is considered to be a danger to others or himself, or liable to attempt to escape.

In both cases, all necessary measures compatible with the security requirements must be taken to prevent a person who is handcuffed or shackled from being photographed or filmed.

Article 803-1

(Inserted by Law n° 99-515 of 23 June 1999 Article 27 Official Journal of 24 June 1999)

In accordance with the provisions of the present article, in cases where provision is made to notify an advocate by recorded delivery letter or by recorded delivery letter with acknowledgement of receipt, the notification may also be carried out by fax with acknowledgement of receipt.

TITLE I: PROVISIONS APPLICABLE TO NEW CALEDONIA, AND IN THE TERRITORIES OF FRENCH POLYNESIA AND IN THE WALLIS AND FUTUNA ISLANDS

CHAPTER I: GENERAL PROVISIONS

Article 804

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

With the exception of articles 529-3 to 529-9 and 717 to 719, the present Code (legislative provisions) is applicable to New Caledonia, French Polynesia, and Wallis and Futuna Islands, subject to the modifications provided for in the present title.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 805

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of the present Code in France's overseas territories, the terms: "first instance court", "small claims court" or "police court" are replaced by the term: "tribunal de première instance" or, where appropriate, by the terms "detached section of the tribunal de première instance";

Similarly, references to provisions which are not applicable in these territories are replaced by references to locally applicable provisions which have the same objective.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 806

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

(Ordinance n° 2000-916 of 19 September 2000 art. 16 Official Journal of 22 September 2000 in force 1 January 2002)

In France's overseas territories and New Caledonia, financial penalties incurred in accordance with the present Code are imposed in the local currency, taking the exchange value of the euro into account.

CHAPTER II: PROSECUTION AND CIVIL ACTION

Article 807

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

Article 2-6 is drafted as follows:

"Art. 2-6

Any association that has been properly registered for at least five years at the time of the incident which, through its statutes, sets out to combat discrimination on the basis of sex or morals, may exercise the rights granted to the civil party concerning discrimination due to the sex, familial situation or the morals of the victim, punished by articles 225-2 and 432-7 of the Criminal Code, or forbidden by the locally applicable provisions concerning the right to work."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

1. Reference to the territory of New Caledonia is replaced by reference to New Caledonia.
2. Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.
3. Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 808

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law No. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The second paragraph of article 2-8 is drafted as follows:

"Any association that has been properly registered for at least five years at the time of the incident which, in accordance with its statutes, has the championing and help of disabled people as its mission, may also exercise the rights accorded to the civil party regarding the violation of locally applicable legislative provisions or regulations relating to the accessibility of housing, places of work or establishments and buildings open to the public."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER III: THE JUDICIAL POLICE

Article 809

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

I. Civil servants and officials in the overseas territories who carry out duties corresponding to those of civil servants and officials in metropolitan France, to whom articles 22 to 29 are directed, are responsible for carrying out certain judicial police duties, within the conditions and the limits determined by the same articles.

II. Where they belong to a sector of the public services responsible for supervising the implementation of the regulations decreed by the territories or, in the case of New Caledonia, the provinces, officials in the overseas territories or the provinces of New Caledonia who are duly sworn in are competent to record violations of the aforesaid regulations in an official record. These officials are commissioned by the competent administrative authority after they have been approved by the district prosecutor. They swear their oath before the tribunal de première instance.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 809-1

(Law n° 99-515 of 23 June 1999 Article 6 Official Journal of 24 June 1999)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 41-2, references to articles 28 and 32 (2°) of the government decree of 18th April 1939 fixing conditions for weaponry and munitions, and to article L.1 of the Highway Code are replaced by references to the locally applicable provisions punishing the possession and carrying of a weapon, and the locally applicable provisions concerning road traffic, punishing driving under the influence of alcohol or in an obviously drunken state.

Article 810

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of the second paragraph of article 45, the public prosecutor's duties are carried out by the civil servants and officials mentioned in section I of article 809, with the exception of those carrying out the duties of rural policemen in the communes and special guards, duly sworn in.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 811

(Law n°. 96-1240 of 30 December 1996, art. 20 Official Journal of 1 January 1997)

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of the first paragraph of article 46 and of article 48, the public prosecutor's duties can equally be carried out by a judicial police officer who is a member of the gendarmerie.

For the application of the second paragraph of article 46, the public prosecutor's duties can equally be carried out by the head of the district or the administrative subdivision where the police court sits.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER IV: ENQUIRIES

Article 812

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

(Ordinance n° 2000-916 of 19 September 2000 art. 3 Official Journal of 22 September 2000 in force 1 January 2002)

For the application of articles 63, 77 and 154, where the transport conditions do not allow the detainee to be brought before the competent prosecutor or judge, the judicial police officer may order that the detained person periodically presents himself to him, provided the officer immediately informs the competent prosecutor or judge. The prosecutor or judge decides on the withdrawal or the upholding of the measure, for a period of time that he determines, and which may not be extended beyond the day of the first air or sea link.

Failure to meet the obligations set out in the previous paragraph is punishable by a year's imprisonment and a fine of € 15000.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 813

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In the territory of French Polynesia, in the absence of a doctor from the island where the police custody is taking place, the examination provided for in article 63-3 is carried out by a qualified nurse, or failing that, by a member of the public health auxiliary corps.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 814

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

(Ordinance n° 2000-916 of 19 September 2000 art. 3 Official Journal of 22 September 2000 in force 1 January 2002)

In the Territory of New Caledonia, where the police custody takes place outside the communes of Nouméa, Mont-Doré, Dumbea and Paita and an advocate's visit seems physically impossible, the interview provided for in the first paragraph of article 63-4 may take place with someone chosen by the person held in custody. This person must not have been implicated in the same or related charges, and must have no convictions, incapacities or forfeiture noted on certificate n°2 of his criminal record. The provisions of the second and fourth paragraphs of article 63-4 are applicable to the chosen person, who is informed of this by the judicial police officer.

