

**PARTE PRIMA**  
**ATTI LEGISLATIVI ED AMMINISTRATIVI**  
**FIRST PART**  
**LEGISLATIVE AND ADMINISTRATIVE ACTS**

LAW n. 84 of 12 December, 1972.  
Amendment of Criminal Procedure Code.

THE PRESIDENT  
OF THE SUPREME REVOLUTIONARY COUNCIL

HAVING HEARD the Council of Secretaries of State;  
TAKING NOTE of the approval of the Supreme Revolutionary  
Council;

HEREBY PROMULGATES

the following Law:

Article 1

*Amendment of Article 12*

Article 12 of the Criminal Procedure Code (Legislative Decree No. 1 of 1 June, 1963), as subsequently amended, hereinafter called «the Code», is amended by substituting for paragraphs 2 and 3, the following:

«2. In Court proceedings, the Office of the Attorney General shall be represented by:

- (a) the Attorney General or one his Deputies, before the Supreme Court;
- (b) the Attorney General or one of his Deputies or in their absence a Police Officer above the rank of Inspector, before a Court of Appeal;
- (c) the Attorney General or one of his Deputies or a Police Officer of and above the rank of Inspector, before a Regional Court. In case of necessity, the Divisional Commandant of Police may designate any Police Officer for this purpose;
- (d) the Attorney General or one of his Deputies or the Commandant of a Police Station or any Police Officer designated by him, before a District Court.

3. For the purposes of this Code, unless the context otherwise requires, the term «Office of the Attorney General» shall mean:

- (a) the Attorney General or one of his Deputies;
- (b) any Police Officer representing the Attorney General.

## Article 2

### *Amendment of Article 23*

Article 23 of the Code is amended:

- (a) by deleting from paragraph 1 the letter and words «b) the Finance Guards;» and
- (b) by substituting for the definition of the term «Police Officer» in letter (b) of paragraph 2, the following:  
«the term» Police Officer» shall mean any member of the Police Force».

## Article 3

### *Amendment of Article 24*

Article 24 of the Code is hereby amended by adding the following new paragraph at the end of paragraph 5:

«6. A Police Officer investigating an alleged offence may require any person to execute a bond conditioned on his due attendance in Court if and when required to attend and any person who fails to comply with such a requirement shall be guilty of an offence punishable with fine not exceeding Sh. So. 500/- or imprisonment not exceeding one month or both such fine and imprisonment».

## Article 4

### *Amendment of Article 30*

Article 30 of the Code is amended by substituting for the word «required» in paragraph 1, the words «authorised by law».

## Article 5

### *Amendment of Article 47*

Article 47 of the Code is amended by substituting for the proviso to paragraph 1, the following:

«Provided that the competent trial Court may, on application by the Office of the Attorney General, allow the period of custody to be extended for a further period not exceeding the maximum period of custody specified above for each type of offence».

## Article 6

### *Amendment of Article 62*

Article 62 of the Code is amended by adding at the end of paragraph 2, the following new paragraph:

«3. Where any person is released on bail, he shall give to the Court his address at which service on him of all notices and processes may be made. Any such notice or process for such person at such address shall be deemed to have been duly served on him».

## Article 7

### *Amended of Article 73*

Article 73 of the Code is amended by substituting a colon for the full-stop at the end of sub-paragraph (b) of paragraph 2 and by adding thereafter the following proviso:

«Provided that the time during which an accused voluntarily avoids process of law shall be excluded from the said time-limits».

## Article 8

### *Addition of new Chapters IV-A and IV-B to Book Two*

The Code is amended by adding the following new Chapters IV-A and IV-B at the end of Chapter IV of Book Two:

## Chapter IV-A

### SUMMARY TRIALS

## Article 128-A

### *Who may try cases summarily*

Notwithstanding anything contained in this Code or any other law all judges of the Regional Courts and such of the judges of the District Courts as are approved by the President of the Supreme Court on the recommendation of the President of the competent Regional Court, shall have the power to try summarily the offences set out in Article 128-B in the manner specified in Article 128-C, in addition to their normal duties.

