

INNOVATIVE METHODS FOR FILING PUBLIC PROSECUTION CLAIMS BEFORE THE COURT BY THE PUBLIC PROSECUTION IN ALGERIAN CRIMINAL PROCEDURE LAW

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Abstract:

The immediate appearance and penal order are recent procedural mechanisms available to the Public Prosecution for filing public prosecution claims directly before the court. These procedures were introduced by Ordinance No. 15-02, dated July 23, 2015, which amended and supplemented Ordinance No. 66-155 of June 8, 1966, pertaining to the Criminal Procedure Law. The immediate appearance applies to flagrante delicto misdemeanors that do not necessitate an investigation, whereas the penal order pertains to simpler misdemeanors, subject to additional conditions outlined in the amended Criminal Procedure Law. This study aims to examine the conditions and procedures associated with these two mechanisms and evaluate their effectiveness in fulfilling their intended objectives.

Keywords: Immediate Appearance, Penal Order, Public Prosecution, Filing a Claim, Public Prosecution.

INTRODUCTION:

Filing a public prosecution claim marks the initial step in the judicial process for initiating a public prosecution before the relevant authorities.¹ This claim is filed directly before the court in cases involving misdemeanors and infractions, bypassing the need for an investigation, in line with the principle of expedience.² Typically, the Public Prosecutor orders the defendant to appear before the court handling misdemeanors and infractions, as stipulated in Articles 333 and 394 of the Criminal Procedure Law (CPL).

Article 333, amended by Ordinance No. 15-02³, specifies that: "The claim shall be filed before the competent court, which may examine it either by referral from the investigating authority, by voluntary appearance of the parties as per the provisions of Article 334, by a summons delivered directly to the defendant and the individuals civilly liable for the crime, or through the immediate appearance or penal order procedure."

Article 394 further outlines: "The claim is filed before the court in cases of infractions either by referral from the investigating authority, by voluntary appearance of the parties, or by a summons delivered to the defendant and the civilly responsible party."

¹ Mahmoud Nagib Hosni, *Explanation of the Criminal Procedure Law*, Third Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1995, p. 109.

² The Public Prosecution has discretionary authority; it is free to initiate or file a public lawsuit or to archive the papers, in accordance with the provisions of Article 36 of the Criminal Procedure Code, which states: "The Public Prosecutor shall perform the following duties: Receive the reports, complaints, and notifications, decide on the appropriate action to be taken in the best possible time, notify the competent judicial authorities for investigation or trial to examine them, or order their archiving with a decision that is always subject to review, and notify the complainant and/or the victim, if known, as soon as possible. It may also decide to initiate mediation."

³ Order No. 15-02 dated July 23, 2015, amends and supplements Order No. 66-155 dated June 8, 1966, concerning the Criminal Procedure Law, Official Gazette No. 40, dated July 23, 2025, p. 28.

From these provisions, it is evident that new methods for directly filing public prosecution claims before the court have been introduced, including the immediate appearance procedure for flagrante delicto misdemeanors that do not require investigation, as well as the penal order for simpler misdemeanors.

A critical distinction between the initiation of a public prosecution and the filing of a claim lies in the fact that prosecution initiation can occur against an unnamed or unidentified individual, whereas a claim must be filed against a specific, identified defendant. A claim cannot be lodged against an unknown or unnamed person.

This study seeks to elucidate the provisions, conditions, and procedures associated with the new mechanisms available to the Public Prosecution for filing a claim before the court, namely the immediate appearance and penal order procedures, as set out in the amendments introduced by Ordinance No. 15-02, dated July 15, 2015.

The central issue explored in this study is whether the newly implemented procedures for filing public prosecution claims directly before the court by the Public Prosecution are effective in achieving their intended objectives.

To address this question, an analytical approach was employed, focusing on the texts added to the amended Criminal Procedure Law that introduced the immediate appearance and penal order procedures.

The subject matter is divided into two sections: the first section addresses the study and analysis of the immediate appearance procedure, while the second section examines the penal order procedure.

First Section: Immediate Appearance

The immediate appearance procedure is one of the mechanisms available to the Public Prosecution for filing a public prosecution claim directly before the court. This procedure replaced the flagrante delicto procedure as a means of notifying the misdemeanor court of a case, following the annulment of Articles 59 and 338 of the Criminal Procedure Law. These articles previously granted the Public Prosecutor the authority to place the defendant in pre-trial detention for up to eight days until trial.⁴

Consequently, the decision regarding detention now falls under the jurisdiction of the trial judge. This procedure applies to flagrante delicto misdemeanors that do not require a preliminary investigation, as well as crimes where prosecution does not necessitate specific investigative procedures.⁵

The immediate appearance procedure represents a significant legal development introduced by the legislator during the amendment of the Criminal Procedure Law through Ordinance No. 15-02. This amendment added a new section titled "Immediate Appearance before the Court," encompassing Articles 339 bis to 339 bis 7.