If a person who has been summoned to intervene, under the conditions provided for in the previous paragraph, discloses what has been said in the interview to anyone else with the aim of perverting the course of justice, this is punishable by a year's imprisonment and a fine of € 15,000.

The provisions of the previous paragraphs apply to the Territory of French Polynesia, where the police custody takes place on an island where there is no advocate and where an advocate's visit appears physically impossible.

In the territory of the Wallis and Futuna Islands, a person who has been approved by the presiding judge of the tribunal de première instance can be called to take part in the interview provided for in the first paragraph of article 63-4. Where this person has not been appointed by the person held in custody, he is appointed by the presiding judge of this court on his own motion. The provisions of the second, third and fourth paragraphs of article 63-4 and those of the second paragraph of the present article are applicable to the chosen person, who is informed of this by the judicial police officer.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER V: INVESTIGATION JURISDICTIONS

Article 815

(Ordinance n°98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 88, legal aid must be read to mean the locally applicable system of legal aid.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 816

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The civil party's obligation to register an address with the investigating judge, provided for in article 89, must, for overseas territories, mean an address located within the territory where the inquiry is taking place.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 817

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of the second paragraph of article 102, the clerk can be appointed as an interpreter for one of the languages in use within the territory. In this case, he is exempted from taking the oath.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 818

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The obligation of the person under judicial examination to register an address with the investigating judge, provided for in the fifth paragraph of article 116, means an address located within the territory where the investigation is taking place.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 819

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

When the person under judicial examination does not reside on the island where the competent investigating judge sits, the time limit provided for in article 116-1 is extended to one month.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 820

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of articles 127 and 133, if the person who is the subject of the warrant is found on an island where there is no court, he is brought before the competent judge by the first air or sea link. Where appropriate, the amount of time needed to bring this person before the competent judge, and the length of time he was detained before starting the journey are deducted from the length of the sentence imposed.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 821

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

Where the transfer is made to or from an overseas territory, the time limit provided for in article 130 is extended to two weeks.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 822

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of articles 128 and 132, the person may be detained in a location

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 823

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

(Law n° 2000-1354 of 30 December 2000 art 32 Official Journal of 31 December 2000)

For the application of the provisions of article 145 in the territory of the Wallis and Futuna Islands, the investigating judge may order the temporary imprisonment of the indicted person. This person must appear before the liberty and custody judge as soon as possible, and by the seventh working day at the latest.

The time limit provided for in the second paragraph of article 187-1 is also extended to seven working days.

Article 824

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000, art. 83 Official Journal of 16 June 2000 in force 1 January 2001)

For the application of article 191, the investigating chambers attached to the appeal courts of Nouméa and Pepeete are made up of a presiding judge or an appeal court judge and two judges within the appeal court's jurisdiction.

These judges are appointed each year by the senior presiding judge of the appeal court.

Where a member of the investigating chamber is prevented from acting, he is replaced by a judge appointed by the senior presiding judge.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER VI: THE ASSIZE COURT

Article 825

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

By special dispensation from article 236, the assizes are held whenever necessary.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 826

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 244, and subject to the application of the dispositions of article 247, the assize court may also be presided over by the presiding judge of the tribunal de première instance or its longest serving most senior judge.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 827

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of articles 245 and 250, the appointment of the presiding judge and assessors of the assize court is made annually.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 828

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

Section 8° of article 256 is drafted as follows:

"8° Adults who are under legal protection, adults under guardianship or tutelary, and those who have been placed in an establishment for the mentally ill, in accordance with the locally applicable provisions."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 829

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

Without prejudice to the application of article 257, the duties of a juror are also incompatible with the following roles: assessors in labour courts, joint commercial court assessors, assessors in the tribunal de première instance of Wallis and Futuna; members of the government of French Polynesia; members of the territorial assemblies; members of the council of the territory of Wallis and Futuna Islands; members of the provincial assemblies of New Caledonia; representatives of the State in the territories; secretary-generals of the

territories; heads of administrative juridictions and subdivisions.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 830

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The minimum number of jurors provided for by the first paragraph of article 260 is fixed at 80 for the Territory of the Wallis and Futuna Islands.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 831

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In the territory of the Wallis and Futuna Islands, the preliminary copy of the annual list, provided for in articles 261 and 261-1, is drawn up by territory, and the mayor's powers are assumed by the head of the administrative jurisdiction.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 832

(Law n° 96-1240 of 30 December 1996, art. 21 Official Journal of 1 January 1997)

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

I. For the application of the second paragraph of article 262 in the territories of New Caledonia and French Polynesia, determining the composition of the commission provided for in this article, the departmental councillors are replaced by five annually appointed members taken from the French Polynesian Congress or Assembly.

II. In the territories of Wallis and Futuna Islands, the commission provided for in article 262 is made up of:

-the presiding judge of the tribunal de première instance, as presiding judge;

-the district prosecutor or his deputy;

-a citizen appointed in the conditions defined in article L.933-2 of the Code of Judicial Organisation;

-two members of the territorial assembly, appointed annually by this assembly.