## Article 128-B

### *Offences which may be tried summarily*

Notwithstanding anything contained in this Code, the following offences under the Penal Code may be tried summarily:

- (a) Article 313: Bringing the religion of the State into contempt.
- (b) Article 314: Disturbance of religious functions.
- (c) Article 315: Crimes against forms of worship permitted in the State.
- (d) Article 439: Assault.
- (e) Article 440, para 1: Hurt, where the act results in an illness or incapacity which prevents the injured persons from attending to his ordinary occupation for a period not exceeding ten days.
- (f) Article 451: Insult.
- (g) Article 470: Violation of the privacy of the home.
- (h) Articles 480 and 481: Theft. ) Where the amount or
- (i) Article 496: Cheating. ) the value of the
- (j) Article 502: Misappropriation: ) property involved does
- (k) Article 504: Receiving. ) exceed Sh. So. 200.
- (l) Offences under the Penal Code or any other law not punishable with death or imprisonment for a term exceeding 6 months.
- (m) Abetment of and attempt to commit any of foregoing offences.

#### Article 128-C

##### *Procedure in summary trials*

1. Procedure for the trial of cases summarily shall be the same as for other cases under the Code except that the Judge is not required to make a detailed note of the evidence but shall enter in the case file the following particulars:

- (a) the serial number;
- (b) the date of the commission of the offence;
- (c) the date of the complaint;
- (d) the name of the complaint (if any);
- (e) the name of the accused;
- (f) the offence complained of and the offence (if any); proved; and in cases coming under items (h), (i), (j) and (k) of Article 128-B, the value of the property in respect of which the offence is committed;
- (g) the plea of the accused;
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons thereof;

- (i) the sentence or other final order;
- (j) the date on which the proceedings terminate.

2. Where in the course of a summary trial it appears to the Judge that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Judge, if he is competent to try the case non-summarily, shall recall any witnesses who may have been examined and to proceed to re-hear the case in the manner provided by this Code. If on the other hand, he is not competent to try the case non-summarily, he shall direct the prosecutor to take the case before the competent Court.

3. No sentence of imprisonment exceeding 3 months or of fine exceeding Sh. So. 500/- shall be passed in the case of any convict.

4. Notwithstanding anything contained in this Code, there shall be no appeal by a convicted person in any case tried summarily where the sentence imposed is one of fine only.

#### Chapter IV-B

#### TRIAL IN ABSENCE OF ACCUSED

#### Article 128-D

##### *Issue of proclamation in certain cases*

1. Where a warrant of arrest has been issued under the provisions of this Code and it is not possible to serve such warrant on the accused because he has absconded or is concealing himself or where an offence punishable under Article 7 or 8 of the Penal Code has been committed in any place outside the territory of the Somali State, the competent Court may, at the request of the Attorney General or his representative, issue a proclamation calling upon the accused to appear before it.

2. Any such proclamation shall contain the following particulars:

- (a) the name and the personal details of the accused;
- (b) the date, place and the nature of the offence alleged to have been committed;
- (c) the date, time and the place where the accused is required to appear:

Provided that the specified time shall not be less than than 30 days from the date of the publication of such proclamation.

Article 128-E

*Publication of proclamation*

1. The proclamation referred to in the last preceding Article shall be published as follows:

- (a) it shall be broadcast at least twice on the National Radio System and also published twice in a local newspaper in successive issues;
- (b) it shall be affixed to the Court-house and also to some conspicuous part of the house in which the accused normally resides or was last known to reside.

2. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this Article as regards publication have been complied with.

Article 128-F

*Trial of proclaimed person in absence*

1. In cases of offences committed in the territory of the Somali State or committed by a Somali citizen against another Somali citizen in any place outside the territory of the Somali State, if the proclaimed person fails to appear at the specified place and time, then notwithstanding the provisions to the contrary in this Code or any other law, he may be tried in his absence.

