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# NEW CODE OF CIVIL PROCEDURE

## BOOK I PROVISIONS COMMON TO ALL COURTS

## TITLE I PRELIMINARY PROVISIONS

## CHAPTER I GUIDING PRINCIPLES FOR TRIAL

### SECTION I PROCEEDINGS

#### Article 1

Only the parties may institute proceedings, save where the law shall provide otherwise. They shall have the right to terminate the same prior to them being disposed of by way of a judgment or by virtue of the law.

#### Article 2

Parties shall conduct the proceedings under the duties incumbent upon them. They shall carry out the procedural steps in accordance with the manner and within the time-limit as applicable.

#### Article 3

The judge shall supervise over the proper progress of the proceedings; he shall exercise such powers in view of imparting the time-limits and of giving such directions as necessary.

### SECTION II THE SUBJECT MATTER OF A DISPUTE

#### Article 4

The subject matter of a dispute shall be determined by the respective claims of the parties.

Such claims shall be set out in the originating application and in the defence. Notwithstanding the above, the subject matter of a dispute may be amended by incidental claims where they display a sufficient link so as to connect them with the original claim.

Article 5

A judge must rule upon all the points at issue and only upon them.

SECTION III THE FACTS

Article 6

In support of their claims, the parties shall be held to allege the relevant facts giving rise to them.

Article 7

A judge shall not found his decision on the facts not at issue.

A judge may even take into consideration such facts as forming part of the oral arguments but on which the parties did not lay specific emphasis to support their contention.

Article 8

A judge may invite the parties to provide factual explanations that he shall deem necessary in view of the resolution of the dispute.

SECTION IV EVIDENCE

Article 9

It shall be incumbent on each party to prove in accordance with the law the constituent facts in view of the success of his claim.

Article 10

A judge may exercise such powers ex proprio motu in the giving of such directions as shall be legally appropriate.

Article 11

Parties shall be held to assist in the implementation of directions, save that the judge may draw such conclusions from the abstention or refusal of a party in relation to the same.

Where a party is withholding an item of evidence, the judge may, on the application of the other party, order him to produce the same, where necessary under pain of a civil penalty. He may, on application by one of the parties, request or order, where necessary under the same penalty, the production of all exhibits in the possession of third parties where there are no legitimate impediment to producing them.

SECTION V THE LAW

Article 12

(*Conseil d'Etat No. 1975, 1905, 1948 to 1951 of 12 October 1979, Rassemblement des nouveaux avocats de France et autres, JCP 1980, II, 19288*)

A judge shall determine a dispute in accordance with the rules of law applicable thereto.

He shall provide or restore the proper legal definitions in relation to facts and deeds in issue without limiting himself for that matter to the denominations proffered by the parties.

He may ex proprio motu raise points of law irrespective of the legal basis relied upon by the parties.

Notwithstanding the above, he may not change such denomination or legal bases where the parties, by virtue of an express agreement and in the exercise of such rights which vest upon them an unfettered enjoyment, have limited his cognisance to such legal definitions and points of law within which they seek to restrict the argument.

Where a dispute has arisen, the parties may, where it shall pertain to the same matters and in the same conditions, vest the judge as an amicable compounder which shall be amenable to an appeal where the parties have not expressly renounced to the same.

Article 13

A judge may invite the parties to proffer such submission on points of law which he shall deem necessary for the resolution of the dispute.

SECTION VI THE ADVERSARY PROCEDURE

Article 14

No party may have a determination entered against him without having been heard or called.

Article 15

The parties shall be held to make known in due time to each other the set of facts giving rise to their claim, the items of evidence they shall produce and points of law they shall rely upon so that each of them shall be in a position to prepare his case.

Article 16

(*Decree No. 76-714 of 29 July 1976, sec. 1, Official Journal of 30 July 1976*)

(*Conseil d'Etat 1875, 1905, 1948 to 1951 of 12 October 1979, Rassemblement des nouveaux avocats de France et autres, JCP 1980, II, 19288*)

(*Decree No. 81-500 of 12 May 1981, sec.6, Official Journal of 14 May 1981*)

A judge shall, at any event, cause to comply, and shall himself comply, with the adversary principle.

He may not, in his decision, take into consideration issues, explanations and exhibits relied upon or produced by the parties save where the parties had an opportunity to consider them in an adversarial manner.

He shall not found his decision on points of law which he has raised ex proprio motu without having first invited the parties to comment thereon.

Article 17

Where the law shall allow or where the circumstances shall necessitate that a direction be given without informing a party, the latter shall have an appropriate right of review where he is aggrieved by a decision pursuant to the same.

SECTION VII THE CONTENTION

Article 18

A party may plead his cause himself subject to circumstances where representation shall be mandatory.

Article 19

A party shall choose freely his representative either to represent him or to assist him in accordance with the law or its directives.

Article 20

A judge may hear the parties themselves at any time.

SECTION VIII SETTLEMENT

Article 21

It shall be part of the duties of the judge to conciliate the parties.

SECTION IX ORAL ARGUMENTS

Article 22

Oral arguments shall be held in public, save where the law allows or directs that they be held in chambers.

Article 23

A judge shall not be bound to have recourse to an interpreter where he shall master the language used by the parties.

SECTION X DUTY OF COURTESY

Article 24

Parties shall be bound to act at all times with due respect to the law.

A judge may, according to the seriousness of the contempt, pronounce, even ex proprio motu, injunctive decrees, ban publications, declare them defamatory or order the publication and posting of his judgments.

## CHAPTER II RULES APPLICABLE TO NON-CONTENTIOUS MATTERS

### Article 25

A judge shall rule upon in a non-contentious matter where in the absence of a dispute he is seised of an application in relation to which the law requires, by virtue of the nature of the matter or the status of the petitioner, that it shall be brought under his supervision.

### Article 26

A judge may found his decision on all the facts relative to the case submitted before him, even those which have not been alleged.

### Article 27

A judge shall proceed with, even ex proprio motu, all necessary investigations.

He shall have the power to hear without any prescribed formality persons who may provide guidance to him as well as those whose interests may be aggrieved by his decision.

### Article 28

A judge may rule upon a matter without it being subsequent to oral arguments.

### Article 29

A third party may be granted leave by the judge to consult the file of a case and to have copies thereof delivered to him where he shall show cause of a legitimate interest in the same.

## TITLE II THE ACTION

### Article 30

An action is the right, in relation to the originator of a claim, to be heard on the merits of the same in order that the judge shall pronounce it well or ill-founded.

In relation to the opponent, an action is the right to contest the merits of a claim.

Article 31

An action shall lie to all persons having a legitimate interest in the success or the dismissal of a claim save where the law shall confer locus standi only to those persons allowed to bring or contest a claim or to defend a specific interest.

Article 32

A claim made by or against a person who is divested of the right to bring an action shall be inadmissible.

Article 32-1

(*Inserted by Decree No 78-62 of 20 January 1978, sec.14, Official Journal of 24 January 1978*)

A litigant acting in a dilatory or vexatious manner may be penalised by way of a civil penalty of F 100 to F 10 000, without prejudice to damages and interests thereon which may be claimed.

## TITLE III JURISDICTION

### CHAPTER I SPECIFIC JURISDICTION

Article 33

The jurisdiction of a court that it shall entertain in relation to a subject-matter shall be determined by the rules relating to judicial organisation and by way of specific provisions.

Article 34

Jurisdiction to be entertained in relation to an amount of a claim or in relation to a jurisdictional value-limit under which no appeal shall lie shall be determined by rules specific to each court and by the provisions as hereinafter.

Article 35

Where several claims relying on different facts and which are not connected with one another are made by a claimant against the same opponent and joined in the same proceedings, the relevant jurisdiction and the jurisdictional value-limit shall be determined by the nature and the value of each claim considered separately.

Where the claims which are consolidated draw on the same facts or are connected therewith, the relevant jurisdiction and jurisdictional value-limit shall be determined by the aggregate value of the claims.

Article 36

Where claims are brought in one single proceedings pursuant to a common action on behalf of several claimants or against several defendants, the jurisdiction and the jurisdictional value-limit shall be determined in relation to all the claims by virtue of that one claim which shall carry the highest claim-value.

Article 37

Where the jurisdiction of a court shall depend on the amount of a claim, the court shall entertain all interventions and counterclaims and set-offs which are lower to its jurisdictional value-limit even where, joined to the claims of the claimant, they shall exceed the said value-limit.

Article 38

Where the incidental claim shall exceed the jurisdictional value-limit a court, a judge of the same, where a party shall allege a lack of jurisdiction, may either rule upon the original claim or may remit the parties to litigate in relation to the totality of the matter before the competent court which may have cognisance of the incidental claim. Notwithstanding the above, where a counterclaim for damages and interest is based exclusively on the original claim, the judge shall be competent to entertain the matter irrespective of the value of the claim.

Article 39

Subject to the provisions of Article 35, no appeal shall lie against the judgment where none of the incidental claims shall exceed the jurisdictional value-limit of the last resort.

Where one of them shall exceed such limit, the judge shall rule as a tribunal of first resort in relation to all the claims. He shall rule upon as of last resort where the claim which shall exceed the jurisdictional value-limit is further to a counterclaim for damages and interests based exclusively on the original claim.

Article 40

An appeal shall lie against the judgment which has ruled upon an unspecified claim save where there are contrary provisions to the same.

Article 41

Once a dispute has arisen, the parties may nevertheless agree to submit their dispute before a court which otherwise would have lacked jurisdiction with reference to amount the of the claim.

Further, they may, under the same condition and for matters which vest upon them an unfettered right, agree by virtue of an express agreement that their dispute shall be justiciable without a right of appeal even where the amount of the claim shall exceed the jurisdictional value-limit of the last resort.

## CHAPTER II TERRITORIAL JURISDICTION

Article 42

(*Decree No.81-500 of 12 May 1981, sec.7, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The court territorially competent shall be, save where contrary provisions shall apply, the one for the situs where the defendant has established his dwelling.

Where there are several defendants, the claimant shall seise, at his choice, the court of the situs where one of them has established his dwelling.

Where the defendant has no known domicile or known residence, the claimant may seise the court of the situs where he has established his dwelling or anyone of his choice where he has established his dwelling in a foreign country.

Article 43

Where the defendant has established his dwelling shall mean:

- in relation to a natural person, the situs where he has his domicile or, in default thereof, his residence,

- in relation to a corporate entity, the situs where it is established.

Article 44

In real actions relating to immovables, the court in whose province it is situated shall be the only competent court.

Article 45

Matters involving succession shall be brought before the court in whose province the succession originated and was effectuated to the time of the apportionment where they relate to:

- claims among heirs;

- claims brought by creditors of the decedent;

- claims regarding the implementation of disposition taking effect causa mortis.

Article 46

(*Decree No.81-500 of 12 May 1981, sec.7, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The claimant may seise at his choice, in addition to the court in whose province the defendant has established his dwelling;

- in contractual matters, the court in whose province actual delivery of the personalty or in whose province the performance of the agreed service has been contemplated;

- in delictual matters, the court in whose province the wrongful act was occasioned or the one in whose province the damage was suffered;

- in mixed matters, the court in whose province the immovable is situated;

- in matters of spousal maintenance or contribution to the expenses of marriage, the court in whose province the creditor has established his dwelling.

Article 47

Where a judge or an auxiliary of justice is a party to a litigation within the jurisdiction of the court in the province of which the latter sits in office, the claimant may seise a court sitting in an adjacent province.

The defendant and all parties to an appeal may likewise ask to remit the matter before a court referred to under the same conditions; matter shall be proceeded with as provided under Article 97.

Article 48

Any clause which, directly or indirectly, shall depart from the rules of territorial jurisdiction shall be deemed non existent save where it has been agreed between parties to a contract entered into in the capacity of tradesmen and that the same has been provided for in an explicit manner in the undertakings of the party against whom it shall be enforced.

## CHAPTER III COMMON PROVISIONS

Article 49

A court seised of a claim in relation to which it shall entertain jurisdiction, shall have cognisance of all the grounds adduced in defence, even where they shall require an interpretation of a contract, save where they shall raise issues which shall come under the exclusive jurisdiction of an another court.

Article 50

Preliminary issues of proceedings shall be ruled upon by the court before which the proceedings to which they relate shall be carried out.

Article 51

The *tribunal de grande instance* shall entertain jurisdiction in relation to all incidental claims which shall not come under the exclusive jurisdiction of an another court.

Other courts shall entertain jurisdiction in relation to preliminary issues only where they are jurisdictive over the same.

Article 52

(*Decree No. 78-62 of 20 January 1978, sec.15 Official Journal of 24 January 1978*)

(*Decree No.81-500 of 12 May 1981, sec.9, Official Journal of 14 May 1981*)

Claims in relation to costs, emoluments and disbursements which are incidental to a proceeding, and which have been outlayed before a court by the auxiliaries of justice, public officers or *officiers ministériels* shall be brought before such court.

Claims regarding costs, emoluments and disbursements which have not been outlayed before a court shall be brought before the *Tribunal d'instance* or the *Tribunal de grande instance*, according to the amount of the same, in the province where the public officer or the *officier ministériel* or the auxiliary of justice carries out his business.

## TITLE IV CLAIM BEFORE A COURT

### CHAPTER I INITIAL CLAIM

#### SECTION I CLAIM IN CONTENTIOUS MATTERS

Article 53

The originating application is the one whereby a litigant shall take the initiative of judicial proceedings by submitting his contentions before a judge.

It shall initiate the proceedings.

Article 54

Subject to cases where proceedings are instituted by way of a petition or by way of a declaration to the clerk's office of the court and those where cognisance shall be taken by a voluntary presentation of the parties before a judge, the originating application shall be brought by way of summons or by the filing of a joint petition at the clerk's office of the court.

Article 55

Summons is a process of a huissier of justice whereby a claimant shall cite his opponent to appear before a judge.

Article 56

(*Decree No. 98-1231 of 28 December 1998, sec.3, Official Journal of 30 December 1998, in force on 1 March 1999*)

The summons shall contain, under penalty of it otherwise being null, further to the particulars prescribed for process served by a huissier of justice:

1° The indication of the court before which the claim is brought;

2° The subject-matter of the claim with a presentation of the issues of facts and of law;

3° The indication that, where the defendant fails to appear, he shall incur the risk that a judgment be entered against him on the sole items produced by his opponent;

4° Should the occasion arise, particulars in relation to the identification of immovables as required by the land registry in relation to their advertisement.

Further, it shall contain indications in relation to the exhibits in support of the claim. Such exhibits shall be listed in a docket which shall be attached.

It shall amount to the necessary pleadings.

Article 57

The joint petition shall be the process in common whereby the parties shall submit before a judge their respective claims, the points on which they disagree as well as their respective grounds.

It shall contain, further, under penalty of it otherwise being inadmissible:

1° a) in relation to natural persons, the surname, first names, occupation, domicile, nationality, date and place of birth of each of the petitioners;

b) in relation to corporate entities, their form, denomination, the address of their registered office and the body which shall legally represents them;

2° an indication of the court before which the claim is brought;

3° should the occasion arise, particulars in relation to the identification of immovables as required by the land registry in relation to their advertisement.

It shall also contain an indication as to the exhibits in support of the claim.

It shall be dated and signed by the parties.

It shall amount to the necessary pleadings.

Article 58

Where such right is conferred upon them by virtue of Article 12, the parties may, where they have not yet resorted to the same since the commencement of the dispute, vest the judge with the vires of an amicable compounder by virtue of the joint petition or limit his cognisance to such legal definitions and points of law within which they seek to restrict the argument.

Article 59

The defendant shall have to, on pain of being declared, even ex proprio motu, inadmissible, set out in his defence:

a) in relation to a natural person, his surname, first names, occupation, domicile, nationality, date and place of birth;

b) in relation to a corporate entity, its form, denomination, registered seat and the department that shall represent it legally.

## SECTION II CLAIM IN NON-CONTENTIOUS MATTERS

### Article 60

In non-contentious matters, the claim shall be brought by way of petition.

### Article 61

The judge shall be seised by the filing of the petition at the clerk's office of the court.

### Article 62

Further, before a *tribunal d'instance*, a claim may be brought and the court seised by way of an oral declaration taken down by the clerk's office-registry of the court.

## CHAPTER II INCIDENTAL CLAIMS

### Article 63

Incidental claims are: counterclaim, additional claim and intervention.

### Article 64

Shall constitute a counterclaim a claim whereby the original defendant shall contend in his favour beyond the mere dismissal of the contention brought forward by the opponent.

### Article 65

Shall constitute an additional claim a claim whereby a party shall amend his previous claims.

Article 66

Shall constitute an intervention a claim whereby the effect shall be to join a third party to an action which involved the original parties.

Where the claim shall emanate from a third person, the intervention shall be voluntary: the intervention shall be a compelled one where a party has impleaded a third person.

Article 67

The incidental claim shall have to contain the claims and grounds of the party bringing it and shall identify the supporting documents.

Article 68

Incidental claims shall be brought against parties to a proceedings in the same manner as defences are submitted.

They shall be brought against defaulting parties or third parties in the manner provided for to institute proceedings. In relation to appeals, they shall be brought by way of summons.

Article 69

The instrument whereby an incidental claim is brought shall amount to a pleading; it shall have to be denounced to other parties.

Article 70

Counterclaims or additional claims shall only be admissible where they are connected by way of a sufficient link with the original claims.

Notwithstanding the above, a claim for set-off shall be admissible even in the absence of such a link, but the judge may sever them where it is likely to delay excessively the judgment on the whole.

## TITLE V GROUNDS OF DEFENCE

### CHAPTER I DEFENCE

Article 71

A point which shall cause the dismissal because unfounded in relation to the merits, after an examination of the law, the claims of the opponent shall constitute a substantive defence.

Article 72

Substantive defences may be proffered at any stage of the proceedings.

## CHAPTER II PROCEDURAL PLEAS

Article 73

Issues raised against a procedural course of action to have it declared irregular, extinguished or stayed shall constitute a procedural plea.

Article 74

Pleas shall have, under penalty of it otherwise being inadmissible, to be raised simultaneously and prior to any substantive defence or peremptory declaration of inadmissibility. It shall be likewise even where the rules relied upon to sustain the plea are of public policy.

A request for service of exhibits shall not constitute a ground for inadmissibility of the pleas.

The provisions of the first sub-article shall not prevent the application of Articles 103, 111, 112 and 118.

### SECTION I PLEAS AGAINST JURISDICTION

#### SUB-SECTION I LACK OF JURISDICTION RAISED BY THE PARTIES

Article 75

Where it is alleged that the court seised lacks jurisdiction, the party who shall proffer the plea shall have, under penalty of it otherwise being inadmissible, to provide reasons thereof and to indicate, at all event, court before which the matter should be brought.

Article 76

The judge may, in one single judgment, but by way of separate dispositions, hold himself competent and rule upon the merits of the dispute provided that he shall put the parties on default notice to plead on the merits in relation to the matter.

Article 77

Where he does not rule upon the substance of the dispute, but where the determination of a point of jurisdiction shall be dependent upon the substance at issue, the judge shall have to, in the holding of the judgment, rule upon the substantive issue and upon jurisdiction by separate dispositions.

SUB-SECTION II APPEAL

Article 78

Where the judge shall hold himself competent and where he shall rule upon the merits of a case in one judgment, the same may only be impugned by way of appeal, either on the entirety of the holdings where they are amenable to an appeal, or on the ground of jurisdiction where the decision on the merits has been delivered as of first and last resort.

Article 79

Where the [appeal] court shall reverse the judgment by virtue of the issue of jurisdiction, it shall, nevertheless, rule upon the merits of the case where the impugned decision is amenable to an appeal on its entirety and where the [appeal] court is the proper appellate forum in relation to the lower court which would have been competent in this matter.

Otherwise, in reversing a judgment on the issue of jurisdiction, the [appeal] court shall refer the matter to that other appellate forum jurisdictive over that lower court which would have been competent in this matter as a tribunal of first instance. This decision shall bind the parties and the court before which the matter is remitted.

SUB-SECTION III APPELLATE PLEA AGAINST JURISDICTION

Article 80

Where the judge rules upon a point of jurisdiction without determining the merits of the case, his decision may only be impugned by way of an appellate plea against jurisdiction, even though the judge has resolved the substantive issue determinative of jurisdiction.

Subject to special rules as to expertise, the decision may similarly be impugned only by way of an appellate pleas against jurisdiction where the judge has ruled in relation to the issue of jurisdiction and has given a direction or issued an interim order.

Article 81

Where the judge holds himself competent, the proceedings shall be stayed until the expiration of the time-limit for lodging the appellate plea against jurisdiction and, where the same is lodged, until that the court of appeal has delivered its decision.

Article 82

(*Decree No. 78-62 of 20 January 1978, sec.16, Official Journal of 24 January 1978)*

The appellate plea against jurisdiction shall have, under penalty of it otherwise being inadmissible, to set out its grounds and shall be remitted to the clerk's office of the court ad quo which has pronounced the decision within fifteen days therefrom.

Where the appellate plea against jurisdiction are to be lodged subject to court's costs payable to the clerk's office, the lodgment of the same shall be proceeded with only where the appellant has paid into court by consignation an amount covering the costs.

An acknowledgment shall be issued on its lodgment.

Article 83

(*Decree No. 78-62 of 20 January 1978, sec.16, Official Journal of24 January 1978)*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The clerk of the court ad quo which has delivered the decision shall notify without delay a copy of the appellate plea to the opponent party by recorded letter with the advice of delivery slip sought and shall likewise inform his representative where he has retained one.

Simultaneously, he shall transmit to the registrar-in-chief of the [appeal] court the file of the case subjoined with the appellate plea and a copy of the judgment.

Article 84

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The first president shall set the date of the hearing, which shall have to take place as soon as possible.

The registrar of the court shall inform the parties by recorded letter with the advice of delivery slip sought.

Article 85

Parties may, in support of their claims, submit any written argumentation which they shall consider appropriate. Such papers, bearing the imprint of the judge, shall be put on record.

Article 86

The appeal court shall refer the matter to the one which it shall deem competent. Such decision shall be binding on the parties and on the referral judge.

Article 87

(*Decree No. 76-1236 of 28 December 1976, sec.1, Official Journal of 30 December 1976*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The registrar of the court shall notify the parties of the judgment immediately by recorded letter with the advice of delivery slip sought.

Such judgment may not be amenable to an application to be set aside. The time-limit for a petition in cassation shall run as from the notification of the same.

Article 88

(*Decree No. 78-62 of 20 January 1978, sec.18, Official Journal of24 January 1978)*

Costs incidental to the appellate plea against jurisdiction shall be borne by the loosing party on the issue of jurisdiction. Where the latter is the originator of the appellate plea

against jurisdiction, he may further be ordered to pay a civil penalty of F 100 to F 10,000 without prejudice to any claim for damages and interest which may be brought against him.

Article 89

Where the [appeal] court is the appellate forum in relation to the lower court which the former shall deem jurisdictive of the matter, the said appeal court may proceed to consider the merits of the case where it shall hold the view that justice commands that a definite solution be brought to the matter at issue, after having issued, should the occasion arise, any necessary directions.

Article 90

Where it shall decide to hear the substance of the matter, the court shall invite the parties, should the occasion arise, by recorded letter with the advice of delivery slip sought, to retain an *avoué* within the time-limit that it fixes, where such retainership is required by the rules applicable to appeals against decisions pronounced by the lower court which gave the impugned judgment over the issue of jurisdiction.

Where none of the parties has retained an *avoué*, the court may ex proprio motu strike out the matter by a reasoned decision which shall not be subject to appeal. A copy of such decision shall be brought to the notice of each of the parties by ordinary letter addressed to their domicile or residence.

Article 91

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Where the court considers that the decision which is brought before it by way of an appellate plea against jurisdiction should have been brought by way of an appeal, it shall nevertheless be seised of the matter.

The matter shall then be examined and judged according to the rules applicable to appeals against a decision pronounced by the lower court which has been impugned pursuant to the appellate plea.

Where, according to these rules, the parties have to retain an *avoué*, the appeal shall ex proprio motu be declared inadmissible where the party who proffered the appellate plea against jurisdiction has not retained any *avoué* within a month of the advice given to the parties by the registrar of the court.

SUB-SECTION IV LACK OF JURISDICTION RAISED EX PROPRIO MOTU

Article 92

(*Decree No. 76-1236 of 28 December 1976, sec.2-i and II, Official Journal of 30 December 1976*)

Lack of jurisdiction may be declared ex proprio motu in cases of contempt of a rule which confers specific jurisdiction to a designated forum where such rule pertains to public policy or where a defendant does not appear. The same may only be declared in the aforementioned cases alone.

Before a court of appeal and the *Cour de cassation*, lack of jurisdiction may be raised ex proprio motu only where the matter shall appertain to a criminal or administrative court or shall lie outside the cognisance of a French court.

Article 93

(*Decree No. 76-1236 of 28 December 1976, sec.3, Official Journal of 30 December 1976*)

In non-contentious matters, the judge may raise ex proprio motu his lack of territorial jurisdiction. He may only do so, in contentious matters, in litigations relating to the status of persons in cases where the law ha conferred exclusive jurisdiction to another court or where a defendant does not appear.

Article 94

An appellate plea against jurisdiction shall be the only means available where a court ruling upon a matter as a court of first instance shall declare itself ex proprio motu as lacking jurisdiction.

SUB-SECTION V COMMON PROVISIONS

Article 95

Where the judge, in considering his jurisdiction, resolves the substantive issue determinative of the same, his ensuing decision shall have the authority of res judicata in relation this substantive consideration.

Article 96

Where a judge considers that the matter appertains to a criminal, administrative, arbitral or foreign court, he shall only remit the parties thereto to perfect their petition.

At all events, a judge who holds himself as lacking jurisdiction shall designate the forum which he holds competent. This designation shall be binding on the parties and the ad quem referral judge.

Article 97

(*Decree No. 76-1236 of 28 December 1976, sec.4, Official Journal of 30 December 1976*)

(*Decree No. 81-500 of 12 May 1981, sec.10, Official Journal of 14 May 1981*)

Where there is a remission before a designated forum, the file of the matter shall be transmitted to the latter as soon as possible by the clerk of the court with a copy of the decision to remit. Notwithstanding the above, the transmission shall only be carried out in the absence of an appellate plea against jurisdiction within the time-limit where such mean was available against the decision of to remit.

On receipt of the file, the parties shall be invited by recorded letter with the advice of delivery slip sought by the clerk of the designated forum to prosecute the proceedings and, where the same appears necessary, to retain an *avocat* or *avoué*.

Where, before such a forum, the parties are required to be represented, the matter shall be deleted off the list ex proprio motu where none of the parties has retained an *avocat* or *avoué*, as appropriate, within a month of the advice given to them.

Where the remission is before the court which was originally seised of the matter, the proceedings shall be prosecuted at the suit of the judge.

Article 98

A lodgment of an appeal shall be the only mean available against summary interlocutory procedure orders and against a decree of the conciliating judge in matters of divorce or judicial separation.

Article 99

As an exception to the rules of the present Section, the court may only be seised by way of an appeal where the lack of jurisdiction has been relied upon or raised ex proprio motu on the ground that the matter appertains to an administrative court.

## SECTION II PLEAS OF LIS ALIBI PENDENS AND AGAINST DOUBLE COGNISANCE

### Article 100

Where a same cause of action is pending before two forums of the same hierarchy equally competent, the court seised last shall relinquish jurisdiction in aid of the first seised one where one of the parties so requests. In default thereof, this may be proceeded with ex proprio motu.

### Article 101

Where matters currently apprised by different forums shall exhibit links between them so that it is in the interest of justice to manage and to determine them together, one of forum seised may be asked to relinquish jurisdiction and to remit the matter as it shall stand before the other.

### Article 102

Where the forums seised are not of the same hierarchy, pleas of litispendens or those against double cognisance may only be raised before the inferior one.

### Article 103

A plea against double cognisance may be brought at any time during the proceedings, save that it may be dismissed where raised at a late stage in a dilatory intention.

### Article 104

Reviews against decisions pronounced in relation to lis alibi pendens or double cognisance by forums of first instance shall be brought and determined in the same manner as in relation to a plea against jurisdiction.

Where there is a multiplicity of reviews, it shall be for the court of appeal seised first to decide, where it upholds the plea, to remit the matter to an another court which in the circumstances shall appear most convenient to have cognisance of the matter.

### Article 105

The decision given on the pleas of exceptions as above, either where pronounced by the court seised or where it is pursuant to an appeal, shall be binding on both the court of remission and on the court which was ordered to relinquish jurisdiction.

Article 106

Where both courts have relinquished jurisdiction, the decision pronounced last shall be deemed void.

Article 107

Where on a question of double cognisance, difficulties arise between different panels of the same court, they shall be resolved without any formality by the president. His decision shall be an act of judicial administration.

SECTION III DILATORY PLEAS

Article 108

The judge shall have to stay the proceedings where the party requesting the same has in his favour a certain period in order to carry out an inventory and effect a deliberation or has a vested right of a benefit of discussion or a benefit of divided liability, or has in his favour such other periods as afforded by law.

Article 109

The judge may grant for the benefit of a defendant a postponement in view of issuing proceedings against a surety.

The proceedings shall resume their course upon the expiration of the time-limit granted for the surety to appear; save that the indemnity claim shall be ruled upon separately where the impleading of the surety was not carried out within the time-limit fixed by the judge.

Article 110

Further, the judge may stay proceedings where one of the parties shall rely upon a decision which is the subject-matter of an application to set aside, or of a review to reconsider or of a petition in cassation.

Article 111

The party who has the benefit of a time-limit to draw up an inventory and to effect a deliberation may proffer such other pleas of exceptions after the expiration of such time-limit.

SECTION IV PLEAS OF NULLITY

SUB-SECTION I NULLITY OF INSTRUMENTS OWING TO FORMAL IMPROPRIETY

Article 112

The nullity of processual papers may be raised as and when they are served; but their impropriety shall be waived where the person seeking to rely upon the same, has proffered, subsequent to the impugned instrument, a substantive defence or a plea seeking a peremptory declaration of inadmissibility .

Article 113

Grounds contending to the effect that processual papers shall be null, shall have to be raised simultaneously on pain of inadmissibility of such other grounds which shall not have been raised on that occasion.

Article 114

No processual paper may be declared null for a formal impropriety where the nullity was not expressly provided for in law, save where there is a failure to observe an essential formality or where it shall pertain to public policy.

Nullity may not be pronounced save where the opponent who relies upon it proves the prejudice the impropriety has caused to him even in the case of an essential formality or where it pertains to public policy.

Article 115

The impropriety is made right on it being subsequently remedied, where no time-limitation has intervened and where no prejudice shall subsist.

Article 116

The sanction for failure to observe procedural formality prior to the oral arguments shall be subject to the rules provided in this sub-section.

## SUB-SECTION II NULLITY OF INSTRUMENTS OWING TO SUBSTANTIVE IMPROPRIETY

### Article 117

Shall constitute substantive impropriety affecting the validity of an instrument:

Lack of capacity to ester in judgment;

Lack of authority of a party or a person appearing in the proceedings as the representative of either a corporate entity or of a person under legal incapacity;

Lack of capacity or authority of a person legally representing a party before a court of law.

### Article 118

Pleas of nullity based on the failure to observe the substantive rules relating to processual papers may be raised at any stage of the proceedings, but the judge may award damages and interest against a party who, in a dilatory intention, failed to raised the same earlier.

### Article 119

Pleas of nullity based on the failure to observe substantive rules relating to processual papers shall be admissible without the party raising them having to prove a prejudice caused to him even where the nullity does not result from express provisions.

### Article 120

Pleas of nullity based on the failure to observe substantive rules relating to processual papers shall have to be raised ex proprio motu where they pertain to matters of public policy.

The judge may raise ex proprio motu the nullity in view of the lack of capacity to ester in judgment.

### Article 121

In cases where it is susceptible of being remedied, nullity shall not be entered where the defect has been remedied at the moment the judge shall rule upon the same.

## CHAPTER III PEREMPTORY DECLARATION OF INADMISSIBILITY

### Article 122

Shall constitute a plea seeking a peremptory declaration of inadmissibility one which, without an examination on the merits of the case, shall cause to render the opponent's claim inadmissible on the grounds that it does not disclose a right of action, a locus standi or an interest, or it is precluded by virtue of prescription, a determined time-limit or by the operation of res judicata.

### Article 123

A plea seeking a peremptory declaration of inadmissibility may be brought at any stage of the proceedings save that the judge may order damages and interest against those who, in a dilatory intention, failed to raise them earlier.

### Article 124

A plea seeking a peremptory declaration of inadmissibility shall be admissible without the party raising it shall have to prove a prejudice caused to him even where the inadmissibility shall no result from express provisions.

### Article 125

(*Decree No. 79-941 of 7 November 1979, sec.5, Official Journal of 9 November 1979 in force on 1 January 1980*)

A peremptory declaration of inadmissibility shall have to be raised ex proprio motu where it pertains to matters of public policy, and namely where they result from an inobservance of a time-limit within which means of review are to be instituted or where no means of review shall lie.

The judge may raise ex proprio motu the question of a peremptory declaration of inadmissibility where the action lacks interests to suing out.

### Article 126

In the case where the situation giving rise to a peremptory declaration of inadmissibility may be remedied, the inadmissibility shall be set aside where its cause shall no longer exist at the moment the judge shall rule upon it.

The same shall apply where, before the operation of a preclusion to suing out, a person having standing to act shall be joined as a party to the proceedings.

## TITLE VI SETTLEMENT

### Article 127

Parties may mediate as between themselves a settlement or the same may be engineered by the judge at any time during the proceedings.

### Article 128

A attempt at conciliation may be undertaken, save where special provisions shall apply, at such venue and time as the judge shall deem proper.

### Article 129

Parties may always request the judge to record their settlement.

### Article 130

The tenor of the agreement, even where partial, shall be recorded in a procès-verbal signed by the judge and by the parties.

### Article 131

Abstracts of the procès-verbal recording the agreement may be delivered; they shall be enforceable.

## TITLE VI B MEDIATION

### Article 131-1

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

A judge seised of a dispute may, after having received the agreement of the parties, appoint a third person to hear the parties and to confront their points of view so as to allow them to resolve the issues dividing them.

The same power may be exercised by the summary interlocutory procedure judge in the course of a proceeding.

Article 131-2

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

Mediation shall relate to the whole or a part of the dispute.

At any event it shall not bring the matter out of the cognisance of the judge who may at any time give all other directions which shall appear necessary to him.

Article 131-3

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

The initial time-limit for mediation shall not exceed three months. The assignment may be renewed once, for the similar duration, at the suit of the mediator.

Article 131-4

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

Mediation may be assigned to a natural person or to an association.

Where the appointed mediator is an association, its legal representative shall submit to the approbation of the judge the surname or surnames of the natural person or persons who shall implement the measure on its behalf.

Article 131-5

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

A natural person implementing mediation shall have to satisfy the following conditions:

1° Not having been the subject of a criminal sentence, of an incapacity or a forfeiture as indicated in the N° 2 criminal record bulletin.

2° Not having been the originator of facts contrary to honour, probity and good virtue which gave rise to disciplinary or administrative sanctions of dismissal, removing off, revocation, or that of a withdrawal of consent or authorisation;

3° To hold, by actual and past occupation, the required qualifications with regard to the nature of the dispute;

4° To show cause of, as the case may be, a training or experience suitable for the practice of mediation;

5° To demonstrate sufficient guarantee of independence necessary to conduct mediation.

Article 131-6

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

The decision which orders a mediation shall indicate the agreement of the parties, appoint the mediator and the initial duration of his enterprise and indicate the date at which the matter shall be called for a hearing.

It shall fix the amount of the deposit for the remuneration of the mediator at a level which is the nearest possible to the foreseeable payment and shall designate the party or parties who shall deposit by consignation within the imparted time-limit; where several parties are designated, the decision shall indicate the contribution in relation to consignation of each party.

In default of a deposit by consignation, the decision shall lapse and the proceedings shall be prosecuted.

Article 131-7

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

As from the pronouncement of the decision appointing the mediator, the registry of the court shall notify a copy thereof by ordinary letter to the parties and the mediator.

The mediator shall immediately make known to the judge his acceptance in relation to the same.

As soon as he is informed by the registrar of the consignation, he shall have to convene the parties.

Article 131-8

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

The mediator shall not hold powers to give directions. Notwithstanding the above, he may, with the agreement of the parties and as necessitated by the mediation, hear third persons consenting to the same.

The mediator may not be appointed, in the course of the same proceedings, to implement directions.

Article 131-9

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

The natural person who carries out a mediation shall inform the judge of difficulties encountered in the implementation of his assignment.

Article 131-10

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

The judge may put an end, at any time, to the mediation on application by a party or on the initiative of the mediator to the same.

The judge may, further, ex proprio motu put an end thereof where the proper progress of the mediation shall seem to have been compromised.

At all events, the matter shall have to be called for a hearing to which the parties shall have to be convened at the suit of the registrar by recorded letter with the advice of delivery slip sought.

At such hearing, the judge, where he puts an end to the assignment of the mediator, may revive the proceedings. The mediator shall be informed of the decision.

Article 131-11

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

At the termination of his enterprise, the mediator shall inform in writing the judge that the parties have or not resolve the issues dividing them.

On the day fixed, the matter shall be brought before the judge.

Article 131-12

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

At the request of the parties the judge shall approve by way of homologation the agreement that they shall submit before him.

Homologation shall appertain to non-contentious matters.

Article 131-13

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

At the termination of his enterprise, the judge shall fix the remuneration of the mediator.

The burden of the cost of the mediation shall be borne as provided under Article 22 of the Act n° 95-125 of the 8 February 1995 relating to the organisation of courts and that of civil, criminal and administrative procedures.

The judge shall grant leave to the mediator to have the amount deposited to the registry to be released to him up to the due limit.

He shall order, where the same appears necessary, the payment of additional sums and shall indicate the party or parties who shall have to provide for it, or the return of the excess amount deposited.

An enforceable title shall be delivered to the mediator on his request.

Article 131-14

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

The findings of the mediator and the declarations he has taken down may not be produced nor shall be relied upon in the course of the subsequent proceedings without the agreement of the parties, nor, in any case, be referred to in any other proceedings.

Article 131-15

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.2, Official Journal of 23 July 1996*)

No appeal shall lie against a decision providing for, renewing the mediation or putting an end to the same.

## TITLE VII JUDICIAL ADMINISTRATION OF EVIDENCE

### SUB-TITLE I EXHIBITS

#### CHAPTER I SERVICE OF EXHIBITS BETWEEN PARTIES

Article 132

The party who shall rely on an exhibit shall be bound to disclose it to the other party to the proceedings.

Service of exhibits shall have to be spontaneous.

In the course of an appeal, a new service of exhibits already on record in relation to the trial of first instance shall not be required. Any party may nevertheless require that he same be complied with.

Article 133

Where the service of exhibits has not been carried out, the judge may, without any formality, be requested to order such service.

Article 134

The judge shall fix the time-limit, on pain of a civil penalty should the occasion arise, and the manner of the service, where necessary.

Article 135

The judge may exclude from the trial those exhibits which have not been served in due time.

Article 136

The party who does not return the exhibits served may be compelled to do so, ultimately under a civil penalty.

Article 137

The amount of the civil penalty may be determined by the judge who ordered it.

## CHAPTER II OBTAINING EXHIBITS HELD BY A THIRD PERSON

Article 138

Where, during the course of the proceedings, a party wishes to rely on an authentic instrument of record or an instrument under private signature to which he was not a party or a document held by a third party, he may request the judge seised of the matter to order that a certified copy of the same be delivered or that the instrument or document be produced.