Article 833

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In the territories of Wallis and Futuna Islands, the special list of substitute jurors is made up of thirty names.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 834

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 269, the accused may be transferred to a penal establishment other than a remand prison.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER VII: TRIAL OF MISDEMEANOURS

Article 835

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 392-1, legal aid must mean the locally established system of legal aid.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 836

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In the territory of New Caledonia, the correctional court ruling in collegiate formation is supplemented by two assessors under the conditions provided for in the Code of Judicial Organisation.

In the territory of the Wallis and Futuna Islands, the correctional court ruling in collegiate formation is made up of a judge and two assessors, under the conditions provided for in the Code of Judicial Organisation.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 837

(Ordinance n° 98-729 of 20 August 1998 art. 2 Official Journal, 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

Article (Law n° 2001-616 of 11 July 2001 art. 75 Official Journal of 13 July 2001)

(Law n° 2003-495 of 12 June 2003 art. 44 Official Journal of 13 June 2003)

Article 398-1 is drafted as follows:

I.-In the territory of French Polynesia:

"Article 398-1

The following are tried in the conditions provided for in the third paragraph of article 398:

1° Misdemeanours provided for in articles 66 and 69 of the government decree of 30 October 1935 standardising the law concerning cheques and debit cards;

2° Misdemeanours under the locally applicable provisions concerning road traffic, and, when they are committed whilst driving a vehicle, those under articles 222-19, 222-20, 223-1 and 434-10 of the Criminal Code;

3° Misdemeanours under the locally applicable provisions relating to transport by land;

4° Misdemeanours provided for in articles 222-11, 222-12 (1° to 10°), 222-13 (1° to 10°), 222-16, 222-17, 222-18, 222-32, 227-3 to 227-11, 311-3, 311-4 (1° to 8°), 313-5, 314-5, 314-6, 321-1, 322-1 to 322-4, 322-12, 322-13, 322-14, 433-5 and 521-1 of the Criminal Code and L.628 of the Public Health Code;5° Misdemeanours under the locally applicable provisions concerning hunting, fishing, protection of flora and fauna and regarding sea fishing;

6° Misdemeanours provided for in the French Polynesian Town Planning Code concerning failure to obtain planning permission or permission to carry out excavations or by locally applicable regulations governing listed installations;

7° Misdemeanours provided for in law n°83-581 of 5 July 1983 relating to the protection of human life at sea.

However, the court is required to rule in the conditions provided for by the first paragraph of article 398 where the defendant is in pre-trial custody at the time of his appearance at the hearing, or where he is being prosecuted according to the procedure of immediate appearance in court. It also rules in the conditions provided for in the first paragraph of article 398 when trying the misdemeanours provided for in the present article, where these misdemeanours are connected to other misdemeanours not provided for in this article."

II.-In the territories of New Caledonia and the Wallis and Futuna Islands:

"Article 398-1

The following are tried in the conditions provided for in the third paragraph of article 398:

1° Misdemeanours under articles 66 and 69 of the government decree of 30th October 1935 standardising the law concerning cheques and debit cards;

2° Misdemeanours under the locally applicable provisions concerning road traffic, and when they are committed whilst driving a vehicle, those under articles 222-19, 222-20, 223-1 and 434-10 of the Criminal Code;

3° Misdemeanours under the locally applicable provisions regarding transport by land;

4° Misdemeanours under the locally applicable provisions concerning hunting, fishing, protection of flora and fauna and regarding sea fishing.

However, the court compulsorily rules in the conditions provided for by the first paragraph of article 398 where the defendant has been remanded in custody at the time of his appearance at the hearing, or where he is being prosecuted according to the procedure of immediate appearance in court. It also rules in the conditions provided for in the first paragraph of article 398 when trying the misdemeanours provided for by the present article, where these misdemeanours are related to other misdemeanours not provided for by

this article."

Article 838

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In the territory of the Wallis and Futuna Islands, the opinion provided for in article 399 is given by the district prosecutor.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 839

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 407, the clerk may be appointed as an interpreter for one of the languages in use within the territory. In this case he is exempted from taking the oath.

If there is a permanent official interpreter, he takes the oath only when he takes up the post.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 840

(Ordinance N.l 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 410-1, if the defendant is found on an island where there is no court, he is brought before the competent judge by the first air or sea link. Where appropriate, the amount of time needed to bring this person before the competent judge, and the length of time he was detained before starting the journey are deducted from the length of the sentence imposed.

The period of time provided for in order to carry out this transfer before the competent court is extended to two weeks if this transfer is to or from an overseas territory.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 841

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The provisions of article 411 are applicable to a defendant who lives on an island where there is no court or who lives more than a hundred-and-fifty kilometres from the court, where the length of the prison sentence involved is not more than five years.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 842

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 416 in the territories of French Polynesia and New Caledonia, where an advocate's visit appears to be physically impossible, the defendant can seek the advice of a person who has no convictions, incapacities or forfeitures noted on certificate n°2 of his criminal record. A person against whom the same or related charges have been brought cannot be chosen.

