

BOOK FOUR

**APPEALS AND EXECUTION**

**PART I**

**APPEALS**

**CHAPTER I**

**General Provisions**

**Article 208**

**General Rules**

1. The law shall prescribe the cases in which judicial measures are subject to appeal and shall prescribe the means by which such appeal shall be made.
2. The right of appeal shall be restricted to such party or parties on whom it is expressly conferred by law.
3. Only a party having interest in an appeal shall have the right of appeal.
4. In every case:
  - a) the accused shall not appeal against a count of the judgment for which he has been found guilty when he has already pleaded guilty to such count in accordance with the provisions of this Code;
  - b) a party shall not appeal against an order that proceedings be terminated when such order has been granted in conformity with, or is a consequence of, any request of such party in accordance with the provisions of this Code;
  - c) the Attorney General shall not appeal against an order that proceedings be terminated when the Attorney General, having been consulted beforehand in accordance with the provisions of this Code, did not object to such order.
5. Appeals shall be governed by the provisions of the Law on the Organization of the Judiciary, except as otherwise provided in this Code.

Article 209

**Appeal by Accused**

1. An accused may appeal in person or through a special representative.

2. In cases where a sentence of death has been passed, the Counsel who defended the accused in the trial may appeal without any special mandate to do so and even against the wishes of the convicted person.

3. Parents of minor children and the legal representatives of wards, even though they are not entitled to notification of judgment, may appeal on behalf of such children or wards.

4. Except in the cases referred to in paragraph 2 of this Article, the accused may cancel an appeal made by another person on his behalf by giving notice to the Court that he does not wish such appeal to be made.

If the accused is a minor or is incompetent, the parents or legal representative shall give consent for such notice to be valid.

5. If an accused person and other persons permitted to do so under the provisions of this Article have each lodged an appeal, and one of the appeals is invalid, it will be validated by the validity of the other, and this shall also apply to the grounds for the appeal. If there is any conflict between the appeals, the appeal lodged by the accused shall prevail.

Article 210

**Appeals by the Attorney General**

1. An appeal may be lodged by the Office of the Attorney General or by the person who has represented the Attorney General in the proceedings, in accordance with paragraph 2 of Article 12.

2. If the Attorney General or his Deputies, as well as his representative in the relevant proceedings, have lodged an appeal and one of the appeals is invalid, it will be validated by the validity of the other; and this shall also apply to the grounds for the appeal. If there is any conflict between the appeals, the appeal lodged by the Attorney General or his Deputies shall prevail.

Article 211

**Appeal by the other Parties**

Other parties may lodge an appeal personally or through a special representative.

Article 212

**Form of Appeal**

An appeal shall be lodged by means of a notice, which may be verbal and which shall indicate:

- a) the judicial act or judgment against which the appeal is lodged;
- b) the date of such act or judgment;
- c) the judicial authority that has issued it;
- d) the proceedings to which the appeal refers.

Article 213

**Receipt of the Notice of Appeal**

1. A notice of appeal shall be lodged with the Registrar of the Court from whose act or judgment the appeal is being taken. The notice may also be filed by registered letter or telegram to such Registrar and shall be presented at a post or telegraph office within the time-limit fixed in Article 214.

2. If the person who is concerned in the appeal is under detention, the notice of appeal shall be sent or given to the authority detaining such person and that authority shall immediately transmit such notice to the Registrar of the Court from whose act or judgment the appeal is being taken.

3. The Registrar shall attach the notice of appeal to the record of the trial, after having recorded thereon the date on which the appeal was received and after having signed it.

## Article 214

### **Time-limit for Notice of Appeal**

1. The time-limit for the lodging of a notice of appeal shall be:
  - a) 30 days, if the appeal is against judgment, starting from the day on which judgment was pronounced;
  - b) 15 days, if the appeal is against any other judicial act starting from the date on which:
    - i) such act was done, in respect of the parties present;
    - ii) the parties who were not present were notified.

2. The Supreme Court and the Court of Appeal may, by decision in chambers, extend the time-limit for lodging an appeal against an act or judgment of a lower Court, when it is ascertained that the accused was unable to comply with such time-limit for reasons beyond his control. Insofar as applicable, the provisions laid down in paragraphs 2 and 3 of Article 223 shall apply.

## Article 215

### **Notification of Appeal by the Attorney General**

1. A notice of appeal by the Attorney General shall be notified to the accused within 30 days of its being lodged with the Registrar who has received it; otherwise such notice shall be null and void.

2. Notice of such appeal shall be made in accordance with paragraph 5 of Article 80, provided that, if it is not possible to make the notification in accordance with paragraphs 2, 3 and 4 of Article 51, the notice of appeal shall be deemed to have been made by depositing one of the originals, for transmission to the accused, with the Registrar of the Court from whose act or judgment the appeal is made.

## Article 216

### **Grounds of Appeal**

1. The grounds of appeal shall be established by law.
2. Grounds of appeal shall be specific; if not, the appeal shall not be admissible. The grounds of appeal may be included in

the notice of appeal; otherwise the grounds of appeal shall be presented in writing and signed by the person lodging the appeal or by the special representative or defence Counsel, within the time-limits laid down in Article 214.

The parties may submit memoranda explaining further the grounds of appeal even after the expiration of the said time-limit.