Article 139

The request shall be made without any formality.

The judge, where he shall deem the request to be well-founded, shall order the delivering or production of the instrument or document, its original, or a copy or extract as the case may be thereof, under the conditions and undertakings that he shall determine, should the occasion arise, under a civil penalty.

Article 140

The decision of the judge shall be enforceable, and where it appears necessary, by the production of the minutes of the same.

Article 141

In case of difficulty, or where a lawful impediment is raised, the judge who ordered the delivery or the production may, on the informal request made to him, revoke or amend his decision. The third party may appeal against the new decision within fifteen day as from its pronouncement.

## CHAPTER III SERVICE OF EXHIBITS HELD BY A PARTY

Article 142

Requests for service of items of evidence held by the parties shall be made, and the service complied with, in accordance with Articles 138 and 139.

## SUB-TITLE II DIRECTIONS

## CHAPTER I GENERAL PROVISIONS

### SECTION I DECISIONS PROVIDING FOR DIRECTIONS

#### Article 143

The factual circumstances upon which the resolution of the dispute shall rely upon, may, at the request of the parties or ex proprio motu, be the subject of any directions legally permissible.

#### Article 144

Directions may be given at any time in the course the proceedings, ever since the judge is not placed before sufficient material to determine the matter.

#### Article 145

Where there is a legitimate reason to preserve or to establish, before any proceedings, the means of proving the factual circumstances upon which the resolution of the dispute shall depend, directions legally permissible may be given at the request of any party further to a petition or by way of a summary interlocutory procedure.

#### Article 146

Directions may be given in relation to factual circumstances only where the party shall bring the same lacks the necessary means to proving the same.

In no case may directions be given for the sake of making up a party’s deficiency in the presentation of evidence.

#### Article 147

The judge shall have to limit his choice of directions as to what shall be sufficient for the resolution of the dispute by endeavouring to select the simplest and least onerous ones.

Article 148

The judge may combine several directions. He may at any time, even while they are being carried out, decide to add any other necessary order to those which have been given.

Article 149

The judge may at any time extend or restrict the scope of the prescribed directions.

Article 150

The decision which gives or amends directions may not be set aside; it may not be impugned independently of the judgment on the merits of the case by way of an appeal or by way of a petition in cassation, save where they are specified by law.

The same shall apply to decisions rejecting a request for a direction or for the variation of those already given.

Article 151

Where it may not be appealed against independently of the judgment on the merits of the case, the decision may take the form of simple notes recorded on the file or on the transcript of the hearing.

Article 152

The decision in relation to, in the course of proceedings, the providing or the varying of directions shall not be notified. It shall be likewise in relation to decisions rejecting a request for direction or providing for a variation of those already given. The clerk shall send a copy of the decision by ordinary letter to the defaulting or absent parties at the time of the pronouncement of the decision.

Article 153

A decision providing for directions may not bring the matter out of the cognisance of a judge.

Article 154

Directions shall be carried out at the initiative of the judge or of one of the parties according to the rules applicable to each matter on the examination of an extract of a certified copy of a judgment where the same shall apply.

## SECTION II IMPLEMENTING DIRECTIONS

### Article 155

(*Decree No. 98-1231 of 28 December 1998, sec.4, Official Journal of 30 December 1998 in force on 1 March 1999*)

Directions shall be carried out under the supervision of the judge who provided for them where he does not proceed with the same himself.

Where directions have been provided for by a panel-judge, the supervision shall be exercised by the judge who were entrusted with the management, in default thereof, by the president in relation to the panel-judge where the matter has not been entrusted to any member of the same.

The judge specified in the first sub-article and the panel-judge may further have recourse to a judge appointed in the manner as provided for under Article 155-1.

### Article 155-1

(*Inserted by Decree No. 98-1231 of 28 December 1998, sec.5, Official Journal of 30 December 1998 in force on 1 March 1999*)

The president of the court may, in the interest of a good administration of justice, appoint a judge especially entrusted with the supervision the implementation of directions as conferred to a technician in application of Article 232.

### Article 156

The judge may go outside the province of the court's jurisdiction to implement directions or to supervise the same.

### Article 157

Where the remoteness of the parties or person who have to assist with the directions, or the remoteness of the place, shall render travelling to and from it too difficult or too onerous, the judge may request another court of equal or lesser jurisdiction to proceed with all or part of the directions ordered.

The decision shall be transmitted with all useful documents by the clerk of the commissioning court to the commissioned court. On receipt thereof, the prescribed directions shall be proceeded with at the initiative of the commissioned court or of the judge whom the president of the latter court has designated to that effect.

The parties or persons who have to assist in the execution of the directions shall be directly convened or advised by the commissioned court. Parties shall not be required to retain an *avocat* or *avoué* before such a court.

Where the directions have been implemented, the clerk's office of the court which proceeded with the same, shall transmit to the commissioning court the procès-verbaux subjoined with documents annexed or objects deposited.

Article 158

Where several directions have been given, their execution shall be carried out simultaneously wherever possible.

Article 159

Directions given may be executed immediately.

Article 160

Parties and third parties who shall have to assist with the directions shall be convened, as the case may be, by the clerk of the judge proceeding with them or by a commissioned expert. The convocation shall be by recorded letter with the advice of delivery slip sought. The parties may likewise be convened by the delivery to their representative of a simple notes.

Parties and third person may also be convened verbally where they are present at the time of the fixing of the date for the implementation of the directions.

Representatives of the parties shall be advised by ordinary letter where they have not been advised verbally or by a memorandum.

Defaulting parties shall be advised by ordinary letter.

Article 161

The parties may be assisted in the implementation of directions.

They may release themselves from attending their implementation where shall not be caused to testify over the same.

Article 162

The person who shall represent or assist a party before a court which has given directions may attend its implementation wherever it shall take place, make submissions or present any request relating to its implementation in his absence.

Article 163

The ministère public may always attend the implementation of directions even where it is not a main party to the action.

Article 164

Directions to be implemented before the court shall take place in open court or in chambers according to the rules applicable to oral arguments relating to substantive issues.

Article 165

The judge may proceed with, attend a direction or go outside the court's jurisdiction without being assisted by the clerk of the court.

Article 166

The judge entrusted to proceed with a direction or to supervise its implementation may give such other directions as would perfect the benefits of the directions already given.

Article 167

The difficulties encountered in the course of the implementation of directions shall be resolved, at the request of the parties, on the initiative of the commissioned technician, or ex proprio motu, either by the judge proceeding therewith or by the judge entrusted with the supervision its implementation.

Article 168

The judge shall give an immediate ruling where the difficulty arises during the course of the implementation of a direction with which he is proceeding with or at which he is present.

Otherwise, the judge informally seised shall indicate the date upon which the parties and, should the occasion arise, the commissioned technician, shall be convened by the clerk of the court.

Article 169

Where there is an intervention in the proceedings by a third person, the clerk of the court shall as soon as possible inform the judge or the technician entrusted with the implementation of the directions.

The intervener shall be given the opportunity to make submissions in relation to the directions which have already been carried out.

Article 170

Decisions relating to the implementation of directions may not be impugned by way of application to set aside; they may be impugned by way of an appeal or by way of a petition in cassation only where they are brought with the judgment relating to the substantive issue.

They shall take the form of a simple notes recorded on the file or on the transcript of the hearing, or where necessary, of an order or a judgment.

Article 171

Decisions taken by a commissioned judge or by the supervising judge shall not have the effect of res judicata over a consideration of the merits the case.

Article 172

As soon as a direction has been implemented, the carriage of proceedings shall be proceeded with at the initiative of the judge.

The latter may, within the limits of his jurisdiction, hear immediately the observations of the parties or closing speeches and rule ex tempore on their claims.

Article 173

The procès-verbaux, opinions or reports made at the time or following the implementation of a direction shall be addressed or given in the form of the original or a copy thereof to each of the parties by the clerk of the court which provided for them or by the technician who drafted them as the case may be. A note of the same shall be made on the original.

Article 174

The judge may have a sound, visual or audiovisual recording made of all or part of the directions in relation to which he is proceeding with.

The recording shall be kept by the clerk's office of the court. Each party may, at his own expense, ask to be provided a duplicate, copy or a transcription thereof.

SECTION III NULLITIES

Article 175

The nullity of decision or instruments of implementation relating to directions shall be subject to the provisions governing the nullity of processual papers.

Article 176

Nullity shall affect only those directions which are the subject-matter of an irregularity.

Article 177

The directions may be remedied or begun again, even immediately, where the defect can be removed.

Article 178

An omission or an inaccuracy in a note intended to show the observance of the formalities in relation to a direction shall not render it null, where it is established by every means that the legal requirements have, in fact, been observed.

CHAPTER II PERSONAL VERIFICATIONS BY THE JUDGE

Article 179

The judge may, in any matter, take personal cognisance of the facts at issue, in order to verify them himself, the parties being present or having been convened.

He shall proceed with the findings, evaluations, appraisals or reconstructions which he shall deem necessary and, should the occasion arise, by being present on the situs concerned.

Article 180

Where he does not proceed therewith immediately, the judge shall fix the venue, day and time for the verification; should the occasion arise, he shall appoint a member of the adjudicating panel to that effect.

Article 181

The judge may, during the process of verification, at the hearing or in relation to such other venue, call upon the assistance of a technician, or hear the parties or such other person whose testimony is proper to establishing the truth.

Article 182

A procès-verbal shall be drawn accounting for the findings, evaluations, appraisals, reconstructions or declarations.

The drawing up of the procès-verbal may notwithstanding the above, be substituted by a note in the judgment where the case is adjudged ex tempore as by way of last resort.

Article 183

A judge who is causing to implement another direction may, even where he is not a member of the adjudicating panel, proceed with the personal verifications which the implementation of the direction shall render appropriate.

## CHAPTER III PERSONAL APPEARANCE OF THE PARTIES

Article 184

A judge may, at all events, order the parties, or one of them, to appear in person.

Article 185

The personal appearance may only be ordered by the adjudicating panel or by a member of such panel entrusted with the management of the case.

Article 186

Where the personal appearance is ordered by a panel-judge, it may decide that the appearance shall be before one of its members.

Where it is ordered by the judge entrusted with the management, he may proceed with the same himself or decide that the appearance shall be before the adjudicating panel.

Article 187

The judge, in ordering as above, shall determine the venue, date and time in relation to the personal appearance save where he shall proceed with the same immediately.

Article 188

Personal appearance may be in chambers.

Article 189

The parties shall be examined in each other's presence save where the circumstances require them to be examined separately. They shall have to be confronted where one of the parties so requests.

Where the appearance of one party only has been ordered, such party shall be examined in the presence of the other party, save where the circumstances require him to be examined immediately or out of the other party's presence, subject to the absent party's right to be immediately informed of the declarations made by the party so heard.

The absence of a party shall not prevent the testimony of the other.

Article 190

The parties may be examined in the presence of a technician and be confronted with witnesses.

Article 191

The parties shall answer personally to questions put to them without being able to read from any notes.

Article 192

Personal appearances shall take place in the presence of legal representatives of all the parties or on them being called.

Article 193

The judge shall put, where it seems necessary to him, the questions which the parties shall submit to him after the examination.

Article 194

A procès-verbal shall be drawn up noting down the statements of the parties and of their absence or refusal to answer.

The drawing up of the procès-verbal may notwithstanding the above, be replaced by a note in the judgment where the case is determined ex tempore as a decision of last resort.

Article 195

The examined parties shall sign the procès-verbal after having verified or certified that it conforms to their statements in which case the same is mentioned in the procès-verbal. Should the occasion arise, it shall be indicated that the parties refused to sign or to certify the same.

The procès-verbal shall, further, be dated and signed by the judge and, should the occasion arise, by the clerk.

Article 196

Where one of the parties is unable to be present, the judge who ordered the appearance, or the judge appointed by the adjudicating panel to which he is attached may travel to him after having convened the opponent to the same should the occasion arise.

Article 197

The judge may order the appearance of incapable persons subject to the rules relating to the capacity of persons and to the administration of evidence as well as their legal representatives or those assisting them.

He may order the appearance of corporate entities including public bodies or public corporations in the person of their authorised representatives.

He may, further, order the appearance of any member or agent of a corporate entity to be examined on facts personal to him as well as those which ought to know by reason of his office.

Article 198

The judge may draw any conclusion in law from the statements of the parties, from the absence or refusal to answer in relation to a party and establish the same as likely factum probantia.

## CHAPTER IV STATEMENTS OF THIRD PERSONS

Article 199

Where testimonial evidence is admissible, the judge shall admit statements from third persons so as to provide guidance to him on the facts at issue in relation to which they have personal knowledge thereof. These statements shall be made in writing or brought by means of an inquiry, depending on whether they are written or oral.

### SECTION I STATEMENTS IN WRITING

Article 200

Statements in writing shall be brought forward by the parties or on the request of the judge.

The judge shall make available to the parties those transmitted directly to him.

Article 201

The statements in writing shall have to be made by persons who fulfil the conditions required to be heard as witnesses.

Article 202

The statement in writing shall contain an account of facts which the maker thereof has witnessed or which he has personally noticed.

It shall indicate the surname, date and place of birth, domicile and occupation of the maker as well as, where the same appears necessary, his relationship, by blood or by marriage, to the parties, the link of subordination to, of collaboration or joint interests with them.

Further, it shall indicate that it has been drawn up for its production before a court of law and that the maker is aware that any false statement on his behalf shall be punished by criminal sanctions.

The statement shall be written, dated and signed by the hand of its maker. The latter shall have to annex thereto, by way of the original or a photocopy thereof, any official document proving his identity which includes his signature.

Article 203

The judge may always proceed by means of an inquiry to hear the maker of a statement in writing.

SECTION II THE INQUIRY

SUB-SECTION I GENERAL PROVISIONS

Article 204

Where an inquiry is ordered, cause against it may be adduced by way of witnesses without any new decision.

Article 205

Any person may be heard as a witness save in relation to those rendered unfit owing to a legal incapacity to stand as a witness before a court.

Persons who may not stand as a witness may, notwithstanding the above, be heard under the same conditions but without taking the oath. Notwithstanding the above, descendants may never be heard on the grievances brought before the court in relation to the partners to a marriage in support of a petition for divorce or judicial separation.

Article 206

Any person called upon to testify shall be bound to do so. Persons exhibiting a legitimate excuse may be exempted from giving their testimony. Parents or relatives in direct line with one of the parties or a partner or previous partners to a marriage, may object to giving testimony.

Article 207

Defaulting witnesses may be cited at their expense where it is deemed proper that they be heard.

Defaulting witnesses and persons who, without any legitimate excuse, has refused to testify or to take the oath may be ordered to pay a civil fine from F 100 to F 10,000.

A person who shall show cause that he was unable to attend on the appointed day may be exempted from the imposition of the fine and the visit of the expenses of the citation.

Article 208

The judge shall hear the testimony of the witnesses separately and in the order which he shall determine.

The witnesses shall be heard in the presence of the parties or the latter being called.

As an exception thereto, where the circumstances shall so require, the judge may ask a party not to be present during the testimony of a witness, subject to the right of the latter to have the statements of the latter produced to him immediately thereafter.

The judge may, where there is a risk of the loss of the validity of proof, proceed without delay with a testimony-hearing of a witness after having, wherever possible, called the parties.

Article 209

An inquiry shall take place in the presence of the legal representatives of the parties or the latter being called.

Article 210

The witnesses shall state their surname, first names, date and place of birth, domicile, occupation, as well as, should the occasion arise, their relationship by blood or by marriage to the parties, or the link of subordination to, of collaboration or joint interests with them.

Article 211

Persons who are heard as witnesses shall take the oath to tell the truth. The judge shall remind them that perjury shall be punishable by way of a fine or imprisonment.

Person who are heard without taking the oath shall be informed of their duty to tell the truth.

Article 212

Witnesses may not read from any notes.

Article 213

The judge may hear or examine the witnesses on all facts in relation to legally admissible evidence, even where these facts are not stated in the decision ordering the inquiry.

Article 214

Parties shall neither interrupt, nor question, nor attempt to influence the witnesses who is giving testimony, nor address them directly on pain of being excluded from attending to the same.

After an examination of a witness, the judge shall, where he shall deem it proper, put to the latter questions submitted to him on behalf of the parties.

Article 215

The judge may recall the witnesses and may confront them with each other or with the parties; should the occasion arise, he shall proceed with a hearing in the presence of a technician.

Article 216

Save where they have been permitted or directed to leave after having given their testimony, witnesses shall remain at the disposition of the judge until the close of the inquiry or the hearing. They may, until such time, add to or alter their testimony.

Article 217

Where a witness proves that it is impossible for him to travel on the appointed day, the judge may allow him a time-limit or travel himself toward the former to receive his testimony.

Article 218

The judge who proceeds with an inquiry may, ex proprio motu or at the request of the parties, convene or hear any person should he deem the same material for the manifestation of the truth.

Article 219

The testimony shall be recorded in a procès-verbal.

Notwithstanding the above, where the testimony is received in the course of the hearing, a note shall simply be made in the judgment of the surname of the persons heard and the result of their testimony where the matter must immediately be adjudged as of last resort.

Article 220

The procès-verbal shall have to make a note of the presence or absence of the parties, the surname, first names date and place of birth, domicile and occupation of the parties heard as well as, should the occasion arise, the oath taken by them and of their statements relating to their relationship to the parties, the link of subordination to, of collaboration or joint interests with them.

Each person heard shall sign the procès-verbal in relation to his testimony after having verified or certified that it conforms with the same, in which case a note shall be made thereof in the procès-verbal. Should the occasion arise, a note shall be made in relation to his refusal to sign or to certify.

The judge may note in the procès-verbal his findings in relation to the behaviour of a witness during a testimony-hearing.

The comments of the parties shall be noted down in the procès-verbal, or shall be annexed to it where they are in writing.

Documents presented at the inquiry shall also be annexed to the same.

The procès-verbal shall be dated and signed by the judge and, should the occasion arise, by the clerk of the court.

Article 221

The judge shall grant leave to the witness, at his request, to seek such expenses in relation to which he is entitled to being paid.

SUB-SECTION II ORDINARY INQUIRY

§ 1 Determination of facts to be proved

Article 222

The party requesting an inquiry shall have to state the facts he shall substantiate.

It shall belong to the judge who orders the inquiry to determine the material facts to be proved.

§ 2 Designation of witnesses

Article 223

It shall be incumbent upon the party who requests an inquiry to state the surname, first names and domicile of the persons they intend to produce as witnesses.

The same burden shall be incumbent upon the opponents who intend to produce witness to in relation to those facts they contemplate substantiating.

A decision ordering an inquiry shall indicate the surname, first names and domicile of persons to be heard.

Article 224

Where the parties are unable to specify at the onset the persons to be heard, the judge may nevertheless grant them leave to attend, without any further formality, the inquiry with those person they intend to produce as witnesses, or to inform the clerk's office of the court, within a time-limit as specified by the aforementioned judge, of the surname, first names and domicile of the persons they intend to produce as witnesses.

Where the inquiry has been ordered ex proprio motu, the judge, where he cannot indicate in his order the surname of the witnesses to be heard, shall direct the parties to proceed as set out in the previous sub-article.

§ 3 DETERMINATION OF THE MANNER AND THE TIMETABLE OF THE INQUIRY

Article 225

A decision ordering an inquiry shall specify whether it be conducted before the adjudicating panel, a member of such panel, or, should the occasion arise, before any other judge of the court.

Article 226

Where the inquiry shall take place before the judge who ordered it, or before one of the members of the adjudicating panel, the decision shall indicate the day, time and venue where it will be proceeded with.

Article 227

Where the judge designated by the court is not a member of the adjudicating panel, the decision which ordered the inquiry may limit itself to an indication of the time-limit within which it shall have to be proceeded with.

Where the same is by way of a commission on behalf of another court, the decision shall specify the time-limit within which the inquiry shall have to be proceeded with. Such time-limit may be extended by the president of the commissioned court and he shall inform the judge who ordered the inquiry thereof.

The commissioned judge shall fix the day, time and venue of the inquiry.

§ 4 SUBPOENA OF WITNESSES

Article 228

Witnesses shall be subpoenaed by the clerk of the court at least eight days before the date of the examination.

Article 229

The subpoenas shall indicate the surname and first names of the parties and shall reproduce the provisions of the first two sub-articles of Article 207.

Article 230

The parties shall be notified of the date of the inquiry verbally or by ordinary letter.

SUB-SECTION III THE IMMEDIATE INQUIRY

Article 231

The judge may, at the hearing or in chambers, as well as in any other venue where a direction is being carried out, hear immediately those persons whose testimony he deems proper in view of establishing the truth.

## CHAPTER V DIRECTIONS CARRIED OUT BY A TECHNICIAN

### SECTION I COMMON PROVISIONS

#### Article 232

The judge may commission any person of his choice to provide guidance to him by way of observations, consultation or by way of an expertise on a question of fact which calls for the guidance of a technician.

#### Article 233

The technician, empowered by the judge by reason of his qualifications shall have to fulfil personally the enterprise entrusted to him.

Where the appointed technician is a corporate entity, its authorised representative shall submit, for the judge’s approval, the surname of the person or persons within its ranks who will ensure the implementation of the direction on its behalf.

#### Article 234

The technicians may be recused for the same causes as judges. Where it is a corporate entity, the recusal may be directed against the corporate entity as well as against the natural person or persons approved by the judge.

The party who intends to recuse a technician shall have to do so before the judge who appointed him, or before the judge entrusted with the supervision prior to the implementation of the directions or otherwise shall do so on the discovery of a cause of recusal.

Where the technician shall consider himself to be recusable, he shall have to declare the same immediately to the judge who commissioned him or to the judge entrusted with the supervision.

#### Article 235

Where a recusal is justified, where a technician refuses an assignment, or where there exists a lawful impediment, the judge who commissioned the latter or the judge entrusted with the supervision of the operations shall replace the technician.

The judge may also, at the request of the parties or ex proprio motu, replace the technician who has failed in his duties after caused him to provide explanations in relation to the same.

Article 236

The judge who has commissioned the technician or the judge entrusted with the supervision may add to or restrict the assignment entrusted to the technician.

Article 237

The commissioned technician shall have to fulfil his enterprise conscientiously, objectively and impartially.

Article 238

The technician shall have to give his opinion on the points he has been commissioned to examine.

He may not consider other questions except by virtue of a written agreement by the parties.

He shall never express an opinion on a point of law.

Article 239

A technician shall have to respect the time-limits imparted to him.

Article 240

A judge may not confer upon a technician such an assignment as to reconcile the parties.

Article 241

The judge entrusted with the supervision of the operations may attend those of the technician.

He may cause him to provide explanations and impart a time-limit to him.

Article 242

The technician may receive oral or written information from any person as long as their surname, first names, domicile and occupation are specified as well as, where the same appears necessary, his relationship, by blood or by marriage, to the parties, the link of subordination to, of collaboration or joint interests with them.

Where the commissioned technician or the parties request that these persons be heard by the judge, the latter shall proceed to hear them where he considers such useful.

Article 243

The technician may request any documents from the parties or third persons and the judge may provide for the same in case of difficulty.

Article 244

The technician shall have to make known in his opinion all the information which shall provide guidance on the area he has examined.

He shall be forbidden to reveal other information which might have come to his knowledge in the course of implementing his enterprise.

He may only refer to information lawfully received.

Article 245

(*Decree No. 89-511 of 20 July 1989, sec.2, Official Journal of 25 July 1989 in force on 15 September 1989*)

The judge may always invite the technician to complete, clarify or to explain his observations or conclusions either in writing or at the hearing.

The technician may at any time seek a hearing before the judge.

The judge may not, without having been put before the observations of the commissioned technician, add to the assignment of the latter or confer a complementary assignment upon another technician.

Article 246

The judge shall not be bound by the observations or conclusions of the technician.

Article 247

Where the publicity of the technician's opinion shall cause to invade the privacy of personal lives or any other legitimate interest, it may not be used for any other purpose other than in relation to the proceedings except with a judge's permission or with the consent of the party concerned.

Article 248

The technician may not receive remuneration directly from one party in any form whatsoever even as a reimbursement of outlays save where so ordered by the judge.

SECTION II REPORTING OF FACTS

Article 249

The judge may entrust the persons he has commissioned to proceed with the finding of facts.

The examiner shall not formulate any opinion on the factual and legal consequences which may result therefrom.

Article 250

Fact-findings may be ordered at any time including at the conciliation stage or during the deliberation. In the latter event, the parties shall be advised of the same.

The findings of fact shall be recorded down in writing save where the judge shall decide for their oral presentation.

Article 251

The judge who orders a fact-finding exercise shall fix the time-limit within which a report of the same shall have to be presented or the date of the hearing at which the an oral report shall have to be presented. He shall designate the party or parties who will be bound to provide for an interim payment for remuneration of the examiner, which shall be fixed by the judge.

Article 252

The examiner shall be notified of his assignment by the clerk of the court.

Article 253

The report shall be delivered to the clerk of the court.

A procès-verbal shall be drawn up of the reporting presented verbally. The drawing up of the procès-verbal may, notwithstanding the above, be replaced by a note made in the judgment where the matter is adjudged immediately at last resort.

Documents in support of the fact-finding shall be included in the file of the matter.

Article 254

Where a fact-finding has been ordered during the deliberations, the judge, following the implementation of the direction, shall order the reopening of the hearing where one of the parties so requests or where the judge considers it necessary.

Article 255

The judge shall fix the payment to the examiner on proof of the completion of his enterprise. He may deliver to him an enforceable title.

SECTION III CONSULTATION

Article 256

Where a purely technical question does not require complex investigations, the judge may entrust the person he shall commission to provide him with a simple opinion.

Article 257

A consultation may be ordered at any time including during conciliation stage or during the deliberations. In the latter case, the parties shall be informed thereof.

The opinion shall be presented orally save where the judge requires it to be submitted in writing.

Article 258

The judge who orders an opinion shall fix the date of the hearing at which it shall be presented orally or the time-limit within which it shall be submitted.

He shall designate the party or parties who will be bound to give a sum on accounts to the consultant for his payment, the amount of which shall be fixed by the judge.

Article 259

The consultant shall be notified of his assignment by the clerk of the court who will convene him should the occasion arise.

Article 260

Where the opinion is given orally, it shall be recorded in a procès-verbal. The drawing up of the procès-verbal may, notwithstanding the above, be replaced by a note made in the judgment where the matter is adjudged immediately as of last resort.

Where the opinion is written, it shall be delivered to the clerk's office of the court.

The documents in support of the opinion shall be included in the file of the matter.

Article 261

Where the opinion has been ordered during the deliberations, the judge, following the implementation of the direction, shall order the reopening of the hearing where one of the parties so requests or where the judge shall deem it proper.

Article 262

The judge shall fix, on proof of the completion of the enterprise, the remuneration due to the consultant. He may deliver to him an enforceable title.

SECTION IV EXPERTISE

Article 263

An expertise shall not be ordered except in cases where a finding of fact or consultation would not be sufficient to provide guidance to the judge.

SUB-SECTION I THE DECISION PROVIDING FOR THE EXPERTISE

Article 264

Only one person shall be appointed as an expert, save where the judge shall deem it proper to appoint several persons.

Article 265

The decision which provides for the expertise shall:

Set out the circumstances which shall make an expertise necessary and, where applicable, which shall make the appointment of several experts necessary;

Surname the expert or experts;

Specify the field of the enterprise of the expert;

Prescribe the time-limit within which the expert shall have to give his opinion.

Article 266

The decision may also specify a date on which the expert and the parties shall have to appear before the judge who has delivered the same or before the judge entrusted with the supervision of the operations so that the enterprise and, should the occasion arise, the timetable of the operations, may be determined.

Documents useful for the expertise shall be given to the expert at this conference.

Article 267

(*Decree No. 89-511 of 20 July 1989, sec.3, Official Journal of 25 July 1989 in force on 15 September 1989*)

As soon as the decision appointing the expert is delivered, the clerk of the court shall transmit to him a copy thereof by ordinary letter.

The expert shall without delay notify to the judge of his acceptance; he shall have to commence the expert operations as soon as he has been informed that the parties has deposited by consignation the sum for which they are held to contribute, or the amount of the first instalment as due under the consignation order, save where the judge directs him to start immediately his operations.

Article 268

The files of the parties or the documents necessary to the expertise shall provisionally be kept at the clerk's office of the court subject to the authorisation of the judge to the parties who submitted them to withdraw certain parts or to have copies delivered to them. The expert may consult them even before accepting his assignment.

From the moment of his acceptance, the expert may, on a marginal imprint or on the issuance of an acknowledgement, withdraw the files or documents of the parties or have them transmitted to him by the clerk of the court.

Article 269

(*Decree No. 89-511 of 20 July 1989, sec.4, Official Journal of 25 July 1989 in force on 15 September 1989*)

The judge who orders the expertise or the judge entrusted with the supervision shall fix, at the time of the expert is appointed or as soon as he is able to do it, the amount of the sum to be put on accounts for the payment of the expert as near as possible to the foreseeable final payment. He shall nominate the party or parties who shall have to deposit the sum on accounts to the registry of the court within the time-limit which he shall fix; where several parties are named, he shall indicate in what proportion each of the parties shall have to deposit. He shall, should the occasion arise, adjust the instalments whereby the deposit may be constituted.

Article 270

(*Decree No. 89-511 of 20 July 1989, sec.5, Official Journal of 25 July 1989 in force on 15 September 1989*)

The registrar shall invite the parties who are held to contribute to the consignation, in reminding to them the provisions of Article 271, to deposit the sum on accounts to the registry within the time-limit and in the manner specified.

He shall inform the expert of the deposit.

Article 271

(*Decree No. 89-511 of 20 July 1989, sec.5, Official Journal of 25 July 1989 in force on 15 September 1989*)

In default of consignation within the time-limit and in the manner specified, the appointment of the expert shall lapse save where the judge, at the request of one of the

parties availing himself of a lawful excuse, shall grant a further time-limit or shall discharge the operation of lapsing. The proceedings shall continue but it may be drawn from the abstention or refusal to deposit any such inference as appropriate.

Article 272

The decision ordering the expertise shall be appealable independently of the judgment on the merits of the case by leave of the first president of the court of appeal where serious and legitimate reasons are shown.

The party who wishes to appeal shall seise the president who shall give a ruling in the form of a summary interlocutory procedure. The summons shall have to be served within one month of the decision.

Where he allows the request, the first president shall fix the day where the matter shall be examined by the court, which shall be seised and shall give a ruling as in matters of a fixed-date procedure or as is provided under Article 948, as the case may be.

Where the judgment providing for the expertise has also ruled upon the issue of jurisdiction, the [appeal] court may be seised of the challenge in relation to jurisdiction even though the parties had not filed an appellate plea against jurisdiction.

SUB-SECTION II OPERATIONS OF EXPERTISE

Article 273

(*Decree No. 98-1231 of 28 December 1998, sec.6, Official Journal of 30 December 1998, in force on 1 March 1999*)

The expert shall have to inform the judge of the progress of his operations and the steps taken by him.

Article 274

Where the judge attends the operation of the expertise, he may record in a procès-verbal his observations, the explanations of the expert as well as the statements of the parties and of third persons; the procès-verbal shall be signed by the judge.

Article 275

(*Decree No. 98-1231 of 28 December 1998, sec.7, Official Journal of 30 December 1998, in force on 1 March 1999*)

The parties shall have to deliver without delay to the expert all documents which the latter shall deem necessary for the performance of his enterprise.

Where there parties have defaulted, the expert shall inform the judge thereof and the latter may order the production of documents, should the occasion arise, subject to a civil penalty, or, as the case may be, grant leave to him to proceed with the matter and to submit his report as it stands. The trial court may draw any such inference in law in relation to the failure to produce the necessary documents to the expert.

Article 276

The expert shall have to take into consideration the observations or assertions of the parties, and, where they are written, shall attach them to his report where the parties so request.

He shall have to indicate in his report the weight he has attached to them.

Article 277

Where the ministère public is present at the operations of the expertise, its observations shall, at its request, be recited in the expert's opinion as well as the weight which it has attached to them.

Article 278

The expert may take the initiative of obtaining the opinion of another technician, but only in a specialised field different from his own.

Article 279

Where the expert encounters difficulties which shall obstruct the completion of his enterprise, or where an extension seems necessary, he shall so report to the judge.

The latter in his ruling may extend the time-limit within which the expert shall have to give his opinion.

Article 280

(*Decree No. 89-511 of 20 July 1989, sec.6, Official Journal of 25 July 1989 in force on 15 September 1989*)

The expert who shows to have made progress may be granted leave to draw a partial payment on the sum deposited.

Where the expert shows that the sum on accounts allocated is insufficient, the judge shall order the deposit of a further sum on accounts. In default of a deposit within the time-limit and in the manner specified by the judged, and save where there is an extension of such a time-limit, the expert shall submit his opinion as it stands.

Article 281

Where the parties have reached a settlement, the expert shall record that his enterprise has become pointless; he shall so report to the judge.

The parties may request the judge to deliver an enforceable certificate in relation to the document containing their agreement.

SUB-SECTION III THE EXPERT'S OPINION

Article 282

Where his opinion does not need to be explained in writing, the judge may grant leave to the expert to present it orally at the hearing; a procès-verbal shall be drawn in relation to the same. The drafting of the procès-verbal may, notwithstanding the above, be substituted by a note in the judgment where the matter is adjudged ex tempore at last resort.

Otherwise, the expert shall have to file a report to the clerk's office of the court. Only one report shall be drawn up even where there are several experts; in case of dissent, each one shall give his view.

Where the expert has obtained the opinion of another expert in a different field as that of his own, such opinion shall be attached, as the case may be, to the expert's report, the procès-verbal of the hearing or to the file of the matter.

Article 283

Where the judge does not find in the report matters as to guide him, he may hear the expert, the parties being present or called.

Article 284

(*Decree No. 89-511 of 20 July 1989, sec.7, Official Journal of 25 July 1989 in force on 15 September 1989*)

(*Decree No. 98-1231 of 28 December 1998, sec.8, Official Journal of 30 December 1998, in force on 1 March 1999*)

Since the filing of the report, the judge shall fix the payment of the expert, and namely in relation to the steps taken, the respect of the time-limit imparted and the quality of the work furnished.

He shall grant leave to the expert to be paid up to the amount of the sums deposited at the registry. He shall order, as the case may be, either the payment of additional sums due to the expert in indicating the party or parties who shall provide for the same, or the restitution of the excess amount as deposited.

Where the judge considers fixing the payment of the expert at an amount less than the sum requested, he shall first have to invite the expert to submit his comments in relation to the same.

The judge may deliver to the expert, at his request, an enforceable title.

Article 284-1

(*Decree No. 89-511 of 20 July 1989, sec.8, Official Journal of 25 July 1989 in force on 15 September 1989*)

Where the expert so requests, a copy of the judgment delivered upon consideration of his opinion may be delivered or given by the registrar.

SUB-TITLE III DISPUTES RELATING TO DOCUMENTARY EVIDENCE

SUB-SECTION I THE INCIDENTAL PLEA OF VERIFICATION

Article 285

Verification of handwriting under private signature shall pertain to the jurisdiction of the judge seised of the main issue where it is requested incidentally.

It shall pertain to the jurisdiction of the *Tribunal de grande instance* where it is requested as a main issue.

*Article 286*

A plea of forgery against an authenticated instrument of record shall pertain to the jurisdiction of the judge seised of the main issue where it is brought incidentally before the *Tribunal de grande instance* and the Court of Appeal.

In other cases, a plea of forgery shall pertain to the jurisdiction of the *Tribunal de grande instance*.

## SECTION I VERIFICATION OF HANDWRITING

### Article 287

Where one of the parties denies the handwriting that is attributed to him, or declares that he does not recognise that which is attributed to its author, the judge shall verify the impugned handwriting save where he is able to make a ruling without taking it into account. Where the impugned writing relates only to certain points of the claim, the judge may rule upon the other points.

### Article 288

It shall belong to the judge to proceed with the verification of the handwriting in the light of the material at his disposition after having directed the parties, should the occasion arise, to produce all documents so that he may compare them, and under his supervision, to have samples of handwriting made up.

### Article 289

Where he does not rule ex tempore, the judge shall retain the handwriting to be verified and the exhibits for comparison or shall order them to be deposited at the clerk's office of the court.

### Article 290

Where it is useful to compare the impugned handwriting with such instruments in the possession of third persons, the judge may order, even ex proprio motu and under a civil penalty, that those instruments be deposited at the clerk's office of the court in the form of the originals or copies thereof.

He shall give all the necessary directions, and namely those relating to the preservation, consultation, reproduction, return or restoration of the instruments.

Article 291

Where necessary, the judge shall order the personal appearance of the parties and, should the occasion arise, in the presence of a consultant or shall give any direction.

He may hear the alleged author of the impugned handwriting.

Article 292

Where a technician is called upon, the latter may be granted leave by the judge to take out the impugned handwriting and the exhibits for comparison, on a marginal imprint of the same having been entered, or to have the same transmitted to him by the clerk of the court.

Article 293

Persons who witnessed the impugned instrument being written or signed or those whose hearing appear useful in eliciting the truth, may be heard as witnesses.

Article 294

The judge shall rule upon the difficulties in carrying out the verification of the writing, in particular as to the determination of exhibits for comparison.

His decision shall take the form either of simple notes recorded on the file or in the minutes of the hearing, or, where necessary, of an order or a judgment.

Article 295

Where it is ruled that the instrument was written or signed by the person who denied it, the latter shall be ordered to pay a civil fine of between F 100 and F 10,000 without prejudice to damages and interests which may be claimed.

SUB-SECTION II THE VERIFICATION OF HANDWRITING REQUESTED AS A MAIN ISSUE

Article 296

Where the verification of a handwriting is raised as a main claim, the judge shall consider the handwriting as recognised where the defendant, cited in person, does not appear.

Article 297

Where the defendant recognises the handwriting, the judge shall find for the claimant.

Article 298

Where the defendant denies or does not recognise the handwriting, the procedure set out under Articles 287 to 295 shall be followed.

It shall be likewise where the defendant who has not been cited in person fails to appear.

## SECTION II FALSIFICATION

### SUB-SECTION I THE PLEA OF FALSIFICATION

Article 299

Where a writing under private signature produced in the course of the proceedings is alleged to be forged, the examination of the impugned writing shall be carried out as it is provided under Article 287 to 295.

### SUB-SECTION II FORGERY RAISED AS A MAIN CONTENTION

Article 300

Where the allegation of forgery of a writing under private signature is raised as a main claim, the summons shall indicate the grounds for the allegation and shall convey a precept to the defendant to the effect that the latter shall declare whether or not he intends to rely upon the instrument alleged to be forged or falsified.

Article 301

Where the defendant declares that he does not wish to use the writing alleged to be forged, the judge shall find for the claimant.

Article 302

Where the defendant does not appear or where he declares that he wishes to use the impugned writing, the procedure shall be carried out as provided under Articles 287 to 295.

## CHAPTER II PLEA OF FORGERY AGAINST AUTHENTIC INSTRUMENT OF RECORD

### Article 303

A plea of forgery against an authentic instrument of record shall be communicated to the ministère public.

### Article 304

The judge may order the hearing of the person who drew up the impugned instrument.

### Article 305

The claimant whose plea of forgery fails shall be ordered to pay a civil fine of F 100 to F 10,000 without prejudice to damages which may be claimed.