In the territory of the Wallis and Futuna Islands, the defendant can seek the advice of a person appointed in the conditions provided for in the last paragraph of article 814.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 843

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 420-1, the total of the claim must not exceed the upper limit of the ordinary jurisdiction of metropolitan small claims courts in civil matters.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 844

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The second paragraph of article 470-1 is drafted as follows:

"However, where it appears that a third party bearing liability should be joined in the proceedings, the court sends the case before the competent civil court, in a decision that is not open to any form of challenge."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 845

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The time limits for an application to set aside, provided for in article 491 and in the first paragraph of article 492, are set at ten days if the defendant resides on the island where the court is located, and one month if he resides elsewhere.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 846

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For parties who do not reside on the island where the court which delivered the contested verdict has its seat, the extra time provided for in article 500 is extended to two weeks.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 847

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

If the appellant does not reside on the island where the court which delivered the contested judgment has its seat, the appeal declaration provided for in article 502 may be addressed to court's clerk in a letter signed by the appellant. As soon as he receives this letter, the clerk drafts the appeal notice and attaches the appellant's letter to this. The appellant is bound to confirm his appeal at the town council or police station nearest to his home within the time limit provided for in articles 498, 500 and 846.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER VIII: TRIAL OF PETTY OFFENCES

Article 848

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In Nouméa, Mata-Utu and Papeete, the police court is made up of a tribunal de première instance judge, an official from the public prosecutor's office as provided by articles 45 to 48, 810 and 811, and a clerk.

In sections of the tribunal de première instance, and at commercial hearings the court is made up of the judge responsible for the section's service or the commercial judge, an official from the public prosecutor's office, according to the provisions of articles 45 to 48, 810 and 811, and a clerk.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 849

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

For the application of article 527, the time limit for an application to set aside available to the defendant, provided by the third paragraph of the aforesaid article, is extended to two months if the defendant does not reside on the island where the court which delivered the contested verdict has its seat.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 850

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The first paragraph of article 529 is drafted as follows:

"For petty offences of the first four classes of the locally applicable regulations concerning road traffic, insurance, hunting, fishing, protection of the environment, consumers' rights, safety at sea, the regulation of drinking establishments, being drunk and disorderly and land burning, which are punished only by a fine, criminal liability is extinguished by the payment of a fixed fine which precludes the implementation of the rules governing recidivism.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 851

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In addition to the provisions made applicable by articles 544 and 545, articles 841 and 845 are also applicable before the police court.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 852

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The provisions of the fourth paragraph of article 546 apply to proceedings brought at the request of the competent water and forestry authorities.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 853

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In addition to the provisions made applicable by articles 547 and 549, article 846 is applicable to appeals made against police court judgments.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER IX: SUMMONSES AND NOTIFICATIONS

Article 854

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

If the person summoned lives on the island where the court is located, the time limit between the day that the summons is served and the date fixed for the court appearance, provided for in article 552, is no less than ten days. This time limit is extended by a month if the person summoned lives on another island within the same territory or in a different French territory altogether.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER X: CASSATION

Article 855

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

If the appellant does not reside on the island where the court which delivered the contested decision is situated, the time limit for the appeal, provided for in the first paragraph of article 568, is extended to one month.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 856

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

If the appellant does not reside on the island where the court which delivered the contested decision is situated, the appeal declaration provided for in article 576 may also be made by addressing a letter signed by the appellant to the clerk attached to the court which delivered the contested judgment. As soon as he receives this letter, the clerk drafts the appeal notice and attaches the appellant's letter to this. The appellant is bound to confirm his appeal at the town council or Police station nearest to his home within the time limit provided for in articles 568 and 855.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 857

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The time limit for an application to set aside a ruling given by the Court of Appeal, provided for in article 579, is extended to a month if the party opposing the ruling does not live on the island where the court which delivered the contested decision is situated.

In this case, the application to set aside may also be made in the forms provided for in article 856.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 858

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The time limit provided for in article 584 is extended to two months if the appellant does not live on the island where the court which delivered the contested decision is situated.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 859

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The time limit and the forms of appeal against a judgment given by the Appeal Court, provided for in article 589, are those set out in articles 855 and 856.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER XI: PARTICULAR PROCEEDINGS

Article 859-1

(Inserted by Law n° 2002-268 of 26 February 2002, art. 4 Official Journal of 27 February 2002)

The time limit provided for in the first paragraph of article 627-6 is extended to fifteen days where the transfer is made from New Caledonia, French Polynesia or the Wallis and Futuna Islands.

Article 860

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The judgment mentioned in article 628 and the extract from the conviction referred to in article 634 are put in one of the territory's newspapers and affixed to the door of the party home of the party concerned. Where there is no town hall, they are displayed by the head of the administrative jurisdiction.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 861

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The time limit provided for in the third paragraph of article 662 is two months.

Article 862

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In the territory of the Wallis and Futuna Islands, the presiding judge of the tribunal de première instance carries out the duties allotted to the commission referred to in article 706-4.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 862-1

For the application of article 706-2 in New Caledonia, French Polynesia and the Wallis and Futuna Islands, the words "or by the locally applicable regulations" are added after the words "by article L.5311-1 of the Public Health Code".

Article 863

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

Article 706-9 is drafted as follows:

"Art. 706-9

The commission or, in Wallis and Futuna, the presiding judge of the tribunal de première instance takes the following into account when considering the amount of money granted to the victim by way of compensation for his damage:

- the allowances set out in section II of article 1 of edict n°59-76 of 7th January 1959 relating to actions of civil compensation of the State and of certain other public persons;

- benefits paid by organisations, establishments and services which manage a compulsory social security system;

- sums paid to reimburse a medical or rehabilitation treatment;

- the wage earner's salary or allowance maintained by the employer during the period of inactivity following the event which caused the injury.

Any other type of indemnity which has been or will be received from other persons liable in payment for the same prejudice.

