

## **The principle of double degree of jurisdiction in Light of Criminal Procedure Law No. 25-14 as a guarantee of a fair trial**

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**Abstract---**The Algerian criminal legislator has enshrined the principle of double degree of jurisdiction since 1966 with respect to misdemeanors and contraventions, unlike felonies, until the issuance of Law No. 17-07 (now repealed), followed by Law No. 25-14, which maintained this principle. Under the latter, the Criminal Court was replaced by the Court of First Instance for Felonies, which examines acts classified as felonies at first instance, and a Criminal Court of Appeal was established as a second degree of jurisdiction. Prior to the 2017 amendment, limiting felony cases to a single degree of litigation was based on two main ideas. First, that judicial investigation was conducted on two levels: initially by the investigating judge, and subsequently by the Indictment Chamber, which was mandatorily referred every investigation concluding that sufficient evidence existed. However, despite the compulsory two-tier investigation, the existence of only one level of trial for acts considered the most serious and dangerous remained subject to significant criticism, as it undermined the principle of double degree of jurisdiction and thus constituted a clear infringement of the requirements of a fair trial. Furthermore, it was argued that adopting double degree litigation could lead to prolonging judicial proceedings and slowing down the administration of justice. On this basis, the present study aims to shed light on the various guarantees provided by the principle of double degree of jurisdiction in consolidating the principles of a fair trial.

**Keywords---**Double degree of jurisdiction, Rights of the accused, Court of First Instance for Felonies, Criminal Court of Appeal.

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## Introduction

The principle of double degree of jurisdiction is considered one of the most fundamental pillars of a fair trial in criminal matters. For this reason, most international and regional conventions have enshrined it, and national constitutions and legislation have emphasized the protection of this right. Through this principle, a party against whom a judgment has been rendered at first instance is given the opportunity to bring the dispute before a higher court for reconsideration. This allows the accused to review the grounds of conviction and the proportionality of the imposed sentence in relation to the act committed, whether it constitutes a felony, misdemeanor, or contravention.

The importance of double degree litigation increases with the seriousness of the offense and, consequently, with the severity of the prescribed penalty. The objective of this research is to highlight the guarantees achieved by double degree jurisdiction in felony cases, particularly following the amendment of the Criminal Procedure Code in 2017 (now repealed) and the issuance of Law No. 25-14, both of which adopted this principle. Accordingly, the core research question may be summarized as follows:

To what extent do the guarantees afforded to the accused manifest through the adoption of the principle of double degree of jurisdiction in felony cases?

The study adopts both the descriptive and analytical methods, by examining the relevant legal texts and doctrinal opinions addressing the principle of double degree of jurisdiction, analyzing them, and shedding light on the various guarantees ensured by this principle.

In order to answer the research question, the study is divided into two chapters. The first chapter is devoted to the nature of the principle of double degree of jurisdiction, detailing its concept and justifications through two sections. The second chapter addresses the guarantees of double degree jurisdiction in light of the reform of the Criminal Court, examining the substantive guarantees before the Court of First Instance for Felonies and the Criminal Court of Appeal in the first section, and dedicating the second section to the procedural guarantees resulting from the adoption of the principle of double degree of jurisdiction.

### Section One: The Principle of Double Degree of Jurisdiction as a Foundation of a Fair Trial

The litigant enjoys numerous guarantees embodied in a set of general foundations and principles that apply to all judicial bodies and at all stages through which the case proceeds, whether within the same judicial body or throughout the hierarchical structure of courts. This hierarchical structure ensures the realization of the principle of double degree of jurisdiction and the justifications it entails in providing the guarantees of a fair trial. These aspects will be addressed through the two sections that follow.

#### Requirement One: The Content of the Principle of Double Degree of Jurisdiction

The principle of double degree of jurisdiction is defined as a litigation principle realized through one of the ordinary means of appeal, namely appeal. Appeal is understood as a form of grievance aimed at re-examining the case before a higher court than the one that issued the judgment, whether the ruling was rendered in presence or in absentia, with the purpose of correcting or remedying errors committed by the court of first instance. It also seeks, to some extent<sup>1</sup>, to achieve a degree of uniformity in legal interpretation among courts.