## SECTION I THE INCIDENTAL PLEA OF A FORGERY AGAINST AN AUTHENTIC INSTRUMENT OF RECORD

### SUB-SECTION I THE INCIDENTAL PLEA RAISED BEFORE THE *TRIBUNAL DE GRANDE INSTANCE* OR THE COURT OF APPEAL

### Article 306

(*Decree No. 82-716 of 10 August 1982, sec.1, Official Journal of 17 August 1982*)

The plea of forgery shall be entered by filing with the clerk's office-registry of a process by the party or his agent specially empowered.

The process, in duplicate, shall have, under penalty of it otherwise being inadmissible, to state precisely the grounds which the party shall rely upon to establish the forgery.

One of the copies shall immediately be placed in the file of the matter and the other, dated and imprinted with a seal by the registrar, shall be returned to the party in order to give notice of the plea to the defendant.

The notice shall have to be made by service to and by *avocat* or by signification to the opposing party within one month as from the making of the plea.

### Article 307

The judge shall rule upon the forgery save where he decides the case without taking into consideration the exhibit alleged to be forged.

Where the alleged instrument to be forged relates only to one of the heads of the claim, the judge may rule upon the other heads.

Article 308

It shall belong to the judge to admit or reject the impugned instrument in the light of the material at his disposal.

Should the occasion arise, the judge shall give, as to the forgery, all directions necessary and it shall be proceeded with as in matters of verification of handwriting.

Article 309

The judge shall rule in the light of the grounds stated by the parties and of those raised ex proprio motu.

Article 310

The judgment declaring the forgery shall be noted in the margin of the instrument recognised as forged.

It shall specify whether the original of the authentic instrument of record will be returned to the depository from which it was obtained or will be kept at the clerk's office-registry.

The implementation of these provisions shall be stayed as long as the judgment has not become res judicata or until the acquiescence of the losing party.

Article 311

Where there is a withdrawal or settlement in relation to the plea of forgery, the ministère public may require all measures proper to prosecuting a criminal action.

Article 312

Where criminal proceedings are brought against the perpetrators of or accomplices to the forgery, the civil judgment shall be deferred until after the criminal decision has been given, save where the main issue may be ruled upon without taking into account the exhibit alleged to be forged or save where there has been a withdrawal or settlement as to the forgery.

SUB-SECTION II THE INCIDENTAL PLEA RAISED BEFORE OTHER COURTS

Article 313

Where the plea is raised before a court other than the *Tribunal de grande instance* or the court of appeal, the judgment shall be stayed until a ruling on the issue of falsification has been given, save where the impugned exhibit has been withdrawn so as it is possible to rule upon the main issue without taking the same into consideration.

The plea of forgery shall be proceeded with as provided under Articles 314 to 316. The process entering the plea of forgery shall have to be lodged at the clerk's office-registry of the *Tribunal de grande instance* within the month of the decision to stay the judgment, failing which the plea shall be disregarded and the impugned instrument shall be considered to have been accepted as valid between the parties.

SECTION II THE PLEA OF FORGERY AS A MAIN CONTENTION

Article 314

The main claim of forgery shall be preceded by a plea of forgery entered as set out under Article 306.

A copy of the process entering the plea shall be attached to the summons which shall contain a precept to the defendant to declare whether or not he intends to rely upon the instruments alleged to be forged or falsified.

The summons shall have to be served within one month of the plea of forgery being entered under penalty of it otherwise being lapsed.

Article 315

Where the defendant shall declare that he does not wish to use the instrument alleged to be false, the judge shall acknowledge the point in favour of the claimant.

Article 316

Where the defendant fails to appear or to declare that he wishes to use the impugned instrument, it shall be proceeded with as provided under Articles 287 to 294 and 309 to 312.

SUB-TITLE V THE IN-COURT OATH

Article 317

The party who invite that evidence shall be taken on oath shall set forth the facts in relation to which it shall be taken.

The judge shall order evidence on oath where it is permissible and shall specify the facts on which it shall be taken.

Article 318

Where the oath is called for ex proprio motu, the judge shall determine the facts in relation to which it shall be taken.

Article 319

The judgment which orders the oath shall fix the date, time and venue where it shall be taken. It shall formulate the question in relation to which the oath is to be taken and shall point out that perjury will expose a witness to criminal sentences.

Where the oath is called for in relation to a party, the judgment shall specify further that the party in relation to whom the oath is called for has failed in his claim where he refuses to take the oath and fails to request one in return.

In all cases, the judgment shall be notified to the party in relation to whom the oath is called for as well as to his agent should the occasion arise.

Article 320

An appeal shall lie against the judgment which orders or refuses to order a decisive oath independently of the decision on the substantive issue.

Article 321

The oath shall be taken by the party in person and at the hearing.

Where the party shows that he is unable to travel, the oath may be taken either before a judge commissioned for that purpose who shall travel to the residence of the party, assisted by the clerk or before the court of his place of residence.

At all events, the judgment shall be notified to the party in relation to whom the oath is called for as well as to his agent should the occasion arise.

Article 322

The person duly authorised as a legal representative may not request an oath without showing a special power.

## TITLE VIII MULTIPLE PARTIES

### Article 323

Where the claim is made by or against several persons with a common interest, each of them shall exercise and discharge insofar as they relate to him, the rights and obligations of parties to the proceedings.

### Article 324

(*Decree No. 79-941 of 7 November 1979, Official Journal of 9 November 1979 in force on 1 January 1980*)

The acts performed by or against the persons with a common interest shall neither benefit nor prejudice the others subject to the provisions of Articles 474, 475, 529, 552, 553 and 615.

## TITLE IX INTERVENTION

### Article 325

An intervention shall not be allowed save where it is connected to the claims of the parties by a sufficient link.

### Article 326

Where the intervention may delay excessively the judgment on the whole, the judge shall first rule upon the main cause of action and thereafter consider the intervention.

### Article 327

The intervention at first instance or on appeal shall be voluntary or compelled.

Before the *Cour de cassation*, only a voluntary intervention shall be admissible where it is accessory.

## CHAPTER I THE VOLUNTARY INTERVENTION

### Article 328

The voluntary intervention shall be principal or accessory.

### Article 329

The intervention shall be principal where it raises a claim to the benefit of the party filing it.

It shall be admissible only where the party filing it has the right to bring an action with regard to that claim.

### Article 330

The intervention shall be accessory where it supports the claims of a party.

It shall be admissible where its originator, in order to preserve his rights, has an interest in supporting that party.

The accessory intervener may unilaterally withdraw his intervention.

## CHAPTER II COMPELLED INTERVENTION

## SECTION I PROVISIONS COMMON TO ALL THIRD-PARTY PROCEEDINGS

### Article 331

A third party may be joined for the purpose of being cast in judgment by any party who has the right to bring a claim against the former.

He may likewise be sued out by a party who has an interest in making the judgment common to them all.

The third party shall have to be called in good time to establish his defence.

### Article 332

The judge may invite the parties to issue proceedings against all interested persons whose presence seems to him necessary for the resolution of the dispute.

In non-contentious matters, he may order proceedings to be issued against persons whose rights or duties may be affected by the decision to be taken.

Article 333

The third party against whom proceedings have been issued shall be bound to proceed before the court seised of the original claim without being able to challenge the territorial jurisdiction of the court even by relying upon an argument of specific jurisdiction attributable to another forum.

SECTION II SPECIAL PROVISIONS FOR CONTRIBUTION NOTICES

Article 334

The contribution shall be simple or formal depending on whether the defendant seeking the contribution is himself being sued as being personally liable or only as holder of a property.

Article 335

The defendant seeking a simple contribution shall remain the main party.

Article 336

The defendant in formal contribution may always request his withdrawal and that the person standing liable be substituted for as the main party.

The defendant seeking a contribution, notwithstanding the above, although allowed not to stand as a main party may remain in the case to preserve his rights; the original defendant may ask that he remains in the case to preserve his.

Article 337

The judgment delivered against the formal co-defendant standing liable may, in all cases, be executed against the person seeking the contribution on the sole condition that he has been notified.

Article 338

The taxable charges shall be recoverable against the person seeking the contribution only in case of the insolvency of the formal person standing liable to the contribution and on condition that the person seeking the contribution remained in the case, even on an accessory basis.

TITLE IX B TESTIMONY OF A CHILD BEFORE A COURT OF JUSTICE

Article 338-1

(*Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

(*Decree No. 94-42 of 14 January 1994, sec.22, Official Journal of 16 January 1994 in force on 1 February 1994*)

Where a minor requests to be heard by virtue of Article 388-1 of the Civil Code, the provisions as hereinafter shall be applicable.

Article 338-2

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

The request shall be made without any formality to the judge by the interested person. It may be made at any stage of the proceedings and even for the first time on appeal.

Article 338-3

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

No appeal shall lie against the decision ruling on the request to be heard made by the minor.

The decision whereby the testimony is ordered may, notwithstanding the above, be amended or set aside by another special reasoned decision where the judge has been

apprised of a good reason which shall render a testimony of the minor unsuitable under the conditions previously provided.

Article 338-4

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

The decision ordering the testimony may take the form of simple notes recorded on the file or the transcript of the hearing.

Article 338-5

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

A convocation to his testimony-hearing shall be transmitted to the minor by recorded letter with the advice of delivery slip sought, doubled by an ordinary letter to that effect.

The convocation shall inform him of his right to testify alone, or in the presence of an *avocat* or a person of his choice.

On the same day, the clerk's office-registry shall inform the legal representatives of the parties by ordinary memorandum and, in default thereof, the parties themselves by recorded letter with the advice of delivery slip sought of the decision ordering the testimony. The notice shall reproduce the provisions of Article 338-3.

Article 338-6

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

Where the judge is seised of a request to give evidence in the presence of the parties and the minor, the testimony-hearing may take place immediately. Where such is not proceeded with immediately, the convocation of the minor and the information provided in the second sub-article of Article 338-5 shall be given orally.

Article 338-7

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

Where the minor appears alone in view of giving evidence, the judge shall give notice to him of his right to give evidence in the presence of an *avocat* or a person of his choice. Where the minor shall exercise such a right, the testimony-hearing shall be postponed at a later date.

The *avocat* retained by the minor shall inform the judge of the same.

Where the minor shall request to give evidence in the presence of an *avocat* and where he does not choose one himself, the judge shall behest the Chairman of the Bar to appoint an *avocat*.

Article 338-8

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

The decision refusing the testimony of the minor shall be transmitted by the clerk's office-registry to the minor by recorded letter with the advice of delivery slip sought doubled with an ordinary letter. As the case may be, a copy of the decision shall be transmitted to the *avocat* of the minor by a simple memorandum.

Article 338-9

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.20, Official Journal of 17 September 1993*)

The court sitting as a panel-judge may hear a minor or appoint one of its members to proceed with the testimony-hearing of the minor and to give an account of the same thereafter.

## TITLE X THE WITHDRAWAL, RECUSAL AND REFERRAL

### CHAPTER I ABSTENTION

Article 339

The judge who considers there exists as regards to his person grounds of recusal, or who thinks he should in conscience abstain, shall have himself replaced by another judge nominated by the president of the court to which he it is attached to. The replacement of a judge of the *tribunal d'instance* shall be appointed by the president of the *tribunal de grande instance* in default of a presiding judge.

Article 340

Where the abstention of several judges prevents the court seised from ruling, it shall be proceeded as in matters of referral on grounds of reasonable suspicion.

CHAPTER II RECUSAL

Article 341

(*Decree No. 78-330 of 16 March 1978, sec.7, Official Journal of 18 March 1978 amendment, JORF of 24 March 1978 and JORF of 10 November 1978*)

The recusal of a judge shall be permissible only for causes provided by the law.

As it is provided under Article L.731-1 of the Code of Judicial Organisation, and save where there exist special provisions for certain courts, the recusal of a judge may be requested:

1° Where he himself or his spouse has a personal interest in the dispute;

2° Where he himself or his spouse is the creditor, debtor, presumed heir or donee of one of the parties;

3° Where he himself or his spouse is related by blood or marriage with one of the parties or his or her spouse up to the fourth degree of kinship inclusive;

4° Where there have been or have proceedings between himself or his spouse and with one of the parties or his or her spouse;

5° Where he has, previously, had knowledge of the matter in the capacity of a judge or arbitrator or where the has counselled one of the parties;

6° Where the judge or his spouse is entrusted of the administration of the property of one of the parties;

7° Where there exists a link of subordination between the judge or his spouse and one of the parties or his or her spouse;

8° Where there has been a notorious friendship or enmity between the judge and one of the parties;

The ministère public, as a joined party may be recused on the same grounds.

Article 342

The party who wishes to recuse a judge shall have, on pain of inadmissibility, to do so as soon as he has knowledge of a ground of recusal.

In no case may the request for recusal be made after the end of the oral arguments.

Article 343

The recusal shall have to be made by the party himself or his agent specially empowered.

Article 344

The request for the recusal shall be made by a processual instrument lodged at the clerk's office of the court to which the relevant judge is attached or by declaration taken down by the clerk in a procès-verbal.

The request for the recusal shall have, under penalty of it otherwise being inadmissible, to specify precisely the grounds for the recusal and be subjoined with the necessary supporting exhibits.

An acknowledgement of the request shall be issued.

Article 345

The clerk shall transmit to the judge a copy of the recusal application against him.

Article 346

The judge, as soon as he receives the copy of the application, shall have to withdraw until the recusal has been ruled upon.

Where there is an urgency, another judge may be nominated, even ex propio motu, to carry out the necessary procedures.

Article 347

Within eight days of this communication, the impugned judge shall have to make known in writing, either an acquiescence of the recusal or the grounds for which he opposes the same.

Article 348

Where the judge acquiesces, he shall immediately be replaced.

Article 349

Where the judge opposes the recusal or does not give any reply, the recusal application shall be ruled upon at once by the court of appeal or, where it is directed against a member of a court composed of occupational and lay judges, by the president of the court in question, whose ruling shall not be appealable.

Article 350

The clerk shall transmit the recusal application with the judge's reply or a note of his failure to reply, to the first president of the court of appeal or to the president of the court composed of occupational and lay judges.

Article 351

The matter shall be determined without the necessity of calling the parties or the impugned judge.

A copy of the decision shall be delivered or transmitted by the clerk to the judge and to the parties.

Article 352

Where the recusal application is granted, the replacement of the judge shall be proceeded with.

Article 353

Where the recusal application is dismissed, the applicant may be ordered to pay a civil fine from F 100 to F 10 000 without prejudice to the damages which may to be claimed.

Article 354

The acts performed by the impugned judge before he had knowledge of the recusal may not be challenged.

Article 355

The recusal against several judges shall have, under penalty of it otherwise being inadmissible, to be filed in the same plea, save where a ground for the recusal comes to light subsequently to the same.

It shall then be proceeded with as provided in the following Chapter even though a referral has not been requested.

## CHAPTER III THE REFERRAL TO ANOTHER COURT

### SECTION I THE REFERRAL FOR REASONABLE SUSPICION

Article 356

The application for referral on grounds of reasonable suspicion shall be subject to the same conditions of admissibility and of form as is the case for a recusal application.

Article 357

The application to bring the matter out of the cognisance of the judge shall immediately be communicated by the clerk to the president of the court.

Article 358

Where the president considers the application well-founded, he shall assign the matter to another panel of the same court or refer it to another court of the same kind.

Where the president considers that the matter shall have to be referred to another court, he shall transmit the file to the president of the next superior court who shall designate the court of referral.

A copy of the decision shall be transmitted by the clerk to the parties.

An appeal shall not lie against the decision; it shall be binding on the parties and on the ad quem referral judge.

Article 359

Where the president opposes to the application, he shall transmit the matter with the reasons of his refusal to the president of the next superior court.

Such court shall, in chambers, rule within one month after having heard the ministère public and without the necessity of calling the parties.

Copy of the decision shall be transmitted by the clerk to the parties and to the president of the court whose cognisance is at issue.

Article 360

Where the application is well-founded, the matter shall be referred to another panel of the court originally seised, or to another court of the same kind as the latter.

The decision shall be binding on the parties and on the ad quem referral judge. No appeal shall lie against it.

Article 361

The proceedings shall not be stayed before the court whose cognisance is at issue.

The president of the court seised of an application for referral may notwithstanding the above, order, according to the circumstances, that the court suspected of bias shall refrain from ruling until the judgment of referral.

Article 362

Where there shall be a referral, it shall be proceeded with as provided under Article 97.

Article 363

The dismissal of the referral application may carry the application of provisions of Article 353.

SECTION II REFERRAL ON GROUNDS OF A RECUSAL AGAINST SEVERAL JUDGES

Article 364

Where the referral is requested on grounds of a personal recusal against several judges of the court seised, it shall be proceeded as in matters of referral on grounds of reasonable suspicion after that each impugned judge has replied or has allowed the time-limit to the reply to expire.

## SECTION III THE REFERRAL ON GROUNDS OF PUBLIC SECURITY

### Article 365

The referral on grounds of public security shall be ordered by the *Cour de cassation* on the behest of the procureur général before such court.

### Article 366

(*Decree No. 81-500 of 12 May 1981, sec.11, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

Provisions of Articles 360 to 362 shall be applicable.

# TITLE XI INCIDENTS OF THE PROCEEDINGS

## CHAPTER I THE JOINDER AND DISJOINDER OF PROCEEDINGS

### Article 367

The judge may, on the application of the parties or ex proprio motu, order the joinder of several proceedings pending before him where there is a connexity between the disputes such that it would be in the interest of justice to manage or to determine them together.

He may likewise order the disjoinder of proceedings into several actions.

### Article 368

The decision of joinder or disjoinder of proceedings pertains to measures of judicial administration.

## CHAPTER II THE ABATEMENT OF THE PROCEEDINGS

### Article 369

The proceedings shall be abated by:

- the majority of a party;

- the discontinuance of representation by an *avocat* or an *avoué* where the representation is compulsory;

- the effect of the judgment which orders the receivership or judicial liquidation of properties in cases where this entails the control or the dispossession of the debtor.

Article 370

As from the time of the notification to the other party, the proceedings shall be abated by:

- the death of a party in cases where the action is transmissible;
- the discontinuance of the legal representative of a person under a legal disability;
- the recovery or loss by a party of the legal capacity to ester in judgment.

*Article 371*

In any case shall the proceedings be interrupted where the event happens or is notified after the opening of the oral arguments.

Article 372

The acts performed and even the judgments which have become res judicata, obtained after the abatement of the proceedings, shall be considered void save where they are expressly or tacitly confirmed by the party for whose benefit the abatement is provided.

Article 373

The proceedings may be revived voluntarily in the manner provided for in view of tendering grounds of defence.

In default of voluntary revival, it may be caused by way of a citation.

Article 374

The proceedings on revival shall be prosecuted as they stood at the time where they were abated.

Article 375

Where a party who is cited in view to a revival of the proceedings fails to appear, matters shall be proceeded with as provided under Articles 471 and following.

Article 376

The abatement of proceedings shall not bring the matter out of the cognisance of the judge.

The latter may invite the parties to inform him of their steps to revive the proceedings and may strike out the matter in default of thereof within the time-limit specified by him.

He may request the ministère public to collect the information necessary for the revival of the proceedings.

## CHAPTER III STAY OF THE PROCEEDINGS

Article 377

(*Decree No. 98-1231 of 28 December 1998, sec.9, Official Journal of 30 December 1998, in force on 1 March 1999*)

Further to the cases provided by the law, the proceedings shall be stayed by the decision providing for a deferment of judgment or which struck off the matter from the roll.

### SECTION I DEFERMENT OF JUDGMENT

Article 378

The decision of deferment shall suspend the course of the proceedings for the period, or until the occurrence of an event, which it shall identify.

Article 379

The deferment shall not bring the matter out of the cognisance of the judge. At the expiration of the deferment, the proceedings shall be resumed on the initiative of the parties or by steps taken by the judge, subject to the latter's power to order, should the occasion arise, a new deferment.

The judge may, according to the circumstances, revoke the deferment or abridge the period.

Article 380

The decision to put off the judgment may be appealed on leave by the first president of the court of appeal where a serious and legitimate cause against it is shown.

The party who wishes to appeal shall seise the first president who shall rule as in matters of summary interlocutory procedure. The summons shall have to be served within one month as from the decision.

Where the application is granted, the first president shall specify the date where the matter shall be examined by the court which shall be seised and give a ruling as in matters of fixed-day procedure or, as provided under Article 948, as the case may be.

Article 380-1

(*Inserted by Decree No. 79-941 of 7 November 1979, sec.7, Official Journal of 9 November 1979 in force on 1 January 1980*)

The decision for a deferment of judgment delivered as a one of last resort may be impugned by way of petition in cassation only in relation to breach of the rule of law.

SECTION II DELETION OFF THE ROLL

Article 381

(*Decree No. 98-1231 of 28 December 1998, sec.10, Official Journal of 30 December 1998, in force on 1 March 1999*)

Deletion off the roll shall be the order made, under the conditions prescribed by law, as a result of a want of action on behalf of the parties.

It shall carry the removing of the matter off the roll of cases being proceeded with.

It shall be notified by ordinary letter to the parties as well as to their representatives. Such notification shall mention the want of action.

Article 382

(*Decree No. 98-1231 of 28 December 1998, sec.10, Official Journal of 30 December 1998, in force on 1 March 1999*)

The withdrawal from the roll shall be ordered where all the parties make an application to the same while giving the reasons thereof.

Article 383

(*Decree No. 81-500 of 12 May 1981, sec.12, Official Journal of 14 May 1981 amendment JORF 21 May 1981*)

(*Decree No. 98-1231 of 28 December 1998, sec.10, Official Journal of 30 December 1998, in force on 1 March 1999*)

Deletion off the roll shall pertain to measures of judicial administration.

Save where the proceedings are time-barred, a matter may be restored, where it has been deleted, on showing cause of the compliance with the steps to be undertaken which was wanting and which resulted in the matter being deleted, on application by one of the parties.

## CHAPTER IV THE EXTINCTION OF THE PROCEEDINGS

Article 384

Further to cases where an extinguishment of action is effected as a result of the pronouncement of a judgment, the proceedings shall be extinguished accessorily on a settlement, acquiescence, withdrawal of action or, in non-transmissible actions, on the death of a party.

The extinction of the proceedings shall be recorded by a decision rendering the court no more cognisant of the matter.

It shall belong to the judge to confer an enforceable title upon the instrument recording the settlement between the parties, whether this is done before him or has been reached out of his presence.

Article 385

The proceedings shall be extinguished principally by the effect of a bar by limitation, discontinuance of the proceedings or the lapse of the citation.

In those cases, the recording of the extinction of the proceedings and the rendering of the court as no more cognisant of the matter shall not be a bar to the institution of new proceedings where the action is not otherwise extinguished.

SECTION I DISMISSAL FOR WANT OF PROSECUTION

Article 386

Proceedings shall be dismissed for want of prosecution where no party has prosecuted with the carriage of the case for a period of two years.

Article 387

Dismissal for want of prosecution may be applied for by either one of the parties.

It may be raised by way of a plea against the party who performed an act after the expiration of the time-limit occasioning a dismissal for want of prosecution.

Article 388

Dismissal for want of prosecution shall have to, under penalty of it otherwise being inadmissible, be requested or raised before any other grounds; it shall be as of right.

It may not be raised ex proprio motu by the judge.

Article 389

Dismissal for want of prosecution shall not extinguish the right of action; it shall only carry the extinction of the proceedings and shall disenable a party to oppose any of the lapsed processual papers or to avail himself thereof.

Article 390

Dismissal for want of prosecution in relation to appeals or application to set aside shall confer on the judgment the authority of res judicata even where it has not been notified.

Article 391

The time-limit beyond which a dismissal for want of prosecution shall result, shall run against natural persons and corporate entities, even where they are under legal disabilities, subject to their right of action against the administrators or tutors.

Article 392

(*Decree No. 76-1236 of 28 December 1976, sec.5, Official Journal of 30 December 1976*)

The abatement of proceedings shall effect a pause in the reckoning of the time-limit governing dismissal for want of prosecution.

The time-limit shall continue to run in cases of stays of the proceedings save where they are operative for a limited period only or until the occurrence of a specific event; in the latter event, a new period shall run as from the expiration of the limited period or as from the occurrence of the event.

Article 393

The costs attendant upon a dismissal for want of prosecution shall be borne by the party who instituted the relevant proceedings.

SECTION II THE DISCONTINUANCE OF PROCEEDINGS

SUB-SECTION I THE DISCONTINUANCE OF THE CLAIM AT FIRST INSTANCE

Article 394

The claimant may, in all matters, discontinue his claim in view to terminating the proceedings.

Article 395

The discontinuance shall be perfected only on the acceptance of the same by the defendant.

Notwithstanding the above, an acceptance shall not be necessary where the defendant has not tendered a substantive defence or a plea seeking a peremptory declaration of inadmissibility at the time where the claimant moves for discontinuance.

Article 396

The judge shall declare the discontinuance perfected where the defendant's non-acceptance is not founded on any reasonable grounds.

Article 397

The discontinuance shall be express or implied; the same shall apply to acceptance.

Article 398

A discontinuance of proceedings shall not carry a renunciation to the right to sue, but only the extinction of the proceedings.

Article 399

The discontinuance shall carry, save where there is a agreement to the contrary, an undertaking to bear the costs of the extinguished proceedings.

SUB-SECTION II THE DISCONTINUANCE OF AN APPEAL OR APPLICATION TO SET ASIDE

Article 400

The discontinuance of an appeal or of an application to set aside shall be allowed in all matters except where there are provisions to the contrary.

Article 401

(*Decree No.81-500 of 12 May 1981, sec.13, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The discontinuance of an appeal shall require the acceptance only where it shall contain provisos or where the party in whose regard it is made has previously filed a cross-appeal or an incidental claim.

Article 402

The discontinuance of an application to set aside shall require the acceptance only where the original claimant has previously filed an additional claim.

Article 403

The discontinuance of an appeal shall carry a confession of the judgment. It shall be void where another party shall thereafter lodge in due form an appeal.

Article 404

The discontinuance of an application to set aside without provisos shall carry a confession of the judgment.

*Article 405*

Articles 396, 397 and 399 shall not be applicable to discontinuance of appeal or to an application to set aside.

SECTION III LAPSING OF THE CITATION

Article 406

A citation shall lapse in the cases and under the conditions prescribed by law.

Article 407

The decision putting on record the operation of being lapsed in relation to the citation may be revoked, in case of error, by the judge who delivered the same.

SECTION IV CONFESSION OF JUDGMENT

Article 408

Confessing to a claim shall carry the recognition of the merits of the opponent's claims and a renunciation to mount a challenge.

It shall lie only in relation to those rights vesting its persona with an unfettered enjoyment.

Article 409

(*Decree No. 79-941 of 7 November 1979, sec.8 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

Confessing to a judgment shall carry a deference to its holdings and a renunciation of exercising any means of review save where another party shall thereafter duly institute review proceedings.

It shall always lie save where contrary provisions shall apply.

Article 410

Confession may be express or implied.

The enforcement without any proviso of a non-enforceable judgment shall amount to a confession to the same, save where confession shall not be entertained.

## TITLE XII LEGAL REPRESENTATION AND ASSISTANCE BEFORE A COURT

Article 411

The authority to act in representation before a court of justice shall carry the power and the duty to effectuate processual papers on behalf of the principal.

Article 412

The function of assisting before a court of justice shall carry the power and duty to advise the party and to defend his contentions without the same binding him.

Article 413

The authority to act in representation shall carry the function of assistance save where provisions or agreement to the contrary shall apply.

Article 414

A party may be represented only by one legal persona whether by a natural person or corporate entities empowered in law.

Article 415

The surname of a representative and the capacity in which he acts shall have to be provided to the judge by way of a declaration to the clerk of the court.

Article 416

Whoever intends to represent or assist a party shall have to show cause of his authority to act to assist.

An *avocat* or *avoué* shall, notwithstanding the above, be exempted from such proof.

The *huissier de justice* shall benefit from the same exemption in cases where he is entitled to represent or assist the parties.

Article 417

The persons empowered with an authority to act in representation before a court of justice shall be considered, with regard to the judge and the opposing party, to have received special powers to move for or indicate acceptance of discontinuances of action, to the confessing of actions, to make or accept offers, to tender admissions or agreements.

Article 418

The party who shall revoke the retainership of his representative shall have to immediately thereafter either provide for his replacement or inform the judge and the opposing party of his intention to conduct the proceedings himself, where the law so permits, failing which his opponent may prosecute the proceedings and seek judgment while recognising all the way only the revoked representative.

Article 419

The representative who intends to release himself from a retainership shall only be in a position to effect the same where he has informed the one on whose behalf he has been acting, the judge and the opposing party of his intention.

Where representation is compulsory, the *avocat* or the *avoué* may only discharge their retainership on them being replaced by a new representative employed by the party, or in default thereof, appointed by the Chairman of the Bar or the President of the Disciplinary Chamber.

Article 420

The *avocat* or the *avoué* shall fulfil the duties of his mandate without a renewal of powers until the enforcement of judgment, provided that the same shall be executed within less than a year after the judgment stood as res judicata.

These provisions shall not prevent a direct payment to the party where the same has fallen due.

## TITLE XIII THE MINISTÈRE PUBLIC

### Article 421

The ministère public may act as a main party or intervene as a party joined to the proceedings. He shall represent such other persons as in the cases prescribed by law.

## CHAPTER I THE MINISTÈRE PUBLIC AS A MAIN PARTY

### Article 422

The ministère public shall act ex proprio motu in matters prescribed by law.

### Article 423

Further to theses matters, it may be the advocate for the maintenance of public policy in matters where the same is at stake.

## CHAPTER II THE MINISTÈRE PUBLIC AS A JOINED PARTY

### Article 424

(*Decree No.81-500 of 12 May 1981, sec.14, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The ministère public shall be a joined party where it shall intervene to tender its observations in relation to the application of the law in a matter which has been brought to his attention.

### Article 425

(*Decree No.81-500 of 12 May 1981, sec.15, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

(*Decree No.82-327 of 9 April 1982, sec.33, Official Journal of 11 April 1982)*

(*Decree No.85-1388 of 27 December 1985, sec.182, Official Journal of 29 December 1985)*

The ministère public shall have to be intimated of:

1° Matters relating to parentage, to the organisation of the tutela, to the institution or modification of the tutela of adults;

2° Proceedings for provisional stay of prosecution and general wiping off of debts, personal bankruptcy or other penalties and, with regard to corporate entities, proceedings relating to a court administration of insolvency and liquidation of property, proceedings relating to receiverships and judicial liquidation as well those relating to the financial responsibility of company directors.

The ministère public shall have, further, to be intimated of all matters in relation to which the law shall provide that it shall indicate its opinion.

Article 426

The ministère public may be apprised of such other matters in relation to which it holds the view that it is its duty to intervene.

Article 427

The judge may ex proprio motu decide to intimate a matter to the ministère public.

Article 428

The intimation to the ministère public shall, save where special provisions shall apply, have to be proceeded with at the initiative of the judge.

It shall have to be effected in due time so as not to delay the judgment.

Article 429

On intimating a matter to the ministère public, it shall have to be notified of the date of the hearing.

# TITRE XIV THE JUDGMENT

## CHAPTER I GENERAL PROVISIONS

### SECTION I THE ORAL ARGUMENTS, DELIBERATION AND THE JUDGMENT

#### SUB-SECTION I THE ORAL ARGUMENTS

Article 430

The court shall be constituted, under penalty of it otherwise being null, in accordance with the rules regarding judicial organisation.

Disputes relating to its regularity shall have to be raised, under penalty of it otherwise being inadmissible, at the commencement of the oral arguments or at the point where an irregularity has become apparent if subsequent to the oral argument, failing which no nullity may thereafter be declared on these issues, even ex proprio motu.

The provisions of the preceding sub-article shall not be applicable to a person who by virtue of his occupation or the office he occupies does not rank him as a member of the court, although called to act as the case may be.

Article 431

(*Decree No.81-500 of 12 May 1981, sec.16, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The ministère public shall be bound to attend a hearing only in cases where he is a main party, in those where it represents other persons or where its presence is required by law.

In all other cases, it may give its opinion to the court either by transmitting written submissions, which are made available to the parties, or by the presentation of the same orally at the hearing.

Article 432

The oral arguments shall take place on the day and, to the extent that the progress of the hearing shall allow, at the time previously specified, according to the rules of each court. They may be resumed in subsequent sittings.

In the event of a change in the composition of the court after the opening of the oral arguments, they shall have to be tendered de novo.

Article 433

The oral arguments shall be public except where the law requires them to be held in chambers.

The provisions made in this regard at first instance shall have to be followed on appeal, save where otherwise provided.

Article 434

In non-contentious matters, an application shall be examined in chambers.

Article 435

The judge may decide that the oral arguments shall take place or shall continue in chambers where its publicity might adversely affect individual privacy or, where all the parties so request, or where there arise such disturbances as may disrupt the judicial atmosphere.

Article 436

In chambers, it shall be proceeded with without the presence of the public.

Article 437

Where it appears, or where it is alleged, either that the oral arguments should have taken place in chambers where it is held in open court, or mutatis mutandi in a reverse instance, the president shall rule ex tempore and the incident shall be disregarded.

Where the hearing is prosecuted as according to its proper manner, no nullity based on the prior progress thereof may be subsequently pronounced, even ex proprio motu.

Article 438

The president shall see to the proper conduct of the hearing. Any direction given to ensure the same shall be implemented at once.

Judges shall exercise the same powers in any venue they may sit in office.

Article 439

Persons who are attending a hearing shall have to observe a dignified attitude and show due respect to justice. They shall not be allowed to speak without having been invited to do so, to exhibit signs of approval or disapproval, or to cause any disturbance of any nature whatsoever.

The president may have any person who fails to comply with his orders expelled without prejudice to such criminal or disciplinary proceedings which might be instituted against him.

Article 440

The president shall chair the oral arguments. He shall turn to the judge-rapporteur to address the court where a report is to be presented.

The claimant, thereafter the defendant, shall be called in that order to set forth their claims.

Where the court holds it has been apprised of the necessary elements of the matter, it shall draw the closing speeches and the observations of by the parties to an end.

Article 441

Even in cases where representation is compulsory, the parties even though aided by their representatives, may submit in person oral observations.

The court may deny them the right to address it where passionate feelings or inexperience prevail over dignity or clarity so as to prevent a proper discussion of the matter.

Article 442

The president and the judges may call upon the parties to provide legal or factual explanations which they deem necessary to clarify matters otherwise obscure.

Article 443

The ministère public, when joined to a proceedings, shall be the last to be called in view to addressing the court.

Where it is not in a position to make submissions at that moment, it may request that its speech be deferred to a subsequent hearing.

Article 444

The president may order the oral arguments to be re-opened. He shall have to order so where parties were not in a position to argue in adversum on the legal and factual clarifications sought.

Where there is change in the composition of the court, it shall be necessary conduct de novo the oral arguments.

Article 445

Subsequent to the close of the oral arguments, the parties may not file any written comment in support of their arguments except in reply to the arguments advanced by the ministère public or at the request of the president under the circumstances provided for under Articles 442 and 444.

Article 446

The provisions of Articles 432 (sub-article 2), 433, 434, 435 and 444 (sub-article 2) shall have to be complied with under penalty of a nullity.

Notwithstanding the above, no nullity may subsequently be raised owing to a failure to comply with such provisions where it has not been relied upon prior to the close of the oral arguments. Nullity may not be raised ex proprio motu.

SUB-SECTION II THE DELIBERATION

Article 447

It shall belong to the judges before whom the matter has been argued to deliberate on it. They shall consist of such numbers no less to that which is laid down under the rules relating to judicial organisation.

Article 448

The deliberations of the judges shall be in camera.

Article 449

The decision shall be delivered on a majority of votes.

SUB-SECTION III THE JUDGMENT

Article 450

Where a judgment may not be pronounced ex tempore, its pronouncement shall be reserved in view of further consideration and to be pronounced on a date as specified by the president.

Article 451

Decisions in contentious matters shall be pronounced in open court and those in non-contentious matters out of the presence of the public, subject to special provisions pertaining to certain matters.

Article 452

The judgment shall be read by one of the judges who formed it, even where the other judges and the ministère public are not present.

The pronouncement may be limited to its operative part.

Article 453

The date of the judgment shall be that on which it has been read.

Article 454

The judgment shall be delivered on behalf of the French people.

It shall contain an indication of:

- the court from which it emanates;
- the names of the judges who deliberated on it;
- its date;
- the name of the representative of the ministère public where he attended the oral arguments;
- the name of the clerk;
- the names or denomination of the parties as well as their domicile or registered office;
- should the occasion arise, the names of the *avocats* or any person who represented or assisted the parties;
- in non-contentious matters, the name of the persons to whom it shall have to be notified.

Article 455

(*Decree No. 98-1231 of 28 December 1998, sec.11, Official Journal of 30 December 1998 amendment JORF of 13 February 1999, in force on 1 March 1999*)

The judgment shall have to set forth succinctly the respective claims of the parties and their grounds. Such presentation may take the form of a reference to the pleadings of the parties with the indication of their date. Reasons for the judgment shall have to be given.

It shall pronounce the decision in the form of holdings.

Article 456

The judgment shall be signed by the president and the clerk of the court. Where there is impediment in relation to president, a mention thereof shall be recorded on the minutes which shall be signed by one of the judges who deliberated on it.

Article 457

The judgment shall have the probative authority of an authentic instrument of record subject to provisions of Article 459.

Article 458

The provisions of Articles 447, 451, 454, with regard to the indication of the names of the judges, 445 (sub-article 1) and 456 shall have to be complied with under penalty of it otherwise being null.

Notwithstanding the above, no nullity may subsequently be relied upon or raised ex proprio motu for non-compliance with the formalities provided under Articles 451 and 452 where it has not been raised of at the time the judgment was pronounced, and noted down by way of a simple mention on the transcript of the hearing.

Article 459

Omission or inaccuracy in a note intended to establish the regularity of the judgment may not cause the nullity thereof where it is shown on producing the processual papers, the transcript of the hearing or by any other means that the legal requirements have, in fact, been complied with.

Article 460

The nullity of a judgment may only be raised by the means of review provided by the law.

Article 461

The legal significance of a judgment shall be construed by the judge who pronounced it where it is not appealed against.

An application for the interpretation of a judgment shall be brought by way of simple petition by one of the parties or by joint petition. The judge shall rule upon it with the parties being present or called.

Article 462

Clerical errors or omissions which affect a judgment, even one which has become res judicata, may always be rectified by the court which delivered it or by the one to which it has been referred, in accordance with the matters on the court's record, or should the occasion arise, what reason would dictate.

The judge shall be seised by a simple petition on behalf of one of the parties, or by joint petition; he may also be seised ex proprio motu.

The judge shall rule upon the matter after having heard the parties or the latter having been called.

A note of the rectifying decision shall be made on the original and on the certified copies of the judgment. It shall be notified in the same way as a judgment.

Where the rectified decision has the authority of res judicata, the rectifying decision may only be impugned by way of a petition in cassation.

Article 463

(*Decree No. 89-511 of 20 July 1989, sec.9, Official Journal of 25 July 1989 in force on 15 September 1989*)

The court which has failed to rule upon a head of a claim, may likewise complete its judgment without affecting the res judicata in respect of the other heads of the claim, except where, should the occasion arise, the exact statements of the respective claims of the parties and their grounds are to be formulated again.

An application to the same shall have to be presented within one year at the latest after the decision which has become res judicata, or in case of a petition in cassation, in relation to the same, as from the judgment of inadmissibility.

The judge shall be seised by way of a simple petition of one of the parties or by a joint petition. He shall rule after having heard the parties or the latter being called.