The sum granted is paid by the guaranteed fund for victims of terrorist acts and other offences."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 864

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The first paragraph of article 706-14 is drafted as follows:

"Any person who, having been the victim of theft, fraud or a breach of trust cannot get compensation or an indemnity on any basis and

who consequently finds himself in a serious financial position, can obtain an indemnity in the conditions provided for in articles 706-3 (third and last paragraphs) to 706-12 if his financial resources are lower than the limit for benefiting from partial legal aid, subject, where appropriate, to adjustments which take dependants into account, provided for in article 3 of edict n°92-1147 of 12th October 1992 relating to legal aid for criminal matters in the French overseas territories."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 865

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

In the Territory of French Polynesia, the examinations provided for in articles 706-23 and 706-29 may be carried out in the conditions defined in article 813.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 866

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The first paragraph of article 706-30 is drafted as follows:

"Where an investigation into an offence listed in articles 222-34 to 222-38 of the Criminal Code has been opened, in order to guarantee the payment of fines incurred as well as the carrying out of the seizure provided for in the second paragraph of article 222-49 of the same Code, at the public prosecutor's behest the presiding judge of the tribunal de première instance or a judge appointed by him may order protective measures to be taken over the assets of the person under judicial examination. The expense of this is advanced by the Treasury and conforms to the conditions provided for in the locally applicable regulations concerning civil proceedings."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER XII: ENFORCEMENT PROCEDURES

Article 867

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The powers granted to the tax collector in article 707 are exercised by the officer in charge of recovering fines by virtue of the regulations applicable in the Territory.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 868

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The persons referred to in article 714 can be detained in a location other than a remand prison.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 868-1

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

As an exception to the provisions of the second and third paragraphs of article 709-1, the presiding judge of the tribunal de première instance of Wallis and Futuna performs the duties of the post-sentencing judge.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 869

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

The powers granted to the Minister of Justice in articles 730 to 733 are exercised by the State representative in the territory.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 870

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n°. 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

Article 752 is drafted as follows:

"Art. 752

Civil imprisonment may not be imposed on sentenced persons who can justify their insolvency by producing:

1° An attestation from the tax collector or the official who exercises the powers granted to the tax collector for their home, stating that they have not been taxed;

2° An attestation from the mayor or the police superintendent of their commune or the head of their administrative district.

Evidence that the sentenced person is actually solvent can be brought by any means".

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 871

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

Article 758 is drafted as follows:

"Art. 758

Civil imprisonment is served in a penal establishment."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 872

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

The security described in article 759 is accepted by the tax collector or by the official who carries out the tax collector's duties, conferred on him by the regulations applicable in the territory.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 873

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

Article 763 is drafted as follows:

"Art. 763

Where a sentence imposed in a felony case becomes time-barred, the person convicted automatically incurs an indefinite banning order preventing him from entering specific areas in the administrative jurisdiction or subdivision where the victim of the felony or his direct heirs live."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 873-1

(Law n°98-468 of 17 June 1998, art. 40 Official Journal of 18 June 1998)

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

The first paragraph of article 763-7 is drafted as follows:

"Where a person sentenced to socio-judicial surveillance including a medical treatment order must serve a custodial sentence, he serves this sentence in a penal establishment which allows him to follow an appropriate programme of medical treatment and counselling."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER XIII: CRIMINAL RECORDS

Article 874

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

For the application of article 768, the powers of the national criminal record department are exercised by the Clerk's Office attached to each tribunal de première instance which receives the records of the convictions, judgments and decisions listed in sections 1° to 8° of the aforesaid article, relating to people born within the district where the court is situated, after verifying their identity in the register of civil status.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 875

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

For the application of article 768-1, the powers of the national criminal record are exercised by the Clerk's Office attached to each tribunal de première instance which receives the records of the convictions and declarations listed in sections 1° to 4° of the aforesaid article relevant to the legal persons from the court's jurisdiction, after checking their identity in the territorial register of businesses and companies.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

Article 876

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

Article 773 is drafted as follows:

"Art. 773

A copy of each record listing a decision involving the loss of electoral rights is sent to the competent administrative authority for the territory."

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

TITLE II: PROVISIONS APPLICABLE TO MAYOTTE

CHAPTER I: GENERAL PROVISIONS

Article 877

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-616 of 11 July 2001, art. 75 Official Journal of 13 July 2001)

With the exception of articles 191, 232, 235, 240, 243 to 267, 288 to 303, 305, 398 to 398-2, 399, 510, 717 to 719, the present Code (Legislative provisions) is applicable to Mayotte subject to the changes provided for in the present title.

Article 878

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-616 of 11 July 2001, art. 75 Official Journal of 13 July 2001)

For the application of the present Code to Mayotte:

The terms: "appeal court" or "criminal appeals chamber" or "indictment chamber" are replaced by the term: "upper appeal court";

The terms: "first instance court" or "small claims court" or "police court" are replaced by the term: "tribunal de première instance";

The terms: "assize court" or "the court and the jury" are replaced by the term: "criminal court";

The term: "département" is replaced by the term: "territory";

The term: "prefect" is replaced by the term: "Government representative" and the term "order of the prefect" by the term "Government representative's decree".

Similarly, references to provisions that are not applicable to the territory are replaced by references to locally applicable provisions which have the same objective.

The powers granted to the heads of court by the present Code are exercised respectively by the presiding judge of the upper appeal court and by the district prosecutor of the aforementioned court. The powers given to the investigating judge are exercised by a judge of the tribunal de première instance.

Article 879

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The powers conferred on advocates and advisers to the parties by the present Code may be exercised by persons approved by the presiding judge of the upper appeal court. These persons are exempted from rules on special agency.