This is subject to the condition that the court of first instance has exhausted its jurisdiction by issuing a judgment on the merits of the case rather than on procedural grounds, such as a ruling of lack of jurisdiction or inadmissibility.<sup>2</sup>

As for the legal nature of the right to double degree of jurisdiction, it finds its basis in the International Covenant on Civil and Political Rights, particularly Article 14(5), to which Algeria acceded on 16 May

<sup>1</sup> Abdel Sattar Salem Al-Kubaisi, *Guarantees of the Accused Before and During Trial*, 1st ed., Al-Halabi Legal Publications, Beirut, Lebanon, 2013, p. 873.

<sup>2</sup> Ramzi Riyad Awad, *Judicial Oversight of the Application of Fair Trial Guarantees*, Dar Al-Nahda, 2005/2006, p. 143

1989. Constitutionally, it was enshrined for the first time in the 2016 constitutional amendment under Law No. 16-01<sup>3</sup>, Article 160, which provides: “The law shall guarantee litigation on two levels in criminal matters and shall determine the modalities of its application.”

This was followed by the amendment of the Criminal Procedure Code through Law No. 17-07<sup>4</sup> (now repealed), which introduced reforms to the Criminal Court system and generalized the principle without exception. Subsequently, Law No. 25-14<sup>5</sup> maintained the same principle. It is worth noting that the 1966 Criminal Procedure Code had already established double degree litigation, but only for misdemeanors, contraventions, and civil sections of the court.

Although double degree jurisdiction has justifications and advantages reflecting the pursuit of a fair trial in which the accused enjoys substantial guarantees, it does not mean that the system is free from shortcomings. Among its criticisms are the prolongation of litigation, delays in adjudication, the slowing of judicial processes, and the accumulation of cases in court registries in a manner that prevents adequate examination. It also increases litigation costs, which the State seeks to reduce.

Adopting appeal mechanisms necessitates the establishment of additional chambers or judicial bodies, requiring more judges and court clerks. Furthermore, second-instance judges are not immune from error; sometimes the first-instance judgment may be more accurate<sup>6</sup>. Additionally, the speed of judgment plays a significant role in achieving the deterrent purpose of criminal punishment, which is a central objective of criminal legislation.

Opponents of double degree litigation argue that if the justification for a second level of jurisdiction lies in the possibility of error at first instance, the same reasoning applies to appellate judgments, as appellate courts are not infallible. Thus, the purpose of resorting to such a mechanism would be undermined. Assuming that second-instance courts are less prone to error and their judgments more just, critics ask what the accused would lose if first-instance courts were abolished and their guarantees transferred directly to a single higher court<sup>7</sup>, thereby saving time, effort, and expenses, and accelerating adjudication. They further question why litigation should not extend to three levels if greater fairness is the ultimate goal.<sup>8</sup>

Historically, the emergence of appeal did not primarily aim at correcting judicial errors but rather resulted from social and political needs related to centralization and control. In France, for example, appeal developed as a means by which monarchs sought to overcome feudal judicial authority and centralize judicial administration. Thus, it was more a political or administrative mechanism than a purely judicial one, serving the historical need for centralization and hierarchical coherence.<sup>9</sup> Despite these criticisms, the justifications and objectives underlying the activation of double degree litigation merit careful analysis, which will be addressed in the following section.

### **Requirement Two: Justifications of the Principle of Double Degree of Jurisdiction**

Some jurists argue that appeal, as enabled by the principle of double degree jurisdiction, is not a genuine safeguard intended to correct judicial errors but rather a social construct designed to address the historical issue of centralization and unification. Since its origin in France was tied to the monarchs’

<sup>3</sup> Official Gazette No. 14, dated 06 March 2016.

<sup>4</sup> Official Gazette No. 20, dated 27 March 2017, amending and supplementing Order No. 66/155 on the Code of Criminal Procedure.

<sup>5</sup> Zuleikha Tijani, *Procedural System Before the Criminal Court: A Comparative Study*, Dar Al-Huda, 2015, p. 270.

<sup>6</sup> Khairy Ahmed El-Kabbash, *Criminal Protection of Human Rights: A Comparative Study in Light of Islamic Sharia, Constitutional Principles, and International Covenants*.

<sup>7</sup> Khairy Ahmed El-Kabbash, *Criminal Protection of Human Rights: A Comparative Study in Light of Islamic Sharia, Constitutional Principles, and International Covenants*, Alexandria, 2002, p. 667.

<sup>8</sup> Khairy Ahmed El-Kabbash, *Ibid.*, p. 667.