3. Insofar as applicable, the provisions of Article 213 and of paragraph 2 of Article 214 shall be observed.

## Article 217

### **Application of the Appeal to more than one Person**

1. When two or more persons, having been accused of participation in the same offence, have been tried together, a notice of appeal made by one of the accused and the grounds of such appeal, unless the appeal and the grounds apply exclusively to one person, shall also apply to the other or others.

2. When there is a joinder of proceedings for different offences, a notice of appeal by one accused shall only apply to all the other accused if the grounds of appeal relate to procedural violations and do not apply exclusively to the accused who is appealing.

3. If the appeal is inadmissible or if it has been withdrawn in accordance with Article 221, the inadmissibility or withdrawal shall also apply to the appeal as concerns the other accused referred to in the preceding paragraph.

## Article 218

### **Appeal operate as Stay of Proceedings**

1. Except as otherwise provided by law, during the period preceding the expiration of the time-limit to appeal and during the appeal proceedings, the execution of any act or judgment shall be suspended.

2. However:

- a) any measures relating to the liberty of the person shall immediately be enforceable;
- b) whenever an accused is on bail, the Court which pronounced sentence of conviction or the Court to which the appeal shall be taken shall revoke such bail if the amount of the bond or other guarantee is considered insufficient in relation to the punishment imposed.

Article 219

**Appeal against Orders and Decisions made before and during the Trial**

Except as otherwise provided by law:

- a) orders and decisions made before trial may be appealed against only if they dispose of the proceeding;
- b) any orders and decisions made during the trial are subject to appeal only together with appeal from the judgment or an order to terminate proceedings, provided that the intention of appealing was notified to the Court immediately after such orders or decisions were made.

Article 220

**Appeal with regard to Civil Damages**

1. An appeal in a criminal proceeding by an injured party, or by an accused, against the judgment in regard to civil damages given in accordance with Article 131, shall only be admissible in such a proceeding when an appeal has been lodged by the accused or by the Attorney General against sentence of conviction or acquittal.

2. An appeal against a judgment with regard to civil damages shall be governed by the provisions of civil law, insofar as applicable, where:

- a) no appeal against conviction or acquittal has been lodged by the accused or by the Attorney General;
- b) such appeal is either inadmissible or has been withdrawn, in accordance with Article 221, by the parties that lodged the appeal.

3. When an appeal is not allowed in a criminal proceeding, the time-limit for the appeal in a civil Court with regard to a judgment concerning civil damages shall run:

- a) from the day on which the judgment becomes final and irrevocable in cases coming within the provisions of sub-paragraph a) of the preceding paragraph;
- b) either from the day on which the inadmissibility of the appeal was declared or from the day on which such appeal was withdrawn in cases coming within the provisions of sub-paragraph b) of the preceding paragraph.

4. A judgment with regard to civil damages shall be considered automatically revoked if, as a result of the appeal, the accused is acquitted or an order that the proceedings be terminated is issued, provided that the civil action may be started in a civil Court when such action is not precluded by the nature or contents of the decision of the criminal Court.

## Article 221

### **Withdrawal of Appeal**

1. A party may withdraw an appeal. Withdrawal of the appeal shall be made by notifying the Registrar of the Court from whose act or judgment the appeal is made, or by notifying the Registrar of the Court to which the appeal has been taken. An appeal may also be withdrawn during the appellate hearing and shall be put on record.

2. If the appeal has been lodged by the Attorney General or one of his Deputies, it shall not be withdrawn without the prior authorization of the Attorney General.

## Article 222

### **Transmission of Documents connected with Appeal**

After the prescribed time-limits have expired, the Registrar of the Court from whose act or judgment the appeal is being taken, shall without delay send to the Registrar of the Court to which the appeal must be taken copies of the Court case file and of the decision appealed against and the notice of appeal together with the grounds for such appeal, documents and any other relevant memoranda.

## Article 223

### **Inadmissibility of Appeal**

1. When:

- a) an appeal has been lodged:
  - i) by a person who did not possess the right to appeal or who did not have an interest in such appeal;
  - ii) against an order or decision not subject to appeal;



- b) the notice of grounds of appeal have not been presented in the prescribed form, time or place;
- c) the notifications without which an appeal is null and void have not been made;
- d) the appeal has been withdrawn;
- e) the law expressly provides for the inadmissibility of the appeal;

the Court to which appeal has been taken shall deliberate in chambers, after having granted to the party that lodged the appeal, when it considers it necessary, a reasonable time to present in writing his reasons, petitions and defences. If it finds the appeal inadmissible, it shall so declare and shall order execution of the act or judgment appealed against.

2. A decision that an appeal is inadmissible shall be notified to all interested parties and to the Attorney General. An appeal against such decision may be filed before the Supreme Court.

3. Such notification shall be made in the manner provided for in paragraph 2 of Article 215.

#### Article 224

#### **Cognizance by the Court of the Notice of Appeal**

1. An appeal gives to the Court which hears such appeal the power to take cognizance only of those parts of the contested act or judgment on which the appeal is based, except for matters provided for in Article 107.

