

Lesson No. 03: Concepts of Civil and Criminal Procedures

Civil Procedure In court, the procedure begins with the submission of a written and signed petition by the plaintiff or their lawyer (introductory petition).

Prescription (Limitation Periods)

- o **Acquisitive prescription:** The passage of time leads to acquiring a right.

Emergency Procedures

a) **Emergency Procedures by Petition and Summary Proceedings** In both cases, the aim is to obtain a provisional decision that allows the dispute to be resolved smoothly while the normal procedure is ongoing.

b) **Extraordinary Remedies**

- o **Appeal to the Supreme Court (Cassation Appeal):**
 - o This is an extraordinary remedy for reforming a ruling.
 - o **Third-Party Opposition:** o This is an extraordinary remedy allowing third parties (not involved in the original trial) to contest a judgment, ruling, or order that adversely affects them.
 - o The appeal does not suspend the execution of the decision
- o The deadline for filing a cassation appeal is two months in civil matters and one month in urgent matters.

a) **Ordinary Remedies**

- o **Opposition:** o This is an ordinary means of recourse for retracting a decision.
- o It applies when a judgment has been rendered by default, meaning in the absence of the defendant.
- o By a resulting harm, where the victim reports it.
- o **In flagrante delicto:** An offense being committed or just committed, and discovered by judicial authorities.
- o In a flagrante delicto investigation, judicial police powers are broader.
- o In preliminary investigations, the depth of the inquiry depends on the case details.

Public Prosecution Criminal procedure differs from civil procedure:

- o The goal is not to settle private interests but to sanction an individual.
- o The Public Prosecutor is usually informed of an offense by police or gendarmerie investigations or by a victim's complaint.
- o The prosecutor decides the next steps:
- o Dismissal of the case (in which case the limitation period applies).
- o Initiation of public prosecution (the prosecutor has discretion in prosecution).

Statute of Limitations in Criminal Law This is the time limit after which a prosecution can no longer be initiated:

- o 10 years for crimes (from the date of commission).

Certain crimes, such as terrorist and subversive acts, are not subject to a statute of limitations.

For flagrant offenses:

- o **Immediate appearance** (introduced in 2015), allowing the prosecutor to bring the accused directly before the criminal court after custody.
- o **Direct summons** by a bailiff, initiated by the prosecutor or the victim.
- o **Summons:** This is an act by which the plaintiff invites the defendant to appear before the court.

However, if the defendant fails to appear on the scheduled day, a judgment is rendered by default.

- o Civil procedure is a written process, involving exchanges of pleadings between the parties at the hearing.
- o The civil judge is relatively passive: they only rule on what is requested (except for matters of public order).

b) **Injunction to Pay Procedures**

Appeal Procedures There are ordinary remedies and extraordinary remedies.

- o The opposition is filed with the court that issued the decision, and the case is retried in the presence of the defendant so they can defend their rights.
- o The aim is to challenge the legality of the decision based on legal errors.

- o **Extinctive prescription:** The passage of time leads to losing a right.
- o When society prosecutes an offender for punishment, it is called public prosecution.
- o **Res judicata** (a case that has already been judged).
- o **Withdrawal of the complaint** (if required for prosecution).

Initiation of Prosecution The Public Prosecutor has three options:

1. **Requisition to open an investigation**, mandatory for felonies.

Criminal Mediation

- o An alternative to prosecution, introduced in amendments to the Code of Criminal Procedure.
- o The Public Prosecutor acts as a mediator to find a resolution outside court

If the plaintiff does not appear on the day of the hearing without a valid reason, the case may be dismissed.

- o **Appeal:**

o This is an ordinary means of recourse for modifying a decision.o The deadline for filing an appeal is one month, and new claims cannot be introduced at this stage.o The Supreme Court does not reexamine the facts, only the proper application of the law.o The case is re-examined in their presence so they can present their arguments.Criminal Procedure When an offense is committed, the authorities must identify the perpetrator, establish their guilt, and judge them.Reporting an Offense An offense is typically discovered in one of two ways: 1.By direct observation at the time of commission (in flagrante delicto).o The police investigation is conducted under the control of the Public Prosecutor.o 2 years for minor offenses (contraventions).Other reasons for extinction of public prosecution include: o The death of the accused.o It is served by a bailiff.o This standard procedure is quite lengthy.o These decisions fall under the jurisdiction of the president of the court, who rules by order. o The appeal is brought before a higher court (court of appeal) to have the case re-examined.o It is only possible against first-instance rulings.Criminal procedure regulates these steps.o Amnesty.2.