<sup>9</sup> Ahmed Hindi, *The Principle of Two-Level Litigation: A Comparative Study*, Dar Al-Jam’ā Al-Jadida, Alexandria, 2009, p. 27.

efforts to consolidate judicial authority, it functioned more as a political-administrative structure than as a judicial guarantee. With the disappearance of the centralization problem, proponents of this view suggest that appeal should also disappear, as its historical objective has faded. In their view, its modern function is merely to correct potential errors in first-instance judgments, thus reducing it to a procedural safeguard aimed at ensuring the correctness of rulings.<sup>10</sup>

However, although a judgment is considered an embodiment of truth and generally prevents the dispute from being re-litigated, it remains a human act and may therefore be flawed. Judges may deviate from correctness due to bias, insufficient examination of facts, or inadequate mastery and application of legal rules. It would be dangerous to leave litigants to bear the consequences of such shortcomings without granting them an avenue to protect themselves and challenge erroneous judgments rendered against them. This protection is achieved through a second degree of jurisdiction capable of correcting both factual and legal errors.

Appellate judgments often carry greater authority and inspire more confidence than first-instance judgments, as appellate panels are generally composed of a larger number of judges who are typically more experienced and senior. In this way, additional safeguards consistent with the requirements of a fair trial are ensured.

As for the objection that double degree litigation prolongs proceedings, increases costs, and delays dispute resolution, and that it disproportionately benefits the wealthy who can afford appeal expenses, it may be countered that although litigation may indeed take longer, the proper administration of justice requires such delay to allow for a renewed examination of the case.

Respect for the rights of defense for all parties on an equal footing raises the necessity of implementing the principle of equality of arms, ensuring equal opportunities to present claims and defenses. This requires granting each party another opportunity to present their case, thereby establishing a fair balance and preventing abuse of the right to litigate. The principle thus constitutes a fundamental component of the right of defense and an essential guarantee of full equality.<sup>11</sup>

At the international level, the principle is recognized as a cornerstone of a fair trial. The Human Rights Committee has clarified that the concept of a fair trial entails several essential conditions, foremost among them the principle of equality of arms. The Committee has expressly affirmed that this principle applies to all judicial proceedings and, a fortiori, to criminal matters<sup>12</sup>, where its effective realization requires granting the opportunity for reconsideration of the case in order to remedy any injustice or error.

## **Section Two: Guarantees of Double-Degree Litigation in Light of the Reform of the Criminal Court**

Article 262 of Law No. 25-14 provides that:

“If the investigating judge considers that the facts constitute a crime classified by law as a felony, he shall order the case file and the list of evidence to be transmitted, without delay and through the Public Prosecutor, to the Attorney General before the Judicial Council to take the necessary measures in accordance with the provisions relating to the Indictment Chamber.”

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<sup>10</sup> Ahmed Hindi, *Two-Level Litigation: Its Limits and Application in Egyptian and French Law*, Dar Al-Nahda Al-Arabiya, undated, p. 28.

<sup>11</sup> United Nations Human Rights Committee, General Comment No. 32, paragraph 13, 91st Session of the General Assembly, Office of Democratic Institutions and Human Rights Publications, November 2007, p. 88.

<sup>12</sup> Decisions cited in the official documents of the General Assembly, Communication No. 307/1988, *J. Camille v. Belgium*, 40/48, declared on 24/03/1993, p. 280.

Accordingly, the legislator made felonies subject to mandatory investigation on two levels, which previously served as a justification for limiting criminal trials in felony matters to a single degree before the 2017 amendment.

In addition, the dual composition of the Criminal Court, consisting of professional judges and lay jurors, was also considered among the factors justifying single-degree litigation in felony cases.

The Criminal Court differs from other courts in that it has jurisdiction over felonies, as well as related misdemeanors and contraventions referred to it by the Indictment Chamber. It also rules on related civil claims. For this reason, it is considered a court of general jurisdiction. Moreover, it is a court of conviction (intime conviction), meaning that judges decide based on their personal conviction derived from the oral pleadings before them, without being required to provide detailed reasoning for their verdict.

### **Introduction of the Appellate Criminal Court (Post-2017 Reform)**

Following the 2017 reforms, and within the framework of justice reform in alignment with international standards advocating for double-degree litigation, the Appellate Criminal Court was introduced under Organic Law No. 17/06 (amending Article 18 of Organic Law No. 05/11 on judicial organization). It was later reaffirmed in the Criminal Procedure Code amendments (Law No. 17/07, repealed and replaced by Law No. 25-14).