2. Within such limits and if the appeal has been lodged by:

a) the Attorney General:

i) and the appeal is against the sentence, the Court may, within the limits of the jurisdiction of the Court of first instance, declare the offence to be different from the offence charged, even if such new offence is more serious, or it may change or increase the punishment, revoke any benefit granted, and apply, when necessary, any security measures or any other provisions imposed or allowed by law;

ii) and the appeal is against an acquittal, the Court may hand down a conviction, applying together with the punishment any of the other measures referred to in the preceding sub-paragraph;

- b) the accused alone, the Court may not inflict a punishment more serious either in form or in length, nor revoke any benefits granted. The Court may, however, within the limits indicated in sub-paragraph a) (i) of this paragraph, declare the offence to be different from the offence appealed against even if such new offence is more serious, provided the new offence remains within the jurisdiction of the Court of first instance.

## Article 225

### **Hearing of the Appeal**

1. Except as otherwise provided by law, only appeals against judgments and orders made in the course of the trial that proceedings be terminated shall be heard in public.

2. For appeals against any other act or decision, the competent Court shall come to its decision in chambers, after having granted to the interested parties a reasonable time to present in writing their reasons, petitions, objections and grounds of defence.

3. When a Court makes its decision regarding an appeal against a judgment concerning civil damages, the provisions of Articles 130 and 131 shall be observed, insofar as applicable.

## Article 226

### **Renouncing the Right to be Present at the Appeal Hearing**

1. The accused and the injured party, subject to the consent of the Court competent to hear the appeal, may renounce the right to participate in the hearing.

2. The failure of the accused or the injured party to appear shall not prevent the hearing of the appeal when:

- a) there is no reasonable justification for the failure to appear, and
- b) the Court does not deem it necessary for the party to appear,

provided, however, that the provisions relating to the defence of the accused in the cases referred to in sub-paragraph b) of paragraph 2 of Article 14 of the Law on the Organization of the Judiciary are observed.

## CHAPTER II

### Appeals

#### Section I

#### GENERAL PROVISIONS

#### Article 227

#### **Matters against which Appeal can be taken and Grounds for Appeal**

1. In addition to cases covered by special provisions, an appeal may be lodged against judgments and other measures of a Court of first instance as laid down in the following paragraph.

2. Except as otherwise provided for in Chapter I of this part, the following may appeal:

- a) against conviction or against acquittal:
  - i) the accused, where he is convicted or granted judicial pardon or when security measures are applied to him;
  - ii) the Attorney General in case of acquittal or conviction;
- b) against an order that the proceedings be terminated:
  - i) the accused, when security measures have been ordered against him;
  - ii) the Attorney General;
- c) against measures concerning personal liberty:
  - i) the accused;
  - ii) the Attorney General;
- d) against a judgment in respect of civil damages;
  - i) the accused;
  - ii) the injured party;
- e) against the penalties inflicted under the provisions of paragraph 2 of Article 16, a Counsel who has been so convicted.

3. An appeal shall be allowed on grounds of fact or of law.

Article 228

**Courts which may hear Appeals**

1. A Court of Appeal shall be competent to hear appeals.
  - a) The General Appellate Section of the Court of Appeal shall have jurisdiction over:
    - i) decisions referred to in Article 223;
    - ii) judgments given by the Criminal Section of a District Court and by the General Section of a Regional Court and any order by such Sections given at a trial that the proceedings be terminated;
    - iii) an order that the case shall not proceed given in the pretrial proceedings in any Court;  
matters laid down in sub-paragraphs c) and e) of paragraph 2 of Article 227.
  - b) The Assize Section of the Court of Appeal shall have jurisdiction over appeals with regard to judgments given by the Assize Section of a Regional Court and any order given by such Assize Section at a trial that the proceedings be terminated.
  - c) The Military Penal Appellate Section shall have jurisdiction over appeals with regard to judgments given by a Military Penal Section of a Regional Court and any order given by such Military Penal Section of a Regional Court at a trial that the proceedings be terminated.

Article 229

**Decisions of the Court of Appeal**

1. The Court of Appeal shall:
  - a) if the appeal is lodged against the decisions specified in sub-paragraphs a) (ii), b) and c) of Article 228, decide on the merits of the appeal, after conducting a hearing in accordance with the provisions of Section 2 of this Chapter, provided that, if the Court of Appeal declares itself incompetent to hear the appeal or declares the judgment of the Court of first instance to be null and void, then the Court of Appeal shall order that the case be referred to the Court competent to hear it;

- b) if the appeal is lodged against the decisions specified in subparagraph a) (iii) of Article 228, affirm or reverse, deliberating in chambers, in accordance with paragraph 2 of Article 225, the decision appealed against. The Court of Appeal shall order, if the decision has been reversed, that the case be referred back to the competent Court;
- c) in all other cases, decide on the merits of the appeal, deliberating in chambers in accordance with paragraph 2 of Article 225, and shall either affirm or modify the decision appealed against.

2. Decisions of the Court of Appeal shall be made public:

- a) by reading the dispositive part of the decision in open Court, in the cases provided for in subparagraph a) of the preceding paragraph;
- b) by depositing its decision with the Registrar of the Court in all other cases.

3. A copy of the decision of the Court of Appeal shall be sent by the Court Registrar to the Court against whose act or judgment the appeal was taken. The decision of the Court shall also be notified by the Registrar of the Court to the parties concerned, in the manner provided for in paragraph 2 of Article 215, and shall also be communicated to the Attorney General, if they were not present when the decision was announced.