A note of the decision shall be made on the original and certified copies of the judgment. It shall be notified in the same way as provided for judgments and shall make available the same means of review

Article 464

The provisions of the preceding Article shall be applicable where the judge has ruled upon matters not in issue or where more has been awarded than has been claimed.

Article 465

(*Decree No.81-500 of 12 May 1981, sec.17, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Each party shall be entitled to the delivery of a certified copy of the judgment imprinted with a certificate of enforcement.

Where there is a serious cause to the same, a second certified copy, containing the same certificate, may be delivered to the same party by the clerk of the court which has delivered the judgment. Where there is a difficulty, the president of such court shall rule upon it by a reasoned order.

Article 465-1

Where a judgment fix a family support or a debt provided for under the Articles 214, 276 and 342 of the Civil Code, the parties shall be informed, by a document added to the cerfitied copy of the judgment, of the manner of the debt collection, of the rules of revision of the debt and the criminal sentences incurred.

Article 466

*(Inserted by Decree No. 85-1330 of 17 December 1985 Article 1 Official Journaml of 18 December 1985 into force on 1 January 1986)*

In non-contentious matters, a copy of the petition shall be attached to the certified copy of the judgment.

## SECTION II THE DEFAULT OF APPEARANCE

### SUB-SECTION I LITIGATED JUDGMENT

Article 467

The judgment shall be litigated as long as the parties appear in person or by a representative, according to the rules proper to the court before which the claim is brought.

Article 468

(*Decree No.86-585 of 14 March 1986, sec.1, Official Journal of 19 March 1986*)

Where without a lawful excuse, the claimant does not appear, the defendant may request a judgment on the merits of the case which shall be litigated although the judge has the power to postpone the matter to a later hearing.

The judge may also, even ex proprio motu, declare that the citation has lapsed. The declaration of lapsing may be withdrawn where the claimant makes known to the registry within a period of fifteen days a lawful excuse in relation to which he has not been in a position to intimate in due time. In the latter event, the parties shall be convened to a later hearing.

Article 469

Where, after having appeared, one of the parties failed to effectuate the processual papers within the required time-limit, the judge shall rule by a litigated judgment in the light of the material before him.

The defendant may, notwithstanding the above, request the judge to declare that the citation has lapsed.

Article 470

Where none of the parties effectuate the processual papers within the required time-limit, the judge may, ex proprio motu, delete the matter from the roll by a non-appealable

decision after that a final notice has been transmitted to the parties themselves and their representatives where they have retained one.

## SUB-SECTION II THE JUDGMENT DELIVERED BY DEFAULT AND THE JUDGMENT DEEMED LITIGATED

### Article 471

(*Decree No. 76-1236 of 28 December 1976, sec.6, Official Journal of 30 December 1976*)

The defendant who does not appear may, on the initiative of the claimant or on a decision taken ex proprio motu by the judge, be invited to appear again where the citation has not been served on him personally.

The citation shall, subject to special rules applicable to certain courts, be reissued in the same form as the first one. The judge may order that it shall be done by a process served by a huissier where the first citation was effected by a clerk of the court. The new citation shall have to state, as the case may be, the provisions of Articles 472 and 473 or those of Article 747 (sub-article 2).

The judge may also inform the interested party, by ordinary letter, of the consequences of his failure to appear.

### Article 472

Where the defendant fails to appear, a ruling shall nevertheless be made on the substance of the case.

The judge shall uphold the claim only to the extent that he considers it valid, admissible and well-founded.

### Article 473

Where the defendant does not appear, the judgment shall be delivered by default where the decision is of last resort and where the citation has not been served in person.

The judgment shall be deemed to be litigated where the decision is appealable or where the citation has been served to the person of the defendant.

### Article 474

(*Decree No. 89-511 of 20 July 1989, sec.10, Official Journal of 25 July 1989 in force on 15 September 1989*)

Where there are several defendants cited in the same matter, where at least one of them does not appear, the judgment shall be deemed to be litigated with regard to all of them where the decision is appealable or where those who did not appear have been cited in person.

Where the required decision is not appealable, the defaulting parties who have not been cited in person shall have to be cited again. The judge may, nevertheless, decide, where the citation has been made in the manner as laid down under Article 659, and that there is no need for a new citation. The judgment delivered after that new citations have been served shall be deemed to be litigated with regard to all the parties as long as one of the defendants has appeared or has been cited in person by the first or second citation; otherwise, a judgment shall be delivered by default.

Article 475

The judge may not rule prior to the expiration of the longest time-limit for appearance, under the first or second citation.

He shall rule upon the matter with regard to all the defendants in one single judgment, save where circumstances require that a ruling be made with regard to some of them only.

Article 476

The judgment delivered by default may be impugned by way of an application to set aside, except in cases where this means of review is made unavailable by an express provision.

Article 477

The judgment deemed litigated may only be impugned by the means available against litigated judgments.

Article 478

The judgment delivered by default or the judgment deemed to be litigated shall be void on the sole ground that it has not been notified within six months as from its date.

The proceedings may be begun again after the re-issue of the original citation.

Article 479

The judgment by default or the judgment deemed to be litigated delivered against a party residing abroad shall have to record expressly the efforts made in view to informing the defendant of the originating process.

## CHAPTER II SPECIAL PROVISIONS

### SECTION I THE JUDGMENT ON THE SUBSTANTIVE ISSUE

#### Article 480

The judgment which decides in its holdings all or part of the main issue, or one which rules upon the procedural plea, a plea seeking a peremptory declaration of inadmissibility or any other incidental application, shall from the time of its pronouncement, become res judicata with regard to the dispute which it determines.

The main issue shall mean the subject-matter of the litigation as specified under Article 4.

#### Article 481

The judgment, since its pronouncement, shall render the judge no more cognisant of the dispute which he has determined.

Notwithstanding the above, the judge shall have the power to withdraw his decision in case of an application to set aside or a third party application to set aside or an application to reconsider the proceedings.

He may likewise interpret or rectify it under the distinctions drawn under Articles 461 to 464.

### SECTION II THE OTHER JUDGMENTS

#### SUB-SECTION I NON-DEFINITIVE JUDGMENTS

#### Article 482

The judgment which is limited in its holding to giving a direction or a provisional order shall not carry, on the main issue, the authority of res judicata.

#### Article 483

A non-definitive judgment shall not bring the matter out of the cognisance of the judge.

## SUB-SECTION II SUMMARY INTERLOCUTORY ORDERS

### Article 484

A summary interlocutory procedure order shall be a provisional order given at the request of one party, the other party being present or called, in cases where the law confers upon a judge who is not seised of the main issue, the power to give immediately the necessary orders.

### Article 485

The request shall be brought by way of summons at a hearing held for that purpose at the usual time and day for summary interlocutory procedure.

Where, notwithstanding the above, the case requires celerity, the summary interlocutory procedure judge may allow the issuance of a summon for a return day on the time indicated, even where the return day shall fall on a public or bank holiday, to appear either at a hearing or at his domicile open to the public.

### Article 486

The judge shall insure that sufficient time has elapsed between the summon and the hearing for the party summoned to have been able to prepare his case.

### Article 487

The summary interlocutory procedure judge shall have the right to refer a matter managed under a summary interlocutory procedure track to a panel-judge of the court for a hearing the date of which he shall specify.

### Article 488

A summary interlocutory procedure order shall not become, on the main issue, res judicata.

It may be modified or withdrawn by way of summary interlocutory procedure only in the event of new supervening circumstances.

Article 489

(*Decree No. 81-500 of 12 May 1981, sec.18, Official Journal of 14 May 1981 amendment JORF 21 May 1981*)

The summary interlocutory procedure orders shall be provisionally enforceable. The judge may notwithstanding the above, subject its provisional enforcement to the providing of an undertaking in the manner as specified under Article 517 to 522.

Should the occasion arise, the judge may order the enforcement to be executed upon the mere production of the original.

Article 490

(*Decree No.86-585 of 14 March 1986, sec.2, Official Journal of 19 March 1986*)

The summary interlocutory procedure order may be impugned by way of an appeal save where it shall emanate from the first president of the court of appeal or it has been pronounced as of last resort by virtue of the claim-value of the subject-matter.

The order given as of last resort by default may be subject to an application to set aside.

The time-limit to appeal or to apply for it to set aside shall be fifteen days.

Article 490-1

(*Inserted by Decree No. 98-1231 of 28 December 1998, sec.12, Official Journal of 30 December 1998, in force on 1 March 1999*)

Where the appeal relates to a summary interlocutory procedure order given on the basis of Article 808 or of the first sub-article of Article 809, the president of the court-room to which it is allocated shall fix within a short period the hearing at which it shall be considered. On the specified day, it shall be proceeded with in the manner provided under Article 760 to 762.

Appeal against a summary interlocutory procedure order, whatever may be the basis on which it has been given, may be managed and determined in the manner provided under Article 917.

Article 491

The judge adjudicating in a summary interlocutory procedure may pronounce the imposition of civil penalties.

He may fix the amount thereof provisionally.

He shall rule upon taxable charges.

Article 492

The originals of the orders of summary interlocutory procedure shall be kept by the clerk's office of the court.

SUB-SECTION III EX PARTE ORDERS

Article 493

An ex parte order shall be a provisional order given in a non adversary proceedings in cases where the petitioner is justified in not calling the opposing party.

Article 494

(*Decree No. 89-511 of 20 July 1989, sec.11, Official Journal of 25 July 1989 in force on 15 September 1989*)

The application shall be presented in duplicate. It shall have to contain the reasons thereof. It shall have to contain a precise indication as to the exhibits relied upon.

Where it is presented in the course of a proceeding, it shall have to indicate the court seised.

In urgent cases, the application may be presented at the judge's domicile.

Article 495

(*Decree No. 89-511 of 20 July 1989, sec.12, Official Journal of 25 July 1989 in force on 15 September 1989*)

The ex parte order shall contain the reasons thereof.

It shall be enforceable upon the mere production of the original.

Copy of the application and the order shall be given to the person against whom it is enforceable.

Article 496

(*Decree No. 76-1236 of 28 December 1976, sec.7, Official Journal of 30 December 1976*)

Where the application is not acceded to, an appeal may be lodged save where the order emanates from the first president of the court of appeal. The time-limit for appeal shall be fifteen days. The appeal shall be lodged, managed and determined as in non-contentious matters.

Where the application is acceded to, any interested party may refer back to the judge who has given the order.

Article 497

The judge shall have the right to modify or withdraw his order even where the trial judge has been seised of the matter.

Article 498

The duplicate of the order shall be kept at the clerk's office.

## CHAPTER III FINAL PROVISION

Article 499

The provisions of the present Title shall not apply to orders of judicial administration.

# TITLE XV THE EXECUTION OF JUDGMENT

Article 500

Shall become res judicata the judgment which is not subject to any review staying its execution.

The judgment which is subject to such a review shall have the same authority on the expiration of the time-limit for such a review where the same has not been made within the time-limit.

Article 501

The judgment shall be enforced, under the following conditions, as from the moment it becomes res judicata, save where the debtor enjoys the benefit of a period of grace or the creditor enjoys the benefit of a provisional enforcement.

## CHAPTER I GENERAL CONDITIONS FOR ENFORCEMENT

### Article 502

A judgment or an instrument may be enforced only on the production of a certified copy imprinted with a certificate of enforcement, save where the law provides otherwise.

### Article 503

Judgments may not be executed against the parties standing liable thereto unless they have been notified, save where the enforcement is voluntary.

In the event of an execution on the mere production of the original, the said production shall amount to a notification.

### Article 504

(*Decree No. 81-500 of 12 May 1981, sec.19, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

The proof of its enforceable nature shall appear on the judgment itself where the same is not subject to a review capable of staying its execution or where it enjoys the benefit of provisional enforcement.

Otherwise, such proof shall result:

either from the acquiescence by the unsuccessful party;

or, from the notification of the decision and of a certificate establishing, in conjunction which the notice, the absence, within a time-limit, of an application to set aside, of an appeal or of a petition in cassation where the petition shall carry a stay of execution.

### Article 505

Each party may cause to be issued by the clerk of the court before which the review may be brought a certificate attesting the absence of an application to set aside, an appeal or of a petition in cassation or indicating the date of the review where one has been lodged.

Article 506

The removal, variation of undertakings, marginal notes, transcriptions or publications, which shall have to be performed in pursuance of a judgment shall be validly carried out upon the production by any interested party of a duplicate or certified copy of the judgment or of an abstract thereof and, where it is not provisionally enforceable, of proof of its enforceable nature. The proof may result from a certificate drafted by an *avocat* or an *avoué*.

Article 507

The delivery of the judgment or the instrument to a *huissier de justice* shall amount to an authority to execute, where executions of judgment does not require specific authority.

Article 508

No execution may be carried out before 6 a.m. or after 9 p.m. nor on public holidays and non working days except by permission of the judge in case of necessity.

Article 509

Judgments delivered by foreign courts and instruments received by foreign officers shall be enforced in the territory of the Republic in the manner and under the circumstances specified by law.

## CHAPTER II THE PERIOD OF GRACE

Article 510

(*Decree No. 96-1130 of 18 December 1996, sec.1, Official Journal of 26 December 1996*)

Subject to the sub-articles as hereinafter, the period of grace may only be granted by the decisions whose execution it is intended to delay.

In urgent cases, the same power shall belong to the summary interlocutory procedure judge.

Following the signification of an order or of an instrument authorising distraint, as the case may be, the execution judge shall entertain jurisdiction to grant a period of grace. Such power shall be exercised by the *tribunal d'instance* in matters of attachment of earnings.

The grant of the period shall be reasoned.

Article 511

The period shall run as from the day of the judgment where it is litigated; in other cases, it shall run only from the notification of the judgment.

Article 512

A period of grace may not be granted to a debtor whose property is seized by other creditors nor to the one who is under administrative receivership or liquidation of properties or who has, by his act, reduced the securities which he has provided in his agreements his creditors.

In such cases, the debtor shall lose the benefit of the period of grace previously obtained.

Article 513

The period of grace shall not prevent the enforcement of protective measures.

## CHAPTER III PROVISIONAL ENFORCEMENT

Article 514

(*Decree No. 81-500 of 12 May 1981, sec.20, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

Provisional enforcement may not be implemented without having been ordered except for decision in relation to which it may be exercised as of right.

Shall in particular be enforceable provisionally as of right, summary interlocutory procedure orders, decisions containing provisional orders governing the course of a proceeding, orders providing for protective measures as well directions of the pre-trial judge granting an interim payment to a creditor.

Article 515

In addition to cases where it is as of right, provisional enforcement may be ordered at the request of the parties or ex proprio motu each time the judge shall deem it proper and compatible with the nature of the matter, provided that it is not prohibited by law.

It may be ordered for all or part of the judgment. In no case may it be ordered in relation to taxable charges.

Article 516

Provisional enforcement may be ordered only in relation to decisions to be made enforceable subject to provisions of Article 525 and 526.

Article 517

Provisional enforcement may be made subject to the providing of undertakings relating real or personal property sufficient to cover restitutions and damages.

Article 518

The nature, extent and conditions of the undertakings shall be specified in the decision which prescribes that they be provided.

Article 519

(*Decree No. 76-714 of 29 July 1976, sec. 2, Official Journal of 30 July 1976*)

Where the undertakings shall consist in a sum of money, the same shall be deposited at the Deposits and Consignation Office; it may be deposited also at the request of one of the parties in the hands of a third party appointed for that purpose.

In the latter case, the judge, where he accedes to the request, shall state in his decision the conditions of such deposit.

Where the third party refuses to accept such a deposit, the sum shall be deposited, without any fresh decision to that effect, at the Deposits and Consignation Office.

Article 520

Where the value of the security may not be immediately determined, the judge shall invite the parties to appear before him with their evidence at a date which he shall specify.

It shall be determined without any right of review.

A note of the decision shall be made on the original and on the certified copies of the judgment.

Article 521

(*Decree No. 81-500 of 12 May 1981, sec.21, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

(*Decree No. 84-618 of 13 July 1984, sec.3 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

The party ordered to pay a sum other than in view of maintenance, compensatory annuities or interim payment may avoid provisional execution by depositing, on leave granted to that effect by the judge, cash or title of sufficient value to provide a security for the amount of the award with respect to the principal claim, interest and costs.

In the event of a judgment ordering the payment of a lump sum as indemnity in cases of personal injury, the judge may also order that it be remitted to a sequester under the condition that he shall pay to the victim such instalments as the judge shall specify.

Article 522

The judge may, at any time, authorise the substitution of the original security for one of an equal value.

Article 523

(*Decree No. 76-1236 of 28 December 1976, sec.8, Official Journal of 30 December 1976*)

Requests relating to the application of Articles 517 to 522 may only be brought in cases of appeal before the first president who shall rule upon it by way of summary interlocutory procedure or, in the circumstances provided under Articles 525 to 526, before an appeal judge entrusted with the management of the case as soon as he is seised.

Article 524

(*Decree No. 76-1236 of 28 December 1976, sec.9-i and 9-ii, Official Journal of 30 December 1976*)

(*Decree No. 81-500 of 12 May 1981, sec.22, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

Where provisional execution has been ordered, it may be stopped, in cases of appeal, only by the first president who shall rule upon it by way of summary interlocutory procedure and in the following cases:

1° Where it is forbidden by law;

2° Where it is likely to lead to consequences which are clearly excessive; in the latter case, the first president may also provide for the measures referred to under Articles 517 to 522.

The same powers may be exercise, on an application to set aside, by the judge who has delivered the ad quo decision.

Where provisional execution is as of right, the first president may provide for all measures specified in the second sub-article of Article 521 and Article 522.

Article 525

(*Decree No. 81-500 of 12 May 1981, sec.23, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

Where provisional execution has been refused, it may be requested, in cases of appeal, only before the first president who shall rule upon it as by way of summary interlocutory procedure or, ever since he is seised, the judge entrusted with the management of the case and provided it is urgent.

Article 526

(*Decree No. 81-500 of 12 May 1981, sec.24, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

Where provisional execution has not been requested, or, where a judge has failed to rule upon it, the same may be requested, in cases of appeal, only before the first president ruling upon it as by way of summary interlocutory procedure or, ever since he is seised, the judge entrusted with the management of the case.

## TITLE XVI MEANS OF REVIEW

Article 527

Ordinary means of review shall be by way of the lodgment of an appeal and of an application to set aside; extraordinary means of review shall be by way of a third party application to set aside and a petition in cassation.

## SUB-TITLE I COMMON PROVISIONS

### Article 528

The time-limit at the expiration of which a review may no longer be brought shall run as from the notification of the judgment, save where the time-limit has begun to run, as provided by law, as from the day of the judgment.

The time-limit shall run even against the party who proceeds to a notification.

### Article 528-1

(*Inserted by Decree No. 89-511 of 20 July 1989, sec.13, Official Journal of 25 July 1989 in force on 15 September 1989*)

Where the judgment has not been notified within two years as from its pronouncement, the party who has appeared shall not be admissible to bring a review on the main issue following the expiration of the said time-limit.

Such provision shall be applicable only to judgments which rule wholly on the main issue and to those which, ruling on a procedural plea, a plea seeking a peremptory declaration of inadmissibility and on all other incidental pleas, seeking to terminate the proceedings.

### Article 529

Where there is a joint and indivisible judgment against several parties, the notification made to one of them shall cause the time-limit to run only with respect to him.

In cases where the judgment is in favour of several parties jointly or indivisibly, each of them may take advantage of the notification made by one of them.

### Article 530

The time-limit shall run against a person under tutela only from the day the judgment has been notified to his legal representative as well as to the subrogated tutor and, where the same appears necessary, even though the latter has not been impleaded in a proceeding.

The time-limit shall run against an adult under curatio only as from the day of the notification made to the curator.

Article 531

Where, during the time-limit for the review, there is a change in the legal capacity of the party to whom the judgment is notified, the time-limit shall be interrupted.

The time-limit shall run further to a notification made to the person who has acquired standing to receiving the same.

Article 532

The time-limit shall be interrupted by the death of the party to whom the judgment has been notified.

It shall run further to a notification made at the domicile of the deceased person, to be reckoned from the expiration of the time-limit for the making of an inventory and deliberation where the latter notification took place prior to the expiration of the aforementioned time-limit.

A notification may be made to the heirs and representatives, collectively and without indication of names and standing.

Article 533

Where the party who has notified the judgment has died, the review may be notified to the domicile of the deceased person, to his heirs and representatives collectively and without indication of names and standing.

A judgment may, notwithstanding the above, be requested against the heirs and representatives only where each has been cited to appear.

Article 534

The person who represents legally a party may, where his functions have ceased and where he has a personal interest, bring the review in his own surname. The review shall likewise be available against him.

Article 535

The party to whom a review has been notified shall be deemed, for the purposes of the notification, to have established his dwelling at the address which he indicated in the notification of the judgment.

Article 536

An inexact intitulation of the term judgment by the judges who delivered it shall not bear on the right to bring a review in any way whatsoever.

Article 537

Measures of judicial administration shall not be subject to any review.

SUB-TITLE II THE ORDINARY MEANS OF REVIEW

Article 538

The time-limit for ordinary means of review shall be one month in contentious matters; it shall be fifteen days in non-contentious matters.

Article 539

The time-limit for ordinary means of review shall stay the execution of the judgment. The lodgment of an application for review brought within the time-limit shall likewise be suspend execution.

Article 540

Where the judgment has been delivered by default or where it is deemed to be litigated, the judge shall have the power to relieve the defendant from the time bar resulting from the expiration of the time-limit, where the defendant, without any fault on his part, did not have knowledge of the judgment in time to bring a review or where he was unable to act.

An enabling declaration against preclusion shall be requested to the president of the competent court to entertain an application to set aside or an appeal. The president shall be seised as in matters of summary interlocutory procedure.

The request shall be admissible only where it is filed within a reasonable time from the moment the defendant had knowledge of the decision, but it can never be made later than one year from the notification of the decision; such time shall not stay the execution.

The president shall rule without any right of review.

Where he grants the petition, the time-limit for an application to set aside or appeal shall run as from the day of his decision subject to the president's right to reduce the time-limit or to order that the citation be made on a day which he shall specify.

Article 541

Where an interested party has been unable, without any fault on his part, to bring within the prescribed time-limit the review available against a non-contentious decisions, he may be granted an enabling declaration against preclusion in the manner as set out in the preceding Article.

## CHAPTER I THE APPEAL

Article 542

An appeal shall aim at reversing or annulling by the court of appeal of a judgment delivered by a court of first instance.

### SECTION I THE RIGHT OF APPEAL

#### SUB-SECTION I APPEALABLE JUDGMENTS

Article 543

Means of appeal shall be available in all matters, even non-contentious ones, against judgments of first instance, save where otherwise is provided.

Article 544

Judgments which decide, in their ruling, a part of the main issue and give a direction or provisional order may immediately be appealed against in the same way as judgments which rule upon the whole of the main issue.

It shall be likewise where a judgment which rules upon a procedural plea, a plea seeking a peremptory declaration of inadmissibility or any other incidental pleas seeking the termination of the proceedings.

Article 545

Appeal may be brought against other judgments independently of the judgments on the main issue only in cases specified by law.

SUB-SECTION II THE PARTIES

Article 546

The right of appeal shall be exercised by any party who has an interest where he has not renounced the same.

In non-contentious matters, means of appeal shall likewise be available to third persons to whom a judgment has been notified.

Article 547

In contentious matters, an appeal shall be directed against those who were the parties at first instance. All those who were parties may be respondents.

In non-contentious matters, the appeal may be admissible even in the absence of other parties.

Article 548

An appeal may be crossed incidentally by a respondent against the appellants as well as against the other respondents.

Article 549

A cross-appeal, against which issue is caused to be joined by a non-party to the appeal proceedings may likewise be brought by the latter who was a party at first instance.

Article 550

The cross-appeal or a provoked appeal instituted by other than a respondent who is caused to join issue, may be brought at any stage of the proceedings even though the person instituting it may be precluded from acting as an original appellant. In the latter case, it will not be entertained, notwithstanding the above, where the main appeal is not itself admissible.

The court may award damages against those persons who, in a dilatory intention, refrained from instituting a cross-appeal or a provoked appeal instituted by other than a respondent who is caused to join issue in due time.

Article 551

The cross or provoked appeal as above shall be brought in the same manner as incidental claims.

Article 552

Where there is joint and indivisible liability with regard to several parties, the appeal brought by one shall preserve the right of appeal of the others, subject to the latter joining themselves as parties to the proceedings.

In the same cases, an appeal directed against one of the parties shall reserve the appellant's right to join the others in the proceedings.

The court may order ex proprio motu the issue of proceedings against all interested parties.

Article 553

Where there several parties stand as an indivisible entity, an appeal by one shall relate to the others even though they have not been joined in the proceedings; an appeal brought against one of them shall not be admissible save where all of them are joined to the proceedings.

Article 554

Where they have an interest therein, persons who have neither been parties nor been represented at first instance or who appeared there in another capacity may intervene in an appeal.

Article 555

The same persons may be called before the court even for the purpose of entering judgment against them where the progress of the case demands that they be impleaded to the same.

Article 556

Persons having the capacity to resort to arbitration may renounce the right to an appeal. They may do so only in cases involving such rights which vest upon them an unfettered enjoyment.

Article 557

Renouncing a right of appeal may not be effected prior to the commencement of litigation.

Article 558

A renunciation shall have to be express or may result from the execution without reservation of a non-enforceable judgment.

The renunciation shall have no effect where, subsequently, another party shall duly lodge an appeal.

SUB-SECTION III MISCELLANEOUS PROVISIONS

Article 559

In cases where the main appeal is dilatory or abusive, the appellant may be ordered to pay a civil fine of F 100 to F 10 000, without prejudice to any claim for damages which may be brought against him.

Such fine, collected separately from the registration costs of the decision ordering the same, may not be collected from the respondents. The latter may obtain a certified copy of the decision in the enforceable form without being precluded therefrom by the non-payment of the fine.

Article 560

The appellate judge may award damages and interests against the person who lodges an appeal on the main issue after having failed to appear before the proceedings of first instance, without any lawful excuse.

SECTION II THE LEGAL SIGNIFICANCE OF AN APPEAL

SUB-SECTION I THE SIGNIFICANCE OF DEVOLUTIVE JOINDER OF ISSUE

Article 561

An appeal shall join issues in relation to a matter already determined before a court of appeal in order that they be adjudged de novo on a consideration of the facts and of the law.

Article 562

An appeal shall bring to the cognisance of the court only those heads of the judgment to which issue is joined expressly or impliedly and those subordinate to them.

The joinder of issue devolving shall relate to all matters where the appeal is not limited to specific heads, or where it contends for the annulling the judgment or where the subject-matter at issue cannot be considered except on the whole of the same.

Article 563

To support on appeal the claims submitted before a lower judge, parties may raise new grounds, produce new exhibits or offer new evidence.

Article 564

(*Decree No. 81-500 of 12 May 1981, sec.25, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

Parties may not submit to the court new claims except in view of a set -off, defeating an opponent's, or in relation to rulings on issues arising from the intervention of a third party, or in relation to the occurrence or manifestation of a fact.

Article 565

Claims shall not be considered as new where they pursue the same object as those submitted before the lower judge even where their foundation in law is different.

Article 566

The parties may make explicit their claims which were only virtually included in the pleadings submitted before the lower judge and may add thereto such other claims as are collateral, consequential or complementary thereto.

Article 567

Counter-claim shall likewise be admissible on appeal.

SUB-SECTION II EVOCATION

Article 568

Where the court of appeal is seised of a judgment containing a direction, or a judgment which, ruling on a procedural plea, has put an end to the proceedings, it may recall by way of evocation the points left unadjudicated where it deems it proper to dispose of the matter by virtue of a final disposition after having itself given, should the occasion arise, a direction.

The evocation shall not prevent the application of Articles 554, 555 and 563 and 567.

SECTION III FINAL PROVISIONS

Article 569

The executions of judgments improperly intituled as such for a forum of last resort may be stayed by the appellate judge at any time during the proceedings.

Article 570

The enforcement of the appellate judgment shall appertain to the court which has ruled as of first resort or, where the latter may not entertain the enforcement of its decisions, the *Tribunal de grande instance*.

Notwithstanding the above, the court of appeal may, even ex proprio motu, decide in its judgment to reserve its enforcement save where it appertains by law to another court; under the same reservation, it may also indicate the forum which will be apprised of the execution of its judgment, provided that the latter forum has jurisdiction to be apprised of judicial decisions.

CHAPTER II THE APPLICATION TO SET ASIDE

Article 571

An application to set aside shall aim at retracting a judgment delivered by default.

It shall only be available in favour of the defaulting party.

Article 572

The application to set aside shall bring back into issue, before the same judge, the points determined by default, so that a new ruling may be given on the facts and on the law.

The judgment made subject to an application to set aside shall be annulled only by the judgments which retracts it.

Article 573

(*Decree No. 84-618 of 13 July 1984, sec.4 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

An application to set aside shall be instituted in the manner provided in relation to instituting proceedings before the court which has delivered the decision.

It may be made by way of a notification by and between *avocats* before courts where legal representation is not compulsory.

Where an application to set aside aims at retracting a decision of a court of appeal delivered by default in a matter governed by the procedure without compulsory legal representation, it shall be brought by a declaration that the party or any agent shall make or address by registered mail to the clerk's office-registry of the court which has pronounced itself. The application to set aside shall be managed and determined in accordance with the rules applicable before a court of appeal in cases where legal representation is dispensed with.

Article 574

The application to set aside shall have to contain the grounds relied upon by the defaulting party.

Article 575

In the cases where the application to set aside is instituted in the manner provided under Article 573 (sub-article 2) it shall have, on pain of inadmissibility, to be declared to the clerk's office-registry of the court which has delivered the decision by the *avocat* or *avoué* retained by the defaulting party within one month as from the day it is brought.

Article 576

The matter shall be managed and determined in accordance with the rules applicable to the court which has delivered the decision subject to the application to set aside.

Article 577

In the re-opened proceedings, the admissibility of the respective claims of the claimant and the defendant shall be assessed on a consideration of the original contentions according to ordinary rules.

Article 578

A person who causes a second judgment to be entered against him by default shall be precluded from instituting a new application to set aside.

## SUB-TITLE III THE EXTRAORDINARY MEANS OF REVIEW

Article 579

Reviews by way of extraordinary means and the time-limit given for exercising the same shall not operate a stay of execution save where the law provides otherwise.

Article 580

Extraordinary means of review shall be available only in the cases specified by law.

Article 581

In cases of a dilatory or abusive review, its originator may be subjected to a civil fine of F 100 to F 10 000 without prejudice to any claim for damages which might be brought before the court seised of the review.

## CHAPTER I THE THIRD-PARTY APPLICATION TO SET ASIDE

Article 582

A third-party application to set aside shall aim at retracting or varying a judgment in favour of the third-party who impugns it.

It shall bring back into issue, with regard to its originator, the points which admitted of a decision which the latter shall challenge so that a new ruling may be given on the facts and on the law.

Article 583

(*Decree No. 81-500 of 12 May 1981, sec.26, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

Shall be admissible to bring a third-party application to set aside any person who shows an interest, provided that he was neither a party nor represented in the judgment which he impugns.

The creditors and other assigns of a party may, notwithstanding the above, lodge a third-party application to set aside a judgment delivered on a fraudulous exercise in relation to their rights or where they raise grounds which are proper to them.

In non-contentious matters, a third-party application to set aside shall be available only to third parties who have not been notified; it may be likewise against judgments delivered as of last resort even where the decision has been notified to them.

Article 584

Where liability is indivisible with regard to several parties concerned by the impugned judgment, the third-party application to set aside shall be admissible only where all the parties are called in the proceedings.

Article 585

All judgments may be subjected to a third-party application to set aside save where the law provides otherwise.

Article 586

(*Decree No. 81-500 of 12 May 1981, sec.27, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

The third-party application to set aside shall be available as a main issue for thirty years as from the judgment save where the law shall provide otherwise.

It may be brought without any bar in time against a judgment given in the course of proceedings relating to another case by the person against whom enforcement is sought.

In contentious matters, notwithstanding the above, it shall only be admissible, on behalf of a third party in relation to whom the judgment has been notified, within two months to be reckoned from the notification provided that the same indicates clearly the time-limit

available to him as well as to the methods whereby a review may be instituted. It shall be likewise in non-contentious matters where a decision of last resort has been notified.

Article 587

A third-party application to set aside instituted as the main issue shall be brought before the court from which the impugned judgment emanated.

The decision may be delivered by the same judges.

Where the third-party application to set aside is directed against a judgment delivered in a non-contentious matter, it shall be brought, managed and determined in accordance with the rules pertaining to contentious procedure.

Article 588

A third-party application to set aside which is incidental to a dispute of which a court is seised shall be ruled upon by the latter where it is a superior court to the one which has delivered the judgment or, where, it being a court of a same level, no rule pertaining to public policy preventing the same. The third-party application to set aside shall hence be brought in the same manner as provided for in relation to incidental claims.

Otherwise, an incidental third-party application to set aside shall be brought, by way of a main claim, before the court which has delivered the decision.

Article 589

The court before which the impugned judgment is produced may, depending on the circumstances, pass or defer its judgment.

Article 590

The judge seised on a third-party application to set aside on the main issue or incidentally may stay the execution of the impugned judgment.

Article 591

The decision which finds in favour of a third-party application to set aside shall retract or vary the impugned judgment only on the points prejudicial to the third-party making the application. The original judgment shall maintain its effects in relation to the other parties even on the points set aside.

Notwithstanding the above, the authority of res judicata in relation to third-party application to set aside shall operate with regard to all the parties called to the proceedings in application of Article 584.

Article 592

The judgment delivered on third-party application to set aside shall be subject to the same reviews as the decisions of the court which has delivered it.

## CHAPTER II THE APPLICATION FOR RECONSIDERATION

Article 593

An application to reconsider shall aim at retracting a judgment which has become res judicata so that a new ruling may be given on the facts and on the law.

Article 594

The reconsideration may be requested only by the persons who were parties to or represented in relation to the judgment.

Article 595

An application to reconsider shall be available only on the following grounds:

1. Where it has come to light, subsequent to judgment, that the decision has been obtained by fraud on behalf of the party in whose favour it was delivered;

2. Where, since the judgment, decisive exhibits which have been withheld by the act of another party have been discovered;

3. Where it has been adjudicated on exhibits which, since the judgment, have been acknowledged or judicially declared to be false;

4. Where it has been adjudicated on statements, testimonies or oaths which, since the judgment, have been judicially declared false.

In all these cases, the application shall be admissible only where its originator has not been able, without any fault on his behalf, to raise, before that the judgment carry the authority of res judicata, the ground on which he relies.

Article 596

The time-limit for an application to reconsider shall be two months.

It shall run as from the date on which the party has knowledge of the grounds for the reconsideration upon which he relies.

Article 597

All the parties to an impugned judgment shall have to be called to the proceedings for the reconsideration by the originator of the application on pain of inadmissibility.

Article 598

An application to reconsider shall be lodged by way of citation.

Notwithstanding the above, where it is directed against a judgment given in the course of other proceedings between the same parties before the court which delivered the judgment, the reconsideration may be requested in the manner provided for the presentation of the grounds of defence.

Article 599

Where a party has lodged or declares that he intends to lodge a petition for reconsideration against a judgment given in proceedings pending before a court other than the one which has delivered the same, the court seised of the matter in which it was given may, depending on the circumstances, shall pass or defer its judgment until the application to reconsider has been determined by the competent court.

Article 600

An application to reconsider shall be intimated to the ministère public.

Article 601

Where the judge declares the application admissible, he shall determine in pronouncing the same judgment the substantive issues save where there is need for a further management.

Article 602

Where the reconsideration is justified only against one point of the judgment, such point alone shall be revised save where the other one are related to it.

Article 603

A party shall not be admissible to apply for a reconsideration of a judgment which he has already impugned by this very same procedure save where it is on grounds which came to light subsequently.

The judgment which shall rule upon an application to reconsider may only be impugned by this very procedure itself.

## CHAPTER III THE PETITION IN CASSATION

Article 604

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

A petition in cassation shall tend to ask the *Cour de cassation* to quash a judgment owing to an error on a point of law.

### SECTION I THE AVAILABILITY OF PETITION IN CASSATION

Article 605

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The petition in cassation shall be available only against judgments delivered as of last resort.

Article 606

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Judgments of last resort which shall determine in their holdings a part of the main issue in dispute and shall give directions or shall grant a provisional order may be impugned by way of a petition in cassation in the same manner as judgments determining the totality of the main issues as of last resort.

Article 607

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

May likewise be impugned by a petition in cassation judgments of last resort which, ruling on a plea as to the procedure, a plea seeking a peremptory declaration of inadmissibility or any other incidental plea, disposed thereby of the proceedings.

Article 608

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Judgments of last resort other than the above may not be impugned by way of a petition in cassation independently of the relevant judgments determining the substantive issues, save where it is provided by law.

Article 609

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Any party who has an interest shall be admissible to file a petition in cassation even where the holding which is unfavourable to him does not benefit his opponent.

Article 610

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

In non-contentious matters, the petition shall be admissible even in the absence of an opponent.

Article 611

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

In contentious matters, the petition shall be admissible even where a judgment has been pronounced to the benefit of or against a person who was not a party to the proceedings.

Article 611-1

(*Inserted by Decree No. 99-131 of 26 February 1999, sec.4, Official Journal of 27 February 1999 in force on 1 March 1999*)

Further to cases where the notification of the decision which is amenable to a petition is incumbent upon the registry of the court which has delivered the same, the petition in cassation shall be admissible only where the decision which it impugns has first been signified.

Article 612

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The time-limit for a petition in cassation shall be two months save where provisions to the contrary shall apply.

Article 613

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The time-limit shall run, with regard to a decision in default, as from the day where an application to set aside shall be no more admissible.

Article 614

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The admissibility of an incidental petition, even a provoked petition instituted by other than a respondent who is caused to join issue in due time, shall follow the rules governing cross-appeals subject to provisions of Article 1010.

Article 615

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

In case of indivisibility with regard to several parties, the petition of one of them shall not be devoid of any effect in relation to the others even where the latter have not been joined to the proceedings in cassation.

Under the same circumstances, the petition filed against one shall only be admissible where all have been called to the proceedings.

Article 616

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where the judgment may be rectified by virtue of Articles 463 and 464, the petition in cassation shall be available, in the manner provided under these present Articles, only against a judgment ruling on the rectification.

Article 617

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The contradiction in judgments may be relied upon where the a peremptory plea founded on the res judicata has in vain been argued before the trial judges.

In this case, the petition in cassation shall be directed against the subsequent judgment in date; where the contradiction has been recorded, it shall be resolved to the benefit of the first.

Article 618

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Inconsistencies in a judgment may, further, as an exception to Article 605, be relied upon where two decisions, albeit not of last resort, are incompatible with each other and shall result in any of them being amenable to an ordinary review; the petition in cassation shall hence be admissible, even where one of the decision has already been impugned by way of a previous petition in cassation which was dismissed.

In the latter event, the petition may be filed even after the expiration of the time-limit provided under Article 612. It shall have to relate to the two decisions concerned; where an inconsistency has been established, the *Cour de cassation* shall quash one of the decisions or, where the same appears necessary, both of them.

Article 618-1

(*Inserted by Decree No.81-500 of 12 May 1981, sec.28, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The procureur général attached to the *Cour de cassation* may, on a referral of a judgment to the latter in view to clarifying of the law, invite the ministère public attached to the ad quo court which delivered judgment to notify such to the parties in relation to the same. The notification shall be effected by the clerk of the ad quo court by recorded letter with the advice of delivery slip sought.