Article 879-1

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

For the application of articles 16 to 19, police officers of Mayotte that have been put at the State's disposal are assimilated to civil servants of the command and managerial corps of the national police force, who are in positions of responsibility, according to the provisions and the conditions provided for in these articles.

For the application of articles 20 and 21, police officers of Mayotte put at the State's disposal are assimilated to officers in the national police force, according to the provisions and the conditions provided for in these articles.

*Article 222 IV of the organic law No. 99-209 of 19 March 1999 concerning New Caledonia provides:

"IV

In all legislative and regulatory provisions in force:

Reference to the territory of New Caledonia is replaced by reference to New Caledonia.

Reference to the territorial assembly of New Caledonia is replaced by reference to the congress of New Caledonia.

Reference to the executive of New Caledonia is replaced by reference to the government of New Caledonia."*

CHAPTER II: ENQUIRIES

Article 880

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

(Ordinance n° 2000-916 of 19 September 2000, art. 3 Official Journal of 22 September in force on 1 January 2002)

Where the visit of an advocate or an approved person set out in article 879 appears to be physically impossible, the interview provided for in the first paragraph of article 63-4 can take place with a person chosen by the detainee.

This chosen person must not have been implicated in the same or related charges, and must have no convictions, incapacities or forfeiture noted on certificate n°2 of his criminal record. The provisions of the second and fourth paragraphs of article 63-4 are applicable to the chosen person, who is informed of this by the judicial police officer.

If a person who has been summoned to intervene, under the conditions provided for in the previous paragraph, discloses what has been said in the interview to anyone else with the aim of perverting the course of justice, this is punishable by a year's imprisonment and a fine of € 15,000.

CHAPTER III: INVESTIGATION JURISDICTIONS

Article 881

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-616 of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The civil party's duty to register an address with the investigating judge, provided for in article 89, means an address located within the territory.

Article 882

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The duty of the person under judicial examination to register an address with the investigating judge, provided for by the fifth paragraph of article 116, means an address located within the territory.

Article 883

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

Where the transfer is made to or from a destination within the territory, the time limit provided for in article 130 is extended to fifteen days.

Article 884

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000, art. 83 Official Journal of 16 June 2000, in force 1 January 2001)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

By way of exception to article 193, the upper appeal court, as a chamber of investigation, meets at the request of its presiding judge or the district prosecutor whenever it is necessary.

CHAPTER IV: THE CRIMINAL COURT

Article 885

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000, art. 83 Official Journal of 16 June 2000, in force 1 January 2001)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The criminal court is presided over by the presiding judge of the upper appeal court or by a judge appointed by the latter, who is assisted by four assessors when the criminal court is ruling at first instance and by six assessors when it is ruling on appeal. For each session, these assessors are drawn by lot from a list chosen by the garde des seaux, Minister of Justice, on the proposal of the presiding judge of the upper appeal court made on the advice of the district prosecutor. French nationals, aged older than twenty-three who can read and write in French, who can show guarantees of competence and impartiality, and who retain their political, civil and familial rights may be entered on this list.

Where the presiding judge is prevented from attending, either before or during the session, he is replaced by a judge from the upper appeal court. Where an assessor is prevented from attending, his replacement is chosen on the same terms as his initial appointment.

Article 886

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The presiding judge of the criminal court addresses the speech provided for in article 304 to the assessors who assist him. The assessors swear the oath provided for in the second paragraph of the same article.

Article 887

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The presiding judge of the criminal court exercises the powers granted to the court by articles 316, 343, 344 and 371 to 375-2.

Article 888

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000, art. 83 Official Journal of 16 June 2000, in force 1 January 2001)

(Law n° 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The majorities of eight or ten votes provided for in articles 359 and 362, second paragraph, are replaced by majorities or four or five votes.

CHAPTER V: TRIAL OF MISDEMEANOURS

Article 889

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The magistrates' court consists of a judge from the tribunal de première instance.

Article 890

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 and 11 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The number and dates of correctional hearings for the following year are fixed at the end of each judicial year, in a decree from the presiding judge of the upper appeal court made on the advice of the presiding judge of the tribunal de première instance and the district prosecutor. This decision may be altered under the same conditions during the course of the year.

Article 891

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The time limit for enforcing the transfer to the court seised of the case, provided for in the second paragraph of article 410-1, is extended to fifteen days if this transfer is made to or from a destination within the territory.

Article 892

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The time limits for an application to set aside provided for in article 491 and the first paragraph of article 492 are ten days, if the defendant resides within the territory, and a month if he resides elsewhere.

Article 893

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The additional time limit provided for in article 500 is extended to fifteen days for parties residing outside the territory.

Article 894

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The number and dates of the hearings of the upper appeal court ruling as a criminal appeals chamber for the following year are fixed at the end of each judicial year, in a decree from the presiding judge of the upper appeal court made on the district prosecutor's advice. This decision may be altered under the same conditions during the course of the year.

CHAPTER VI: TRIAL OF PETTY OFFENCES

Article 895

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The time limit for setting aside a felonious ruling, provided for in the third paragraph of article 527, is extended to two months if the defendant does not live within the territory.

Article 896

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

Articles 892 and 893 are applicable before the police court.

CHAPTER VII: SUMMONSES AND NOTIFICATIONS

Article 897

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The time limit provided for in the first paragraph of article 552 is applicable where the party summoned lives within the territory. This time limit is extended by one month if the summoned party lives in another part of French territory.

