

FIRST PART

BOOK I

SUBJECTS

TITLE I

THE COURT

CHAPTER I

JURISDICTION

Article 1*Criminal jurisdiction*

1. Criminal jurisdiction shall be exercised in accordance with the rules set in this Code by the courts referred to in the judicial system laws.

Article 2*Cognisance of courts*

1. Criminal courts shall settle any issue on which the decision depends, unless otherwise provided. The decision of criminal courts which incidentally settles a civil, administrative or criminal case shall have no binding effect in any other trial.

Article 3*Preliminary issues*

1. If the decision depends upon the resolution of a dispute on either family status or citizenship, if the issue is serious and a civil action is already in progress, the court may suspend the trial until the judgment settling the case becomes final.
2. The suspension shall be directed by order, the latter being subject to appeal to the Court of Cassation. The Court shall decide in chambers.
3. The suspension of the trial shall not prevent urgent actions from being undertaken.
4. The final judgment issued by a civil court which settles a case on family status or citizenship shall be binding in criminal proceedings.

Article 69*Death of the accused person*

1. If the accused person dies, at any stage and instance of the proceedings after the initiation of criminal prosecution, the court, after hearing the Public Prosecutor and the lawyer, shall deliver a judgment under Article 129.
2. The judgment does not prevent prosecution for the same offence and against the same person if it is subsequently ascertained that the accused was mistakenly declared dead.

Article 70*Ascertainment of accused person's capacity*

1. If a judgment of dismissal or no grounds to proceed must not be issued and there are reasons to believe that the accused person, due to mental disorder (...), is unable to participate consciously in the trial, the court may order an expert report, also of its own motion.
2. During the time necessary for producing an expert report, the court, upon request of the lawyer, shall gather the evidence that may lead to the dismissal of the accused person and, should the delay pose a danger, any other evidence requested by the parties.
3. If the need for taking action emerges during preliminary investigations, the court shall require an expert report upon request of a party as provided for the special evidentiary hearing. In the meantime, the time limits for preliminary investigations shall be suspended and the Public Prosecutor shall carry out only those actions that do not require the conscious participation of the suspect. Should the delay pose a danger, evidence may be gathered in the cases provided for in Article 392.

Article 71*Suspension of proceedings due to incapacity of the accused person*

1. If, following the ascertainment provided for in Article 70, it appears that the mental state of the accused is such as to prevent his conscious participation in the proceedings and that his state is reversible, the court shall decide, by order, that the proceedings be suspended, provided it is not necessary to issue a judgment of dismissal or no grounds to proceed.
2. The court shall appoint, by an order of suspension, a special administrator for the accused, preferably designating a possible legal representative.
3. The Public Prosecutor, the accused and his lawyer as well as the special administrator appointed for the accused may appeal against the order to the Court of Cassation.
4. Suspension does not prevent the court from gathering evidence under the conditions and within the limits provided for in Article 70, paragraph 2. The court shall gather evidence also at the request of the

shall be notified or served at least ten days before the aforementioned date. If the accused person does not have a lawyer, the notice shall be sent to the court-appointed lawyer.

2. Briefs may be submitted to the Court Registry up to five days before the hearing.
3. The Public Prosecutor, the other addressees of the notice and the lawyers shall be heard if they appear in court. If the person concerned is detained in or confined to a place outside the district of the court and makes an explicit request to be heard, he must be heard before the day of the hearing by the Sentence Supervision Judge of that place.
4. The hearing shall be postponed in case of a legal impediment of the accused or convicted person who requires to be heard personally and is detained in or confined to a place where the court sits.
5. The provisions of paragraphs 1, 3 and 4 shall apply under penalty of nullity.
6. The hearing shall take place without the presence of the public.
7. The court shall decide by order and immediately notify it or serve it on the subjects referred to in paragraph 1, who may lodge an appeal with the Court of Cassation.
8. The appeal to the Court of Cassation does not suspend the enforcement of the order, unless the court that issued it decides otherwise by reasoned decree.
9. The inadmissibility of the introductory act to the proceedings shall be declared by the court in an order, which may be issued without any formalities, unless otherwise provided. The provisions of paragraphs 7 and 8 shall apply.
10. The record of the hearing shall be generally drafted in summary form under the provision of Article 140, paragraph 2.

Article 128

Filing of judicial decisions

1. Without prejudice to the provisions regarding decisions issued during the preliminary hearing and the trial, the originals of judicial decisions shall be filed with the Court Registry within five days of deliberation. The notice of filing of the appealable decision, containing the operative part of the judgment, shall be delivered to the Public Prosecutor and served on the subjects who are entitled by law to apply for appellate remedies.

Article 129

Requirement of immediate dismissal

1. At any stage and instance of the proceedings after the initiation of criminal prosecution, the court that acknowledges that either the criminal act did not occur or the accused did not commit it or the act does not constitute an offence or it is not deemed an offence by law or the offence is extinguished or a

requirement for prosecution is not met, shall declare so of its own motion by issuing a judgment.