The aim was to provide stronger guarantees for defendants. To assess the effectiveness of these guarantees, it is necessary to examine the court's composition and procedures.

### **First Requirement: Substantive Guarantees before the Primary and Appellate Criminal Courts**

#### **1. Sessions and Organization**

The Primary Criminal Court generally holds sessions at the seat of the Judicial Council. Exceptionally, and by decision of the Minister of Justice, it may sit elsewhere within the Council's jurisdiction (Articles 390–391 CCP).

Sessions are held in four sessions per year. Their opening is ordered by the President of the Judicial Council upon request of the Attorney General. Additional sessions may be convened when necessary. This maintains the system of periodic criminal sessions rather than continuous hearings, distinguishing it from misdemeanor courts.

#### **2. Composition of the Primary Criminal Court**

Under Article 395 of Law 25-14, the court is composed of:

- One judge (at least at the rank of counselor at the Judicial Council) as president,
- Two assistant judges,
- Two jurors (reduced from four under the 2017 amendment).
- The legislator thus reverted to the previous structure by reducing jurors to two.

Judges who previously acted as investigating judges, trial judges, members of the Indictment Chamber, or representatives of the prosecution in the same case are barred from sitting (Article 397 CCP), reinforcing impartiality.

#### **3. Composition of the Appellate Criminal Court**

The Appellate Criminal Court is composed of five members, equal in number to the primary court. This differs from earlier appellate formations, where appellate bodies typically had more members than first-instance panels.

For comparison, in France, the Criminal Court (Cour d'assises) is composed of six jurors at first instance (Article 296 French CCP)<sup>13</sup>, while the appellate formation consists of nine jurors. Prior to 2011, the numbers were even higher.<sup>14</sup>

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<sup>13</sup> Article 296, as amended by Law No. 2011-939 dated August 10, 2011, concerning the participation of citizens in criminal justice and juvenile justice.

#### 4. Strengthening the Role of the President

Under Article 288 CCP (maintained in Law 25-14), the president's authority in managing hearings was strengthened:

- Parties must seek permission before posing questions.
- The president may withdraw inappropriate questions.
- The president ensures orderly proceedings.
- This enhances procedural discipline and fairness.

#### Second Requirement: Procedural Guarantees under Double-Degree Litigation

##### A. Preparatory Procedures

- Notification of the Referral Order

After referral by the Indictment Chamber, the accused must be notified. Failure to notify may result in nullity if invoked by the accused.

- Transfer of the File

- The Attorney General transmits the file after the expiry of appeal deadlines (Article 406 CCP).

- Interrogation before Trial

The accused is interrogated at least eight days before trial and must be provided access to the case file at least five days prior (Article 408 CCP).

- Witness Lists

The prosecution, defense, and civil party must exchange witness lists at least three days before the hearing (Articles 409–410 CCP).

- List of Jurors

The accused must be notified of the juror list at least two days before trial (Article 411 CCP).

Abolition of the Custody Order (Mandat de dépôt automatique)

The repeal of automatic detention orders represents a significant advancement in upholding the presumption of innocence.

##### B. Guarantees during Trial

- Control of Questioning (Article 424 CCP)
- The president regulates questioning and may disallow improper questions.
- Structured Questioning of Guilt (Article 440 CCP)

After closing pleadings, the president formulates precise questions:

-“Is the accused guilty of committing this act?”

-Separate questions for aggravating circumstances or legal excuses.

If criminal responsibility is contested:

-Did the accused commit the act?

-Was the accused criminally responsible at the time?

Accordingly, it is incumbent upon the presiding judge to pose a question regarding each fact set out in the referral order issued by the Indictment Chamber. The law further requires that a separate question be asked for each fact, for each aggravating circumstance, and, where appropriate, for each legal excuse. An aggravating circumstance here refers to any circumstance, condition, or attribute that does not constitute one of the essential elements forming the felony itself, but which, if associated with the criminal act, with one of its material facts, with a characteristic of the offender or the victim, or with another legally relevant situation, leads to the imposition of a harsher penalty than that prescribed for the basic offense and may even alter its legal classification.<sup>15</sup>

<sup>14</sup> Debove Frédéric, Falletti François, and Dupic Emmanuel, *Précis de droit pénal et de procédure pénale*, Éditions Point Delta, 2013, p.888.

<sup>15</sup> Abdel Aziz Saad, *Principles of Procedures before the Criminal Court*, Dar Houma, Algiers, 2008, p.157.