CHAPTER VIII: PARTICULAR PROCEEDINGS

Article 897-1

(Inserted by Law n° 2002-268 of 26 February 2002, art. 4 Official Journal of 27 February 2002)

Where the transfer is made from Mayotte, the time limit provided for in the first paragraph of article 627-6 is extended to fifteen days.

Article 898

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The presiding judge of the tribunal de première instance, or the judge he appoints to take his place, exercises the powers granted to the commission mentioned in article 706-4.

Article 899

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

Article 706-9 is drafted as follows:

"Art. 706-9

The presiding judge takes the following into account when considering the amount of money granted to the victim by way of compensation for his damage:

- the allowances set out in section II of article 1 of edict n°59-76 of 7th January 1959 relating to actions of civil compensation of the State and of certain other public persons;

- benefits paid by organisations, establishments and services which manage a compulsory social security system;

- sums paid to reimburse a medical or rehabilitation treatment;

- the wage earner's salary or allowance maintained by the employer during the period of inactivity following the event which caused the injury.

Any other type of indemnity which has been or will be received from other persons liable for the same damage.

The sum awarded is paid by the guarantee fund for victims of terrorist acts and other offences."

Article 900

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

The first paragraph of article 706-14 is drafted as follows:

"Any person who, having been the victim of theft, fraud or a breach of trust, cannot obtain compensation or an indemnity on any basis and who consequently finds himself in a serious financial position, may obtain an indemnity in the conditions provided for in articles 706-3 (third and last paragraphs) to 706-12 if his financial resources are lower than the limit for benefiting from partial legal aid, subject, where appropriate, to adjustments taking dependants into account, provided for in article 3 of edict n°92-1143 of 12th October 1992 relating to legal aid for criminal matters in Mayotte."

CHAPTER IX: ENFORCEMENT PROCEDURES

Article 901

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art 2 Official Journal of 29 December 1999)

(Law n°. 2001-61- of 11 July 2001, art. 75 Official Journal of 13 July 2001)

Article 758 is drafted as follows:

"Art. 758

Civil imprisonment is served in a penal establishment."

Article 901-1

(Law n° 2000-1354 of 30 December 2000, art. 32 Official Journal of 31 December 2000)

(Law n° 2001-616 of 11 July 2001, art. 75 Official Journal of 13 July 2001)

By way of exception to the provisions of the second and third paragraphs of article 709-1, the presiding judge of the tribunal de première instance carries out the duties of the post-sentencing judge.

Article 902

(Law n° 98-468 of 17 June 1998, art. 42 Official Journal of 18 June 1998)

(Ordinance n° 98-729 of 20 August 1998, art. 2 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999, art. 2 Official Journal of 29 December 1999)

(Law n° 2001-616 of 11 July 2001 art. 75 Official Journal of 13 July 2001)

The first paragraph of article 763-7 is drafted as follows:

"Where a person sentenced to socio-judicial surveillance including a medical treatment order must serve a custodial sentence, he serves this sentence in a penal establishment which allows him to follow an appropriate programme of medical treatment and counselling.

TITLE III: SPECIAL PROVISIONS APPLICABLE TO THE TERRITORY OF SAINT PIERRE AND MIQUELON

Article 902-1

(Inserted by Law n° 99-1121 of 28 December 1999 art 10 Official Journal of 29 December 1999)

The modifications provided for in the present title are taken into account for the application of the present Code in the territory of St Pierre and Miquelon.

CHAPTER I: GENERAL PROVISIONS

Article 903

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000 art 83 Official Journal of 16 June 2000 in force 1 January 2001)

The upper appeal court exercises the powers granted to the appeal court and the investigating chamber by the present Code.

Article 904

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

The powers conferred on the county court, the assize court, the presiding judge of the appeal court and the judge of the tribunal de première instance by the present Code, are respectively exercised by the tribunal de première instance, the criminal court, the presiding judge of the upper appeal court and by a judge from the tribunal de première instance. The powers granted to the district prosecutor and the prosecutor general of the appeal court are exercised by the district prosecutor of the upper appeal court.

Article 905

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

The powers granted to advocates and advisers to the parties by the present Code can be exercised persons appointed in the territory by the presiding judge of the upper appeal court. These persons are exempted from showing proof of power of attorney.

CHAPTER II: BRINGING A PROSECUTION

Article 906

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000 art 83 Official Journal of 16 June 2000 in force 1 January 2001)

By dispensation from article 193, the upper appeal court, as an investigating chamber, meets only at the request of its presiding judge or the district prosecutor, and whenever it is necessary.

Article 907

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000 art 83 Official Journal of 16 June 2000 in force 1 January 2001)

Articles L.952-11 and L.952-12 of the Code of Judicial Organisation relating to the replacement of the presiding judge of the upper appeal court and its assessors, and to the specific terms of enforcement of their legal duties are applicable to the investigating chamber and to its presiding judge.

Article 907-1

(Inserted by law n° 2002-268 of 26 February 2002 art 4 Official Journal of 27 February 2002)

The time limits provided for in article 130 and in the first paragraph of article 627-6 are extended to fifteen days where the transfer takes place from the territory.

SECTION I: TRIAL OF FELONIES

Article 908

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

Articles 233, 245, 261 and 261-1 of the present Code are not applicable.

Article 909

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

Where necessary, for the application of article 236, the presiding judge of the upper appeal court convokes the criminal court in an order made on the advice of the district prosecutor.

Article 910

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 240, the criminal court is made up of the court proper and the jury.