## Section II

### HEARING OF THE APPEAL

#### Article 230

#### **Procedure of Court of First Instance to apply to Court of Appeal. Preliminaries to Hearing of Appeal**

1. Insofar as applicable, the provisions relating to the hearing of a case in a Court of first instance shall be followed in the hearing of an appeal.

2. When an appeal has to be heard, the President of a Court of Appeal shall:

- a) fix the date of the hearing;

- b) order the appearance:
    - i) of the accused who appeals, and
    - ii) of an accused who has not appealed, if the appeal has been made by the Attorney General or is made with regard to one of the cases provided for in Article 217;
  - c) appoint Counsel for the accused in the cases provided for in sub-paragraph b) of paragraph 2 of Article 14 of the Law on the Organization of the Judiciary, when the accused is without Counsel. The Court shall arrange to inform the accused and his Counsel of such appointment;
  - d) order that the injured party be summoned to appear before the Court, if the injured party or the accused has appealed against the judgment concerning civil damages;
  - e) order that the Attorney General be duly notified.
3. The date of the hearing shall be notified to the accused and brought to the notice of this Counsel and of the Attorney General at least 15 days before the hearing.
4. Insofar as applicable, the provisions of paragraph 5 of Article 80 and of Article 89 shall be observed.

## Article 231

### **Hearing of the Appeal**

1. After the opening of the hearing of the appeal, first the appellant shall explain the grounds for his appeal, then the other party shall be given the opportunity to reply. Both parties may make comments and observations, raising objections and presenting requests and petitions which they deem pertinent, and expressing their views on the points of fact and law, which in their opinion the Courts should accept. The right to reply shall be exercised only with the consent of the Court. If an appeal has been made in the same case by both the accused and the Attorney General, the appeal of the accused shall be heard last.

Insofar as applicable, the provisions of Article 119 shall apply.

2. If the appeal is against a conviction or an acquittal and the Court does not consider itself able to reach a decision upon the available evidence, the Court may, even on its own motion, order:

- a) the re-hearing before it, in whole or in part, of the trial;
- b) the examination of witnesses heard in the trial of first instance, who may testify even with respect to matters not previously considered;
- c) the taking of new evidence;
- d) the re-hearing of expert witnesses.

3. If the appeal is against an order that the proceedings be terminated and the Court of Appeal considers that there are valid grounds for the appeal, the Court of Appeal shall set aside the impugned order and shall either try the case itself, in accordance with the provisions of Book Two of this Code, or remand the case for trial to the Court which passed the impugned order.

### CHAPTER III

#### **Appeals to the Supreme Court**

##### Article 232

#### **Matters against which Appeal may be made to the Supreme Court**

1. In addition to cases established by special provision, and subject to the provisions of Chapter 1 of this Part, an appeal may be lodged with the Supreme Court:

- a) by the parties specified in paragraph 2 of Article 227 against any acts and decisions referred to therein when handed down by a Court of second instance;
- b) by the accused or by the Attorney General against any other decision handed down in an appellate proceedings, or against any other decision concerning which appeal to the Court of Appeal is not permissible.

2. An appeal shall be admissible only on the following questions of law:

- a) lack of jurisdiction or incompetence of the lower Court;
- b) violation or erroneous application of legal provisions;
- c) nullity of the judgment or the proceedings;
- d) omission, insufficiency or contradiction in the grounds on which the judgment is based, relating to a material point raised by either party or by the Court on its own motion.

### Article 233

#### **Decision by the Supreme Court**

1. The Supreme Court, depending on the particular case, shall decide in one of the following ways:

- a) if the appeal is against a judgment, it shall, after a hearing in open Court, in accordance with Article 234:
  - i) reject the appeal and make any necessary corrections in any errors of law in the grounds given and errors in the provisions of law referred to in the judgment, provided that such errors did not influence the dispositive part of the judgment;
  - ii) set aside the judgment appealed against and remand the case to the competent Court;
  - iii) set aside the judgment appealed against without remanding the case to any other Court in those cases in which a sentence of conviction could not have been passed or in which no criminal proceedings could have been started or continued;
  - iv) set aside in whole or in part the judgment appealed against; where no additional evidence is required, decide on the merits and, where additional evidence is required, remand the case to the Court that pronounced the judgment appealed against;
- b) if an appeal is against an order issued during the trial that the proceedings be terminated, the Court shall, after a hearing in open Court, in accordance with Article 234:



- i) reject the appeal;
  - ii) set aside the order appealed against, and, insofar as applicable, observe the provisions of the preceding sub-paragraph;
  - c) in every other case, it shall proceed in the manner laid down in the preceding sub-paragraph, reaching its decision in chambers, in accordance with paragraph 2 of Article 225.
2. Judgments of the Supreme Court shall be drawn up in writing by the President of the Court or by another member of the Bench.
  3. The provisions of paragraphs 2 and 3 of Article 229 shall apply, insofar as applicable.

#### Article 234

##### **Hearing of the Appeal in Open Court**

When the appeal is to be heard in open Court, the provisions of Article 230 and of paragraph 1 of Article 231 shall be observed, insofar as applicable.

#### Article 235

##### **Appeal against Decisions given by a Court re-hearing a case remanded by the Supreme Court**

1. The Court to which a case has been remanded for re-hearing shall comply with the findings of the Supreme Court with respect to all questions decided by it.