One of the most significant qualitative developments strengthening the position of the defense is the mandatory requirement to provide reasons for Criminal Court judgments. This obligation was introduced under Article 309 of the repealed 2017 amendment to the Code of Criminal Procedure and is now enshrined in Article 440 of Law No. 25-14. The legislator requires the presiding judge of the Criminal Court, in the event of conviction, to prepare a written questions sheet specifying the principal elements that led the court to conclude that the accused is guilty.

Through this reasoning, the litigant is able to understand the grounds upon which the judge based the judgment. If a party finds fault with those grounds, they may exercise their right of appeal. It also enables the higher court to examine the reasoning underlying the judgment and allows the Supreme Court to supervise the correct application and interpretation of the law.<sup>16</sup>

Although this obligation imposes an additional burden on the presiding judge, since the Criminal Court is traditionally a court of personal conviction (intime conviction), and translating inner conviction into articulated legal arguments is not always straightforward, it nevertheless constitutes a fundamental safeguard for ensuring a fair trial, in accordance with paragraph 7 of Article 1 of the Code of Criminal Procedure.

Conviction, as a mental state, varies from one judge to another; it is difficult to assert that what a judge reaches represents absolute certainty or the most accurate conclusion. Judicial conviction is relative and influenced significantly by experience. The more experienced a judge is, the greater their ability to analyze, infer, and evaluate facts and evidence with clarity and assurance<sup>17</sup>. Despite this subjective dimension, the obligation to state reasons remains an essential procedural guarantee.

Moreover, pursuant to Article 280(2) of the repealed 2017 amendment and Article 416 of Law No. 25-14, the legislator introduced an additional safeguard: the possibility of granting provisional release to an accused whose case has been adjourned, upon request, until the date of the next session.

Finally, Article 430 of Law No. 25-14 sets out the rules governing the absence of the accused despite being duly summoned and without legitimate excuse. The court may issue a warning to appear; if the accused refuses, the presiding judge may order compulsory appearance through the public force or proceed with the trial in their absence. In such a case, all judgments delivered are deemed to have been rendered in the presence of the accused.

### **Conclusion:**

At the conclusion of this research paper, it was determined that despite the significance of the repealed Law No. 17/07 and Law No. 25-14 containing the Code of Criminal Procedure, both representing major legislative steps taken by the Algerian legislator to consolidate the principle of a fair trial through the recognition of appealability in felony matters, thereby aligning them with misdemeanors and contraventions, certain specific characteristics remain in the implementation of this principle.

Among these particularities is the composition of the Appellate Criminal Court, which is equal in number to that of the Primary Criminal Court, despite being a higher judicial body. There is also a tension between the requirement to provide reasons for judgments and the principle of personal conviction upon which criminal judgments are traditionally based.

Furthermore, the legislator did not grant the Appellate Criminal Court the authority to review the procedural correctness of the proceedings conducted before the Primary Criminal Court by affirming, amending, or annulling the appealed judgment. Instead, it vested the appellate court with the power to rehear the case entirely *de novo*. The legislator also placed the Public Prosecution and the accused on

<sup>16</sup> Farida Ben Younes, *Reforming the Criminal Court in Light of Law 17/07*, Journal of Legal Research and Studies, Issue 06, p.116.

<sup>17</sup> Bousna Ahmed, *Lectures on Reforming the Criminal Court System and the Legitimacy of Personal Conviction as the Sole Means for Issuing Judgments*, Legal and Judicial Research Center, Study Day held at Judges' Hotel on 03/10/2010, p.3.

equal footing with regard to the right to pose questions during the trial. Additionally, the powers of the presiding judge in managing the hearing and organizing pleadings were reinforced, and the procedures relating to default were replaced with procedures relating to absence. It is noticeable that these reforms overall strengthen fair trial guarantees and align with international standards reinforcing the presumption of innocence and the legality of proceedings, which constitute the reference framework of criminal litigation.

However, the 2017 amendment and the provisions introduced by Law No. 25-14 are not devoid of certain legal shortcomings that merit further consideration. Accordingly, the following recommendations may be proposed:

It is recommended to increase the number of members composing the Appellate Criminal Court compared to the Primary Criminal Court, given that, as a court of appeal, it should logically have a broader composition than the court of first instance.

It is further recommended to reconsider the powers of the Appellate Criminal Court so that it may review the validity of the first-instance judgment by affirming, amending, or annulling it, rather than issuing an entirely new and independent judgment.