Article 911

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 243, the court proper is made up of the presiding judge and the assessors.

Article 912

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 244, the criminal court is presided over by the presiding judge of the upper appeal court.

Where the post is vacant, or the holder of the post is absent, prevented from attending or legally incompatible, the duties of the presiding judge of the upper appeal court are carried out by a judge appointed by the senior presiding judge from the appeal court of Paris, from a list drawn up by him for each calendar year.

Article 913

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 249, the conditions that the assessors of the criminal court must fulfil are those set out in article L.951-2 of the Code of Judicial Organisation.

Article 914

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 250, the assessors are appointed in an edict from the presiding judge of the upper appeal court on the district prosecutor's advice.

Article 915

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 251, where an impediment occurs before or during the session, the assessors are replaced by a ruling made by the presiding judge of the upper appeal court.

Article 916

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of paragraph 1 of article 260, the number of jurors may not be less than thirty-four.

Article 917

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 262, the commission is made up of:

-the presiding judge of the upper appeal court, as presiding judge;

-the presiding judge of the tribunal de première instance;

-the district prosecutor or his deputy;

-a person qualified as stated in article 905 and appointed by the presiding judge of the upper appeal court;

-three departmental councillors appointed each year by the departmental council;

-three municipal councillors appointed each year by the municipal councils; two for the commune of Saint Pierre and one for the commune of Miquelon-Langlade.

Article 918

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 264, a special list of ten extra jurors is compiled each year in addition to, and under the same conditions as, the annual jury list.

Article 919

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 266, 16 jurors, whose names are drawn from the annual list, make up the list for the session. In addition, the names of three extra jurors are taken from the special list.

If, as a result of death, incapacity or legal incompatibility occurring after the lists were drawn up, the number of citizens from which the jurors for the session should be drawn by lots is less than thirty, the commission responsible for compiling the annual list of jurors is reconvened in order to complete the main list and create a new special list of ten citizens.

Article 920

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of the first paragraph of article 289-1, if, as a result of absence or removal from the list, there are less than fourteen jurors on the list, this number is supplemented by additional jurors, following the order of their registration. Where there are not enough additional jurors, jurors drawn by lots from the names on the special list, in an open court setting, make up the numbers.

Article 921

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000 art 136 Official Journal of 16 June 2000 in force 1 January 2001)

For the application of articles 296 and 297, the trial jury is made up of four jurors when the criminal court rules in the first instance, and six jurors when it rules on appeal.

Article 922

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 298, the accused and the public prosecutor may not challenge more than four jurors each.

Article 923

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

(Law n° 2000-516 of 15 June 2000 art 136 Official Journal of 16 June 2000 in force 1 January 2001)

The majorities of eight and ten votes provided for in articles 359 and 362, second paragraph, are replaced by majorities of four or five votes.

SECTION II: TRIAL OF MISDEMEANOURS

Article 924

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 398, the magistrates' court always comprises a presiding judge or a judge from the tribunal de première instance.

Articles L.952-6 and L.952-7 of the Code of Judicial Organisation, concerning the replacement of these judges and the special conditions for the execution of the judicial powers, are applicable to the magistrates' court.

Article 925

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

Articles 398-1 and 398-2 of the present Code are not applicable.

Article 926

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 and 10 Official Journal of 29 December 1999)

For the application of the first paragraph of article 399, on the advice of the presiding judge of the tribunal de première instance and the district prosecutor, in the first half of December the presiding judge of the upper appeal court issues a decree determining the number of criminal hearings for the following legal year.

Article 927

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of articles 491 and 492, the time limit for an application to set aside is ten days, if the defendant resides within the territory, or a month if he lives elsewhere.

Article 928

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 510, the criminal appeals chamber is made up of the presiding judge from the upper appeal court as well as two assessors appearing on the list provided for in article L.951-3 of the judicial organisation Code.

Articles L.952-10 and L.952-11 of the judicial organisation Code, relating to the replacement of the presiding judge of the upper appeal court and the assessors and the specific conditions for the exercising of the judicial powers, are applicable to the criminal appeals chamber.

Article 928-1

(Inserted by law n° 99-1121 of 28 December 1999 art 10 Official Journal of 29 December 1999)

For the application of the first paragraph of article 511, on the advice of the district prosecutor and in the first half of December, the

presiding judge of the upper appeal court issues a decree determining the number of criminal hearings for the following legal year.

Article 929

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 513, the appeal is determined on the presiding judge's oral report.

SECTION III: TRIAL OF PETTY OFFENCES

Article 930

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

For the application of article 523, the district prosecutor takes the public prosecutor's place before the police court.

Article 931

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

Articles L.952-6 and L.952-7 of the judicial organisation Code, concerning the replacement of judges attached to the tribunal de première instance and the specific conditions for the exercising of the judicial powers, are applicable to the police court.

Article 932

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

The time limit provided for in the first paragraph of article 552 is applicable where the party summoned resides within the territory. The time limit is extended by a month if the summoned party lives in another territory belonging to France.

Article 933

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

By special dispensation from the provisions of the second and third paragraphs of article 706-4, the presiding judge of the *tribunal de première instance* exercises the powers of the indemnity commission.

Article 934

(Ordinance n° 98-729 of 20 August 1998 art. 3 Official Journal of 22 August 1998)

(Law n° 99-1121 of 28 December 1999 art. 2 Official Journal of 29 December 1999)

By special dispensation from the provisions of the second and third paragraphs of article 709-1, the presiding judge of the *tribunal de première instance* exercises the powers of the *post-sentencing judge.*