2. The court shall deliver a judgment of either acquittal or no grounds to proceed with the prescribed formula if there is a cause of extinguishment of the offence but it is clearly proven that the criminal act did not occur or the accused did not commit it or the act does not constitute an offence or it is not deemed an offence by law.

Article 130

Rectification of clerical errors

1. The rectification of judgments, orders and decrees invalidated by errors or omissions which do not determine their nullity and whose elimination does not lead to a substantial modification of the decision, shall be ordered, also of the court's own motion, by the court that issued the decision. If appellate remedies are invoked against the decision and the application is not declared inadmissible, the correction shall be ordered by the court with competence over appellate remedies.

1 -bis. If, due to a denomination or calculation error, only the type, length or amount of the sentence must be rectified in the judgment of application of punishment upon request of the parties, the rectification shall be made by the court that delivered the judgment, also of its own motion. If an appeal is lodged against this judgment, the rectification shall be made by the Court of Cassation according to Article 619, paragraph 2.

2. The court shall decide in chambers under the provision of Article 127. The original document shall contain a notice of the order directing the rectification.

Article 131

Judicial coercive powers

1. While performing its functions, the court may require the intervention of the criminal police and, if necessary, national enforcement authorities, directing the implementation of all necessary measures to ensure a safe and orderly performance of the actions it is in charge of.

Article 132

Compulsory appearance of the accused person

1. The compulsory appearance shall be ordered, in the cases provided for by law, by reasoned decree with which the court directs, by force if necessary, that the accused person appear before it.

2. The person subject to compulsory appearance may not be held at the disposal of the court after conclusion of the envisaged action and any consequent actions requiring his presence. In any case the person may not be held for more than twenty-four hours.

or statements provided during the trial or any other criminal act deemed an offence by law ⁽¹⁾.

⁽¹⁾ Constitutional Court judgment No 113/2011 has added the possibility to request revision when it is necessary to reopen the proceedings in order to comply with a final judgment of the European Court of Human Rights.

Article 631

Limitations to revision

1. Under penalty of inadmissibility of the request, the arguments underlying the request for revision must be such as to prove, if ascertained, that the convicted person must be dismissed under Article 529, 530 or 531.

Article 632

Persons entitled to submit a request for revision

1. Revision may be requested by:

- a) the convicted person or one next of kin or the convicted person's guardian and, if the convicted person is deceased, his heir or one next of kin;
- b) the Prosecutor General attached to the Court of Appeal in whose district the judgment of conviction has been delivered. The persons referred to in letter a) may join their request to that of the Prosecutor General.

Article 633

Form of the request

1. The request for revision shall be submitted personally or through a proxy. The request shall contain the specification of the reasons and the evidence justifying the request and must be submitted, along with any other documents and documentary evidence, to the Registry of the Court of Appeal pinpointed according to the criteria referred to in Article 11.
2. In the cases provided for in Article 630, paragraph 1, letters a) and b), the request must include the authentic copies of the judgments or criminal decrees of conviction specified therein.
3. In the case provided for in Article 630, paragraph 1, letter d), the request must include an authentic copy of the final judgment of conviction for the offence specified therein.

Article 634

Declaration of inadmissibility

1. If the request is submitted for reasons other than those provided for in Articles 629 and 630 or it is submitted without complying with the provisions of Articles 631, 632, 633 and 641 or the request is proven to be manifestly groundless, the Court of Appeal shall issue an order declaring, also of its own

BOOK X
ENFORCEMENT
TITLE I
RES IUDICATA

Article 648

Irrevocability of judgments and criminal decrees

1. Judgments delivered at trial which are not subject to an appellate remedy other than revision are final.
2. If an appellate remedy may be invoked, the judgment becomes final upon expiry of the time limit set to lodge the remedy or to appeal the order declaring its inadmissibility. In case of an appeal to the Court of Cassation, the judgment becomes final from the day of delivery of the order or judgment rejecting the appeal or declaring it inadmissible.
3. The criminal decree of conviction is final upon expiry of the time limit set to lodge an opposition or to appeal the order declaring its inadmissibility.

Article 649

Ne bis in idem

1. The accused person who has been dismissed or convicted by a judgment or criminal decree that has become final shall not be prosecuted again for the same offence, even if his conduct is considered differently in terms of legal definition, stage of the offence or circumstances, without prejudice to Articles 69, paragraph 2, and 345.
2. If, however, the criminal proceedings are started again, the court shall deliver a judgment of dismissal or of no grounds to proceed at any stage and instance of the proceedings, specifying the cause in the operative part of the judgment.

Article 650

Enforceability of criminal judgments and decrees

1. Criminal judgments and decrees shall be enforceable when they become final, unless otherwise provided.
2. Judgments of no grounds to proceed shall be enforceable once they are no longer subject to appellate remedies.

Article 651

Effects of the criminal judgment of conviction in trials for civil or administrative damages

1. The final criminal judgment of conviction delivered after a trial shall have binding effect, with relation to the ascertainment of the criminal act, of its criminal unlawfulness and its commission by the accused,