2. When a Court re-hears a case remanded to it by the Supreme Court, an appeal may be lodged against the new judgment only with respect to those parts which have not already been decided by the Supreme Court. But an appeal may also be lodged when the Court which re-hears the case fails to comply with the provisions of the preceding paragraph.

#### Article 236

##### **No Appeal to lie against Decision of the Supreme Court**

No appeal shall lie against any decision of the Supreme Court with regard to criminal matters.

## CHAPTER IV

### Revision

#### Article 237

##### Cases Subject to Revision

When a conviction has become final, and even when the punishment has been served or has become extinct, revision may be allowed in favour of the convicted person at any time with regard to those cases coming within the provisions of Article 238.

#### Article 238

##### Instances in which a Case is subject to Revision

1. Revision may be sought:
  - a) if after the conviction new facts or new evidence have occurred or been discovered, which either separately or in connection with facts or evidence already considered at the trial, clearly establish that the offence was not committed or that it was not the accused who committed it;
  - b) if it is shown that the conviction was the result of some false act or document or the result of another act which the law considers an offence, provided that a final conviction has been pronounced as a result of such false acts or document or such other offence;
  - c) if the findings on which the conviction is based are incompatible with those of another final penal conviction.
2. Every petition for re-trial shall be based on facts or evidence which, if established, demonstrate that:
  - a) an offence was not committed, or that, if it was committed, it was not the accused who committed it, or
  - b) there was no evidence whatsoever that an offence was committed or that, if it was committed, it was not the accused who committed it.

Otherwise the petition shall not be admissible.

## Article 239

### **Persons who may seek Revision and Petition for Revision**

1. Revision may be sought by:
  - a) the convicted person;
  - b) the Attorney General;
  - c) the «descendants», «ascendants», or the spouse of the convicted person if the convicted person has died.
2. A petition for revision may be submitted in person or through a special representative and shall be presented, together with supporting documentation, to the Registrar of the Supreme Court.

## Article 240

### **Preliminary Proceedings**

1. The President of the Supreme Court, having received the petition and relevant documents, shall convene the Court in chambers, and decide as a preliminary matter whether the application for revision is admissible.
2. If the requisites for filing a petition are lacking or if the petition appears obviously unfounded, the Court shall declare the petition inadmissible. If the Court does consider the application to be admissible, it shall proceed in accordance with Article 241.

## Article 241

### **Hearing in Open Court**

1. If the Supreme Court allows the petition, the proceedings shall take place in open Court, in the manner provided in Article 234.
2. The Supreme Court:
  - a) if it finds that the facts and evidence show that the petition is well-founded, shall set aside the conviction;
  - b) if it finds that further investigations are necessary, shall provisionally set aside the conviction and refer the case to the competent Court which shall try the case in the normal way;
  - c) in any other case, shall reject the petition.

Article 242

**Procedure when Conviction is set aside**

The Supreme Court, when it sets aside a conviction without remanding to a lower Court, or a Court to which a case has been remanded, when either Court gives judgment of acquittal, shall also order the restitution of the fines or damages paid as a consequence of the conviction.

Article 243

**Damages**

1. A convicted person who has been acquitted as a result of a revision proceedings may submit an application to the Supreme Court for the payment of damages by the State.

2. The Supreme Court shall decide in chambers on whether damages should be granted and on the amount. The Court shall take into account the material and moral damages suffered by the convicted person as a consequence of the judgment set aside.

3. The State may recover costs, within the limits of the law, from any person who with criminal intent caused the wrongful conviction.

Article 244

**Appeal against Judgment in a Remanded Proceedings**

1. The Attorney General may appeal against a judgment of acquittal given by a Court to which a case has been remanded.

2. There shall be no appeal against a judgment of conviction by the Court referred to in paragraph 1.

3. In all cases, a petition for another revision proceedings may be made if the application is based on different facts and evidence.

PART II

**EXECUTION**

CHAPTER I

**General Provisions**

Article 245

**Territorial Enforcement of Sentences and other Measures passed by Courts**

Any sentence or other measures passed by a Court with regard to criminal matters may be executed in any part of the Republic.

Article 246

**Enforcement of Judgment and of an Order that Proceedings be Terminated**

1. The judgment of a Court shall be executed when it becomes final or when the law permits its provisional execution.

2. A judgment is final when no appeal other than an application for revision can be lodged against it.

3. When an appeal can be lodged against a judgment, the judgment shall become final from the day on which the time-limit for appeal expires, when no appeal has been lodged within such time-limit.

4. In cases in which appeal is allowed to the Supreme Court, a judgment shall become final from the day on which:

- a) an appeal against the decision of the Court of Appeal which declared the appeal to be inadmissible has been rejected;
- b) an appeal has been declared inadmissible or has been rejected.

5. A judgment of acquittal shall be executed immediately after being pronounced.

6. A judgment of conviction shall be executed within 5 days from the day on which the authority charged with the execution of the judgment receives notice that the judgment has become final. However, if the judgment provides for the release of the accused, such accused shall be released immediately.

7. Insofar as applicable, the provisions of this Article shall also be observed with respect to an order that proceedings be terminated.

8. A petition for an extension of the time-limit to lodge an appeal made in accordance with the provisions of paragraph 2 of Article 214 shall not operate as a stay of the execution of sentence, unless a competent Court orders otherwise.