## SECTION II THE SIGNIFICANCE OF A PETITION IN CASSATION

Article 619

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

New grounds shall not be admissible before the *Cour de cassation*.

Notwithstanding the above, new grounds may be raised for the first time where they are, but subject to any contrary provision on that issue:

1° grounds strictly based in law;

2° grounds arising out of the impugned decision.

Article 620

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The *Cour de cassation* may dismiss the petition by substituting a ground strictly based in law to an erroneous ground; it may effect the same in relation to an erroneous but which is superfluous.

It may, save where provision to the contrary shall apply, quash the impugned decision in raising ex proprio motu a point of law by way of a strict interpretation.

Article 621

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No.86-585 of 14 March 1986, sec.3, Official Journal of 19 March 1986*)

Where the petition in cassation is dismissed, the party who brought it shall be divested of his locus standi to bring afresh a new petition against the same judgment, save as referred to Article 618.

It shall be likewise where the *Cour de cassation* shall dispose of the matter as not admitting a cassation and thereby refusing to take cognisance of the same, or shall declare the petition inadmissible or shall pronounce the operation of a foreclosure in relation to the petition.

The respondent who has not filed an incidental petition or a provoked one wherein he is caused to join issue against the impugned judgment within the time-limit granted under Article 1010 shall not be admissible to institute the review on the main issue in relation to the impugned judgment.

Article 622

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Judgments delivered by the *Cour de cassation* shall not be amenable to an application to set aside.

Article 623

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The cassation may relate to the whole or part of a quashed judgment. It shall be in part where it affects only certain heads which are severable from the others.

Article 624

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The censure attached to a cassation judgment shall be limited to the consequence of a point which constitutes the foundation of the cassation except in case of indivisibility or necessary dependency.

Article 625

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

On the points which it affects, a cassation shall place the parties at the stage where they were before the judgment which is being quashed.

It shall carry, without any need for a new decision, the annulment of all decisions subsequent to the quashed judgment, decisions relating to the application or enforcement of the aformentioned quashed judgment or such other decisions which are linked to the same.

Article 626

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

As provided under Article L. 131-4 of the Code of the Judicial Organisation: "On cassation, the matter shall be remitted, save where provisions to the contrary shall apply, before a court of the same nature as the one from which emanated the judgment or appeal judgment which is being quashed or it shall be remanded before the same forum but consisting of different judges".

Article 627

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

As it is provided under Article L. 131-5 of the Code of the Judicial Organisation: "The *Cour de cassation* may quash without further referring the matter before a forum where the cassation does not imply that there is need to adjudicate on the main issue.

It may, further, in quashing without a remission, put an end to the dispute where the facts, as ascertained supremely by the fact-trier judge, allow it to apply the appropriate rule of law.

In the latter event, it shall consider the issue of taxable charges incidental to proceedings before a trial judge.

The judgment shall carry compelled enforcement.

Article 628

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 85-1330 of 17 December 1985, sec.2, Official Journal of 18 December 1985 in force on 1 January 1986*)

The unsuccessful petitioner in cassation may, on the review being considered to be abusive, be ordered to pay a civil fine of an amount which may not exceed F 20 000 and, within the same limits, a compensation to the respondent.

Article 629

(*Decree No. 85-1330 of 17 December 1985, sec.3, Official Journal of 18 December 1985 in force on 1 January 1986*)

Without prejudice to the application of provisions of Article 700, the *Cour de cassation* may leave the whole or a part of the taxable charges to be borne by a party other than the one who is unsuccessful.

Article 630

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The judgment shall carry the force of a compelled enforcement in relation to a payment of the fine, indemnity and the taxable charges.

Article 631

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Before the court to which the matter is referred back, the management shall be resumed at the stage of the procedure reached up to the point where it may not be affected by the provision of the cassation.

Article 632

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The parties may rely on new grounds in support of their claims.

Article 633

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The admissibility of new claims shall be subject to the rules which shall apply in relation to the ad quo court whose decision has been quashed.

Article 634

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The parties who do not set out new grounds or new claims shall be deemed to confine themselves to the points and claims which they have submitted to the ad quo court whose decision has been quashed. It shall be likewise for those who do not appear.

Article 635

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The intervention of a third party shall be subject to the same rules as those which apply before the ad quo court whose decision has been quashed.

Article 636

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The persons who, having been a party before the ad quo court whose decision has been quashed, and who were not so before the *Cour de cassation*, may be joined in the new proceedings or may voluntarily intervene therein, where the cassation shall interfere with their rights.

Article 637

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

Such persons may, in the same manner, take the initiative to seise the court to which the matter has been referred.

Article 638

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The matter shall be tried again in fact and in law by the court to which the matter has been referred except in relation to those issues not affected by the cassation.

Article 639

(*Decree No. 79-941 of 7 November 1979, sec.2, Official Journal of 9 November 1979 in force on 1 January 1980*)

The court to which the matter has been referred to shall consider the issues of taxable charges outlayed before the ad quo trial courts as well as those incidental to the quashed decision.

## TITLE XVII TIME-LIMITS, PROCESS OF *HUISSIER DE JUSTICE* AND NOTIFICATIONS

### CHAPTER I THE COMPUTATION OF TIME-LIMITS

#### Article 640

Where a process or a formality has to be accomplished before the expiration of a time-limit, the latter shall have as its point of origin the date of the process, of the event, of the decision or of the notification which caused it to run.

#### Article 641

Where a time-limit is expressed in days, the day of the process, event, decision or notification shall not be counted as exclusive to the reckoning.

Where the time-limit is expressed in months or years, it shall expire on the day of the last month or year bearing the same date as the day of the process, of the event, of the decision or of the notification which causes the time-limit to run. In the absence of an identical date, the time-limit shall expire on the last day of the month.

Where a time-limit is expressed in months and in days, the months shall be counted first, then the days.

#### Article 642

All time-limits shall expire on the last day at midnight.

The time-limit which would normally expire on a Saturday, Sunday or a public or bank holiday shall be extended to and shall be inclusive of the first following working day.

#### Article 642-1

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.10, Official Journal of 30 December 1976*)

The provisions of Articles 640 and 642 shall likewise be applicable to time-limits within which registration and other formalities of publication shall have to be effected.

Article 643

Where the claim is brought before a court sitting in the mainland of France, the time-limits for entering appearances, lodging an appeal, an application to set aside, an application to reconsider and a petition in cassation shall be extended by:

1° One month in relation to persons living in an overseas department or an overseas territory;

2° Two months in relation to persons living in a foreign country.

Article 644

(*Decree No. 76-1236 of 28 December 1976, sec.11, Official Journal of 30 December 1976*)

Where the claim is brought before a court sitting in an overseas department, the time-limit for entering appearances, lodging an appeal, an application to set aside, an application to reconsider and a petition in cassation shall be extended by:

1° One month in relation to persons not living in that department as well as for those who have established their dwellings in the localities of such department as specified by the Order of the first president;

2° Two months in relation to persons living in foreign countries.

Article 645

The extension of time-limits provided under Articles 643 to 644 shall apply in all cases not specifically excluded.

The time-limits for review before a court in electoral matters shall be extended only in cases specified by law.

Article 646

The preceding provisions shall not preclude the judges' power, in case of urgency, to abridge the time-limits for appearance or in view to allowing citation in relation to a specified return date.

Article 647

Where a process, to be served on a party whose place of domicile would allow him the benefit of an extended time-limit, is served on him in person in a place not conferring such benefits, the notification shall carry only the time-limits granted to the latter.

## CHAPTER II THE FORMS OF THE PROCESS OF THE HUSSIER DE JUSTICE

### Article 648

Every process by a *huissier de justice* shall indicate, further to other particulars as otherwise prescribed:

1° Its date;

2° a) Where the petitioner is a natural person: his surname, first names, occupation, domicile, nationality, date and place of birth;

b) Where the applicant is a corporate entity: its form, denomination, address of its registered seat and the body which shall represent itself.

3° The surname, first names, domicile and signature of the *huissier de justice*;

4° Where the process shall have to be served, the surname and domicile of the addressee, or, where it is a corporate entity, its surname and registered office.

These particulars are prescribed under penalty of it otherwise being null.

### Article 649

The nullity of process of a *huissier de justice* shall be governed by the provisions governing the nullity of processual papers.

### Article 650

The costs appertaining to unnecessary process shall be borne by the huissiers de justice who served them, without prejudice to damages and interest which might be claimed. It shall be likewise for costs incidental to a process paper rendered void by their fault.

## CHAPTER III THE FORMALITIES OF NOTIFICATIONS

### Article 651

A process paper shall be brought to the knowledge of the interested parties by notification thereof made to them.

The notification made by a process of a huissier shall be a signification.

A notification may always be effected by way of signification albeit the fact that the law has provided another form.

Article 652

Where a party has appointed a person to represent him in court, process which are directed to him shall be notified to his representative, subject to special rules for notification of judgments.

SECTION I THE SIGNIFICATION

Article 653

(*Decree No. 89-511 of 20 July 1989, sec.14, Official Journal of 25 July 1989 in force on 15 September 1989*)

The date of signification of a process of *huissier de justice* shall be that of the day it has been served on the person, at the domicile or residence, on the parquet or, in the case specified under Article 659, that of the drawing up of the procès-verbal.

Article 654

A signification shall have to be made in person.

A signification to a corporate entity shall be effected in person where the process paper is to be delivered to its legal representative, to its authorised recipient, or to any other person empowered in relation to the same.

Article 655

Where the signification in person shall prove to be impossible, the process paper may be delivered either at the place of domicile or, in default of a known place of domicile, at the place of residence.

A copy may be delivered to any person present, in default of the caretaker of the building, or as a last resort, to any neighbour.

A copy may be left only on condition that the person present, the caretaker or the neighbour, shall accept to take possession of the same, state his surname and first names, status and, in the case of a neighbour, indicate his place of domicile and shall thereby acknowledge receipt thereof.

The *huissier de justice* shall have to leave, at all events, at the place of domicile or residence of the addressee, a dated notice of his visit advising of the delivery of the copy and indicate the nature of the process and the surname of the petitioner as well as providing such information relating to the person to whom the copy has been delivered.

Article 656

Where no one is able or willing to receive the copy of the process and where it appears from the investigations made by the *huissier de justice*, a note of which shall be entered on the process paper to be signified, that the addressee has in fact established his dwelling at the address indicated, the signification shall be deemed to have been made at the place of domicile or residence.

In the latter event, the *huissier de justice* shall be bound to deliver a copy of the process paper to the municipality on the same day, or, no later than the first day on which the municipality services are open to the public. The mayor, his deputy or the town clerk shall make a note in the delivery index and shall issue an acknowledgement of the same.

The *huissier de justice* shall leave at the place of domicile or residence of the addressee a notice of visit in pursuance to the provisions of the preceding Article. Such notice shall state that a copy of the process paper shall have to be collected as soon as possible from the municipality, on the issuance of an acknowledgement or on a marginal imprint being inserted in the record books, by the interested party or by any person specially authorised to act.

The copy of the process shall be kept at the municipality for three months. Thereafter, it shall be discharged from keeping the same.

The mayor, his deputy or the town clerk may, at the request of the addressee, shall transmit a copy of the process paper to another municipality where it may be collected under the same conditions.

Article 657

Where the process paper is not delivered in person, the *huissier de justice* shall indicate on the copy, either the particulars of the person with whom the copy was left or those of the municipality where it was delivered.

A copy of a signified process paper shall have to be placed in a sealed envelope bearing only the surname and address of the addressee and the stamp of the *huissier de justice* affixed on the flap of the envelope.

Article 658

In all the cases referred to under Articles 655 and 656, the *huissier de justice* shall have to advise the interested person of the signification on the same day, or no later than the first

working day by ordinary letter containing the same information as the notice of visit and reminding him of, where a copy of the process paper has been delivered at the municipality, the provisions of the last sub-article of Article 656; the letter shall contain further a copy of the process of signification.

It shall be likewise in case of signification to an elected domicile or where the signification has been effected on a corporate entity.

The stamp of the *huissier de justice* shall be affixed on the envelope.

Article 659

(*Decree No. 84-618 of 13 July 1984, sec.5 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

(*Decree No.86-585 of 14 March 1986, sec.4 and 9, Official Journal of 19 March 1986, in force on 2 May 1986*)

(*Decree No. 89-511 of 20 July 1989, sec.15, Official Journal of 25 July 1989 in force on 15 September 1989*)

Where the person to whom the process has to be signified does not have any known domicile, residence or place of employment, the *huissier de justice* shall draw a procès-verbal in which he shall narrate in details the steps he took to look for the addressee of the process.

On the same day, or no later than the first following working day, under penalty of it otherwise being null, the *huissier de justice* shall transmit to the addressee, at the last known address, by a registered letter with the advice of delivery slip sought, a copy of the procès-verbal to which is annexed a copy of the process paper which is the subject-matter of the signification.

On the same day, the *huissier de justice* shall notify the addressee, by an ordinary letter, of the formality carried out.

The provisions of the present Article shall be applicable to the signification of a process relating to a corporate entity which has no office known at the place indicated as the registered office by the Register of commerce and companies.

Article 660

(*Decree No.86-585 of 14 March 1986, sec.5 and 9, Official Journal of 19 March 1986, in force on 2 May 1986*)

Where the process paper is addressed to a person living in an overseas territory, the signification shall be effected at the parquet.

The procureur shall imprint the original with a seal and shall transmit a copy thereof to the head of the local judicial service in view of it being delivered to the interested party according to the formalities applicable in the territory where he has established his dwelling.

The *huissier de justice* shall have to, on the same day as that of the signification to the parquet, or no later than the first working day, transmit to the addressee, by registered letter, a certified copy of the process.

The provisions of the present Article shall not be applicable where it has been possible to effect a signification in person.

Article 661

Where a signification is brought to the parquet, the procureur shall inform the *huissier de justice* of the steps taken; he shall transmit to him, where applicable, the procès-verbal or acknowledgement recording the delivery of the copy, which is to be attached to the first original. These process papers shall be held by the *huissier de justice* attached to the relevant court.

Article 662

(*Decree No.86-585 of 14 March 1986, sec.6 and 9, Official Journal of 19 March 1986, in force on 2 May 1986*)

Where, in the cases specified under Articles 659 and 660, it is not established that the addressee has in fact been notified, the judge may order ex proprio motu any additional steps save where he orders provisional or protective measures necessary to safeguard the rights of the claimant.

Article 663

The originals of the process papers of the *huissier de justice* shall have to contain a note of the formalities and steps carried out in application of the provision of the present section with an indication of their dates.

Where the signification has not been made in person, the originals of the process papers shall have to specify the surname and standing of the person with whom the copy has been left. It shall be likewise in the case specified under Article 654 (sub-article 2).

Article 664

No signification may be made before six o'clock in the morning or after nine o'clock in the evening or on Sundays, public or bank holidays except by permission of the judge in urgent matters.

## SECTION II THE NOTIFICATION OF PROCESS IN THE ORDINARY FORM

### Article 665

The notification shall have to contain all the particulars relating to the surname or to the denomination or trade of the person who issues the same and to the domicile or the registered office of that person.

It shall have to describe the addressee in the same manner.

### Article 666

The other particulars which shall have to be included in the notification shall be determined, according to the nature of the notified process, by the special rules governing that instance.

### Article 667

The notification shall be made in a sealed envelope or letter either by post or by its physical delivery, on a marginal imprint being entered on the books or on the issuance of an acknowledgement.

### Article 668

The date of the notification by post shall be that of, with regard to the sender, the date it was posted, or with respect to the person to whom it is transmitted, the date he receives the letter.

### Article 669

The date of sending a notification by post shall be that which appears on the postmark of the sending office.

The date of the delivery shall be that of the acknowledgment or the marginal imprint.

The date of receipt of a notification made by registered letter with the advice of delivery slip sought shall be that which is affixed by the postal service on the delivery of the letter to its addressee.

Article 670

The notification shall be deemed to have been made in person where the delivery slip is signed by the addressee.

Article 670-1

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.12, Official Journal of 30 December 1976*)

Where a letter of notification is returned to the clerk's office of the court and which has not hence been delivered, the clerk shall request the parties to proceed by way of signification.

Article 670-2

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.12, Official Journal of 30 December 1976*)

The notification made by the clerk of a court to a person living in an overseas territory shall be made by the delivery or transmission of the notification to the parquet.

The procureur shall hence proceed as in matters of signification.

## SECTION III NOTIFICATION BETWEEN *AVOCATS*

Article 671

The provisions of Sections I and II shall not be applicable to notification of process between *avocats*. The same shall be done by signification or direct notification.

Article 672

The signification shall be recorded by the affixing of the seal and the signature of the *huissier de justice* on the process paper and its copy with the indication of the date and the surname of the *avocat* to whom it is addressed.

Article 673

Direct notification shall be effected by the delivery of two copies of the process paper to the *avocat* to whom it is addressed, who shall immediately return one of the copies to his *confrère* after having dated and imprinted the same with a seal.

Article 674

The notification between *avoués* shall be subject to the same rules.

SECTION IV SPECIAL RULES FOR NOTIFICATION OF JUDGMENTS

Article 675

Judgments shall be notified by way of signification save where the law provides otherwise.

In non-contentious matters, judgments shall be notified by the clerk of the court by registered letter with the advice of delivery slip sought.

Article 676

Judgments may be notified by the delivery of just a certified copy.

Article 677

Judgments shall be notified to the parties themselves.

Article 678

Further, where representation is compulsory, a judgment shall have to be, first, notified to the representative in the manner for notification between *avocats*, failing which the notification to the party shall be null. A note confirming that such formality has been carried out shall have to be made on effecting notification to the party.

Notwithstanding the above, where the representative has died or has ceased to practice, notification shall be addressed to the party, with a note of the death or cessation of his practice.

The time-limit for making a review shall run as from the notification to the party himself.

Article 679

In non-contentious matters, a judgment shall be notified to the parties and to third parties whose interests may be affected by the decision as well as to the ministère public where a review is available to the latter.

Article 680

(*Decree No.81-500 of 12 May 1981, sec.29, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The process of notification of a judgment to a party shall have to contain very clearly the time-limits for an application to set aside, appeal or petition in cassation in the case where one of these means of review is available as well as the manner in which such review may be brought; it shall, further, indicate that the originator of an abusive or dilatory review may be ordered to pay a civil fine and a compensation to the other party.

Article 681

Notification, even without reservation, shall not imply acquiescence.

Article 682

Notification of a judgment shall validly be made to the elected domicile in France of a party residing abroad.

SECTION V SPECIAL RULES FOR INTERNATIONAL NOTIFICATIONS

SUB-SECTION I NOTIFICATION OF PROCESS ABROAD

Article 683

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.14, Official Journal of 30 December 1976*)

Notifications abroad shall be effected by way of signification.

Where the notification is effected by the clerk of the court, it shall be proceeded with as provided under Article 670-2. The clerk of the court shall then have to discharge the same duties as a *huissier de justice*.

The provisions of the present Article shall not prejudice the application of Treaties providing for another form of notification.

Article 684

The signification of a process addressed to a party domiciled abroad shall be through the parquet.

The parquet in relation to which the signification is effected shall, as the case may be, be that attached to the court before which a claim has been brought, or the one attached to the court which has given a ruling on the matter or that competent in relation to the petitioner's domicile. Where there is no parquet which is attached to a court, the signification shall be made to the parquet of the *Tribunal de grande instance* in whose province the court sits.

Article 685

The *huissier de justice* shall deliver two copies of the process papers to the procureur who shall imprint the original with a seal.

The procureur shall have the copies of the process transmitted to the Minister of Justice in view of its transmission except for cases where the transmission may be made from one parquet to another.

He shall attach thereto an order of the judge prescribing the transmission of the process papers where the intervention of the judge is required by the country of designation.

Article 686

(*Decree No. 85-1330 of 17 December 1985, sec.4, Official Journal of 18 December 1985 in force on 1 January 1986*)

The *huissier de justice* shall have, on the same day of the signification to the parquet or no later than the first working day, transmit to the addressee by a registered letter with the advice of delivery slip sought a certified true copy of the process papers signified.

Article 687

Where it is not established that the addressee of the process has had knowledge thereof in due time, the judge seised of the matter may order ex proprio motu any additional steps save where he orders provisional or protective measures to safeguard the rights of the claimant.

The judge may give rogatory commission to any competent authority in view of ensuring that the addressee has had knowledge of the process and informing the addressee of the consequences of default on his part. In the latter event, the rogatory commission shall be transmitted by the parquet as provided under Article 685.

Article 688

(*Decree No. 76-1236 of 28 December 1976, sec.15, Official Journal of 30 December 1976*)

The process papers intended to be notified to a foreign State or a foreign diplomatic representative in France or to any other person benefiting from a legal immunity, shall be notified to the parquet and transmitted via the Minister of Justice, save where by virtue of a Treaty the transmission may be effected in any other form.

SUB-SECTION II NOTIFICATION OF PROCESS ORIGINATED ABROAD

Article 688-1

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.16, Official Journal of 30 December 1976*)

Process originating from a foreign State whose authorities are requesting notification shall be notified by means of a simple delivery or signification.

Article 688-2

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.16, Official Journal of 30 December 1976*)

The process papers addressed to the Minister of Justice shall be transmitted by him to the ministère public before the *tribunal de grande instance* in whose province they have to be notified or to the National Chamber for Huissiers de Justice, save where by virtue of a Treaty

the transmission may be made by the foreign authorities directly to the ministère public or to the National Chamber for Huissiers de Justice and subject to all other forms of notification.

Article 688-3

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.16, Official Journal of 30 December 1976*)

Where the notification is made under the care of the ministère public, it shall take place by means of simple delivery and without costs.

Article 688-4

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.16, Official Journal of 30 December 1976*)

The process addressed to the National Chamber for Huissiers de Justice shall be transmitted by it to a *huissier de justice* territorially competent to signify it.

Article 688-5

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.16, Official Journal of 30 December 1976*)

The requesting party shall be bound to provide for the costs of the signification subject to an existing international conventions.

Article 688-6

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.16, Official Journal of 30 December 1976*)

The process shall be notified in the language of the originating State.

Notwithstanding the above, the addressee who does not know the language in which the process is drawn may refuse the notification thereof and ask that it be translated or be subjoined with a translation in the French language at the instance and at the expense of the petitioner.

Article 688-7

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.16, Official Journal of 30 December 1976*)

The documents establishing the execution or the failure to execute requests for notification or signification shall be returned by the same way the requests were transmitted.

Article 688-8

(*Inserted by Decree No. 76-1236 of 28 December 1976, sec.16, Official Journal of 30 December 1976*)

The execution of a request for notification or signification may be refused by the French authority where it is of a nature affecting adversely the sovereignty or the security of the State. It may likewise be refused where the request is not presented in conformity with the provisions of the present Code.

SECTION VI THE PLACE OF NOTIFICATIONS

Article 689

In relation to a natural person, the notification shall be made at the place where the addressee has established his dwelling.

Notwithstanding the above, where it is made in person, the notification shall be valid wherever it is delivered, including at a place of employment.

The notification shall also be validly made at the elected domicile where the law so permits or requires.

Article 690

The notification directed to a corporate entity of private law or a public corporation of a commercial and industrial nature shall be made at its place of establishment.

In the absence of such a place, it shall be made personally on one of its members empowered to receive it.

Article 691

Notifications directed to the ministère public and those which have to be made at the parquet, shall be to the attention of, as the case may be, the parquet attached to the court before which the matter is brought, or to that of the court which has given a ruling on the matter or to that of the court which is competent over the last known domicile.

Where there is no parquet attached to a court, the notification shall be made at the parquet attached to the *tribunal de grande instance* in whose province that court sits.

## SECTION VII MISCELLANEOUS PROVISIONS

### Article 692

Notifications directed at local authorities and public corporations shall be made at the place where they are located on any person authorised to receive them.

### Article 693

(*Decree No.86-585 of 14 March 1986, sec.7 and 9, Official Journal of 19 March 1986, in force on 2 May 1986*)

The provisions of Article 654 to 659, 663 to 665, 672, 675, 678, 680, 683, 684, 686, 689 to 692 shall have to be complied with under penalty of nullity.

### Article 694

The nullity of notification shall be governed by the provisions regulating the nullity of processual papers.

# TITLE XVIII COSTS AND TAXABLE CHARGES

## CHAPTER I THE BURDEN OF TAXABLE CHARGES

### Article 695

(*Decree No 78-62 of 20 January 1978, sec.19-i and 19-ii, Official Journal of 24 January 1978*)

Taxable charges incidental to proceedings, process and execution procedures shall include:

1° The fees, taxes, government royalties or emoluments levied by the clerk's offices of the courts or by the tax administration with the exception of fees, taxes and penalties which may be due on process and documentary evidence produced in support of the claim of the parties;

2° [*Repealed*]

3° Indemnities for witnesses;

4° Technician fees;

5° Fixed amount disbursements

6° Emolument of public officers and *officiers ministériels*

7° Fees of *avocats* in so far as they are regulated including the closing speech dues.

Article 696

Taxable charges shall be borne by an unsuccessful party save where the judge order it, either in part or fully, against another party by a reaonsed decision.

Article 697

(*Decree No 76-714 of 29 July 1976, sec.3, Official Journal of 30 July 1976*)

The *avocats*, *avoués* and huissiers de justice may be personally liable for taxable charges which are incidental to proceedings, process and execution procedures instituted outside the scope of their agency.

Article 698

(*Decree No 76-714 of 29 July 1976, sec.4, Official Journal of 30 July 1976*)

The taxable charges incidental to unjustified proceedings, process and execution procedures shall be borne by the officers of the court who carried them out without prejudice to the damages and interest which might be claimed. The same shall apply to taxable charges relating to proceedings, process and execution procedures which are null as a result of the fault of those officers.

Article 699

*Avocats* and *avoués* may, in matters where their representation is mandatory, request that the taxing of the taxable charges shall contain, for their benefit, the right to recover

directly against the party against whom they have been assessed in relation to those expenses which they have advanced funds without having been placed in funds.

The party against whom the recovery is prosecuted may, notwithstanding the above, cause to deduct, by legal set-offs, the credit in relation to legal costs owed to him as by way of taxable charges.

Article 700

(*Decree No 76-714 of 29 July 1976, sec.5, Official Journal of 30 July 1976*)

(*Decree No 91-1266 of 19 December 1991, sec.163, Official Journal of 20 December 1991 in force on 1 January 1992*)

As provided in I of Article 75 of the Act n° 91-647 of 10 July 1991, in all proceedings, the judge shall order against the party having the burden of taxable charges or, in default, the unsuccessful party, to pay to the other party the amount which he shall fix on the basis of the sums outlayed and not included in the taxable charges. The judge shall take into consideration the rules of equity and the economic condition of the party against whom it is ordered. He may, even ex proprio motu, for reasons based on the same considerations, rule that there is no need for such order.

## CHAPTER II THE ASSESSMENT OF DISBURSEMENT TO BE RECOVERED BY THE CLERK'S OFFICE

Article 701

(*Decree No 78-62 of 20 January 1978, sec.20, Official Journal of 24 January 1978*)

The taxable charges provided under Article 695 (1° and 3°) shall be quantified by judgment ordering them or by a note on the original by one of the judges of the court.

Certified copies of the judgment may be delivered before the assessment is made.

Article 702

Where the amount of the assessed taxable charges does not appear in the certified copy of the judgment, the clerk shall deliver an executory title.

Article 703

(*Decree No 78-62 of 20 January 1978, sec.21, Official Journal of 24 January 1978*)

The assessment may be challenged according to the procedure provided under Articles 708 to 718.

## CHAPTER III THE VERIFICATION AND RECOVERY OF TAXABLE CHARGES

### Article 704

(*Decree No. 84-618 of 13 July 1984, sec.7 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

The parties may, in case of difficulty, without any formality, request the clerk of the competent court, by virtue of Article 52, to verify the amount of the taxable charges stated under Article 695.

It shall be likewise where the auxiliary of justice wishes to recover the taxable charges; his request shall then be subjoined with a detailed breakdown which he is bound to give to the parties in accordance with the set-fee regulations. The breakdown shall set out any interim payment received.

### Article 705

The clerk of the court shall verify the amount of the taxable charges after having made, should the occasion arise, the necessary correction in order that the account shall comply with the set fees. He shall give or transmit by ordinary letter a certificate of verification to the interested person.

### Article 706

(*Decree No. 84-618 of 13 July 1984, sec.8 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

The moving party shall notify the verified account to the opponent, who shall have a time-limit of one month to challenge the same. The notification shall carry the moving party's acceptance of the verified account.

Such notification shall have to indicate the time-limit for the challenge and the manner in which it may be made and specify that in default of a challenge within the indicated time-limit, the certificate of verification may be rendered enforceable.

Article 707

In the absence of challenge by the opponent within the time-limit, the moving party may request the verifying clerk to state this on the certificate of verification. Such a statement shall amount to an executory title.

Article 708

(*Decree No. 84-618 of 13 July 1984, sec.9 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

The person who wishes to challenge the verification may himself submit, at any time, a request for an assessment order; he may also do so through his representative.

The request shall be made orally or in writing to the clerk's office of the court which has verified the account. It shall have to contain the reasons thereof and be subjoined with the certificate of verification.

Article 709

(*Decree No. 84-618 of 13 July 1984, sec.10 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

The president of the court or the judge assigned thereto shall give a ruling in the form of an order, having considered the verified account and all other relevant documents after having received or requested observations from the opponent.

Article 710

The judge shall rule upon the assessment request as well as on the other requests relating to the recovery of taxable charges.

Article 711

The judge shall make, even ex proprio motu, all necessary corrections so as to render the account in line with the set fees. He shall indicate, should the occasion arise, the sums already paid by way of interim payment.

Article 712

(*Decree No. 84-618 of 13 July 1984, sec.11 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

The judge shall have the power to refer the request, as it stands, to a court for a hearing the date of which he shall specify. The parties shall be convened at least fifteen days before by the clerk of the court.

Article 713

The clerk shall imprint on the original of the assessment order a certificate of enforcement.

Where an appeal shall lie, the notification of the order shall contain, under penalty of it otherwise being null:

1° The indication that the order will become enforceable where no review is made within the time-limit and in the manner laid down under Articles 714 and 715;

2° The tenor of Article 714 and 715.

Article 714

The assessment order rendered by the president of a court of first instance may be challenged by any interested person by way of review before the first president of the court of appeal.

The time-limit for the review shall be one month; it shall not be extended by reason of remoteness.

The time-limit for the review and the making of the review within the time-limit shall not stay the execution.

Article 715

(*Decree No. 89-511 of 20 July 1989, sec.16, Official Journal of 25 July 1989 in force on 15 September 1989*)

The review shall be instituted by giving or sending to the clerk's office-registry of the court of appeal a note setting out the grounds for the review.

A copy of such note shall be transmitted simultaneously to all the parties to the main dispute on pain of inadmissibility of the review.

Article 716

(*Decree No. 82-716 of 10 August 1982, sec.1, Official Journal of 17 August 1982*)

The parties shall be convened at least fifteen days before by the registrar of the court of appeal.

The president or his locum tenens shall hear them by way of adversary proceedings.

He shall carry or cause to carry, should the occasion arise, all useful investigations.

Article 717

The first president or his locum tenens shall have the power to refer the request as it stands to a court for a hearing the date of which he shall specify.

Article 718

(*Decree No. 76-1236 of 28 December 1976, sec.17, Official Journal of 30 December 1976*)

The notifications and convocations shall be made by registered letter with the advice of delivery slip sought.

Where they are made by the clerk of the court, they may be carried out by a simple memorandum where they are transmitted to the *avocats* or *avoués*.

## CHAPTER IV THE REQUESTS OR DISPUTES RELATING TO COSTS, EMOLUMENTS AND DISBURSEMENTS NOT INCLUDED IN THE TAXABLE CHARGES

Article 719

(*Decree No. 84-618 of 13 July 1984, sec.12 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

Requests or disputes relating to costs, emoluments and disbursements which are not included in the taxable charges specified under Article 695, instituted by or against the officers of the court and public officers and *officiers ministériels* shall be subject to the rules set out under Articles 704 to 718.

Article 720

(*Decree No. 84-618 of 13 July 1984, sec.12 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

Disputes relating to the fees of auxiliaries of justice or public officers or *officiers ministériels* in relation to which a mode of calculation has not been specified by a regulatory provision shall remain subject to those special rules governing them.

Article 721

(*Decree No. 84-618 of 13 July 1984, sec.12 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

In the case of Article 720, the judge shall rule according to the nature and the extent of the activities of the auxiliary of justice or the public officer or officier ministerial, the difficulties they were faced with and the responsibility they undertook. He shall indicate, should the occasion arise, the amounts already paid as interim payment, costs or fees.

*Article 722*

[*Repealed*]

*Article 723*

[*Repealed*]

CHAPTER V DISPUTES RELATING TO THE REMUNERATION OF TECHNICIANS

Article 724

(*Decree No. 76-1236 of 28 December 1976, sec.18, Official Journal of 30 December 1976*)

(*Decree No. 85-1330 of 17 December 1985, sec.5, Official Journal of 18 December 1985 in force on 1 January 1986*)

The decisions set out under Articles 255, 262 and 284 given by a judge of a court of first instance or the court of appeal may be challenged by a review before the first president of the court of appeal in the manner provided for under Articles 714 (sub-article 2) and 715 and

718. Where the decision has been given by the first president of the court of appeal, it may be modified under the same conditions by the latter.

The time-limit shall run against each of the parties as from the day the notification is made to him by the expert.

The review and the time-limit to bringing the same shall not stay the execution. The review shall have, on pain of inadmissibility, to be directed against all the parties and against the technician where it is not brought by the latter.

Article 725

(*Decree No. 76-1236 of 28 December 1976, sec.19, Official Journal of 30 December 1976*)

(*Decree No. 85-1330 of 17 December 1985, sec.6, Official Journal of 18 December 1985 in force on 1 January 1986*)

The notification shall have to indicate, under penalty of it otherwise being null, the tenor of the preceding Article as well as that of Articles 714 (sub-article 2) and 715.

CHAPTER VI DISPUTES RELATING TO COSTS, EMOLUMENTS AND DISBURSEMENTS TO REGISTRARS OF COMMERCIAL COURTS

Article 725-1

(*Inserted by Decree No. 85-1330 of 17 December 1985, sec.7, Official Journal of 18 December 1985 in force on 1 January 1986*)

As an exception to Article 704 to 708, the request and disputes relating to costs, emoluments and disbursements, included or not in the taxable charges of registrars of commercial courts shall be brought directly before the president of the *tribunal de grande instance* in whose province the registrar of the commercial court carries out his business without there be any need to establish first a certificate of verification.

TITLE XIX THE CLERK'S OFFICE OF THE COURT

Article 726

The clerk's office of the court shall keep a general docket of the cases brought before the court.

The general docket shall indicate the date the case is filed, the docket number, the name of the parties and the nature of the matter, where necessary, the court-room where the matter is allocated, the nature and the date of the decision.

Article 727

For every case entered on the general docket, the clerk shall open a file on which is indicated, further to the information appearing on the docket, the name of the judge or judges who will entertain the case and, where necessary, the name of the persons who represent or assist the parties.

The process, notes and documents relating to the case shall be placed and recorded in the file after having been imprinted with a seal by the judge or the clerk.

Decisions to which the case shall give rise, notices and letters transmitted by the court or copies thereof shall be put on record.

Where the procedure is oral, the claims of the parties or the references they make to claims submitted in writing shall be noted on the filed or set forth in a procès-verbal.

Article 728

The clerk of the adjudicating court shall keep a register in which shall be entered for each hearing:

- the date of the hearing;
- the name of the judges and of the clerk;
- the name of the parties and the nature of the case;
- the particulars in relation to the parties who appear in person in cases where representation is not mandatory;
- the name of the persons who represent or assist the parties at the hearing.

The clerk shall likewise indicate therein whether the hearing is public or not, the incidents of the hearing and decisions rendered thereon.

Information as to the judgments pronounced shall be entered in the register, which shall be signed after each hearing session by the president and the clerk.

Article 729

(*Decree No. 79-941 of 7 November 1979, sec.9 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where there is review or a referral subsequent to a cassation, the clerk shall transmit the file to the court having jurisdiction either within fifteen days of the request made to him or within the time-limit provided by special provisions.

# TITLE XX ROGATORY COMMISSIONS

## CHAPTER I INTERNAL ROGATORY COMMISSIONS

### Article 730

Where the remoteness of the parties or persons who have to participate in the proceedings, or the remoteness of the situs shall make travel too difficult or too onerous, the judge may, at the request of the parties or ex proprio motu, commission a court of equal or inferior rank which appears to him best placed in the territory of the Republic, to carry out all the judicial acts which he shall deem necessary.

### Article 731

The decision shall be transmitted with all the relevant documents by the clerk's office of the commissioning court to the commissioned one. On receipt, the prescribed procedure shall be carried out at the initiative of the commissioned court or of the judge whom the president of that court appoints for that purpose.

The parties or persons who have to participate in the proceedings shall be summoned or notified directly by the commissioned court. The parties shall not be bound to retain an *avocat* or an *avoué* before such court.

### Article 732

As soon as the proceedings are completed, the clerk's office of the court which carried them shall transmit to the commissioning court the procès-verbaux subjoined with the documents and objects annexed or deposited.

## CHAPTER II INTERNATIONAL ROGATORY COMMISSIONS

### SECTION I ROGATORY COMMISSIONS TRANSMITTED TO A FOREIGN STATE

### Article 733

The judge may, at the request of the parties or ex proprio motu, cause to carry out in a foreign State directions as well as other judicial acts which he shall deem necessary by establishing a rogatory commission either in relation to any competent judicial authority in the State in question or in relation to French diplomatic or consular authorities.

Article 734

The clerk of the commissioning court shall transmit to the ministère public a certified copy of the decision establishing the rogatory commission, subjoined with a translation drawn up at the instance of the parties.

Article 735

The ministère public shall transmit the rogatory commission immediately to the Minister of Justice in order for it to be further transmitted accordingly, save where by virtue of a Treaty the transmission may be effected directly to the foreign authority.

## SECTION II ROGATORY COMMISSIONS ORIGINATING FROM A FOREIGN STATE

Article 736

The Minister of Justice shall transmit to the ministère public in whose province they have to be implemented, the rogatory commissions transmitted to him by foreign States.

Article 737

The ministère public shall transmit the rogatory commission immediately to the court having jurisdiction to implement them.

Article 738

On receipt of the rogatory commission, the prescribed procedures shall be carried out at the initiative of the commissioned court or of the judge whom the president of that court shall appoint for that purpose.

Article 739

The rogatory commission shall be implemented in accordance with French law, save where the foreign State has requested that it should be implemented in a particular way.

Where so requested in the rogatory commission, the questions and answers shall be transcribed or recorded in full.

Article 740

The parties and their representatives, even where they are aliens, may, on authorisation by the judge, put questions; the same shall have to be formulated in or translated into French; similar provisions shall apply to the answers given thereto.

Article 741

The commissioned judge shall be bound to inform the commissioning court, which so requests, of the venue, date and time at which the implementation of the rogatory commission has been carried out; the foreign commissioning judge may attend the same.

Article 742

The judge may not refuse to implement a rogatory commission on the sole ground that French law claims exclusive jurisdiction over the matter, or that it does not recognise the legal remedy sought in pursuance of the claim brought before the commissioning court, or that it does not approve of the end to which the rogatory commission is directed.