2. At the request of the prosecutor, the Court which issued the proclamation may fix a trial date at any time after the expiry of the period set out in the proclamation and on that date may proceed to hold the trial and, after hearing evidence, deliver judgment and on conviction impose sentence according to law.

3. Such trial shall be conducted in accordance with the provisions of this Code. In the case of the absence of the accused, the provisions of this Code shall be constructed so as to permit, of such trial in his absence.

4. In each case of trial in the absence of the accused, the Court shall enter a plea of «Not Guilty» on behalf of the absent accused.

Article 128-G

*Proclamation of sentence*

1. If the accused who is tried in his absence under the last preceding Article is convicted and sentenced such sentence shall be proclaimed in the manner set out in Article 128-E. Any such person

may appear and appeal within the time limits fixed for criminal appeals by law commencing from the date of the publication of the proclamation of sentence. If he fails to appear and appeal within the said time limits then his right of appeal shall lapse.

2. Any sentence imposed against any person tried in his absence shall remain in force during such absence and may be executed against him at any time that he may be found within the territory of the State.

3. Nothing contained in this Chapter shall affect the right of any person to have a case considered for revision under the provisions of Chapter IV of Part 1 of Book Four of this Code.

### Article 128 H

#### *Attachment of property of proclaimed person*

1. A Court issuing a proclamation under Article 128-D may, at the same time or at any subsequent time, order the attachment of any property belonging to any proclaimed person within the limits of such Court's jurisdiction, or, if any such property is situated outside the said Court's jurisdiction, it may issue an attachment warrant and send it to the Court of Appeal within whose jurisdiction such property is situated and request such Court of Appeal to approve of its execution and such Court of Appeal is hereby empowered to do so.

2. If the property attached is livestock or subject to speedy or natural decay, the Court may, if it thinks expedient to do so, order the sale thereof and in such case the proceeds of the sale shall abide the order of the Court.

3. If the proclaimed person does not appear within the time fixed by the proclamation, then any property attached under this Article shall be at the disposal of the State which may use it as part of the general funds of the State or wholly or partially to compensate any person or persons injured in any way by the offence for which the accused had been proclaimed. Where such compensation is to be paid, the Secretary of State for Interior shall decide the amount of such compensation and to whom it shall be payable.

4. If within one year from the date of attachment of the property any person whose property is or has been at the disposal of the State appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant issued against him and also that he had no knowledge of such proclamation, then the Court may order the return of such property or of its value to him, less the costs incurred in connection with the attachment of the property and all subsequent proceedings».

Article 9

*Addition of new Chapter VI-A to Book Two*

The Code is amended by adding the following new Chapter VI-A at the end of Chapter VI of Book Two:

«Chapter VI-A

DISPOSAL OF PROPERTY

Section 1 — Disposal of Movable Property

Article 131-A

*Order for custody and disposal of abandoned  
or seized movable property*

1. Where any movable property found abandoned in circumstances which create suspicion of the commission of offence or seized under this Code or any other law, is produced before a Court, it may, subject to the provisions of any other law, make such order as it thinks fit respecting the delivery of such property to the persons entitled to the possession thereof or, if such person cannot be ascertained, respecting the custody and production of such property.

2. If the person so entitled is known, the Court may order the property to be delivered to him on such conditions (if any) as the Court thinks fit. If such person is unknown, the Court may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto appear before it and establish his claim within six months from the date of such proclamation.

3. If no person within such period establishes claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the State.

4. If the person entitled to the possession of such property is unknown or absent and the property is livestock or is subject to speedy or natural decay, the Court may at any time direct it to be sold by public auction; and the provisions of the preceding paragraphs of this Article shall, as nearly as may be practicable, apply to the net proceeds of such sale.

Article 131-B

*Order for custody and disposal of movable property pending trial*

Where any movable property regarding which an offence appears to have been committed, or which appears to have been used



for the commission of an offence, is produced before a Court during a trial, the Court may, subject to the provisions of any other law, make such order as it thinks fit for the property custody of such property pending the conclusion of the trial. If the property is livestock or is subject to speedy or natural decay the Court may, after recording such evidence as it thinks necessary, order it to be sold by public auction.