#### Article 247

#### **Rules governing Execution**

The execution of judgments shall be governed by the provisions of this Code and by the provisions of the Penal Code.

### CHAPTER II

#### **Execution of Punishments**

#### Article 248

#### **Execution of Death Sentence**

1. When a sentence of death has become final, the Attorney General shall urgently inform the Supreme Court and the Minister of Grace and Justice.

2. The Supreme Court, having received the records of the trial concerned, shall order the execution, fixing the date, time and place, and shall send such order to the Attorney General.

3. A death sentence shall be carried out by shooting and shall be executed by members of the Prison Guards. The death sentence shall not be executed in public, unless the Minister of Grace and Justice provides otherwise.

At the execution there shall be present a representative of the Attorney General, a medical officer appointed by him, and a Minister of the religion practised by the convicted person if he so requests.

4. A special record shall be made by the representative of the Attorney General of anything which the condemned man said, of the execution and of the medical certificate that death took place.

5. A death sentence shall be postponed:

- a) when a petition for mercy has been submitted and until such time as a decision is reached on the petition;
- b) against a pregnant woman as long as she is pregnant;
- c) against a woman who has given birth to a child less than one year previously, unless the child has died, or has been entrusted to the care of another person and birth occurred more than two months previously.

#### Article 249

#### **Execution of Sentence of Imprisonment**

1. When a judgment sentencing a person to imprisonment has become final, the President of the Court that pronounced judgment in the first instance shall issue an order of imprisonment against the convicted person, and shall send such order together with a copy of the judgment to the Attorney General for execution.

If the convicted person is already in detention, a copy of the order of imprisonment shall also be sent to the authority detaining such convicted person.

2. An order of imprisonment shall indicate:

- a) the type and the length of the term of imprisonment;
- b) the date on which the convicted person shall be released without any further order, unless he is to be detained for another reason.

3. The President of the Court may order that a sentence of imprisonment be suspended in the cases coming within the provisions of paragraph 2 of Article 44, until such time as the reasons for the suspension are no longer valid.

Article 250

**Execution of Fines**

1. When a judgment sentencing a person to a fine has become final, the President of the Court that pronounced judgment in the first instance shall issue an order for payment against the convicted person and shall send such order for execution to the Attorney General, together with a copy of the judgment.

2. The order for payment shall:
- a) indicate the form of the fine and the amount to be paid;
  - b) indicate the time-limit within which payment must be made to the State treasury;
  - c) contain a warning that, if the fine is not paid, it shall be collected in the manner laid down for the execution of civil judgments.

3. The President of the Court, upon a request from the convicted person, may order that the fine be paid by instalments.

4. In cases where the convicted person is unable to pay the fine, the President of the Court shall order conversion of the fine into imprisonment, in accordance with the conversion rate laid down in Article 112 of the Penal Code and may issue an order of imprisonment in accordance with Article 249.

Article 251

**Detention prior to Judgment**

1. A period of imprisonment undergone prior to a judgment becoming final shall be deducted from the overall sentence of imprisonment; where the sentence is one of a fine, an amount corresponding to such period of imprisonment shall be deducted from the total fine.

2. When a case is heard abroad and is re-heard in the Somali Republic, the punishment served abroad shall always be deducted from any punishment inflicted by a Court in the Somali Republic, taking into account the form of such punishment served abroad; if a person has been in detention prior to judgment abroad, the provisions referred to in the preceding paragraph shall apply.



Article 252

**Execution of Accessory Penalties**

1. Insofar as applicable, the provisions of this Chapter shall apply to the execution of accessory penalties.

2. The following periods shall not be deducted from accessory penalties:

- a) the period of time during which a convicted person is serving a sentence of imprisonment;
- b) the period during which the convicted person was subject to detention as a security measure;
- c) any period during which the convicted person wilfully avoided the execution of imprisonment or a security measure.

Article 253

**Revocation of Conditional Suspended Sentence and of other Benefits**

1. Revocation of conditional suspended sentence shall be carried out in the form laid down for enforcement measures by the President of the Court that pronounced judgment in the first instance or by the Court which later pronounced a sentence of conviction, in the cases laid down in paragraph 2 of Article 127.

2. In the same way, the following measures shall be revoked:

- a) the benefit of conditional release in the cases indicated in sub-paragraph a) of paragraph 2 of Article 127;
- b) any amnesty, conditional pardon or indult, whenever the convicted person fails to comply with any of the required conditions or obligations.

3. Revocation of the benefit of conversion of a sentence of imprisonment to a fine shall be ordered in the manner laid down for enforcement measures by the President of the Court who pronounced judgment in the first instance, in the cases laid down in paragraph 3 of Article 125.

4. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

## CHAPTER III

### Extinction of Offence and Punishment

#### Article 254

##### Declaration of Extinction of Offence or Punishment

1. Whenever, after conviction, an offence or punishment becomes extinct, the President of the Court which pronounced sentence in the first instance shall declare the offence or the punishment to be extinct, taking all necessary measures which result from such extinction.
2. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

#### Article 255

##### Measures relating to Pardon and Conditional Release

1. An appeal for pardon or for conditional release shall be addressed to the President of the Republic and sent to the Attorney General.  
The appeal shall be signed:
  - a) by the convicted person,
  - b) by a «descendant», «ascendant» or spouse of the convicted person.
2. Pardon or conditional release shall be granted by decree of the President of the Republic, having heard the Minister of Grace and Justice and the Attorney General.
3. Insofar as possible, the provisions of Article 254 shall apply with regard to the implementation of the decree.