Article 743

The commissioned judge may refuse, ex proprio motu or at the request of any interested person, to implement the rogatory commission where he considers that it does not fall within his duties. He shall have to refuse the same where it is of a nature which adversely affects the sovereignty or the security of the French State.

Interested persons may likewise, in the same cases, request the commissioned judge to cancel the direction he has already given and to annul the instruments recording the implementation of the rogatory commission.

Article 744

The ministère public shall have to insure the compliance with the fundamental principles of procedure in the implementation of the rogatory commission.

Where there is a violation of these principles, the ministère public or an interested party may request the commissioned judge to cancel the directions which he has already given and to annul the instruments recording the implementation of the rogatory commission.

Article 745

Where the rogatory commission has been irregularly transmitted, the commissioned judge may ex proprio motu or at the request of the ministère public refuse to implement the same; he may likewise, at the request of the ministère public cancel the directions which he has already given and annul the instruments recording the execution of the rogatory commission.

Article 746

The judge shall have to give reasons for the decision whereby he refuses to implement the rogatory commission, annul the instruments recording their implementation, cancel the directions which he has already given or whereby he refuses to cancel the last as aforementioned.

The parties and the ministère public may lodge an appeal against the decision.

The time-limit for the appeal shall be fifteen days; it may not be extended on grounds of remoteness.

Article 747

The instruments recording the implementation of a rogatory commission, or the decision whereby a judge refuses to implement the same, shall be transmitted to the commissioning court in the same way as the rogatory commission was transmitted to the commissioned court.

Article 748

The implementation of the rogatory commission shall take place without costs nor taxes.

Notwithstanding the above, the sums due to witnesses, experts, interpreters as well as to any person participating in the implementation of the rogatory commission shall be at the expense of the foreign authority. The same shall apply to the costs resulting from the application of a particular form of procedure at the request of the commissioning court.

TITLE XXI FINAL PROVISION

Article 749

The provisions of the present Book shall apply before all courts of the general-court system hearing any civil, commercial, social security, agricultural or labour matter, subject to the special rules governing each matter and to the specific provisions binding each court.

*BOOK TWO OF SPECIFIC PROVISIONS RELATING TO EACH COURT*

TITLE I SPECIFIC PROVISIONS RELATING TO THE *TRIBUNAL DE GRANDE INSTANCE*

SUB-TITLE I THE PROCEDURE BEFORE THE COURT

CHAPTER I THE PROCEDURE IN CONTENTIOUS MATTERS

Article 750

(*Decree No. 94-42 of 14 January 1994, sec.8, Official Journal of 16 January 1994 in force on 1 February 1994*)

An application to the court shall be brought by way of summons or by the filing of a joint petition at the clerk's office-registry, except for cases whereby the court may be seised by way of simple petition or by way of a declaration.

Article 751

Parties shall be held to retain an *avocat*, save where contrary provisions apply.

The retainership of an *avocat* shall carry an election of domicile.

*Article 752*

Further to the particulars prescribed under Article 56, the summons shall contain, under penalty of it otherwise being null:

1° the retainership of the *avocat* of the applicant;

2° the time-limit within which the respondent shall be held to retain an *avocat*.

Article 753

(*Decree No. 98-1231 of 28 December 1998, sec.13, Official Journal of 30 December 1998, in force on 1 March 1999*)

Pleadings shall set out expressly the claims of the parties as well as the issues of law and fact which are the basis of each claim. A memorandum listing the documents in support of these claims shall be annexed to the pleadings.

Parties shall have to refer in their last pleadings the claims and points submitted or referred to in previous ones. In default thereof, they shall be deemed to have been abandoned and the court shall only rule upon the last pleadings filed.

Pleadings shall be notified and documents shall be exchanged by the *avocat* of each of the parties to the other one; where there is a multiplicity of applicants or respondents, this shall be effected in relation to each *avocat* on record.

Copies of pleadings shall be lodged at the registry on cause being shown that their notification has been proceeded with.

*Article 754*

The court shall be seised and a matter shall be managed in accordance with, save for urgent matters, the rules relating to ordinary procedure.

## SECTION 1 THE ORDINARY PROCEDURE

### SUB-SECTION 1 THE COGNISANCE OF THE COURT

*Article 755*

The respondent shall be held to retain an *avocat* within a time-limit of fifteen days, to be reckoned from the summons.

*Article 756*

Once retained, the *avocat* for the respondent shall inform to the one acting on behalf of the applicant of the same; a copy of the notice of acting shall be filed at the clerk's office-registry.

*Article 757*

The court shall be seised, at the suit of one or the other party, by the filing at the clerk's office-registry of a copy of the summons.

The said filing shall be complied with within four months of the summons, failing which it shall lapse.

The operation of lapsing shall be put on record ex proprio motu by way of an order of the president or a judge seised of the matter.

In the absence of filing, a petition may be brought before the president in view of causing to put on record the operation of lapsing.

*Article 758*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The president of the court shall fix the date and the time at which the case shall be called; where the same appears necessary, he shall specify the court-room to which it shall be allocated.

*Article 759*

On the appointed day, the matter shall have to be called before the president of the court-room to which it has been allocated.

The latter shall confer with the *avocats* present as to the current position of the matter.

SUB-SECTION 2 SETTING DOWN FOR TRIAL

*Article 760*

The president shall set causes down for trial where, based on the submissions of the *avocats* and on an examination of the pleadings served and documents exchanged, they appear to him to be in good order and ready for a substantive consideration.

He shall set down similarly for trial causes in which the respondent has not made an appearance where they are ready for a substantive consideration, save where he orders fresh service of the summons on the respondent.

At all events, the president shall declare the closure of the pre-trial management of the matter and shall fix the date of the trial. The latter may be conducted on the same day.

*Article 761*

(*Decree No. 98-1231 of 28 December 1998, sec.14, Official Journal of 30 December 1998, in force on 1 March 1999*)

The president may equally decide that the *avocats* shall appear afresh before him, on a date that he shall specify, so as to confer on the cause for a last time, where he forms the view that an ultimate service of pleadings or an ultimate exchange of documents would bring the cause under a proper case-management or that the pleadings of the parties are to be brought in line with the provisions of Article 753.

In the latter event, he shall impart the appropriate time-limit in relation to the *avocats* in view of the signification of the pleadings and, where the same appears necessary, of the exchange of documents. His directions shall be recorded by simple notes on the court's file.

On the date specified by him, the president shall set down the cause for trial where its due management has been complied with within the imparted time-limit or on the request of one of the *avocats*, in which case he shall declare the closure of the pre-trial management of the cause and shall specify the date of the trial. The latter may be conducted on the same day.

*Article 762*

All causes which the president does not set down for trial shall be managed in accordance with the provisions as laid down hereinafter.

SUB-SECTION 3 MANAGEMENT BEFORE THE PRE-TRIAL JUDGE

*Article 763*

A cause shall be managed under the supervision of a judge of the court-room to which it has been allocated.

The latter shall carry out the enterprise of supervising the loyal conduct of the procedures, namely as to the timely service of pleadings and exchange of documents.

He may hear the *avocats* and bring to their attention any appropriate observations.

He may equally, where so necessitated, provide for injunctive decrees.

*Art 764*

The pre-trial judge shall fix, as the case progresses, the time-limits within which the matter is to be managed, having considered the nature, urgency and complexity of the same, and after having called for the opinion of the *avocats*.

He may grant extensions of time.

He may adjourned the matter for another conference in view of favouring the resolution of the dispute.

*Article 765*

(*Decree No. 98-1231 of 28 December 1998, sec.15, Official Journal of 30 December 1998, in force on 1 March 1999*)

The pre-trial judge may invite the *avocats* to address him in relation to such grounds as pleaded, to provide such argumentation in fact and in law as necessary for the resolution of the dispute, and, should the occasion arise, to bring their pleadings in accordance with the provisions of Article 753.

He may request for the originals of the documents on record or request the filing of a copy thereof.

*Article 766*

The pre-trial judge shall proceed with joinders and disjoinders of proceedings.

*Article 767*

The pre-trial judge, may, even ex proprio motu, hear the parties.

The testimony of the parties shall be held by adversary proceedings, save where one of the parties, duly called, has not appeared.

*Article 768*

The pre-trial judge may put on record a conciliation, even where partly so, of the parties.

*Article 768-1*

(*Decree No. 84-618 of 13 July 1984, sec.14 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

The pre-trial judge may invite the parties to join any other interested party as a third party whose citation shall appear to him necessary for the resolution of the dispute.

*Article 769*

The pre-trial judge shall put on record the extinction of the proceedings.

*Article 770*

The pre-trial judge shall entertain such jurisdiction as necessary in relation to the service, receipt and production of documents.

*Article 771*

(*Decree No. 81-500 of 12 May 1981, sec.30, Official Journal of 14 May 1981*)

(*Decree No. 98-1231 of 28 December 1998, sec.16, Official Journal of 30 December 1998, in force on 1 March 1999*)

Where an application is brought subsequent to his designation, the pre-trial judge shall be, until such time where the matter is brought out of his cognisance, the only competent judge, at the exclusion of any other panel of the court, to:

1. rule upon procedural pleas;
2. provide for interim payments for the proceedings;
3. provide for an interim payment to the creditor where liability resultant from such obligation cannot be seriously challenged;
4. provide for such interim, or even protective measures, save as to attachments and interim mortgages and pledges, as well as varying or supplementing directions already given where there shall be a new supervening fact;
5. provide for such directions as necessary, even ex proprio motu.

*Article 772*

The pre-trial judge may rule upon taxable charges.

*Article 773*

Directions provided for by the pre-trial judge shall be recorded by simple notes on the court's file; the *avocats* shall be advised of the same.

Notwithstanding the above, with reference to the provisions laid down under Articles 769 to 772, the pre-trial judge shall rule upon by reasoned orders, subject to the specific rules applicable to pre-trial procedures.

*Article 774*

Orders shall be given, immediately where the same appears necessary, while *avocats* are heard or called.

The *avocats* shall be convened by the judge to appear before him.

In matters of urgency, a party may, by notification between *avocats*, invite the other party to appear before the judge at a date, time and venue as specified by the latter.

Article 775

The directions of the pre-trial judge, in relation to the main issue, shall not carry the authority of res judicata.

*Article 776*

(*Decree No. 75-1123 of 5 December 1978, Official Journal of 9 December 1975 in force on 1 January 1976*)

(*Decree No. 81-500 of 12 May 1981, sec.31, Official Journal of 14 May 1981 amendment JORF 21 May 1989*)

(*Decree No. 89-511 of 20 July 1989, sec.17, Official Journal of 25 July 1989 in force on 15 September 1989*)

(*Decree No. 98-1231 of 28 December 1998, sec.17, Official Journal of 30 December 1998, in force on 1 March 1999*)

Directions of the pre-trial judge shall not be the subject of an application to set aside or of an appeal on a point of jurisdiction.

They may only be subjected to an appeal or to a petition in cassation where they are brought together with the judgement determining the substantive merits of the case.

Notwithstanding the above, they shall be amenable to an appeal in cases of and in relation to the conditions laid down with reference to expertise proceedings or with reference to cases of deferment of judgements. Similarly, the same shall apply, on the expiration of fifteen days of their notification:

1. where, in effect, they terminated the proceedings or caused to put on record the extinction of the same;

2. where they are in relation to interim measures provided for in divorce and judicial separation matters;

3. where, in cases where the value of the claim exceeds the jurisdictional value-limit of last resort, they are in relation to interim payment that may be granted to a creditor where liability resultant from such obligation is not seriously challenged;

4. where they shall rule upon a plea against jurisdiction, a plea of lis alibi pendens and a plea against double cognisance.

*Article 777*

(*Decree No. 98-1231 of 28 December 1998, sec.18, Official Journal of 30 December 1998, in force on 1 March 1999*)

The pre-trial judge shall oversee the implementation of the directions which he has given, subject to the provisions of the third sub-article of Article 155.

*Article 778*

Where the directions have been complied with, the carriage of the matter shall be proceeded with at the suit of the pre-trial judge.

*Article 779*

As soon as the pre-trial management of the matter so allows, the pre-trial judge shall set the case down for trial to be argued at the date as specified by the president or by himself where he was so delegated to that effect.

The pre-trial judge shall declare the closure of the pre-trial management. The closing date shall have to be as near as possible to the one fixed for the closing speeches.

The pre-trial judge shall entertain jurisdiction until the opening of the oral arguments.

*Article 780*

(*Decree No. 98-1231 of 28 December 1998, sec.19, Official Journal of 30 December 1998, in force on 1 March 1999*)

Where one of the *avocats* has failed to implement the procedural steps within the imparted time-limit, the judge may set down the case for trial and close the pre-trial management, either ex proprio motu or at the suit of one of the parties, save that, in the latter event, he may refuse the request on pronouncing a reasoned order which shall not be amenable to review.

*Article 781*

Where the *avocats* have failed to implement the procedural steps within the imparted time-limit, the pre-trial judge may, ex proprio motu, after advising the *avocats* of the same, pronounce an order for the dismissal of the action, which shall not be amenable to a review.

A copy of that order shall be sent to each of the parties by ordinary letter to their actual domicile or residence.

SUB-SECTION IV COMMON PROVISIONS

*Article 782*

The closure of the pre-trial management, as laid down under Articles 760, 761, 779 and 780, shall be pronounced by a non-reasoned order, which shall not be amenable to review. A copy of that order shall be delivered to the *avocats*.

*Article 783*

After the pronouncement of closure, no further pleadings may be filed nor any new document be produced in the course of the oral arguments, under penalty of them being declared inadmissible ex proprio motu.

Notwithstanding the above, shall be admissible third parties' applications to join proceedings by way of voluntary intervention, pleadings in relation to rents, arrears, interests and other incidental expenses that are fallen due and disbursements occasioned until the opening of the oral arguments, where their breakdown cannot be seriously challenged, as well as applications to revoke the pronouncements of closure.

Shall equally be admissible, pleadings in view of the revival of proceedings from the point it reached at the time of its abatement.

*Article 784*

The pronouncement of closure shall only be revoked where a matter of serious gravity has supervened subsequent to its pronouncement; the retainership of an *avocat* subsequent to the closure does not constitute, per se, a ground for revocation.

Where an application to be joined as third parties by way of voluntary intervention has been filed after the closure of the pre-trial management, the pronouncement of closure shall only be revoked where the court cannot immediately rule upon the totality of the matter.

The pronouncement of closure may be revoked ex proprio motu or at the suit of the parties, either by the pronouncement of a reasoned decision by the pre-trial judge, or, after the opening of oral arguments, by a decision of the trial court.

*Article 785*

Where he deems that the matter so necessitates, the president of the court-room may assign the pre-trial judge to draw up a written report; exceptionally, he may assign any other judge or carry it out himself.

The report shall set out the subject-matter of the claim and the grounds put forward by the parties, it shall specify the issues of fact and law that are raised by the dispute and shall mention such consideration that shall provide guidance to the arguments.

The judge assigned to draw up the report shall present the same at the hearing, before the closing speeches, without indicating his opinion.

*Article 786*

The pre-trial judge or the judge assigned to the report may, where the *avocats* shall not raise any objection to the same, sit alone at the trial to hear the closing speeches. He shall recite the same to the court in his deliberation.

*Article 787*

Directions ordered by the trial court shall be implemented under the supervision of the pre-trial judge.

Once an order has been complied with, the president of the court-room to which the matter has been allocated shall set it down for trial or shall refer it back to the pre-trial judge, as referred to under sub-section II as below.

## SECTION II FIXED DATE SUMMONS

*Article 788*

(*Decree No. 89-511 of 20 July 1989, sec.18, Official Journal of 25 July 1989 in force on 15 September 1989*)

(*Decree No. 98-1231 of 28 December 1998, sec.20, Official Journal of 30 December 1998, in force on 1 March 1999*)

In urgent matters, the president of the court may grant leave to an applicant, further to his petition, to summon the respondent to a fixed return date. He shall specify, where the same appears necessary, the court-room to which the matter shall be allocated.

The petition shall have to set out the grounds of urgency, include the pleadings of the applicant and identify the supporting documents.

Copy of the petition and the supporting documents shall be remitted to the president to be placed on the court's record.

*Article 789*

The summons shall indicate, subject to it otherwise being null, the date and time specified by the president at which the matter shall be called as well as the court-room to which it has been allocated. A copy of the petition shall be annexed to the summons.

The summons shall inform the respondent that he may be apprised of a copy of the supporting documents identified in the petition and a precept shall be conveyed unto him to transmit those documents which he intends to rely upon before the date of the hearing.

*Article 790*

The respondent shall be held to retain an *avocat* before the date of the hearing.

*Article 791*

The court shall be seised by the filing of a copy of the summons at the clerk's office-registry.

The filing of the same shall have to be executed before date fixed for the hearing, failing which the summons shall lapse.

The operation of being lapsed shall be ruled upon, ex proprio motu, by the president of the court-room to which the matter has been allocated.

*Article 792*

On the trial date, the president shall be satisfied that sufficient time has elapsed since the service of the summons so that the summoned party may have been able to prepare his contention.

Where the respondent has retained an *avocat*, the matters shall be argued there and then in the state in which it is found, even in the absence of the pleadings on behalf of the respondent or on simple oral submissions.

Where the matter so necessitates, the president of the court-room may exercise the powers referred to under Article 761 or may remit the matter to the pre-trial judge.

Where the respondent has not retained an *avocat*, the matter shall be proceeded with as laid down under Article 760.

SECTION III JOINT PETITION

*Article 793*

Further to the particulars prescribed under Article 57, a joint petition shall include, under penalty of it being inadmissible, the retainership of the *avocats* of the parties.

It shall be signed by the *avocats* retained.

*Article 794*

Petitioners may, as from the joint petition, request that the matter be allocated to a single judge, or may renounce to right to request that the matter be set down before a panel-judge.

*Article 795*

The court shall be seised by the filing at the clerk's office-registry of the joint petition.

*Article 796*

The president of the court shall specify the time and date at which the matter shall be called; where the same appears necessary, he shall specify the court-room to which it shall be allocated.

Advice of the same shall be given to the *avocats* on record by the clerk's office-registry.

The matter shall be then proceeded with as laid down under Articles 759, 760 and 762, save as to the matters referred to under Article 794 where the matter would have been allocated to a judge sitting alone.

## CHAPTER II PROCEDURE IN NON-CONTENTIOUS MATTERS

*Article 797*

(*Decree No. 76-714 of 29 July 1976, sec. 6, Official Journal of 30 July 1976*)

The application shall be brought by an *avocat*, or by an *officier ministériel* or a public officer in cases where the last two shall be empowered to act by the provisions in force.

*Article 798*

The ministère public shall have to be informed of non-contentious matters.

*Article 799*

A judge rapporteur shall be designated by the president of the court-room to which the matter has been allocated.

He shall be conferred the same powers, in view of pre-trial management of a matter, as that of the court.

*Article 800*

The ministère public shall be held to attend, where the same is being held, the oral arguments.

## CHAPTER III THE SINGLE JUDGE

*Article 801*

The allocation of a matter to a single judge may be decided upon until the fixing of a date of the hearing.

The business allocation of causes to be allocated to the single judge shall be carried out by the president of the court or by the president of the court-room to which they shall be allocated.

*Article 802*

Where a matter is allocated to a single judge, the latter shall be conferred the same powers as the court or the pre-trial judge.

Where the matter is subsequently brought before a panel-judge, its pre-trial management shall be prosecuted, where the same appears necessary, either by the judge exercising the powers of the pre-trial judge, or by the pre-trial judge, in accordance with the decision of the president of the court-room.

*Article 803*

The allocation of a matter to a single judge or its referral before a panel-judge shall be recorded by simple notes on the court's file. Advice of the same shall be given to the *avocats* on record.

In matters where the retainership of an *avocat* is dispensed with, advice of the same shall be addressed to the parties by recorded letter with the advice of delivery slip sought.

*Article 804*

The application to have a matter, which has been allocated to a single judge, brought before a panel-judge shall have to be made, under penalty of it being precluded, not later than fifteen days as from the advice referred to under the aforegoing Article, or from its receipt where it shall be addressed to the parties themselves.

The referral of a matter before a panel-judge by the president of the court or his locum tenens may be decided upon at any stage.

*Article 805*

The provisions laid down under the second sub-article of Article 803 and the first sub-article of Article 804 shall cease to be applicable where the right to apply for a referral before a panel-judge has been renounced.

## CHAPTER IV MISCELLANEOUS PROVISIONS

*Article 806*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Where the court is seised by way of petition, in contentious and non-contentious matters, the parties shall be advised of the trial date by the registrar.

*Article 807*

Advice shall be given either to the *avocats* by simple memorandum, or, where legal representation is not mandatory, transmitted to the parties by recorded letter with the advice of delivery slip sought. A copy of the petition shall be subjoined to the advice addressed to the *avocats* or the parties.

# SUB-TITLE II THE POWERS OF THE PRESIDENT

## CHAPTER I SUMMARY INTERLOCUTORY PROCEDURE ORDERS

*Article 808*

In all cases of urgency, the president of the *Tribunal de grande instance* may order by way of summary interlocutory proceedings such directions regarding which no serious objections is raised or which ought to be given by reason of a dispute.

*Article 809*

(*Decree No. 85-1330 of 17 December 1985, sec.8, Official Journal of 18 December 1985*)

(*Decree No. 87-434 of 17 June 1987, sec.1, Official Journal of 23 June 1987*)

The president may, at any time, even where confronted with serious objections, provide by way of summary interlocutory proceedings for such protective measures or such measures as to keep the status quo of the matters as required, either to protect from an impending damage, or to abate a nuisance manifestly illegal.

Where liability resultant from an obligation cannot be seriously challenged, he may award an interim payment to the creditor or order the mandatory performance of the obligation even where it shall be in the nature of an obligation to perform.

*Article 810*

The powers of the president of the *Tribunal de grande instance* as provided for under the aforegoing two Articles shall extend to all matters where there summary interlocutory proceedings cannot be instituted.

*Article 811*

(*Decree No. 92-755 of 31 July 1992, sec.305, Official Journal of 5 August 1992*)

(*Decree No. 98-1231 of 28 December 1998, sec.21, Official Journal of 30 December 1998, in force on 1 March 1999*)

At the suit of one or the other party and where the urgency of the matter calls for it, the president seised by way of summary interlocutory procedure may set down the matter for a hearing, the date of which he shall specify, in view of a ruling on the merits. He shall pay special attention to the fact that the respondent shall be given ample time to prepare his contention. The order shall carry the cognisance of the court. The matter shall be then proceeded with as laid down under Article 790 and under the last three sub-articles of Article 792.

## CHAPTER II DECREES FURTHER TO A PETITION

*Article 812*

The president of the court shall be seised by petition in the circumstances provided by law.

He may equally decree such urgent directions where the circumstances so demand that they are not dealt with by way of adversarial proceedings. Incidental petitions relating to a

current proceeding shall be presented to the president of the court-room to which the matter has been allocated or to the judge seised of the same.

*Article 813*

(*Decree No. 76-714 of 29 July 1976, sec. 7, Official Journal of 30 July 1976*)

The petition shall be presented by an *avocat*, or by a public officer or *officier ministériel* in cases where they are empowered to act by the provisions in force.

Where it is presented in the course of a proceeding, it shall mention the court seised of the matter.

## SUB-TITLE III MISCELLANEOUS PROVISIONS

### CHAPTER I RETAINERSHIP OF *AVOCATS* AND PLEADINGS

*Article 814*

The retainership of *avocat* by the respondent or by any other person who shall be joined as a party to a current proceeding shall be denounced to the other parties by way of notification between *avocats*.

The instrument shall specify:

a) where the respondent is a natural person, his surname, names, occupation, domicile, nationality, date and place of birth;

b) where the respondent is a corporate entity, its form, denomination, registered seat and the department that shall represent it legally.

*Article 815*

Pleadings on behalf of the parties shall be signed by their *avocats* and shall be notified by way of notification between *avocats*. They shall only be admissible where the particulars referred to under sub-article 2 of Article 814 have been provided.

The service of documents produced shall be validly acknowledged by the signature of the recipient *avocat* appended on the docket drawn by the *avocat* implementing service.

*Article 816*

The filing at the clerk's office-registry of a copy of the notice of acting and of the pleadings shall be carried out either as their notification shall be effected, or, where that has been prior to the cognisance of the court, with the filing of a copy of the summons.

## CHAPTER II JUDICIAL ADMINISTRATION

### *Article 817*

The appointment of pre-trial judges and judges called to sit alone shall be carried out in accordance with the manner laid down in relation to the allocation of judges in the different court-rooms.

The president of the *Tribunal de grande instance* and the presidents of the court-rooms may exercise these specific powers.

### *Article 818*

More than one judge may be entrusted with the pre-trial management of a matter within the same court-room; in the latter event, matters shall be divided between them by the president of the court-room.

### *Article 819*

The pre-trial judges may be replaced at any time in case of any impeding circumstance.

### *Article 820*

The president of the *tribunal de grande instance* may delegate to one or more judges part or all of his powers that shall be conferred upon him pursuant to sub-titles I and II.

The presidents of the court-rooms may similarly delegate to other judges of their court-room all or part of the functions attributed to them under the sub-title I.

## CHAPTER III THE CLERK'S OFFICE-REGISTRY

### *Article 821*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The filing at the clerk's office-registry of a copy of processual papers or of any document shall be entered on the record by the mention of the date of filing and by the imprint of the registrar on the copy as well as on the original which shall be returned to its holder forthwith.

*Article 822*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The copy of the summons, of the petition and of the joint petition shall, as from its filing at the clerk's office-registry, be presented by the registrar to the president of the court so as to allow the fixing of dates and the allocation of businesses.

The decision of the president shall be recorded by simple notes on the court's file.

*Article 823*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The court’s record shall be kept and updated by the registrar of the court-room to which it shall be allocated.

A docket system shall be set-up allowing for the possibility of tracking down the step reached in a matter at any time.

*Article 824*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

With reference to Article 788, copies of the petition and documents brought to the president shall be, as well as a copy of his order, placed by the registrar on the court’s record, as soon as it shall be created.

Where, on the day when the matter ought to be called, a copy of the summons has not been filed at the clerk's office-registry, the registrar shall ex proprio motu return to the *avocat* concerned those copies which he has in his possession.

*Article 825*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The registrar shall advise forthwith the *avocats* whose retainerships are known to him of the case number of the matter on the general register, of the dates and time fixed by the president of the court for the call of the matter and the court-room to which it has been allocated.

This advice shall be given to those *avocats* whose retainerships are not yet known, as from the filing at the clerk's office-registry of their notice of acting.

*Article 826*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The *avocats* of each of the parties shall be convened or advised of the office incumbent upon them by the president or by the pre-trial judge, according to the track management of the matter; they shall be convened or advised orally, with a marginal note and a record imprinted on the court's file.

Where they are not present, they shall be so advised by way of a simple memorandum, dated and signed by the registrar, and served or placed by him in the office of the main venue of the court where notifications between *avocats* are dispatched.

Injunctive decrees shall always give cause to the issuance of a memorandum.

SUB-TITLE IV THE PROCEDURE ON A REFERRAL FROM A CRIMINAL COURT

*Article 826-1*

(*Inserted by Decree No. 83-1155 of 23 December 1983, sec.3 and 5, Official Journal of 27 December 1983, in force on 1 January 1984*)

Where a matter has been referred to the *tribunal de grande instance* in the manner prescribed under sub-article 2 of Article 470-1 and under Article R-41-1 of the Code of Criminal Procedure, the clerk's office-registry shall convene to a hearing, at least a month before and by recorded letter with the advice of delivery slip sought, the parties to the civil proceedings who appeared before the criminal court as well as third parties who are liable in damages as referred to in the referral judgment. The clerk's office-registry shall address on the same day to the same individuals a copy of the convocation by ordinary letter. The convocation to which is annexed a copy of the referral judgment shall amount to a citation to a court of law.

The convocation shall specify that the legal representation at the hearing by an *avocat* shall be mandatory and that, where they fail to appear, provisionally enforceable judgments

may be entered against any party other than the victim who suffered loss and damage and against third parties who are so liable as referred to in the referral judgment.

The Departments of Social Security and that of the Motor Insurance Fund, where they have made an appearance before the criminal court, shall be convened to the same hearing by way of a recorded letter with the advice of delivery slip sought addressed by the clerk's office-registry. A copy of the referral judgment shall be annexed to the convocation.

At the hearing, matters shall be proceeded with as laid down under Articles 759 to 762. The president of the court-room may provide for, further to a summary interlocutory procedure, interim payments in the manner as prescribed under sub-article 2 of Article 809.

## TITLE II SPECIFIC PROVISIONS RELATING TO THE *TRIBUNAL D'INSTANCE*

### *Article 827*

The parties shall plead their causes by themselves.

They shall have the right to be assisted or represented.

### *Article 828*

The parties may be assisted or represented by:

- an *avocat*;
- their partner or cohabitee;
- their parents or an affines under a direct line;
- their parents or an affines under a collateral line of up to the third degree inclusive;
- individual attached to their personal or corporate service.

The State, departments, communes and public bodies may be represented or assisted by a civil servant or an officer of their body.

The representative, where he is not an *avocat*, shall have to show cause of a specific authority to act.

## SUB-TITLE I THE ORDINARY PROCEDURE

### *Article 829*

(*Decree No. 88-209 of 4 March 1988, sec.1, Official Journal of 5 March 1988, in force on 1 January 1989*)

(Decree No.2003-542 of June 2003, sec. 17, sec. 18, Official Journal of 25 June 2003, in force 15 September 2003)

Before the court of first instance and the community court, the court action shall be brought in the form of summons in view of conciliation, and, in default thereof, of the pronouncement of a judgement, save the right of the plaintiff to give chance to a conciliation before issuing a summons.

The action may equally be brought either by filing, at the clerk's office-registry of a joint petition, or by the voluntary appearance before the judge, or, in the case envisaged in Article 847-1, by a declaration made to the clerk's office.

In absence of agreement of the parties to give chance to a conciliation, the judge, by a ruling not revisable by any appeal, may direct them to meet a conciliator, that he shall designate for this purpose, who is charged to inform them concerning the subject-matter and the procedure of the conciliation measure.

## CHAPTER I THE PRE-ACTION ATTEMPT AT CONCILIATION

### *Article 830*

An application in view of pre-action attempt at conciliation shall be brought orally or by ordinary letter, to the clerk's office-registry.

The applicant shall specify the surname, names, occupation and address of the parties, as well as the subject-matter of his claim.

### *Article 831*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

(*Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The pre-action attempt at conciliation may be chaired by the judge or by a mediator satisfying the conditions laid down by virtue of Decree no. 78-381 of 20 March 1978 as modified relating to mediators, appointed to that end.

At all events, the parties are to appear in person.

*Article 832*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

(*Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The initial timescale for the enterprise of the mediator shall not exceed that of a month. This enterprise may be renewed once, for a similar timescale, at the suit of the mediator.

*Article 832-1*

(*Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

(*Decree No. 98-1231 of 28 December 1998, sec.23, Official Journal of 30 December 1998, in force on 1 March 1999*)

(Decree No.2003-542 of June 2003, sec. 17, sec. 19 I, Official Journal of 25 June 2003, in force 15 September 2003)

Where a judge contemplates the appointment of a mediator, he shall advise the parties by recorded letter with the advice of delivery slip sought and shall invite them to apprise him of their acceptance within a time-limit of fifteen days.

He shall notify them that in the absence of an agreement between them, he shall proceed as laid down under Articles 833 and 834.

The letter shall specify that each party may appear before the mediator with a person allowed by law to assist him before the judge and shall recite the provisions of Article 832.

The letter addressed to the respondent shall mention the surname, names, occupation and address of the applicant and the subject-matter of the claim.

*Article 832-2*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

Once the parties have made known their acceptance, the judge shall appoint a mediator and shall fix a time-limit that he shall impart to him to undertake his enterprise.

Advice of the same shall be given to the mediator and to the parties. A copy of the application shall be addressed to the mediator.

*Article 832-3*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The mediator shall convene the parties, to the venue, date and time that he shall determine, to proceed to the pre-action attempt at conciliation.

*Article 832-4*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The mediator may carry out inspection of premises.

He may, with the consent of the parties, hear the testimony of any person, whose testimony shall be deemed useful by him, save under the agreement of the former.

*Article 832-5*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The mediator shall keep the judge informed of the obstacles met by him in the implementation of his enterprise.

*Article 832-6*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The judge may bring an end at any stage to the conciliation at the suit of a party or at the instance of the mediator.

The judge may equally bring an end to it ex proprio motu where a proper conduct of the conciliation appears to have been compromised.

Advice of the same shall be given to the mediator.

The registry shall notify the parties of the decision of the judge, by recorded letter with the advice of delivery slip sought, which shall further remind them that they have the right to seise the competent court in view of the pronouncement of a judgment.

*Article 832-7*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

At the end of his enterprise, the mediator shall inform in writing the judge of the success or failure of the attempt at the pre-action conciliation.

Where a conciliation has been mediated, even partial, the mediator shall draw a heads of agreement in relation to the same signed by the parties.

In the case of a failure, the registry shall address to the parties a recorded letter with the advice of delivery slip sought reminding them that they have the right to seise the competent court in view of the pronouncement of a judgment.

*Article 832-8*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The consent application to endorse by way of homologation the heads of agreement mediated between the parties shall be transmitted to the judge by the mediator; a copy of the heads of agreement shall be annexed thereto.

The procedure of homologation shall appertain to non-contentious matters.

*Article 832-9*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The findings of the mediator and the statements that he has taken down may not be produced nor be referred to in the subsequent course of the proceedings without the agreement of the parties, nor, for that matter, be produced in any other proceedings.

*Article 832-10*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

An appeal shall not lie against a decision ordering or renewing the attempt at conciliation or bringing the same to an end.

*Article 833*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

When the judge undertakes himself the pre-action attempt at conciliation, the registry shall advise the applicant by ordinary letter of the venue, date and time where it shall be held.

The respondent shall be convened by ordinary letter. The convocation shall mention the surname, first names, occupation and address of the respondent as well as the subject-matter of the application.

The advice and convocation shall specify that each party may be assisted by one of the persons listed under Article 828.

*Article 834*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

In default of a conciliation before the judge, the matter may be immediately determined where the parties so agree. In the latter event, matters shall be proceeded with according to the manner prescribed in cases of voluntary appearance.

*Article 835*

(*Inserted by Decree No. 96-652 of 22 July 1996, sec.1, Official Journal of 23 July 1996*)

The application in view of a pre-action attempt at conciliation shall not suspend the running of the time-limit save where the summons has been served within two months to be reckoned from, as the case may be, the date of the attempt at conciliation conducted by the judge, or from the notification referred to under the fourth sub-article of Article 832-6, or from the one referred to under the third sub-article of Article 832-7 or from the lapsing of the time-limit granted by the applicant to the debtor to perform his obligation.

CHAPTER II THE PROCEDURE BY WAY OF SUMMONS FOR ALL INTENT AND PURPOSES

*Article 836*

The summons shall specify, under penalty of it being null, further to the particulars prescribed under Article 56:

1☐ the venue, date and time of the hearing at which the conciliation shall be attempted where that has not been the case so far, and should the occasion arise, to have the matter determined.

2☐ where the respondent resides outside the jurisdiction, the surname, names and address of the person at whose place he has elected domicile in France.

The originating process shall specify, furthermore, the conditions in which the respondent may be assisted or represented, as well as, where the same appears necessary, the name of the representative of the respondent.

*Article 837*

The summons shall have to be served at least fifteen days before the hearing date.

*Article 838*

The *tribunal d'instance* shall be seised, at the suit of one or the other party, by the filing at the clerk's office-registry of a copy of the summons.

The filing shall have to be at least eight days before the hearing date.

*Article 839*

In cases of urgency, the time-limit to appear and to file the summons may be abridged by the leave of the judge.

*Article 840*

(*Decree No. 98-1231 of 28 December 1998, sec.24, Official Journal of 30 December 1998, in force on 1 March 1999*)

The judge shall endeavour to reconcile the parties. The attempt at conciliation may be held in his chambers.

It may equally be conducted by a court mediator appointed by the judge without any specific formality with the agreement of the parties.

*Article 841*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

In default of a conciliation, the matter shall be determined there and then or where it is not in good order to be considered, it shall be set down for trial on an another date. In the latter event, the registrar shall advise by ordinary letter the parties who would not have been so advised orally, of the date of the hearing.

*Article 842*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The prosecution of the proceedings after the implementation of a direction or at the expiration of a time-limit in relation to a deferment of judgment shall be initiated on the advice given to the parties orally or by ordinary letter by the registrar.

*Article 843*

The procedure shall be carried out orally.

The claims of the parties or the references they submit in relation to such claim as they would have brought in writing shall be noted down on the court's record or in the form of a procès-verbal.

*Article 844*

The judge may invite the parties to provide such explanations that he deems necessary to the resolution of the dispute or may put them on default notice to produce within such a time-limit as he shall determine such relevant documents or supporting exhibits as would provide guidance to him, failing which, he may discard them and determine the matter, while he may draw any such inference in relation to the abstention or refusal on behalf of a party.

## CHAPTER III JOINT PETITION AND THE VOLUNTARY APPEARANCE OF PARTIES

*Article 845*

Parties may present their claim by joint petition; they may also appear voluntarily before a judge in view of determining the matter.

*Article 846*

(Decree No.2003-542 of June 2003, sec. 17, sec. 19 I, II Official Journal of 25 June 2003, in force 15 September 2003)

The judge shall be seized, either by presenting the joint petition, or by signing the minutes wherein shall be recorded that the parties have appeared voluntarily to have their claims judged.

The minutes shall include the particulars referred to in relation to the joint petition provided for under Article 57.

*Article 847*

(*Decree No. 98-1231 of 28 December 1998, sec.25, Official Journal of 30 December 1998, in force on 1 March 1999*)

The judge shall endeavour to reconcile the parties.

He may with their agreement and without any specific formality appoint a court mediator to proceed with the attempt at conciliation.

Where the parties fail to be reconciled, the judge shall rule upon their contention.

## CHAPTER IV THE DECLARATION TO THE REGISTRY

*Article 847-1*

(*Decree No. 88-209 of 4 March 1988, sec.2, Official Journal of 5 March 1988, in force on 1 January 1989*)

(*Decree No. 89-511 of 20 July 1989, sec.19, Official Journal of 25 July 1989 in force on 15 September 1989*)

Where the claim-value does not exceed the jurisdictional value limit of last resort of the *tribunal d'instance*, the latter may be seised by a declaration made by, remitted or addressed to the registry, whereupon it shall be entered on the record.

The declaration shall have to specify the surname, names, occupation and address of the parties, or, in relation to corporate bodies, their denomination and their registered seat. It shall include the subject-matter of the claim and a brief summary of the grounds thereof.

Prescriptions and time-limits to prosecuting the action shall be suspended by the recording of the declaration.

*Article 847-2*

(*Decree No. 88-209 of 4 March 1988, sec.2, Official Journal of 5 March 1988, in force on 1 January 1989*)

The parties shall be convened to a hearing by the registrar by recorded letter with the advice on delivery slip sought. He shall forward on the same day a copy of the convocation by ordinary letter. The respondent may also be convened orally on the inscription of a marginal note to the same.

The convocation addressed to the respondent shall amount to a citation to a court of law. It shall mention that, where he fails to appear, he shall incur the risk that a judgment may be entered against him on the sole issues brought forward by his opponent. A copy of the declaration shall be annexed to the convocation.

*Article 847-3*

(*Decree No. 98-1231 of 28 December 1998, sec.26, Official Journal of 30 December 1998, in force on 1 March 1999*)

The judge shall endeavour to reconcile the parties.