Thus, this section will examine, in the first requirement, the conditions for the immediate appearance procedure, and in the second requirement, its application.

First Requirement: Conditions for Immediate Appearance

To implement the immediate appearance procedure, the legislator specified several conditions that must be fulfilled. These conditions are divided into two categories: objective conditions, which pertain to the crime itself, to be discussed in the first subsection, and personal conditions, which concern the defendant and will be addressed in the second subsection.

Subsection One: Objective Conditions

⁴ Najar Al-Waiza, *The Immediate Appearance System as an Alternative to the Trial for Crimes in the Act*, *Proceedings of the University of Guelma on Social and Political Sciences*, Issue 26, 2019, p. 326, pp. 315-340.

⁵ Kheira Hilalabi, Tareb Makhoulouf, *The Immediate Appearance Procedure as a New Mechanism for Initiating Public Prosecution in Light of Order 15-02*, *Future Journal of Legal and Political Studies*, Issue 2, 2018, p. 43, pp. 42-55.

Article 339 bis, paragraph 1, of the Criminal Procedure Law states: "In the case of flagrante delicto misdemeanor, if the case does not require a judicial investigation, the procedures for immediate appearance as outlined in this section may be followed."

Paragraph 2 of the same article further specifies: "The provisions of this section do not apply to crimes that are subject to special investigative procedures."

From this text, it is clear that the crime in which the Public Prosecution can initiate proceedings by applying the immediate appearance procedure must meet the following conditions:

- The crime must be classified as a misdemeanor.
- The misdemeanor must be a flagrante delicto offense. While the Criminal Procedure Law does not provide a direct definition of flagrante delicto, the Algerian legislator instead outlines its conditions in Article 41.

Doctrinally, flagrante delicto is understood as the simultaneity or close proximity between the time of the crime's commission and its discovery—i.e., the moment of commission and the moment of detection, such as through direct observation.⁶

The conditions for flagrante delicto are outlined in Article 41 of the Criminal Procedure Law, which states: "A felony or misdemeanor is considered to be in flagrante delicto if it is committed at the moment or immediately after its commission. A felony or misdemeanor is also considered flagrante delicto if, shortly after the crime was committed, the suspected person was followed by the public due to their shouts or if objects or evidence were found in their possession that suggest their involvement in the crime.

Any felony or misdemeanor is considered to be in flagrante delicto, even if it does not meet the conditions specified in the previous paragraphs, if it was committed in a house and the owner of the house, immediately after its commission, calls a judicial police officer to confirm the crime."

This passage clearly defines the specific circumstances under which a crime qualifies as flagrante delicto. These conditions are enumerated exhaustively in the law, but the determination of their applicability rests with the competent authorities, depending on the context of each case. The conditions include the following:

1. Directly witnessing the crime at the moment of its commission.
2. Witnessing the crime immediately after its commission.
3. The public pursuing the suspect due to their loud calls or shouts.
4. Discovering the crime weapon or the location of the crime in the possession of the suspect.
5. Finding evidence or traces that indicate the commission of the crime.
6. The discovery of the crime in a dwelling, followed by immediate reporting.

To trigger the legal effects of flagrante delicto, it is not sufficient to meet merely one of these conditions. The following additional criteria must also be satisfied:

1. The cases of flagrante delicto are strictly listed in Article 41 of the Criminal Procedure Law. A judicial police officer cannot invoke flagrante delicto unless the conditions explicitly align with one of the enumerated criteria in Article 41 to exercise their exceptional powers.
2. Flagrante delicto must occur prior to any action taken by the judicial police officer. This is because flagrante delicto serves as the legal foundation that allows the officer to exercise their powers. Any action taken before flagrante delicto occurs, or in its absence, is deemed unlawful and lacks legal consequences. Thus, flagrante delicto discovered after previous actions is not legally recognized and cannot produce any legal effect.
3. The judicial police officer must either personally observe or later discover the flagrante delicto situation. If the officer receives information about the situation, they must physically visit the crime scene to verify the facts. Relying solely on third-party reports or hearsay is insufficient.
4. The discovery of flagrante delicto must be made through legal means. The judicial police officer must ensure that all investigative actions adhere to legal protocols.