#### Article 256

##### Rehabilitation after Conviction

1. In the cases indicated in Article 153 of the Penal Code, rehabilitation shall be granted, at the request of the convicted person, by an order from the Court of Appeal, having heard the Attorney General.

2. If rehabilitation is not granted because the convicted person has not given proof of good conduct, a petition for rehabilitation may only be submitted again after a period of 2 years from the submission of the previous petition.

3. Rehabilitation shall be revoked by the President of the Court of Appeal that granted it or by the Court which pronounced a subsequent conviction in the cases referred to in Article 154 of the Penal Code.

4. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

## CHAPTER IV

### **Matters Arising in Execution**

#### Article 257

#### **Competence in Matters arising in Execution**

The President of a competent Court who has the power to enforce any order or other measures shall also have the power to decide on all matters arising in the course of the execution thereof.

#### Article 258

#### **Proceedings relating to Matters arising in Execution**

1. Matters relating to execution may be raised by the Attorney General or the party concerned.

2. The President of the Court shall decide on such matters after granting the interested parties reasonable time to present their arguments, petitions and defences in writing.

3. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

## CHAPTER V

### Execution of Security Measures

#### Article 259

#### **Application, Modification, Substitution and Revocation of Security Measures**

1. Security measures shall be ordered by a Court together with the judgment of conviction or the order that proceedings be terminated.
2. In the cases referred to in paragraph 2 of Article 165 of the Penal Code, security measures shall be applied, at the request of the Attorney General, in the manner provided for matters arising in execution, by the President of the Court which has passed the judgment of conviction or the order that proceedings be terminated.
3. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

## CHAPTER VI

### Criminal Records

#### Article 260

#### **Criminal Records Office**

1. There shall be one unified Criminal Records Office, which shall be a section of the Headquarters of the Police Force. It shall be under the immediate direction and supervision of the Attorney General.
2. In the Criminal Records Office, there shall be kept extracts of orders or other measures referred to in Articles 261 and 262, given by a Court of the Somali Republic, as well as by foreign Courts which have been recognized in accordance with law.
3. Extracts of orders or other measures concerning foreign or stateless persons shall be kept separately in the Criminal Records Office.

Article 261

**Orders relating to Criminal Proceedings to be recorded  
in the Criminal Records Office**

1. In the Criminal Records Office there shall be recorded extracts of:
  - a) convictions which have become final;
  - b) orders which grant or revoke rehabilitation;
  - c) any other measures relating to the application, modification or revocation of punishments, security measures and benefits provided by law.

2. There shall not be recorded in the Criminal Records Office convictions for contraventions for which it is permissible to pay the fine to the administrative authorities or which may be compounded.

Article 262

**Civil and Administrative Matters to be Recorded**

1. In the Criminal Records Office there shall also be recorded abstracts of:
  - a) as regards civil matters:
    - i) final judgments declaring partial or total incapacity or final judgments revoking such declaration;
    - ii) orders issued by a Civil Court for the committal of a person to a mental hospital or for the revocation of such order;
    - iii) judgment of bankruptcy;
  - b) administrative orders relating to the loss of citizenship and to the expulsion of aliens.

Article 263

**Record Cards**

1. Abstracts of the orders or judgments referred to in the preceding Articles shall be recorded on appropriate cards by the Registrar of the Court in which the judgment or order became final or, in the case of appeal, by the Registrar of the Court which decided the matter in the final instance.

2. A separate record card shall be maintained for each person and for each proceedings. If a person has been convicted of more than one offence, a separate reference shall be made on the card for each such offence in the order followed in the judgments or orders.

3. For record purposes, the Registrar shall use a form, to be provided by the Police, containing the fingerprints of the person concerned.

4. The record shall be prepared not later than 10 days after the order or judgment has become final. A reference shall be made on the original of the order or judgment that the matter has been recorded in the Criminal Records Office.

## Article 264

### **Forwarding of the Record Card**

1. As soon as the record card has been completed, the Registrar shall forward it with an accompanying note to the Criminal Records Office where the note shall be signed and returned to the Registrar as a receipt.

2. If the person to whom the record refers has no previous convictions, the Registrar shall prepare and send a second copy of the record card.

3. If the record refers to an alien, the Registrar shall prepare and transmit another copy of the record card, which will then be sent to the Government of the country of which the alien is a citizen, in accordance with international conventions or by way of reciprocity.

## Article 265

### **Maintenance of the Record Cards**

1. The record card, as soon as it is received by the Criminal Records Office, shall be registered in the Register maintained for this purpose.

2. If the record card refers to a person who has no previous convictions, the Criminal Records Office shall place one of the copies of the card in a file indicating the personal details of the person concerned, his fingerprint classification, the serial number of the file, and a reference to the record card. The other copy of the record card shall be kept by the fingerprint archives. The Crim-

inal Records Office shall also prepare an index card containing personal details of the person, his fingerprint classification and the number of his file. Such cards also shall be maintained in appropriate filing cabinets in alphabetical order.

3. If the record card refers to a person who has previous convictions, it shall be put in such person's existing file, after having made the necessary reference on the file cover.