He may with their agreement and without any specific formality appoint a court mediator to proceed with the attempt at conciliation.

Where the parties fail to be reconciled, the judge shall rule upon their contention.

## Chapter V: Referrals of competence

*Article 847-4*

(Decree No.2003-542 of June 2003, sec. 20, Official Journal of 25 June 2003, in force 15 September 2003)

When he faces a serious legal difficulty concerning the application of a rule of law or the interpretation of a contract binding the parties, the community judge, after hearing the parties, shall refer the case to the first instance judge by transmitting the file to him immediately.

His decision is a measure of judicial administration measure. It may take the form of a simple reference in the file.

The first instance judge shall reopen the procedure in the state left by the community judge, save the rehearing of the parties if the have already pleaded.

*Article 847-5*

(Decree No.2003-542 of June 2003, sec. 20, Official Journal of 25 June 2003, in force 15 September 2003)

The community judge shall refer all oppositions of incompetence to the first instance judge. His decision shall take the form of a simple reference in the file.

The community judge may always raise ex officio his incompetence like the first instance court in favour of the community judge.

The first instance judge shall decide without any appeal whether his decision concerns merely his own competence or the competence of the community judges of his jurisdiction.

## SUB-TITLE II ORDERS PURSUANT TO A SUMMARY INTERLOCUTORY PROCEDURE

### *Article 848*

In cases of urgency, a judge of the *tribunal d'instance* may, within the confines of his powers, provide for on summary interlocutory procedure such order regarding which no serious objections shall be raised or which ought to be given by reason of a dispute.

### *Article 849*

(*Decree No. 85-1330 of 17 December 1985, sec.9, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 87-434 of 17 June 1987, sec.2, Official Journal of 23 June 1987*)

A judge of the *tribunal d'instance* may at any time, even where confronted with serious objections provide by way of summary interlocutory proceedings such protective measures or such measures as to keep the status quo of the matters that have become necessary, either to protect from an impending damage, or to abate a nuisance manifestly illegal.

Where liability resultant from an obligation cannot be seriously challenged, he may award an interim payment to the creditor or order the mandatory performance of the obligation even where it is in the nature of an obligation to perform.

### *Article 850*

A judge of the *tribunal d'instance* shall entertain the same powers in relation to disputes arising out of contract of employment when they fall within his jurisdiction.

## SUB-TITLE III EX PARTE ORDERS

*Article 851*

A judge of the *tribunal d'instance* shall be seised by way of a petition in the circumstances as prescribed by law.

Further to a petition he may equally provide for, within the confines of his powers, any such urgent directions where the circumstances so demand that they are not dealt with by way of adversarial proceedings.

*Article 852*

The petition shall be remitted or addressed to the clerk's office-registry by the applicant or by any person acting on his behalf.

SUB-TITLE IV THE PROCEDURE ON A REFERRAL FROM A CRIMINAL COURT

*Article 852-1*

(*Inserted by Decree No. 83-1155 of 23 December 1983, sec.4 and 5, Official Journal of 27 December 1983, in force on 1 January 1984*)
(Decree No.2003-542 of June 2003, sec. 17, sec. 19 I, Official Journal of 25 June 2003, in force 15 September 2003)

When a matter has been referred to the judge in the conditions laid down under sub-article 2 of Article 470-1 and in Article R. 41-1 of the Code of Criminal Procedure, the clerk's office-registry of that judge shall convene to a hearing, a month before and by recorded letter with the advice of delivery slip sought, the parties to the civil proceedings which has been instituted before the criminal court as well as liable third parties referred to in the referral judgement. The clerk's office-registrar shall address on the same day and to the same persons copies of the convocation by ordinary letter. The convocation to which shall be annexed a copy of the referral judgement shall amount to a citation to a court of justice.

The convocation shall specify that in case of non-appearance on their behalf, an interim enforceable judgement may be entered against the parties other than the victim of the wrong and against the liable third parties that are mentioned in the referral judgement.

The welfare institutions and the guarantee fund of motor car, if they want to be party before a criminal court, shall be summoned to the same hearing by means of a registered letter with advice of delivery slip to be sent by the clerk's office-registrar. A copy of the referral judgement shall be annexed to the convocation.

The hearing shall take place as it is provided for in Articles 840 to 844. The presiding judge may grant, in a summary procedure, the payment of a deposit within the terms provided for in sub-article 2 of article 849.

## TITLE III SPECIFIC PROVISIONS RELATING TO THE COMMERCIAL COURT

*Article 853*

The parties shall plead their causes by themselves.

They shall have the right to be assisted or represented.

The representative, where he is not an *avocat*, shall have to show cause of a specific authority to act.

## CHAPTER I THE PROCEDURE BEFORE THE COMMERCIAL COURT

### SECTION I INSTITUTING A CLAIM

*Article 854*

An originating application shall be brought by summons, by the filing at the registry of a joint petition or by the voluntary appearance of the parties before the court.

#### SUB-SECTION I THE SUMMONS

*Article 855*

The summons shall specify, under penalty of it otherwise being null, further to the particulars prescribed under Article 56:

1☐ the venue, date and time of the hearing where the matter shall be called;

2☐ where the respondent resides outside the jurisdiction, the surname, first names and address of the person at whose place he has elected domicile in France.

The originating application shall specify furthermore the conditions under which the respondent may be assisted or represented, as well as, where the same appears necessary, the name of the representative of the respondent.

*Article 856*

The summons shall have to be served at least fifteen days before the hearing date.

*Article 857*

The court shall be seised, at the suit of one or the other party, by the filing to the registry of a copy of the summons.

The filing shall have to be at least eight days before the hearing date.

*Article 858*

In cases of urgency, the time-limit to appear and the filing of the summons may be abridged by the leave of the president of the court.

In sea or air matters, the summons may be served, even contemporaneously, without the leave of the president when there are parties not jurisdictionally domiciled or where it shall be in relation to urgent or interlocutory matters.

SUB-SECTION 2 THE JOINT PETITION AND THE VOLUNTARY APPEARANCE OF PARTIES

*Article 859*

Parties may present their claim by joint petition; they may also appear voluntarily before the court in view of determining the matter.

*Article 860*

The court shall be seised, either by the filing of the joint petition, or by the signing of a procès-verbal putting on record that the parties have appeared voluntarily to have their claims determined.

The procès-verbal shall include the particulars referred to in relation to joint petition as under Article 57.

SECTION II THE COURT PROCEEDINGS

*Article 861*

Where the matter is not ready for trial, the adjudicating panel shall set it down for trial at a subsequent date or shall entrust one of its members the task of getting it up for trial in the capacity of a judge rapporteur.

SUB-SECTION 1 THE JUDGE RAPPORTEUR

*Article 862*

The judge rapporteur may hear the parties.

He may invite them to provide such explanation which he deems necessary to the resolution of the dispute or order them to produce within such period as he shall determine such relevant documents or exhibits as would provide guidance to the court, failing which, they may be discarded and the matter may be set down before the adjudicating panel which may draw any such inference in relation to the abstention or refusal on behalf of a party with reference to the above.

*Article 863*

The judge rapporteur shall enter on record any conciliation between the parties, even where the same is partial.

*Article 864*

The judge rapporteur may implement a joinder or a disjoinder of proceedings.

*Article 865*

The judge rapporteur may provide for, even ex proprio motu, any such direction as necessary.

He shall determine in relation to the obstacles relating to the service of documents.

He shall put on record the extinction of proceedings. In that latter event, he shall rule upon, where the same appears necessary, taxable charges.

*Article 866*

The directions provided for by the judge rapporteur shall be recorded by simple notes on the court's file: an advice of the same shall be given to the parties.

Notwithstanding the above, in relation to the matters referred to in the aforegoing Article, the judge rapporteur shall rule by way of a reasoned order, save as to the specific rules relating to directions.

*Article 867*

The orders of a judge rapporteur shall not carry, with reference to the main issue, the authority of res judicata.

*Article 868*

The orders of a judge rapporteur shall not be open to review per se irrespective of the substantive judgment of the matter.

Notwithstanding the above, they may be subject to appeal, either in the form laid down in relation to expertise, or within fifteen days from the date on which they have put on record the extinction of the proceedings.

*Article 869*

The judge rapporteur may, where the parties do not so oppose, sit alone to hear the closing speeches. He shall enter a recital of the same in his deliberation.

In other cases, he shall set down the matter before the court as soon as the pre-trial management of the same would so allow.

SUB-SECTION 2 GENERAL PROVISIONS

*Article 870*

Save where the matter has been tried on a first hearing, the registrar shall advise by ordinary letter the parties who have not been advised orally of the date of the subsequent hearings.

*Article 871*

The procedure shall be carried out orally.

The claims of the parties or the references they submit in relation to such claim as they would have brought in writing shall be noted down on the court's record or taken down in the form of a procès-verbal.

## CHAPTER II THE POWERS OF THE PRESIDENT

### SECTION I ORDERS PURSUANT TO A SUMMARY INTERLOCUTORY PROCEDURE

*Article 872*

In all cases of urgency, the president of the Commercial Court may order by way of summary interlocutory proceedings such directions regarding which no serious objections shall be raised or which ought to be given by reason of a dispute.

*Article 873*

(*Decree No. 85-1330 of 17 December 1985, sec.10, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 87-434 of 17 June 1987, sec.3, Official Journal of 23 June 1987*)

The president may within the same confines and even where confronted with serious objections provide for by way of summary interlocutory proceedings such protective measures or such orders as to keep the status quo of the matters as required, either to protect from an impending damage, or to abate a nuisance manifestly illegal.

Where liability resultant from an obligation cannot be seriously challenged, he may award an interim payment to the creditor or order the mandatory performance of the obligation even where it shall be in the nature of an obligation to perform.

### SECTION II EX PARTE DECREES

*Article 874*

The president of the Commercial Court shall be seised by petition in the circumstances as provided by law.

*Article 875*

He may equally provide for, further to a petition, and within the confines of the powers of the court, such urgent directions where the circumstances so demand that they shall not be dealt with by way of adversarial proceedings.

*Article 876*

In cases of urgency, the petition may be presented at the domicile of the president or at the place where he sits for business.

## CHAPTER III MISCELLANEOUS PROVISIONS

*Article 877*

The Commercial Courts shall not entertain jurisdiction to enforce their judgments.

*Article 878*

The president of a Commercial Court may delegate to one or more members of the court part or all of his powers that are conferred unto him under this Title.

## TITLE IV SPECIFIC PROVISIONS RELATING TO EMPLOYMENT COURTS

*Article 879*

*(Decree No. 76-1237 of 28 December 1976, Official Journal of 30 December 1976)*

*(Conseil d'Etat of 11 February 1977, Official Journal of 26 April 1977)*

*(Decree No. 79-1022, of 23 November 1979, sec.12 Official Journal of 2 December 1979)*

*(Decree No. 80-303 of 28 April 1980, sec.1, Official Journal of 29 April 1980)*

*(Decree No. 81-835 of 8 September 1981, sec.1 Official Journal of 10 September 1981)*

*(Decree No. 82-1073 of 15 December 1982, sec.12 and 15, Official Journal of 21 December 1982)*

*(Decree No. 87-107 of 18 February 1987, sec.16, Official Journal of 19 February 1987)*

*(Decree No. 87-452 of 29 June 1987, sec.2, Official Journal of 30 June 1987)*

*(Decree No. 88-765 of 17 June 1988, sec.1, Official Journal of 22 June 1988)*

The specific provisions relating to court having cognisance of employment matters shall be those Articles as hereinafter of the Employment Code:

"BOOK 5 INDUSTRIAL DISPUTES

TITLE I PERSONAL DISPUTES. CONSEIL DE PRUD'HOMMES

CHAPTER 6 PROCEDURE BEFORE THE CONSEIL DE PRUD'HOMMES

Article R.516-0 The procedure before the courts having cognisance of employment matters shall be governed by the provisions of Book I of the New Code of Civil Procedure subject to the provisions of the following code.

SECTION I ADMISSIBILITY OF CLAIMS

Article R. 516-1 Any claim arising out of a contract of employment between the parties must, whether they emanate form the applicant or the respondent, be joined in one single action, save where the basis of the claims arose or became apparent subsequent to the cognisance of the conseil de prud'hommes.

Article R. 516-2 New claims arising out of the same contract of employment shall be admissible at any stage of the proceedings, even on appeal, without the same being demurrable to a motion to the fact that there is an absence of an attempt at conciliation.

Courts having cognisance of employment matters shall be apprised of any counter-claim or pleas in compensation which, by their nature, shall be within their jurisdiction, even where raised by way of grounds of appeal.

Article R. 516-3 In employment matters, the proceedings shall be extinguished only where the parties fail to implement, within a time-limit of two years as referred to under Article 386

of the New Code of Civil Procedure, the steps which shall be expressly assigned to them by the court.

SECTION 2 ASSISTANCE AND REPRESENTATION OF PARTIES

Article R. 516-4 The parties shall be held to appear in person save where a representative is acting on their behalf where there is a lawful ground.

They may be assisted.

Article R. 516-5 The persons empowered to assist or represent the parties in employment matters shall be :

- employees or employers of a same line of activity;
- delegates, whether permanent or non-permanent, of trade unions or of employers' association;
- married partners;
- *avocats*.

An employer may equally be assisted or represented by a member of the enterprise or of the entity.

Before the court of appeal, the parties may be assisted or represented by an *avoué*.

Article R. 516-6 The procedure shall be oral.

Article R. 515-7 The claims of the parties or the references they submit in relation to such claim as they would have brought in writing shall be noted down on the court's record or in the form of a procès-verbal.

SECTION 3 THE COGNISANCE OF THE CONSEIL DE PRUD'HOMMES

Article R. 515-8 The *Conseil de Prud'hommes* shall be seised either by an application, or by the voluntary presentation of the parties before the office for conciliation.

The cognisance of the conseil de prud'hommes, even where it lacks jurisdiction, shall suspend the running of limitation periods.

Article R. 516-9 An application shall be brought to the clerk's office of the conseil de prud'hommes. It may be addressed by registered letter.

It shall have to specify the surname, occupation and addresses of the parties as well as the various grounds at issue. The clerk's office-registry shall issue or sent immediately an acknowledgement of the same to the applicant.

The acknowledgement, or a document subjoined to it, shall reproduce the Articles R.516, R.516-5 and R.516-13 to R.516-20-1.

Article R. 516-10 The clerk's office-registry, either orally on the presentation of the application, or by ordinary letter which shall be official paid, shall advise the applicant of the venue, date and time of the session of the office for conciliation at and on which the matter shall be called and shall invite him to bring along any useful document.

Article R. 516-11 The clerk's office-registry shall convene the respondent before the office for conciliation by recorded letter with the advice of delivery slip sought. He shall address on the same day a copy of that convocation by ordinary letter which shall be official paid.

The convocation destined to the respondent shall indicate the name, occupation and domicile of the respondent, the venue, date and time of the session of the office for conciliation on and at which the matter shall be called as well as the grounds of the claim. It shall inform further the respondent that decisions which shall be executory provisionally may, in his absence be pronounced against him by the office for conciliation on the examination of the only exhibits brought forward by his opponent. It shall invite the respondent to bring along any useful document. This convocation, or any document subjoined to it, shall reproduce the Articles R. 516-4, R. 516-5 and R. 516-13 to R. 516-20-1.

Article R. 516-12 The convocation of the respondent before the office for conciliation shall amount to a citation to appear before a court of law, subject to the provisions under sub-article two of Article R. 516-8.

SECTION 4 THE OFFICE FOR CONCILIATION

Article R. 516-13 The office for conciliation shall hear the parties in their submissions and shall endeavour to reconcile them. A procès-verbal shall be drawn up.

Article R. 516-14 Where there shall be a total or partial conciliation, the procès-verbal shall mention the tenor of the agreement reached. Where the same appears necessary, it shall specify that the agreement shall be the subject-matter in whole or in part of an immediate enforcement before the office for conciliation.

Article R. 516-15 In default of a total conciliation, the issues that shall be still in dispute and the declarations of the parties in relation to these issues shall be noted down in the file or in the procès-verbal drawn by the registrar under the supervision of the president.

Article R. 516-16 Where on the date fixed for the attempt at conciliation, the applicant does not appear without having a shown cause of a lawful excuse of in due time, the office

for conciliation shall declare the application and citation to have lapsed. The application may only be presented afresh once only, save where the office for conciliation, seised without any formality, shall record that the applicant has not been able to appear on the second application owing to an Act of God.

Article R. 516-17 Where, on the date fixed for the attempt at conciliation, the respondent does not appear, the office for conciliation shall proceed as indicated under Article R. 516-20, after having, where the same appears necessary, made reference to the powers conferred upon it by virtue of Article R. 516-18.

Notwithstanding the above, where the respondent has shown cause in due time of a lawful impediment excusing his absence, he shall be convened to a subsequent session of the office for conciliation by ordinary letter.

Where it has become apparent that the respondent has not been served with the process, without any fault on his behalf, in relation to the first convocation, the office for conciliation shall decide that he shall be convened de novo to a subsequent session either by recorded letter with the advice of delivery slip sought by the clerk's office-registry, or by process of a *huissier de justice* at the suit of the applicant. This process must be effectuated within six months of the decision of the office for conciliation, under penalty of the application on the record of the office being otherwise lapsed.

Article R. 516-18 The office for conciliation may, albeit such exception of procedure or even where the respondent does not appear, order:

The issuance, should the occasion arise, under penalty of a civil penalty, of a certificate of employment, of pay slips and such other items that the employer shall be held legally to issue;

Where the existence of the obligation cannot meritoriously be challenged: interim payment in relation to salaries and other incidental payments, commissions and paid holidays, indemnity on termination of contract as referred to under Article L. 122-3-5, indemnity referred to under IV of Article L. 122-3-8, indemnity as referred to under Article L. 122-32-6- and indemnity of insecurity of employment as referred to under Article L, 124-4-4; the total amount of these sums to be awarded, which must be quantified by the office for conciliation, cannot exceed six months salary based on the average of the three last salaries.

Any direction, even ex proprio motu;

Any necessary measure to preserve items of evidence or objects in dispute.

The office for conciliation may quantify, provisionally, the civil penalty that it has ordered.

Where the present Article shall be applied and by way of a departure from the provisions of the last clause of Article R. 515-1 the sessions of the office for conciliation shall be held in public.

Article 516-19 The decisions taken by virtue of the application of Article R. 516-18 shall always be applicable provisionally; they shall not carry the authority of res judicata over the

main action. They shall be executory, where the same shall be provided for and should the occasion arise, on the presentation of the minutes. They shall not be amenable to an application to set aside. They may be appealed or be petitioned in cassation simultaneously as the judgment on the merits, save as to the specific rules in relation to expertise.

Article 516-20 Where the applicant and the respondent are present or are represented and that the matter is in good order for trial without the appointment of one of the two rapporteurs or the recourse to a direction being necessary, the office for conciliation shall set the matter before the trial office. The parties may be convened before this office orally with a marginal note of the same having been entered on the file; in the latter event, a memorandum indicating the date of the hearing shall be remitted to them by the registrar.

Where the matter is in good order so as to be able to be determined immediately, and where the management of the court business so allows, the office for conciliation may, subject to the approval of all parties, cause them to appear before a hearing which the trial office shall hold immediately.

Where the respondent has not appeared and that the recourse to an investigation or a direction does not appear necessary beforehand, the office for conciliation shall set the matter before the trial office. The applicant may be convened before that latter office orally with a marginal note of the same having been entered on the file; in the latter event, a memorandum indicating the date of the hearing shall be remitted to him by the registrar.

Article R. 516-20-1 The office for conciliation may fix the time-limit to exchange documents or notes that the parties contemplate to submit in support of their contention.

SECTION 5 THE RAPPORTEUR

Article R. 516-21 In view of putting the matter in good order for trial, the office for conciliation or the trial office may, by virtue of a decision which shall not be open to review, appoint one or more rapporteurs so as to compile, in relation to this matter, the necessary information for the attention of the *Conseil de Prud'hommes*to allow them to rule upon it.

One or two rapporteurs may equally be appointed by the summary interlocutory procedure panel, in view of compiling such information necessary to reaching a decision on behalf of this panel.

The decision that appoints one or two rapporteurs shall fix the time-limit to enforce their assignment.

Article R. 516-22 A rapporteur is a councillor for the conseil de prud'hommes. He may be part of the panel pronouncing a judgment.

Where two rapporteurs are appointed in the same matter, one must be an employer, another one an employee. They work together in relation to their assigment.

Article R. 516-23 A rapporteur may hear the parties.

He may invite them to submit such explanations that he deems necessary to the resolution of the dispute and put them on default notice to produce within a time-limit that he shall determine such documents or explanations appropriate to guiding the conseil de prud'hommes, failing which he may discard them and set the matter before the trial office which shall draw such inference as proper in relation to the abstention or refusal of a party.

He may hear any person whose testimony appear useful to the manifestation of truth, as well as proceeding by himself or cause to proceed with such direction as necessary.

Article R. 516-24 Where the parties are reconciled, even partially, the rapporteur shall record the tenor of the agreement reached in a procès-verbal.

Article R. 516-25 Decisions taken by the rapporteur shall always be provisional and shall not carry the authority of res judicata over the main action. They shall be immediately enforceable, and cannot be the subject-matter of a review save only with the judgment on the merits subject to the rules specific to expertise.

Article R. 516-26 Save where it is orally made with a marginal note having been entered on the file, the parties shall be convened before the trial office by recorded letter with the advice of delivery slip sought addressed by the clerk's office-registry which shall send on the same day to the parties a copy of the convocation by ordinary letter.

The convocation shall indicate the name, occupation and domicile of parties, the venue, date and time of the hearing as well as the point at issue.

Where on the date fixed for the judgment, the respondent does not appear, the matter shall be considered on its merits.

However, where the respondent has excused in due time his absence by a lawful impediment, he shall be convened to a subsequent session of the trial office by registered letter.

Where it has become apparent that the respondent has not been served with the process, without any fault on his behalf, in relation to the first convocation, the trial office shall decide that he shall be convened de novo to a subsequent hearing either by recorded letter with the advice of delivery slip sought, or by process of a *huissier de justice* at the suit of the applicant.

Article R. 516-26-1 In the case where the trial office shall declare that the citation has lapsed by virtue of the application of Article 468 of the New Code of Civil Procedure, the application may be renewed once.

It shall be brought directly before the trial office in accordance with the manner prescribed for under Article R. 516-26.

Article R. 516-27 Where the parties are reconciled, even partially, the trial office shall record the tenor of the agreement reached in a procès-verbal.

Where the same appears necessary, the procès-verbal shall specify that the agreement shall be the subject-matter in part or in whole of an immediate enforcement before the trial office.

Article R. 516-28 The decisions of the trial office shall be reached by a majority vote,

Where a majority cannot be reached, the matter shall be proceeded with as in the cases of equality of votes. The oral arguments must be resumed.

Article R. 516-29 At the end of the oral arguments and where a decision has been reserved, the date on which judgment shall be given shall be mentioned to the parties either by way of a marginal note of the same being entered on the file or by way of remitting a memorandum of the same by the registrar.

SECTION 7 THE SUMMARY INTERLOCUTORY PROCEDURE IN EMPLOYMENT MATTERS

Article R. 516-30 In all cases of urgency, the summary interlocutory procedure panel may, within the scope of its powers as councillors of the conseil de prud'hommes, order such directions that shall not offend a meritorious contention of the matter or which shall be rendered necessary by virtue of a dispute.

Article R. 516-31 The summary interlocutory procedure panel may even where confronted with serious objections provide for such protective measures or such orders as to keep the status quo of the matters as required, either to protect from an impending damage, or to abate a nuisance manifestly illegal.

Where the existence of the obligation cannot be meritoriously challenged, it may award an interim payment to the creditor or order the performance of the obligation even where it is in the nature of an obligation to perform.

Article 516-32 An application for summary interlocutory procedure shall be brought at the choice of the applicant either by process of a *huissier de justice*, or in the conditions referred to under Article R. 516-8. Where the application shall be brought by process of a *huissier de justice*, a copy of the summons shall be filed at the clerk's office-registry of the conseil de prud'hommes, no later than the day before the hearing; where the application shall be brought in the manner provided for under Article R. 516-8, the provisions of Articles R. 516-9 to R. 516-11 shall be applicable.

Internal rules of the *Conseil de Prud'hommes* shall fix the day and hours of business of the summary interlocutory procedure hearings. A hearing per week must at least be provided for.

Where the circumstances so require, the president of the conseil de prud'hommes, after having caused the vice-president to indicate his advice, fix one or more supplementary hearings or move the days and time of the hearing or hearings during the week.

Article R. 516-33 The Articles 484, 486 and 488 to 492 of the New Code of Civil Procedure shall be applicable in summary interlocutory procedure for employment matters.

Where it appears that it lacks jurisdiction in relation to the claim brought before it, and where the application is urgent, the summary interlocutory procedure panel may, with the agreement of all the parties and after having attempted itself a conciliation in camera and in accordance with the rules laid down under Articles R. 516-13 to R. 516-15, set down the matter before the trial office. The notification to the parties by way of a summary interlocutory procedure order mentioning the date of the hearing of the trial office amount to a citation to a court to a court of law.

Article R. 516-34 The time-limit to appeal shall be fifteen days.

Article R. 516-35 The appeal shall be brought, managed and determined as indicated under Articles R. 517-7 to 517-9.

SECTION 8 THE ENFORCEMENT OF JUDGMENTS

Article R. 516-36 The *Conseil de Prud'hommes* cannot enforce their judgments.

Article R. 516-37 Shall be provisionally enforceable:

Judgment which shall be open to appeal only in furtherance of a counter-claim;

Judgment ordering the issuance of a certificate of employment, salary slips or such documents which the employer is held to deliver;

Judgment ordering the payment of sums by way of remuneration and indemnity referred to under Article R. 516-18, within the limit of nine months of salary to be calculated on the average of the last three salaries. This average shall be referred to in the judgment.

SECTION 9 COMMON AND MISCELLANEOUS PROVISIONS

Article R. 516-38 Exceptions to procedural steps must, under penalty of it otherwise being inadmissible, be raised before any defence on the merits or a plea seeking a peremptory declaration of inadmissibility. They may, subject to this proviso, still be raised before the trial office.

Article R 516-39 The rapporteur or the trial office may give such direction as necessary in relation to the protection of items of evidence or in relation to objects in dispute.

Article R. 516-40 In case of an equality of votes, the matter shall be set down to a subsequent hearing before the office for conciliation or the trial office, presided by an umpire judge having a casting vote, which must be held within the month of the setting down.

In case of an equality of votes among the summary interlocutory procedure panel, the matter shall be set down to a hearing presided by an umpire judge, which must be held without any delay and no later than fifteen days of the setting down.

Where a councillor of the *Conseil de Prud'hommes* is impeded to sit in an umpire hearing, he shall himself provide for his replacement by another councillor of the *Conseil de Prud'hommes* of the same body, and attached, as the case may be, to his section, court-room or summary interlocutory procedure panel.

Where he does not provide for his replacement, the president or vice-president having jurisdiction over his section or his court-room or of his body may provide for the replacement in the same conditions.

A councillor of the *Conseil de Prud'hommes* or, should the occasion arise, the president or vice-president shall advise immediately of this replacement to the clerk's office-registry.

Before the trial office, replacement can only be carried out as within the same body of the *Conseil de Prud'hommes* to which the councillor belonged.

Where, at the umpire hearing, the panel may not be able to sit as a full bench, the umpire judge, at the end of the oral arguments, shall rule upon solely irrespective of the number of councillors of the *Conseil de Prud'hommes* present and even in the absence of any councillor, after having taken cognisance of the opinion of the other councillors present.

The provisions of Article R.516-29 shall be applicable to judgment rendered where the panel shall be presided by the umpire judge.

Article R. 516-41 Where there is a conciliation, abstracts of the procès-verbal wherein shall be mentioned whether immediate total or partial enforcement of the agreement reached, may be issued. They carry the force of an executory title.

Article R. 516-42 The decisions pronounced in employment matters shall be notified to the litigating parties by the clerk's office-registry of the *Conseil de Prud'hommes* or the court of appeal of their actual residence, by recorded letter with the advice of delivery slip sought without prejudice to the right of the parties to have the same signed as by process of a *huissier de justice*.

The parties shall be advised of measures in relation to judicial administration orally with a marginal note have been entered on the file or by ordinary letter.

Article R. 516-44 In all cases where, by virtue of the legislative provisions in force, the *tribunal d'instance* is asked to take cognisance of an employment matter, an application shall be brought, managed and determined in accordance with the rules herein laid down. In case of a review, the matter shall be proceeded as in an employment matter.

Article R. 516-44 Where a renewal of the councillors of the *Conseil de Prud'hommes* makes it impossible to set a matter which has given rise to an equality of votes prior to said renewal, in accordance with the manner referred to under sub-article of Article L. 515-3, the matter shall be resumed, as the case may be, before the office for conciliation, the trial office or the summary interlocutory procedure panel, sitting in a new composition, under the presidency of the umpire judge.

SECTION 10 SPECIFIC PROVISIONS IN RELATION TO DISPUTES IN DISMISSAL CASES FOR REDUNDANCY

Article 516-45 In case of review further to a dismissal for redundancy, the employer must, within eight days as of the date on which he received the convocation to appear before the office for conciliation, lodge or file by recorded letter with the advice of delivery slip sought at the registry of the *Conseil de Prud'hommes* the particulars referred to under Article L. 122-14-3 in view that it may be put on record on the file of the conseil de prud'hommes. The convocation destined to the employer shall remind him of this disposition.

Article R. 516-46 The session for conciliation referred to under Article R. 516-13 must be held within the month in which the *Conseil de Prud'hommes* has been apprised.

Article R. 516-47 The office for conciliation shall lay down the time-limit and directions necessary to the management of the case or to bring such information to the councillors, after having caused the parties to submit their views, and shall fix the time-limit to exchange documents or notes which the parties intend to rely upon in support of their contention. Directions and investigations must be carried out within a time-limit of no later than three months. This time-limit may be extended by the trial office only where the commissioned person or the rapporteur shall request it by a reasoned application.

The office for conciliation shall fix the date of the hearing before the trial office which must rule upon the matter within a time-limit not exceeding six months to be reckoned form the date on which the matter was set down before it.

Article R. 516-48 Where, at the session for conciliation, a section of the *Conseil de Prud'hommes* shall be apprised by more than one applicants challenging the procedure for which they have been made redundant where the dismissal was on a collective basis, the office for conciliation shall order the joinder of these causes.

## CHAPTER 7 JURISDICTION OF THE *CONSEIL DE PRUD'HOMMES* AND MEANS OF REVIEW AGAINST THEIR DECISIONS

### SECTION I JURISDICTION

Article R. 517-1 The *Conseil de Prud'hommes* territorially competent to take cognisance of a dispute in the one in whose province the entity is situated or the employment carried out.

Where the employment is carried out outside any commercial premisses or at home, the application shall be brought before the *Conseil de Prud'hommes* of the situs of the domicile of the employee.

The employee may always apprise the *Conseil de Prud'hommes* competent for the situs where the employment contract was entered into or the situs wherein the employer is established.

Any clause which directly or indirectly depart from the aforegoing provisions shall be deemed unwritten.

Article R. 517-2 Matters shall be distributed among the section of the *Conseil de Prud'hommes* by virtue of the rules laid down under Article L. 512-2 and which govern the attachment of employees to the various sections.

In cases of an obstacle or challenge in relation to the cognisance of a section, and irrespective of the stage of the procedure at which this obstacle is met or this challenge brought forward, the file shall be transmitted to the president of the conseil de prud'hommes, who, after that the vice-president has indicated his opinion, shall allocate the matter to a section which he shall designate by an order not subject to appeal.

### SECTION 2 INSTITUTING MEANS OF REVIEW

Article R. 517-3 The *Conseil de Prud'hommes* shall rule upon as last resort:

1° Where the figure of the claim does not exceed a sum fixed by Decree.

2° Where the claim shall be in view of the issuance, even under a civil penalty, of a certificate of employment, of salary slips and of such other documents that an employer shall be held to deliver, save where the judgment shall be of first resort by virtue of the amount of the other claims.

Article R. 517-4 A judgment shall not be subjected to appeal where the heads of the original claim or incidental claims do not exceed, per se, the jurisdictional value-limit of last resort of the conseil de prud'hommes.

Where one of the heads of the claim can only be ruled upon but ought to be subjected to a review, the *Conseil de Prud'hommes* shall pronounce itself on all of them, as of first resort.

A judgment shall not be open to appeal where there is a counter-claim for damages and interests which shall be based only on the original claim and which shall exceed the jurisdictional value-limit of last resort.

Article R. 517-5 Where a counter-claim which has been considered as unfounded and which has had the effect of rendering the judgment appealable, the court may order against its originator a civil fine of 100 to 10,000 F without prejudice to the damanges and interests which shall be claimed.

SECTION 3 APPLICATION TO SET ASIDE

Article R. 517-6 Application to set aside shall be brought directly to the trial office.

The provisions of Articles R. 516-8 to R. 516-11 shall be applicable.

An application to set aside shall lapse where the party who brought it forward does not appear. It cannot be renewed.

SECTION 4 APPEAL

Article R. 517-7 The time-limit to appeal shall be a month.

The appeal shall be brought by a declaration that the party or any represenstative shall make, or shall be addressed by registered letter, to the clerk's office-registry of the court which rendered the judgment.

The declaration shall indicate the surname, first names, occupation and domicile of the appellant as well as the name and address of the parties against which the appeal is aimed. It shall specify the judgment against which the appeal is brought and shall mention, should the occasion arise, the heads of judgment to which it is limited as well as the name and address of the representative of the appellant before the court.

Article R. 517-8 The appeal shall be brought before the social court-room of the court of appeal.

Article R. 517-9 The appeal shall be brought, managed and determined in accordance with the procedure without mandatory representation.

SECTION 5 PETITION IN CASSATION

Article R. 517-10 In employment matters, the petition in cassation shall be brought, managed and determined in accordance with the procedure dispensing with the auxiliary of an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

CHAPTER 8 RECUSALS

Article R. 518-1 The procedure for recusal of a councillor of the *Conseil de Prud'hommes*shall be governed by the Articles 341 to 355 fo the New Code of Civil Procedure.

Article R. 518-2 Where the application for recusal shall be brought before the court of appeal, it shall be determined before the social court-room."

TITLE V SPECIFIC PROVISIONS RELATING TO THE JOINT RURAL LEASEHOLDS COURT

CHAPTER I THE ORDINARY PROCEDURE

*Article 880*

The competent Joint Rural Leaseholds Court shall be the one in whose locality the property is situated.

*Article 881*

Where the Joint Rural Leaseholds Court shall consist of two sections, the matter shall be brought before the competent section in consideration of the kind of contract binding the parties.

Notwithstanding the above, where a section of the court cannot sit or cannot carry out business, the matter shall be brought before the other section.

*Article 882*

The applicable procedure before the Joint Rural Leaseholds Court shall be the one applicable before the *tribunal d'instance* save to the provisions as below.

*Article 883*

Parties shall be held to appear in person, save that they may be represented where the same is justified in the circumstances.

Notwithstanding the above, they may nevertheless be assisted.

*Article 884*

Individuals empowered to assist or represent the parties shall be:

- an *avocat*
- a *huissier de justice*
- a member of their family
- a member of a professional agricultural organisation.

*Article 885*

An application shall be brought and a court seised by a recorded letter with the advice of delivery slip sought or by process of the *huissier de justice* addressed to the clerk's office of the court.

Application subject to registration in the registry of property shall be brought by process of the *huissier de justice*.

*Article 886*

The secretary of the court shall convene the parties by recorded letter with the advice of delivery slip sought, fifteen days before the date fixed by the president of the court. He shall address on the same day a copy of the convocation by ordinary letter to them.

*Article 887*

On the specified date, an attempt at conciliation shall be carried out before the court of which a transcript shall be recorded.

In cases of non-conciliation, the transcript shall have to specify the modes of bringing a solution to the contention as proposed on a majority vote.

In cases of non-appearance of one of the parties, his absence shall be recorded in the transcript.

*Article 888*

Where the conciliation shall fail, or in cases of a non-appearance of one of the parties, the matter shall be set down for a hearing, the date of which shall be specified by the president to the parties present.

The parties who have not been advised orally shall be convened in the manner and time-limit as provided under Article 886. The convocation shall specify that where they fail to appear, a judgment may be entered against them on the evidence produced by their opponent.

The court shall be conferred the powers laid down under Article 844.

*Article 889*

The nominated assessors, and where applicable, their locum tenens shall be convened as laid down under Article 886.

*Article 890*

In the case of an absence or recusal of one of the assessors, he shall be immediately replaced by a substitute member of his category in the order of the votes won during the poll.

*Article 891*

The decisions of the Joint Rural Leaseholds Court shall be notified in its integrity to the parties within three days by the clerk of the court, by recorded letter with the advice of delivery slip sought.

*Article 892*

(*Decree No. 81-500 of 12 May 1981, sec.32, Official Journal of 14 May 1981, amendment 21 May 1981*)

The decisions of the Joint Rural Leaseholds Court shall not be amenable to an application to set aside.

Where they are subject to appeal, they shall be brought, managed and determined in accordance with the procedure provided for without any mandatory representation.

CHAPTER II THE ORDERS PURSUANT TO A SUMMARY INTERLOCUTORY PROCEDURE

*Article 893*

In all cases of urgency, a president of the Joint Rural Leaseholds Court may, within the confines of his powers, order by way of summary interlocutory proceedings such directions regarding which no serious objections shall be raised or which ought to be given by reason of a dispute.

*Article 894*

(*Decree No. 85-1330 of 17 December 1985, sec.11, Official Journal of 18 December 1985)*

(*Decree No. 87-434 of 17 June 1987, sec.4, Official Journal of 23 June 1987*)

The president may, within the same confines and even where confronted with serious objections provide for by way of summary interlocutory proceedings such protective measures or such orders as to keep the status quo of the matters as required, either to protect from an impending damage, or to abate a nuisance manifestly illegal.

Where the existence of the obligation shall be not meritoriously contested, he may award an interim payment to the creditor or provide for the mandatory order of performance of the obligation even where it shall be in the nature of an obligation to perform.

*Article 895*

[*Repealed*]

*Article 896*

The time-limit to lodge an appeal shall be fifteen days.

The appeal shall be brought, managed and determined in the manner laid down under Article 892.

## CHAPTER III EX PARTE ORDERS

*Article 897*

The president of the Joint Rural Leaseholds Court shall be seised by way of petition in the circumstances as provided by law.

Further to a petition he may equally provide for, within the confines of the jurisdiction of the court, such urgent orders where the circumstances so demand that they shall not be dealt with by way of adversarial proceedings.

Article 898

Where a petition has not been successful, an appeal shall be brought, managed and determined in the manner as laid down under Article 892.

The time-limit to lodge an appeal shall be fifteen days.

## TITLE VI SPECIFIC PROVISIONS RELATING TO THE COURT OF APPEAL

## SUB-TITLE I THE PROCEDURE BEFORE THE PANEL-JUDGE

### CHAPTER I THE PROCEDURE IN CONTENTIOUS MATTERS

*Article 899*

Parties shall be held to, save where dispensed with the same, retain an *avocat*.

The retainership of an *avocat* shall carry with it the election of domicile.

#### SECTION I THE PROCEDURE WITH MANDATORY REPRESENTATION

*Article 900*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

An appeal shall be brought by an ex parte application or by joint petition.