#### Article 131-C

##### *Order for disposal of movable property at the conclusion of trial*

1. Subject to the provisions of Article 133 of the Penal Code or of any other law, a Court may at the conclusion of a trial before it make such order as it thinks fit for the disposal of any movable property produced before it or in its custody or regarding which an offence appears to have been committed or which has been used for the commission of an offence.

2. Where a higher Court makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto such Court may direct that the order be carried into effect by a lower Court.

3. Where an order is made under this Article in a case in which an appeal lies, such order shall not (except where the property is livestock or is subject to speedy or natural decay) be carried out until the period allowed for presenting such appeal has passed or if such appeal is presented within such period, until such appeal has been disposed of.

4. In this Article, the term «property» includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

#### Article 131-D

##### *Destruction of obscene, defamatory or other matter*

The Court may, on conviction, order the destruction of all the copies of any obscene or defamatory matter; or of any adulterated, stimulated or noxious food, drink or other article or any spoiled or defective drugs or medicinal preparations; or narcotics in respect

of which the conviction was had and which are in the custody of the Court.

#### Article 131-E

##### *Payment to innocent purchaser of money found on accused*

Where any person is convicted of an offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowledge, or without having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession hereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

#### Section II — Restoration of Immovable Property

#### Article 131-F

##### *Power to restore possession of immovable property*

1. Where a person is convicted of an offence attended by criminal force and it appears to the Court that by such force any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

2. No such order shall prejudice any right or interest in such immovable property which any person may be able to establish in a civil suit».

#### Article 10

##### *Amendment of Article 224*

Article 224 of the Code is amended:

- (a) by substituting a semicolon for the fullstop at the end of the first sentence of letter (b) of paragraph 2 and by adding immediately thereafter the words «provided that the Court may, having heard the Office of the Attorney General, increase the punishment upto the minimum prescribed by law if the lower Court has imposed a punishment below the minimum»; and
- (b) by adding at the end of paragraph 2, the following new paragraph:
  - «3. The Attorney General and the accused person may submit across appeals within 15 days after the other has appealed».

- a) by substituting a semicolon for the fullstop at the end of the first sentence of letter (b) of paragraph 2 and by adding immediately thereafter the words "provided that the Court may, having heard the Office of the Attorney General, increase the punishment upto the minimum prescribed by law if the lower Court has imposed a punishment below the minimum"; and
- b) by adding at the end of paragraph 2, the following new paragraph:

"3. The Attorney General and the accused person may submit across appeals within 15 days after the other has appealed".

ART. 11

Repeal and replacement of article 250

Art. 250 of the Code is repealed and replaced by the following:

ART. 250

Execution of sentence of fine

1. Notwithstanding anything contained in this Code, where an accused is sentenced to pay a fine and the sentence has become final, the Court passing the sentence may unless the fine is paid:
  - a) allow time for payment of the fine and grant extension of the time so allowed;
  - b) direct payment of the fine to be made by instalments;
  - c) Issue a warrant for the levy of the amount of the fine by seizure and sale of any property belonging to the accused;
  - d) direct that in default of payment of the fine, the accused shall be imprisoned for a term in accordance with law which imprisonment shall be in addition

to any other term of imprisonment to which he may be sentenced;

e) direct that the accused shall be searched and any money found on him applied towards the payment of such fine and the surplus, if any, returned to him:

Provided that the money in his possession shall not be so applied if the Court is satisfied that it does not belong to him.

2. Imprisonment in default of payment of a fine shall terminate whenever the fine is paid or levied by process of law.

3. If part of the amount is paid or levied by process of law before expiry of the term of imprisonment, the period still to be served shall be proportionately reduced".

ART. 12

Coming into force

This law shall come into force on 1st January 1973 and shall be published in the Official Bulletin.

Mogadishu, 12 December 1972.

Maj. Gen. Mohamed Siad Barre

THE PRESIDENT

of the Supreme Revolutionary Council