⁶ Ahmed Fathi Sorour, *The Mediator in the Criminal Procedure Law*, Dar Al-Nahda Al-Arabiya, 8th Edition, Cairo, 2012, p. 568.

5. The misdemeanor alleged to constitute *flagrante delicto* must not fall within the category of crimes subject to special investigative procedures, such as juvenile offenses or crimes committed by government officials, members of the judiciary, or specific employees, as outlined in Articles 573 and following of the Criminal Procedure Law.

It is important to note that the legislator did not exclude crimes related to the press or politically motivated offenses from this procedure, in contrast to the earlier provisions in Article 59 of the Criminal Procedure Law before its repeal. Moreover, the previous requirement that the misdemeanor be punishable by imprisonment has been removed.

Second Subsection: Personal Conditions

These conditions are outlined in Article 339 bis 1 of the Criminal Procedure Law, which states: "A person arrested for a *flagrante delicto* misdemeanor, and who does not provide sufficient guarantees for appearing before the court, shall be presented before the Public Prosecutor." Thus, the personal condition hinges on whether the arrested person can offer sufficient guarantees for their appearance in court. The assessment of whether these guarantees are adequate is left to the discretion of the Public Prosecutor.⁷

Second Requirement: Application of Immediate Appearance Procedures before the Court

This requirement explains how the immediate appearance procedures are applied. The section is divided into two subsections: the first discusses the presentation of the suspect before the Public Prosecutor, and the second addresses the defendant's appearance before the court.

First Subsection: Presentation of the Suspect before the Public Prosecutor

According to Article 339 bis 1 of the Criminal Procedure Law, once the judicial police officer has completed their investigation and collected evidence in a *flagrante delicto* misdemeanor case, the individual must be presented before the Public Prosecutor. This must occur after summoning the witnesses and victims on the day the suspect is to appear before the prosecutor.

As per Article 339 bis 2 of the Criminal Procedure Law, the Public Prosecutor is required to verify the identity of the suspect presented before them, inform the suspect of the charges, and explain the legal description of the offense. Additionally, the Public Prosecutor must notify the victim and the witnesses of the proceedings.

Before referring the suspect to court, the Public Prosecutor must interrogate them and prepare a formal interrogation report. This interrogation must be conducted in the presence of the suspect's attorney, as specified in Article 339 bis 3 of the Criminal Procedure Law. The Public Prosecutor is also obligated to provide the suspect's attorney with a copy of the case file.

The attorney is then permitted to communicate with their client, who is now officially considered a defendant, once they are informed of their imminent appearance before the court. Communication between the attorney and their client must occur in a designated area for this purpose, as outlined in Article 339 bis 4 of the Criminal Procedure Law.

Second Subsection: The Defendant's Appearance Before the Court

When the defendant appears before the court, the presiding judge must first verify their identity and inform them of the procedure under which they have been referred. The judge also ensures the presence or absence of the civil party and witnesses.

If the defendant does not have legal representation, the judge is required to remind them that they have the right to request additional time to prepare their defense, in accordance with Article 339 bis 5 of the Criminal Procedure Law. Should the defendant exercise this right, the court is obligated to grant them at least three (3) days. In such a case, the court may either render its decision on the same day or adjourn the matter to a subsequent session.

⁷Abdellah Ohaibia, *Explanation of the Criminal Procedure Law*, Part One (on definition, criminal lawsuits, and investigation – the inquiry), Special Edition, 2nd Edition, House of Ideas, 2023, p. 494.

If the court finds that the case is ready to be decided on the same day, and the defendant is either represented by a lawyer or waives their right to legal representation, the court will proceed with the trial until a judgment is issued.

On the other hand, if the defendant requests more time to prepare their defense or if the court determines that the case is not prepared for immediate judgment, it may decide to adjourn the case to the next available session. If the court chooses to adjourn, in accordance with Article 339 bis 6 of the Criminal Procedure Law, after hearing the requests of the Public Prosecutor, the defendant, and their defense counsel, it may adopt one of the following measures:

- Release the defendant.
- Subject the defendant to one or more of the judicial supervision measures outlined in Article 125 bis 1 of the Criminal Procedure Law. The Public Prosecutor is responsible for monitoring the enforcement of these measures, as stipulated in the first paragraph of Article 339 bis 7 of the Criminal Procedure Law.
- Place the defendant in provisional detention.