#### Article 266

### **Destruction of Criminal Records**

1. Criminal records of a person shall be destroyed upon official notification of such person's death or after 80 years from the date of birth of such person.

2. The following criminal records shall also be destroyed:

- a) those that record an order or judgment that has already been duly recorded;
- b) criminal records incorrectly attributed to another person as a result of mistaken or false identification of the person concerned or as a result of an error in the record of the Court proceedings, provided that the judgment or order on the basis of which the record has been made has been corrected by a subsequent decision.

3. The Officer-in-Charge of the Criminal Records Office shall remove each month all record cards from the office which are due to be destroyed, making a reference to the card in the appropriate register.

#### Article 267

### **Certificate to be issued to a Public Authority**

1. A Judicial Authority shall have the right to obtain, for judicial purposes, a certificate showing the criminal record concerning any person.

2. The Public Authorities shall have the same right when a criminal record certificate is required for official purposes in respect of the person concerned.

Article 268

**Certificates issued to private Persons**

Without having to give any reason therefor, a person shall have the right to obtain a criminal record certificate concerning him from the Criminal Records Office.

Article 269

**Entries not to be Recorded on a Certificate issued to a private Person**

In a criminal record certificate issued to a private person upon his own request, no mention shall be made:

- a) of convictions in the following cases:
  - i) when a conviction has been set aside, and the accused acquitted in revision proceedings;
  - ii) when the person concerned had not yet attained eighteen years of age at the time he committed an **offence** for which he was convicted to a fine or imprisonment alone or jointly with another punishment, not exceeding 6 months' imprisonment for a crime or one year's imprisonment for a contravention, provided the person concerned has not been subsequently convicted to imprisonment;
  - iii) when an offence of which a person was convicted has been declared extinct or when the person has been re-habilitated and such rehabilitation has not been subsequently revoked;
- b) of any measures referred to in Article 262.

Article 270

**Requests for and Issue of Criminal Record Certificates**

1. A request for a criminal record certificate shall be addressed to the Criminal Records Office. In the request there shall be shown the name of the person concerned, the names of his father and mother, the date and place of his birth and any other details which may identify such person including, when necessary, his fingerprints.



2. A certificate shall be issued by the Officer-in-Charge of the Criminal Records Office.

If no criminal records exist concerning a person in the Criminal Records Office, or if there are only such records as are prohibited by law from being disclosed, the Officer-in-Charge shall write on the certificate the word «Nil». Otherwise the Officer-in-Charge shall write on the certificate details of matters recorded concerning such person in chronological order.

When entering the record of criminal convictions, besides mention of the date and of the Court which pronounced the sentence there shall also be shown the type of offence, the fine or imprisonment inflicted, any accessory penalty, any security measures and any benefits which may have been granted.

The Officer-in-Charge of the Criminal Records Office shall also, in such certificate, show the date of issue, affix his signature and the stamp of the Criminal Records Office, and make a note of the issue in the appropriate register.

3. A certificate issued by the Criminal Records Office to a private person upon request shall be written on stamped paper. If a certificate issued by the Criminal Records Office requires authentication, the signature of the Officer-in-Charge shall be authenticated by the Attorney General.

## Article 271

### **Disputes regarding Entries and Criminal Record Certificates**

In case of any dispute regarding any matter arising out of the preceding Articles, or if correction of any records or certificates issued by the Criminal Records Office is requested by any person, the Attorney General shall make a decision upon such matters on request of the person concerned. If the person concerned wishes to contest any decision by the Attorney General, he shall have the right to do so as a matter arising out of execution.

## CHAPTER VII

### **Effect of Criminal Proceedings on Civil, Administrative and Disciplinary Proceedings**

## Article 272

### **Suspension of Civil, Administrative or Disciplinary Proceedings**

If criminal proceedings are instituted against a person, and the result of such proceedings may affect a civil, administrative or disciplinary proceeding, the latter shall be suspended, unless it is

provided otherwise by law, until the judgment in the criminal proceedings or the order that criminal proceedings be terminated has become final or until an order that the case be closed has been issued.

### Article 273

#### **Relations between Criminal Proceedings and Civil Action**

No civil or administrative action may be initiated, continued or brought up again where, in the course of a criminal proceeding, a Court has declared that:

- a) the act was not committed;
- b) the accused did not commit it;
- c) the act was committed:
  - i) in the fulfilment of a duty, or
  - ii) in the exercise of a lawful right;
- d) there was not sufficient evidence to prove that:
  - i) the act was committed, or
  - ii) the accused committed it.

### Article 274

#### **Effect of Judgment in Criminal Proceedings**

1. In a civil or administrative proceeding for the restitution of, or compensation for, damages, a final conviction or a final judgment of acquittal, and a final order that proceedings be terminated, shall have the authority of *res judicata* as regards:

- a) the question of whether or not the act was committed;
- b) the lawfulness or unlawfulness of the act;
- c) the responsibility of the accused.

A final judgment in a criminal proceeding granting judicial pardon shall also have the authority of *res judicata* as regards a civil or administrative proceeding.

2. Apart from the cases mentioned in the preceding paragraph, the decisions referred to therein shall also have the authority of *res judicata* in civil, administrative or disciplinary proceedings when the dispute relates to a right the recognition of which depends on the ascertainment of facts which were in issue in the criminal proceeding.