

ภาคผนวก ข

CODE OF CRIMINAL PROCEDURE²

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.

² <http://www.legifrance.gouv.fr>

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.

FIRST PART: LEGISLATIVE PRELIMINARY TITLE

PUBLIC PROSECUTION AND CIVIL ACTION. (Art. 1 to 10)

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 1983 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 n°vember 1992 Article 4 Official Journal of 24 n°vember 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)

Any association lawfully registered 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 and bringing 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 of a 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 L.213-1 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 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)

For misdemeanours, the prosecution limitation period is of three complete years; it operates according to the distinctions set out under 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, 225-7, 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.

Article 75

(Ordinance no. 60-529 of 4 June 1960 Article 1 Official Journal of 8 June 1960)

(Act no. 85-1196 of 18 November 1985 Articles 6 & 8 Official Journal of 19 November 1985, in force on 1 January 1986)

(Act no. 2000-516 of 15 June 2000 Article 104 Official Journal of 16 June 2000, in force on 1 January 2001)

(Act no. 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 85

(Act no. 2004-204 of 9 March 2004 art.14 III Official Journal of 10 March 2004)

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 in accordance with the provisions of articles 52,52-1 and 706-42.

However, the complaint for damages is admissible only if the person is justified that the prosecutor gave him, following a complaint lodged with him or a judicial police it will not itself prosecution or a period of three months has passed since she filed a complaint before the magistrate, against a receipt or letter with return receipt, and since it sent in the same way, copy to the judge filed his complaint before a police court. This condition of admissibility is not required if a crime or is an offense under the law of 29 July 1881 on freedom of the press or by articles L. 86, L. 87, L. 91 to L. 100, L. 102 to L. 104, L. 106 to L. 108 and L. 113 of the electoral code. The limit for prosecution was suspended in favor of the victim, the filing of the complaint until the response from the prosecutor or at the latest after the time limit of three months.