The final paragraph of Article 339 bis 6 of the Criminal Procedure Law stipulates that the orders issued by the court under this article are not subject to appeal.

If the defendant violates the judicial supervision measures, they are subject to a penalty of imprisonment and/or a fine, as specified in Article 129 of the Criminal Procedure Law: "If the defendant violates these measures, they shall be punished with imprisonment for a term of three months to three years and a fine ranging from 500 to 50,000 Algerian Dinars, or one of these penalties. Furthermore, their passport shall be temporarily confiscated.

The investigating authority or the court may also prevent them from leaving the national territory." This is in accordance with the second paragraph of Article 339 bis 7 of the Criminal Procedure Law.

Second Section: Penal Order

The legislator introduced the procedure of the penal order when amending Article 333 of the Criminal Procedure Law through Order No. 15-02, which states: "Crimes within the jurisdiction of the court are brought to trial either by referral to the court... or by the procedure of the penal order."

This procedure is outlined in Section 6 bis, entitled "In Penal Order Procedures," which was added to the Criminal Procedure Law under Order No. 15-02 and includes Articles 380 bis to 380 bis 7.

The penal order procedure is one of the methods used by the Public Prosecutor⁸ to directly refer the criminal case to the court based on the results of the investigation. The following section discusses the conditions of the penal order procedure in Subsection One⁹, as well as how it is resolved, its details, and how it can be contested in Subsection Two.

First Requirement: Conditions for the Penal Order and Exceptions to This Procedure

This subsection is divided into two parts. The first part covers the necessary conditions for the penal order, while the second part addresses the exceptions to the use of the penal order procedure.

First Subsection: Conditions Required for the Penal Order Procedure

Article 380 bis of the Criminal Procedure Code outlines the conditions that must be met for the implementation of the penal order procedure, which are as follows:

⁸ This system has different names in comparative legislation; for example, Algerian law shares the term "penal order" with the Iraqi and Kuwaiti legislations, while the Jordanian, Syrian, and Lebanese legislations call it "summary procedures." The Egyptian, Libyan, and Italian legislations refer to it as the "criminal order," while Moroccan law calls it the "judicial order." See: Abdel Rahman Khalfi, *Criminal Procedures in Algerian and Comparative Law*, 6th Edition, Dar Balkis, 2022, p. 207.

⁹ Ali Chamlal, *Recent Developments in Algerian Criminal Procedure Law*, Volume One (Investigation and Accusation), Dar Homeh, 2019/2020, p. 197.

– The crime must be a misdemeanor punishable by a fine or imprisonment for a term equal to or less than two years.

– The identity of the perpetrator of the misdemeanor must be known.

– The facts attributed to the defendant must be simple and substantiated by material evidence, and they should not lead to a need for a detailed public hearing.

– The facts attributed to the defendant must be of low seriousness, and it is likely that the perpetrator will face only a fine as a penalty.

– The procedure must be applied to a single individual, with the exception of cases involving both a natural person and a legal entity for the same acts (Article 380 bis 7 of the Criminal Procedure Code).

Second Subsection: Exceptions to the Penal Order Procedure

Article 380 bis 1 of the Criminal Procedure Code specifies that the penal order procedure does not apply in the following cases:

– If the defendant is a minor.

– If the misdemeanor is coupled with another misdemeanor or an offense that does not meet the conditions for applying the penal order.

– If there are civil rights that require a public hearing for resolution.

Second Requirement: How the Penal Order is Resolved, Its Details, and the Possibility of Objection

This section is divided into two parts. The first part explains how the criminal case is resolved based on the penal order, while the second part details the requirements for the penal order and how it can be contested.

Subsection One: Resolving the Criminal Case Based on the Penal Order

According to Article 380 bis 2 of the Criminal Procedure Code, if the Public Prosecutor decides to proceed with the penal order procedure, the file, along with their requests, is referred to the Court of Misdemeanors. The judge resolves the case in a chamber hearing, not in a public session, by issuing a penal order for either acquittal or a fine, without the presence of the defendant or the Public Prosecutor and without prior oral arguments.

If the judge finds that the conditions for issuing the penal order are not met, the case file is returned to the Public Prosecutor to take appropriate action.¹⁰

There is a noted contradiction between the first paragraph of Article 380 bis, which states that the misdemeanor punishable by a fine and/or imprisonment for up to two years can be resolved by a penal order, and the second paragraph of Article 380 bis 2, which specifies that a decision issued under the penal order procedure may be either an acquittal or a fine.

Second Subsection: Details of the Penal Order and the Right to Object

According to Article 380 bis 3 of the Criminal Procedure Code, the penal order must specify the identity of the defendant, their domicile, the date and place of the alleged offense, the legal classification of the facts, the applicable legal provisions, and, if convicted, the penalty. The penal order must also be reasoned.

Under Article 380 bis 4 of the Criminal Procedure Code, once the penal order is issued, it is immediately referred to the Public Prosecutor, who can either file an objection to the penal order with the clerk's office within ten (10) days or initiate its enforcement.

The penal order is then served to the defendant by any legal means, informing them that they have one month from the date of notification to file an objection. If the defendant objects, the case will be processed according to regular criminal trial procedures (second paragraph of Article 380 bis 4 of the Criminal Procedure Code). If the defendant does not object, the penal order is enforced according to the rules governing the execution of criminal judgments.¹¹

¹⁰ Drissi Jamal, *The Penal Order Under Order 15-02*, *Algerian Journal of Legal, Economic, and Political Sciences*, Issue Two, 2018, p. 255, pp. 249-262.

¹¹ Paragraph Three of Article 380 bis 4 of the amended and supplemented Criminal Procedure Law.

If there is an objection to the penal order, whether from the Public Prosecutor or the defendant, the case is presented before the Court of Misdemeanors for resolution in accordance with regular criminal trial procedures. The judgment rendered by the court is not subject to appeal unless the imposed penalty involves imprisonment or a fine exceeding 20,000 DZD for an individual or 100,000 DZD for a legal entity.¹²

According to Article 380 bis 6 of the Criminal Procedure Code, the defendant may explicitly withdraw their objection before the start of the trial session. In such cases, the penal order regains its enforceability and is not subject to any appeal.

CONCLUSION

To conclude, the amendment made by Order No. 15-02 to the Criminal Procedure Code, specifically the introduction of the immediate appearance procedure, offers a new framework for presenting cases before the court. This reform shifts the authority to apply immediate procedures from the Public Prosecutor to the judgment court, making the process more efficient and faster. It also aims to simplify the handling of misdemeanor cases that do not require an in-depth judicial investigation.

Additionally, the introduction of the penal order procedure seeks to simplify and expedite the legal process, ensuring quicker case resolutions without compromising the defendant's right to a fair trial. Minor cases are now adjudicated by a competent judge without the need for oral arguments, defendant presence, or a public hearing. This method is designed to alleviate the burden on courts handling numerous minor cases, which consume substantial time, effort, and resources, thus addressing the delays in case resolution that hinder the pursuit of justice.

This study led to several key findings about the two procedures, summarized as follows:

- Order No. 15-02, which modifies the Criminal Procedure Code, does not grant victims the right to legal representation when the defendant appears before the Public Prosecutor.

- The law fails to grant the victim's defense access to a copy of the case file for review.

- The law does not require the head of the misdemeanors division to inform the victim about their right to prepare their defense, which is a right granted to the defendant.

- Through the introduction of the immediate appearance procedure, Order No. 15-02 aims to safeguard the defendant by reducing detention periods and preventing pretrial detention. The law accelerates trial procedures while ensuring the defendant's rights, including their right to defense. However, it neglects the constitutional rights of the victim, who has suffered from the crime, failing to provide them with the opportunity to seek justice under this procedure.

- Regarding the penal order, it undermines the defendant's right to a fair trial since the judge depends on police reports, which are inadequate for establishing the truth.

- The penal order also violates the defendant's constitutional right to defense and their rights under international treaties, as the trial occurs in their absence, without summons or access to the police records.

- When misdemeanors are referred to court via the penal order, penalties are limited to fines, with no possibility of imprisonment or additional penalties unless the defendant or the Public Prosecutor objects.

- The penal order procedure excludes the victim from any involvement, both in presenting arguments and in the construction of the judgment, as well as in appealing the judgment, whether it's a conviction or an acquittal.

Based on these findings, the following recommendations are proposed:

- Algerian lawmakers should reconsider the provisions related to both the immediate appearance and penal order procedures, ensuring that victims' rights are safeguarded throughout the process, from the moment the defendant appears before the court to the final judgment.

¹² Article 380 bis 5 of the amended and supplemented Criminal Procedure Law.

Similarly, the penal order procedure should also ensure the protection of the victim's rights, aiming to establish a fair balance between all parties involved in the criminal case.

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