*Article 901*

A declaration of appeal shall be brought by a process specifying, under penalty of it otherwise being null,:

1° a) where the appellant shall be a natural person: his surname, first names, domicile, nationality, date and place of birth;

b) where the appellant shall be a corporate body: its form, denomination, its registered seat and the department that would represent it legally;

2° the surname and first names of the respondent or where it is in relation to a corporate body its denomination and its registered seat;

3° the retainership of the *avocat* of the appellant;

4° particulars of the judgment;

5° particulars of the court to which the appeal shall be brought to.

The declaration shall specify, should the occasion arise, the heads of the judgment to which the appeal shall be limited and the name of the *avocat* retained to assist the appellant before the court.

It shall be signed by an *avoué*.

*Article 902*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

A declaration shall be filed to the clerk's office-registry of the court in so many copies as there are respondents, plus two more.

The filing shall be put on record by the mention of its date and the imprint of the registrar on each of the copies of which one shall be immediately returned.

*Article 903*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The registrar shall address straight away, by ordinary letter, to each of the respondent, a copy of the declaration with the mention of the need to retain an *avoué*.

Where this copy shall be returned by the postal services, the registrar shall forward the same to the *avoué* of the appellant, who shall proceed in the manner as laid down under Article 908.

*Article 904*

As soon as he shall be retained, the *avoué* of the respondent shall inform the one acting on behalf of the appellant; a copy of the notice of acting shall be filed at the clerk's office-registry.

*Article 905*

The court shall be seised at the suit of one or the other party by the filing at the clerk's office-registry of a listing application in the register of cases.

The application shall have to be lodged within two months of the declaration, failing which the latter shall lapse.

The operation of being lapsed shall be entered on record ex proprio motu by an order of the first president or the president of the court-room to which the matter has been allocated.

Where there shall be a failure to filing, a petition may be brought to the first president in view of entering a finding of the matter having lapsed.

*Article 906*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

A copy of the declaration of appeal as imprinted by the registrar and a certified copy of the judgment or a certified true copy by the *avoué* shall be annexed to the listing application in the register of cases.

*Article 907*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The first president shall specify the court-room to which the matter shall be allocated.

Advice of the same shall be given by the registrar to the *avoués* on records.

*Article 908*

Where a party, further to a letter sent by the registrar, has not retained any *avoué*, the appellant shall summon him in signifying to him the declaration of appeal.

The summon shall specify, under penalty of it otherwise being null, that where the respondent fails to retain an *avoué* within fifteen days, he shall be at risk that a judgment may be entered against him on the grounds brought forward by his opponent.

*Article 909*

Pleadings shall be served and documents exchanged by the *avoué* of each of the parties to the other one; where there shall be a multiplicity of applicants or respondents, this shall have to be in relation to each of the *avoués* on record.

A copy of the pleadings shall be filed at the clerk's office-registry while cause shall be shown of the same that they have been notified.

*Article 910*

(*Decree No. 85-1330 of 17 December 1985, sec.12, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 98-1231 of 28 December 1998, sec.27, Official Journal of 30 December 1998, in force on 1 March 1999*)

The matter shall be managed under the supervision of a judge of the court-room to which it has been allocated, in the manner prescribed under Articles 763 to 787 and by the following provisions.

Where the matter shall appear to require some expedition or where it can be heard within a short period, the president of the court-room to which it has been allocated shall fix the date and time where it shall be called; on the specified date, matters shall be carried out in accordance with the manner prescribed under Articles 760 to 762.

*Article 911*

(*Decree No. 84-618 of 13 July 1984, sec.15 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

A pre-trial councillor shall be empowered to find that the appeal shall be inadmissible and shall rule at the same time upon any issue in relation to the admissibility of the appeal.

*Article 912*

A pre-trial councillor, where he has been seised with a matter, shall entertain exclusive jurisdiction to provide for stays of execution of judgments which have been wrongly termed of last resort, or to exercising the powers conferred upon him in relation to interim enforcement.

*Article 913*

(*Decree No. 76-714 of 29 July 1976, sec.8, Official Journal of 30 July 1976*)

Only *avoués* shall be empowered to represent the parties and to submit pleadings on their behalf.

Advice or injunctive decrees shall be validly served where they shall be addressed to the *avoués*.

*Avocats* shall be heard on their instructions.

*Article 914*

(*Decree No. 98-1231 of 28 December 1998, sec.28, Official Journal of 30 December 1998, in force on 1 March 1999*)

The orders of the pre-trial councillor shall not be subjected to any review per se irrespective of the substantive judgment.

Notwithstanding the above, they may be referred to the court by way of simple petition within fifteen days of their date when they aim at terminating the proceedings, where they put on record the extinction of the proceedings or where they are in relation to interim measures in divorce or judicial separation proceedings or where they rule upon pleas against jurisdiction, pleas of lis alibi pendens and of pleas against double cognisance.

*Article 915*

(*Decree No. 85-1330 of 17 December 1985, sec.21, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 89-511 of 20 July 1989, sec.20, Official Journal of 25 July 1989 in force on 15 September 1989*)

The *avoué* for the appellant shall have to, within four months of the declaration of appeal, file at the registry his pleadings, save where the pre-trial councillor imparted to him a shorter period.

Faling that, the matter shall be deleted off the register by an order not open to review, a copy of which shall be sent to the appellant by ordinary letter addressed to his actual domicile or residence. Where the matter has been so deleted, any stay of execution shall be discharged in relation to the appeal, save where interim enforcement shall be prohibited by law.

The matter shall be restored either on cause being shown that the pleadings have been filed on behalf of the appellant, while the appeal shall not carry any stay of execution, or at the suit of one the respondent who may ask that a pronouncement of closure be issued and that the matter be set down for trial for a determination on the holdings of the first instance.

Notwithstanding the aforegoing provisions, the time-limit of four months which has been imparted to plead a matter may be extended by the pre-trial councillor in the circumstances where an *avoué* has been designated under legal aid or retained by an appellant in relation to whom legal aid has been refused.

*Article 916*

[*Repealed*]

SUB-SECTION II FIXED DATE PROCEDURE

*Article 917*

(*Decree No. 89-511 of 20 July 1989, sec.21, Official Journal of 25 July 1989 in force on 15 September 1989*)

Where the rights of a party are imperilled, the first president may, by way of petition, fix a date where the matter shall be called as of priority. He shall specify the court-room to which the matter shall be allocated.

The provisions of the aforegoing sub-article may equally be invoked by the first president of the court of appeal or by the pre-trial councillor upon the exercise of his powers as conferred upon him in relation to summary interlocutory procedure or interim enforcement.

*Article 918*

The petition shall have to indicate the nature of the imperilment, include the substantive plea and identify the exhibits. A certified copy of the decision or a certified true copy by the *avoué* shall have to be subjoined thereto.

A copy of the petition and of the exhibits shall have to be filed to the first president to be entered on the court's file.

*Article 919*

(*Decree No. 81-500 of 12 May 1981, sec.33, Official Journal of 14 May 1981, amendment 21 May 1981*)

The declaration of appeal shall refer to the order of the first president

Copies destined for the respondent shall be returned to the appellant.

The petition may also be presented to the first president at latest within eight days of the declaration of appeal.

*Article 920*

(*Decree No. 81-500 of 12 May 1981, sec.34, Official Journal of 14 May 1981, amendment 21 May 1981*)

The appellant shall summon his opponent to the date specified.

Copies of the petition of the order of the first president, and a copy of the declaration of appeal as imprinted by the clerk or a copy of the declaration of appeal in the manner prescribed under the third sub-article of Article 919, shall be subjoined to the summons.

The summons shall inform the respondent that, failure on his behalf to retain an *avoué* before the date of the hearing, he shall be deemed to rely on the grounds he put forward at first instance.

The summons shall indicate to the respondent that he may obtain a copy of the exhibits identified in the petition at the clerk's office-registry and a precept shall be conveyed upon him to file before the date of the hearing the new exhibits on which he intends to rely upon.

*Article 921*

The respondent shall be held to retain an *avoué* before the date of the hearing, failing which he shall be deemed to rely on the grounds he put forward at first instance.

*Article 922*

The court shall be seised by the filing of a copy of the summons to the clerk's office-registry.

The filing shall have to be carried out before the date fixed for the hearing, failing which the declaration shall lapse.

The operation of having been lapsed shall be put on record ex proprio motu by order of the president of the court-room to which the matter has been allocated.

*Article 923*

On the day of the hearing, the president shall ensure that sufficient time has elapsed since the summons so that the party summoned could have prepared his case. Should the occasion arise, he shall make an order for a fresh service of the summons.

Where the respondent has retained an *avoué*, the oral arguments shall be carried out there and then or on the subsequent hearing, as at the stage the matter has reached.

Where the respondent has not retained an *avoué*, the court shall determine the matter by way of a deemed adversarial proceedings in relying, where necessary on the grounds adduced at first instance.

*Article 924*

The petition in view of the fixture of a hearing may be presented by the respondent as long as the court of appeal has not been seised.

*Article 925*

Where necessary, the president of the court-room may remit the matter to the pre-trial councillor.

SUB-SECTION 3 APPEAL ON JOINT PETITION

*Article 926*

A joint petition shall only be admissible where it shall be presented by all the parties at first instance.

*Article 927*

Further to the particulars prescribed under Article 57, the joint petition shall have to include, under penalty of it being otherwise inadmissible:

1° a certified true copy of the judgment;

2° should the occasion arise, the particulars of the head of judgments to which the appeal shall be limited;

3° the retainership of the *avoués* of the parties.

The joint petition shall mention, should the occasion arise, the name of the *avocats* instructed to assist the parties before the court.

It shall be signed by the *avoués* on record.

*Article 928*

The court shall be seised by the filing at the clerk's office-registry of the joint petition . The filing shall have to be made within the time-limit to appeal.

*Article 929*

The first president shall fix the date and time when the matter shall be called; where the same appears necessary, he shall designate the court-room to which it shall be allocated.

Advice of the same shall be given to the *avoué* on record.

*Article 930*

The matter shall be managed and determined as in cases of summary procedures.

SECTION II THE PROCEDURE WITHOUT MANDATORY REPRESENTATION

*Article 931*

The parties shall plead by themselves their causes.

They shall have the right to be assisted or represented according to the rules applicable before the court ad quo; they may also be assisted or represented by an *avoué*.

The representative shall have to, where he is not an *avocat* or *avoué*, show cause of a specific authority to act.

*Article 932*

The appeal shall be brought by a declaration that the party or his attorney shall make, or address by registered letter, to the clerk's office of the court ad quo.

*Article 933*

The notice shall specify the surname, first names, occupation and address of the appellant as well as the name and address of the parties against whom the appeal is brought. It shall specify the judgment against which the appeal is brought and shall mention, should the occasion arise, the name and address of the representative of the appellant before the court.

*Article 934*

The clerk shall record the appeal as at its date; he shall deliver, or address by ordinary letter a simple acknowledgement of the declaration.

*Article 935*

[*Repealed*]

*Article 936*

(*Decree No 78-62 of 20 January 1978, sec.22, Official Journal of 24 January 1978*)

As soon as the formal steps are discharged by the appellant, the clerk shall advise by ordinary letter, the opponent of the appeal by informing him that he would eventually be convened by the court. Simultaneously, he shall forward to the clerk's office-registry of the court the file of the matter with a copy of the declaration and a copy of the judgment.

*Article 937*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The registrar of the court shall convene the parties to a hearing for the oral arguments, as soon as a fixture has been booked and fifteen days in advance, by recorded letter with the advice of delivery slip sought and shall address on the same day, by ordinary letter, a copy of the convocation.

The convocation shall amount to a citation to a court of law.

*Article 938*

Where it has become necessary to convene afresh a party who has not been joined by the first convocation, it may be ordered that the fresh convocation shall be effected by process of a *huissier de justice*.

*Article 939*

(*Decree No. 84-618 of 13 July 1984, sec.16 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

Where the matter has reached a stage that it may be heard, its pre-trial management shall be entrusted to a member of the court-room. The latter may have been designated before the hearing fixed for the oral arguments.

*Article 940*

The judge entrusted to manage the matter may hear the parties.

He may invite them to provide such explanations as he shall deem necessary to the resolution of dispute, and may order them to produce within such period as he shall determine such relevant documents or exhibits as would provide guidance to him, failing which, he may discard them and refer the matter to the court-room which shall draw any such inference in relation to the abstention or refusal on behalf of a party in relation to the above.

*Article 941*

The judge entrusted to the management of the matter shall enter on record any conciliation, even where partial, of the parties. He shall enter on record the extinction of the proceedings.

*Article 942*

The judge entrusted to the management of the matter shall rule upon all obstacles in relation to the service of documents.

He shall proceed with a joinder and a disjoinder of proceedings.

*Article 943*

The judge entrusted to the management of the matter may:

- provide for, even ex proprio motu, any direction;

- order, should the occasion arise, and under pain of a civil penalty, the production of documents which are in the possession of one party, or by a third one where there is no lawful impediment to the same.

*Article 944*

The judge entrusted to the management of the matter may award an interim payment to the creditor where the existence of the obligation shall be not meritoriously contested, as well as issue any interim order.

*Article 945*

The decisions of the judge entrusted to the management of the matter shall not carry, over the main issue, the authority of res judicata.

They shall not be open to review per se irrespective of the substantive judgment of the matter.

Notwithstanding the above, they may be referred to the court by simple petition within fifteen days of their date where they have put on record the extinction of the proceedings.

*Article 945-1*

(*Decree No.81-500 of 12 May 1981, sec.35, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The judge entrusted to the management of the matter may, where the parties do not so oppose, sit alone to hear the closing speeches. He shall enter a recitals of the same in his deliberation.

*Article 946*

The procedure shall be carried out orally.

The claims of the parties or the references they submit in relation to such claim as they would have brought in writing shall be noted down on the court's record or taken down in the form of a procès-verbal.

*Article 947*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Save where the matter has been determined at the first hearing, the registrar shall advise by ordinary letter of the date of the subsequent hearings those parties who would not have been so advised orally.

*Article 948*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

A party whose rights are imperilled may, even where a fixture has been booked, request the first president to list the matter, as of priority, to the next available date.

Where the request has been acceded to, an applicant shall immediately be advised of the date fixed.

Save where the first president has decided that it shall be by process of *huissier de justice* at the suit of the applicant, the registrar shall convene the opponent party by recorded letter with the advice of delivery slip sought and shall address on the same day, by ordinary letter, a copy of the convocation to him.

The court shall make sure that sufficient time has elapsed between the convocation and the hearing so that the convened party could have prepared his case.

*Article 949*

The advice and convocations prescribed under Articles 936, 937, 947 and 948 shall be dispatched in the manner provided for by these provisions to such departments who shall have to be kept informed of the procedure by virtue of law.

## CHAPTER II NON CONTENTIOUS MATTERS

*Article 950*

(*Decree No 76-714 of 29 July 1976, sec.9, Official Journal of 30 July 1976*)

An appeal against a non-contentious decision shall be brought by a declaration given or addressed by registered letter to the clerk's office of the court ad quo, by an *avocat* or an *avoué*, or any other public officer or officer ministériel where the latter shall be empowered by the provisions in force.

*Article 951*

[*Repealed*]

*Article 952*

(*Decree No 76-714 of 29 July 1976, sec.10, Official Journal of 30 July 1976*)

(*Decree No. 78-62 of 20 January 1978, sec.23 Official Journal of 24 January 1978*)

A judge may, by virtue of that declaration, amend or retract his decision.

Otherwise, the clerk of the court shall forward without any delay to the clerk's office-registry of the court the case file together with the declaration and a copy of the decision.

The judge shall inform the party within a month of his decision to examine anew the matter or to transfer it to the court.

*Article 953*

The appeal shall be managed and determined in accordance with the rules applicable in non-contentious matters before the *tribunal de grande instance*.

CHAPTER III COMMON PROVISIONS

*Article 954*

(*Decree No. 79-941 of 7 November 1979, sec.11 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 85-1330 of 17 December 1985, sec.13, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 98-1231 of 28 December 1998, sec.29, Official Journal of 30 December 1998, in force on 1 March 1999*)

The statement of appeal shall have to specify clearly the contention of the party and the grounds on which they are found.

An *avoué* or the *avoués* of one party or more may be invited to summarise the grounds that have been successively provided. The grounds not summarised shall be deemed abandoned.

Parties pleading the reversal of a judgment shall have to explicitly state the grounds relied upon without any reference to their pleadings before the court of first instance.

A party, who without pleading new grounds, shall plead the affirmance of the judgment shall be deemed to have appropriated its holdings.

*Article 955*

(*Decree No. 79-941 of 7 November 1979, sec.11 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where it affirms a judgment, the court shall be deemed to have adopted the holdings of that judgment which are not contrary to its own.

*Article 955-1*

(*Decree No. 79-941 of 7 November 1979, sec.12, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Where the court is seised by way of petition, the parties shall be advised of the date of the hearing by the registrar.

*Article 955-2*

(*Decree No. 79-941 of 7 November 1979, sec.12, Official Journal of 9 November 1979 in force on 1 January 1980*)

The advice shall be given either to the *avoués* by simple memorandum, or, in matters where the auxiliary of the *avoué* shall be dispensed with, to the parties by recorded letter with the advice of delivery slip sought.

A copy of the petition shall be subjoined to the advice sent to the *avoués* or to the parties.

## SUB-TITLE II THE POWERS OF THE FIRST PRESIDENT

### CHAPTER I THE ORDERS PURSUANT TO A SUMMARY INTERLOCUTORY PROCEDURE

*Article 956*

(*Decree No. 76-1236 of 28 December 1976, sec.21, Official Journal of 30 December 1976*)

In matters of urgency, the first president may, in appeal cases, provide for by way of summary interlocutory proceedings such orders regarding which no serious objections shall be raised or which ought to be given by reason of a dispute.

*Article 957*

(*Decree No. 76-1236 of 28 December 1976, sec.21, Official Journal of 30 December 1976*)

The first president may, in appeal cases, order a stay of execution of the judgments which have been wrongly termed of last resort, or exercise the powers conferred upon him in relation to interim enforcement.

## CHAPTER II EX PARTE ORDERS

*Article 958*

The first president may, during the course of the appeal process, provide for, further to a petition, any urgent order in relation to the protection of the rights of a party or of a third party when the circumstances so require that it shall not be dealt with by adversarial proceedings.

*Article 959*

The petition shall be presented by an *avoué* where the proceedings shall imply the retainership of an *avoué*.

# SUB-TITLE III MISCELLANEOUS PROVISIONS

## CHAPTER I RETAINERSHIP OF AVOUES AND PLEADINGS

*Article 960*

The retainership of an *avoué* by the respondent or by any person who shall become a party in the course of the proceedings shall be denounced to the other parties by way of notification between *avoués*.

This instrument shall specify:

a) where the respondent shall be a natural person, his surname, names, occupation, domicile, nationality, date and place of birth;

b) where the respondent shall be a corporate body, its form, denomination, registered seat and the department that shall represent it legally.

*Article 961*

Pleadings on behalf of the parties shall be signed by their *avoués* and shall be notified by way of notification between *avoués*. They shall not be admissible until that the particulars referred to under sub-article 2 of the aforegoing Article have been provided.

The service of documents produced shall be validly acknowledged by the signature of the recipient *avoué* appended on the docket drawn by the *avocat* implementing service.

*Article 962*

The filing in the registry of a copy of the notice of acting and of pleadings shall be carried out either as of the date of their notification, or where this is prior to the referral of the matter to the court, contemporaneously with the filing the notice.

## CHAPTER II MEASURES OF JUDICIAL ADMINISTRATION

Article 963

The appointment of pre-trial judges shall be carried out in the manner laid down in relation to the allocation of councillors in the different court-rooms of the court.

The first president and the presidents of the court-rooms may exercise these powers.

*Article 964*

More than one judge may be entrusted with the management of the case in one section; in that case, matters shall be allocated between them by the president of the court-room.

The pre-trial judges may be replaced at any stage in case of any impediment.

*Article 965*

The first president may delegate to one or more judges of the court part or all of his functions assigned to him under the sub-titles I and II.

The presidents of a court-room may even delegate to the judges of their rooms part or all of the functions assigned to them under sub-title I.

## CHAPTER III THE CLERK'S OFFICE-REGISTRY

*Article 966*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The filing at the clerk's office-registry of a copy of a processual paper or of any item shall be entered on the record by the mention of the date of filing and the imprint of the registrar on the copy as well as on the original, which shall be returned forthwith.

*Article 967*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

A copy of the declaration, of the petition and of the joint petition shall be, as from its filing at the clerk's office-registry, presented by the registrar to the first president in view of the formalities of fixtures and allocation.

The decision of the first president shall be recorded by a simple annotation in the margin of the copy

*Article 968*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

To the court’s file shall be subjoined to that of the one of the court of first instance that the registrar shall request as soon as the court shall be seised.

*Article 969*

Where the procedure is by way of a fixed date, the provisions of Article 824 shall be followed.

*Article 970*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The registrar shall advise forthwith the *avoués* whose retainership is known to him of the case number in the general register, of the dates and time fixed by the first president to call the matter and the court-room to which it has been allocated.

This advice shall be given to those *avoués* whose retainership is not yet known, as from the filing at the clerk's office-registry of their notice of acting.

*Article 971*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The *avoués* and *avocats* of each of the parties shall be convened or advised of the burden placed upon them by the president or the pre-trial councillor, according to the track management of the matter; they shall be convened or advised orally, with a marginal annotation an note imprinted on the court's file.

In case of absence, it shall be by simple memorandum, dated and signed by the registrar, and served or left by him at the place where shall be carried out, at the main venue of the court, the notifications between *avoués*.

Injunctive decrees shall always have to occasion the issue of a memorandum.

*Article 972*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Where the matter has been remanded before a court of first instance or where its prosecution shall have to be resumed before that court, the file shall be transmitted without any delay by the registrar of the court to the clerk of that court.

Where the decision is not the subject of any review, the file of that court which determined the matter at first instance shall be remitted to the clerk of that court.

In all cases, a copy of the decision of the court shall be subjoined.

## TITLE VII SPECIFIC PROVISIONS RELATING TO THE *COUR DE CASSATION*

*Article 973*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Parties shall be held to, save where the contrary is indicated, retain an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

This retainership shall carry with it the election of domicile.

## CHAPITER I THE PROCEDURE WITH MANDATORY REPRESENTATION

*Article 974*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

A petition in cassation shall be brought by a declaration to the clerk's office-registry of the *Cour de cassation*.

*Article 975*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 89-511 of 20 July 1989, sec.22, Official Journal of 25 July 1989 in force on 15 September 1989*)

The declaration to petition shall be given by an instrument containing:

1° a) where the applicant shall be a natural person: his surname, first names, domicile, nationality, date and place of birth;

b) where the applicant shall be a corporate body: its form, denomination, its registered seat and the department that would represent it legally;

2° the surname and first names of the respondent or where it shall be in relation to a corporate body its denomination and its registered seat;

3° the retainership of the *avocat* au *Conseil d'Etat* et à la *Cour de cassation* of the applicant;

4° particulars of the impugned decision;

5° the stage of the enforcement procedure, save where the enforcement of the impugned decision shall be prohibited by law.

The declaration shall specify, should the occasion arise, the dispositions of the judgment to which the appeal shall be limited.

It shall be signed by the *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

*Article 976*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The declaration shall be filed at the clerk's office-registry of the court in so many copies as there are respondents, plus two more.

The filing shall be entered on record by the mention of its date and the imprint of the registrar on each of the copies of which one shall be immediately returned.

*Article 977*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The registrar shall address forthwith to the respondent by ordinary letter a copy of the declaration with the mention that where he contemplates defending the petition, he shall have to retain an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

He shall request simultaneously the file from the clerk's office of the court ad quo holding the impugned decision.

Where the copy of the declaration shall be returned by the postal services, the registrar of the *Cour de cassation* shall forward the same forthwith to the *avocat* of the applicant who shall signify it to the respondent while reminding the latter that, where he contemplates defending the petition, he shall have to retain an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

*Article 978*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Under penalty of the action being foreclosed, the applicant in cassation shall have to, not later than five months reckoned from the petition, file to the clerk's office-registry of the *Cour de cassation* and shall have to signify the same to the respondent a memorandum of case containing the statements of law advanced against the impugned decision.

Under penalty of having it being declared inadmissible ex proprio motu, a statement or an item of a statement shall only state one cause of action. Each statement or item of a statement shall have to specify, under the same sanction:

- the cause of action advanced
- the part impugned of the decision;
- by virtue of which issue the latter is impugned.

*Article 979*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No.86-585 of 14 March 1986, sec.8, Official Journal of 19 March 1986*)

(*Inserted by Decree No. 99-131 of 26 February 1999, sec.5, Official Journal of 27 February 1999 in force on 1 March 1999*)

Under penalty of the petition being declared inadmissible ex proprio motu, the following shall have to be filed at the registry within the time-limit of the lodgment of a memorandum:

- a copy of the impugned decision and its instruments of signification;
- a copy of the affirmed or reversed decision in relation to the impugned;
- any other decision rendered in the same dispute and to which the impugned decision has made references.

The applicant shall have to equally subjoin the referred documents to the petition.

*Article 980*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where the respondent to the petition has not retained any *avocat*, the signification shall be effected to the party itself.

The instrument of signification shall indicate to the respondent that he shall have to, where he contemplates contending against the petition, retain an *avocat* au *Conseil d'Etat* et à la *Cour de cassation* and shall inform him that where he does not retain an *avocat*, the judgment to be pronounced cannot be subject to an application to set aside. This instrument shall specify furthermore the time-limit within which the respondent shall have to file to the clerk's office-registry his memorandum in reply or cross-appeal, should the occasion arise, by way of an incidental petition.

*Article 981*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

In the absence of filing or signification of the memorandum of case within the period prescribed under sub-article 1 of Article 978, the foreclosure shall ruled upon by order of the first president or his locum tenens.

*Article 982*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 89-511 of 20 July 1989, sec.23, Official Journal of 25 July 1989 in force on 15 September 1989*)

The respondent to the petition shall have at his disposal a period of three months to be reckoned from the signification of the memorandum of the case of the applicant to file at the clerk's office-registry of the *Cour de cassation* a memorandum in reply signed by an *avocat* au *Conseil d'Etat* et à la *Cour de cassation* and to notify the same to the *avocat* acting on behalf of the applicant by way of notification between *avocats*.

The period laid down by the aforegoing sub-article shall be prescribed under penalty of the memorandum in reply being otherwise declared even ex proprio motu inadmissible.

## CHAPTER II THE PROCEDURE WITHOUT MANDATORY REPRESENTATION

*Article 983*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The provisions of the present chapter shall apply to petitions brought in matters whereby owing to a specific provision the parties shall be dispensed with the auxiliary of an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

*Article 984*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 99-131 of 26 February 1999, sec.6, Official Journal of 27 February 1999 in force on 1 March 1999*)

The petition in cassation shall be brought by an oral or written declaration that the party or any representative authorised to act shall hand, or address to by recorded letter with the advice of delivery slip sought to the registry of the *Cour de cassation*.

*Article 985*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 89-511 of 20 July 1989, sec.24, Official Journal of 25 July 1989 in force on 15 September 1989*)

The declaration shall specify the surname, first names, occupation and domicile of the petitioner, as well as the name and address of the respondents to the petition. It shall specify the impugned decision. It shall indicate the stage of the enforcement procedure, save where the enforcement of the impugned decision shall be prohibited by law.

*Article 986*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 85-1330 of 17 December 1985, sec.14, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 99-131 of 26 February 1999, sec.7, Official Journal of 27 February 1999 in force on 1 March 1999*)

The registrar shall register the petition. He shall mention the date on which it is brought and shall deliver, or address by recorded letter with the advice of delivery slip sought, an acknowledgement of the declaration, which shall reproduce the tenor of Articles 989 and 994.

The registrar shall request simultaneously the file from the registry of the court ad quo.

*Article 987*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 99-131 of 26 February 1999, sec.7, Official Journal of 27 February 1999 in force on 1 March 1999*)

The registrar shall address forthwith to the respondent a copy of the declaration by recorded letter with the advice of delivery slip sought.

This notification shall reproduce the tenor of Articles 991 and 994.

*Article 988*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 84-618 of 13 July 1984, sec.17 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

(*Decree No. 99-131 of 26 February 1999, sec.8, Official Journal of 27 February 1999 in force on 1 March 1999*)

The registrar of the court which has delivered the impugned decision shall transmit without any delay to the registrar of the *Cour de cassation*, to which shall be subjoined:

- a copy of the impugned decision and the instruments of notification of the same;
- a copy of the affirmed or reversed decision in relation to the impugned decision;
- a copy such other decision rendered in the same suit to which the impugned decision has made reference;

- the pleadings before the court of first instance and intermediate appeal where one has been lodged;

He shall transmit forthwith to the registry of the *Cour de cassation* all other documents that shall reached him thereafter.

*Article 989*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 89-511 of 20 July 1989, sec.25, Official Journal of 25 July 1989 in force on 15 September 1989*)

(*Decree No. 99-131 of 26 February 1999, sec.9, Official Journal of 27 February 1999 in force on 1 March 1999*)

Where the declaration of petition does not contain a recitals of the grounds of cassation, even summarised ones, which have been invoked against the impugned decision, the applicant, shall have to, under penalty of foreclosure ruled upon by an order of the first president or his locum tenens, submit to the registry of the court, no later than a period of three months to be reckoned from the declaration, a memorandum containing such recitals, and, should the occasion arise, the supporting exhibits to the petition.

This memorandum may be drafted by the representative of the party without any fresh authority to act.

*Article 990*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Where a memorandum is produced by the applicant, the registrar of the *Cour de cassation* shall notify without any a delay the respondent of the same by recorded letter with the advice of delivery slip sought.

*Article 991*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The respondent to the petition shall have at his disposal a period of two months to be reckoned from the notification of the memorandum of case of the applicant or from the expiration of the period of three months prescribed under Article 989 to file, on the issuance of an acknowledgment, or to address by registered letter, to the clerk's office-registry of the *Cour de cassation* a memorandum in reply and to bring, should the occasion arise, an incidental petition.

*Article 992*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The clerk of the *Cour de cassation* shall notify, without any delay, a copy of the memorandum in reply to the applicant by ordinary letter.

In case of incidental petition, he shall notify, in the same manner, to the respondent to the petition a copy of a memorandum referred to under sub-article I of Article 1010.

*Article 993*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where an *avocat* au *Conseil d'Etat* et à la *Cour de cassation* has declared to the clerk's office-registry that he is acting on behalf of a party, the notification referred to under Article 990 or under Article 992 shall be substituted for a notification provided to the latter *avocat*.

The service to the *avocat*, on the issuance of an acknowledgment of the same, of a copy of the memorandum, bearing the imprint of the date from the clerk's office-registry shall amount to a notification.

*Article 994*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

In addition to the original, the applicant shall provide so many copies of his memorandum of the case as there are respondents and the respondent shall provided so many copies of the memorandum in reply as there are applicants.

These copies are to be certified true copies by the signatory of the memorandum.

*Article 995*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where a petition is brought in accordance with the rules in relation to mandatory representation, it shall nevertheless be admissible irrespective of the procedural track followed afterwards.

The respondent shall not be held to have himself represented by an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

## CHAPTER III THE PROCEDURE IN ELECTORAL MATTERS

### SECTION I DISPUTES IN RELATION TO REGISTRATION ON ELECTORAL LISTS IN MATTERS OF POLITICAL ELECTIONS

*Article 996*

(*Decree No. 80-1073 of 24 December 1980, sec.1, Official Journal of 28 December 1980*)

The specific provisions in relation to a petition in cassation shall be those of the Electoral Code as follows:

"Article R. 15-1 The petition in cassation shall be brought within ten days of the notification of the decision of the *tribunal d'instance*. The prefect shall be competent in all cases to stand as a party. It shall not carry any stay of execution.

Article R. 15-2 The petition shall be brought by an oral or written declaration that the party or any representative authorised to act shall make, hand, or address by registered letter either to the clerk's office-registry of the court ad quo pronouncing the impugned decision or to the clerk's office-registry of the *Cour de cassation* . The declaration shall specify the surname, first names, occupation and address of the petitioner, as well as the name and address of the respondent or respondents to the petition.

Under penalty of it being declared inadmissible, even ex proprio motu, the declaration shall contain a statement of the grounds of cassation relied upon and shall be subjoined with a copy of the impugned decision.

Article R.15-3 The clerk's office-registry which receives the petition shall proceed to have it on its records. It shall mention the date on which the petition is brought and shall deliver, or address by ordinary letter, an acknowledgement of the declaration.

Where there is a respondent, the clerk's office-registry which has received the petition shall address forthwith a copy of the declaration by recorded letter with the advice of delivery slip sought to him. This notification shall reproduce the tenor of Article R.15-5

Article R.15-4 Where the petition shall be brought before the *tribunal d'instance*, the clerk's office-registry of that court shall transmit forthwith to the clerk's office-registry of the *Cour de cassation* the file of the case with the declaration or a copy thereof, a copy of the impugned decision as well as the documents in relation to the notification of the latter, and where there is a respondent, the documents in relation to the notification of the petition to the latter. He shall forward to the clerk's office-registry of the *Cour de cassation* all documents that shall reach him thereafter.

Where the petition is brought before the *Cour de cassation*, the clerk's office-registry of the *Cour de cassation* shall request forthwith the file of the case as well as the documents in relation to the notification of the impugned decision from the clerk's office-registry of the *tribunal d'instance* ad quo which has rendered the decision.

Article R.15-5 As soon as he has received a copy of the declaration of the petition, the respondent to the petition shall hand without any delay, in return for an acknowledgement, or shall address by registered letter to the clerk's office-registry of the *Cour de cassation* a memorandum in reply. He shall notify a copy to the applicant.

Article R.15-6 Parties shall be dispensed of the auxiliary of an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*. Where the parties or any one of them retain an *avocat* au *Conseil d'Etat* et à la *Cour de cassation* to represent them or him, the provisions under Articles 974 to 982 of the New Code of the civil procedure shall not apply.

Where an *avocat* au *Conseil d'Etat* et à la *Cour de cassation* has declared to the clerk's office-registry of the *Cour de cassation* that he is acting on behalf of a party, the notification of the copy of the memorandum may be given to that *avocat*, and should the occasion arise, by way of notification between *avocats*. The service to the *avocat*, in return of an acknowledgement, of a copy of the memorandum, bearing the imprint of the date from the clerk's office-registry, shall amount to a notification.

Article R.15-7 The time-limits prescribed under Articles R. 13 and 15-1 are computed or extended in accordance with the provisions of Articles 640, 641 and 642 of the New Code of civil procedure."

*Article 997*

[*Repealed*]

*Article 998*

[*Repealed*]

SECTION II PROFESSIONAL ELECTIONS

*Article 999*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The time-limit to petition in cassation shall be ten days save where the contrary is indicated.

The petition shall be brought by an oral or written declaration that the party or any representative authorised to act shall make, hand, or address by registered letter to the clerk's office of the court ad quo which rendered the impugned decision.

*Article 1000*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The declaration shall specify the surname, first names, occupation and address of the petitioner, as well as the name and address of the respondent or respondents to the petition. It shall specify the impugned decision.

*Article 1001*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The clerk shall record the petition. He shall mention the date on which it is brought and shall deliver, or address by ordinary letter, an acknowledgement of the declaration, which reproduces the tenor of Articles 1004 and 1006.

*Article 1002*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The clerk shall address forthwith to the respondent a copy of the declaration by recorded letter with the advice of delivery slip sought.

This notification shall reproduce the tenor of Article 1006.

*Article 1003*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The clerk shall forward without any delay to the clerk's office-registry of the *Cour de cassation* , the file of the case with:

- a copy of the declaration;

- a copy of the impugned decision.

He shall forward forthwith to the clerk's office-registry of the *Cour de cassation* all documents that shall reach him thereafter.

*Article 1004*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where the declaration in relation to the petition does not contain a statement of the grounds of cassation, even in a summarised form, relied upon against the impugned decision, the applicant, shall have to, under penalty of foreclosure ruled upon ex proprio motu, submit to the clerk's office-registry of the *Cour de cassation* , no later than a period of one month to be reckoned from the declaration, a memorandum containing such pleadings.

This memorandum may be drafted by the representative of the party without any fresh letter of authority to act.

*Article 1005*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where a memorandum is produced by the petitioner, the latter shall have to, under penalty of it being declared inadmissible ex proprio motu, notify, within a month of the declaration, a copy to the respondent by recorded letter with the advice of delivery slip sought.

*Article 1006*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The respondent to the petition has at his disposal a period of fifteen days to be reckoned from the notification of the memorandum of case of the petitioner or from the expiration of the period of a month prescribed under Article 1004 to file, in return for an acknowledgment, or to address by registered letter, to the clerk's office-registry of the *Cour de cassation* a memorandum in reply.

Within the same time-limit, he shall notify to the applicant, by registered letter, a copy of the memorandum in reply.

*Article 1007*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where an *avocat* au *Conseil d'Etat* et à la *Cour de cassation* has declared to the clerk's office-registry that he is acting on behalf of a party, the notification referred to under Article 1005 or under Article 1006 may be given to that *avocat*, and should the occasion arise, by way of notification between *avocats*.

The service to the *avocat*, in return for an acknowledgment of the same, of a copy of the memorandum, bearing the imprint of the date from the clerk's office-registry shall amount to a notification.

*Article 1008*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Where a declaration in relation to a petition is brought in accordance with the rules in relation to mandatory representation, it shall nevertheless be admissible irrespective of the procedural track followed thereafter, the first sub-article of Article 1004 shall thereby apply.

The respondent shall not be held to have himself represented by an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

## CHAPTER IV COMMON PROVISIONS

### *Article 1009*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 89-511 of 20 July 1989, sec.26, Official Journal of 25 July 1989 in force on 15 September 1989*)

(*Decree No. 99-131 of 26 February 1999, sec.10, Official Journal of 27 February 1999 in force on 1 March 1999*)

The first president, or his locum tenens, at the instance of a party or ex proprio motu may abridge the time-limit prescribed for the lodgment of memoranda and exhibits.

At the expiration of these time-limits, the president of the competent panel shall fix the date of the hearing.

### *Article 1009-1*

(*Decree No. 89-511 of 20 July 1989, sec.27, Official Journal of 25 July 1989 in force on 15 September 1989*)

(*Decree No. 99-131 of 26 February 1999, sec.11, Official Journal of 27 February 1999 in force on 1 March 1999*)

Except for those matters where the petition impedes the enforcement of the impugned decision, the first president may, at the instance of the respondent, and after having been

place before the advice of procureur général and of the parties, decide for the withdrawal of the case from the list where the applicant does not show to have enforce the decision against which a petition lies, save where it appears that the execution is prone to entail manifestly excessive consequences.

He shall give leave to re-enter the matter on the list of the court on showing cause of the enforcement of the impugned judgment.

*Article 1009-2*

(*Decree No. 99-131 of 26 February 1999, sec.11, Official Journal of 27 February 1999 in force on 1 March 1999*)

The time-limit of preclusion shall be reckoned from the notification of the decision ordering the withdrawal from the list. It shall cease to run by a clear act exhibiting the intention to enforce unequivocably.

*Article 1009-3*

(*Inserted by Decree No. 99-131 of 26 February 1999, sec.11, Official Journal of 27 February 1999 in force on 1 March 1999*)

The first president or his locum tenens shall grant leave, where the shall put on record the operation of preclusion, the re-enter the matter on the list of the court on cause being shown of the enforcement of the impugned decision.

The time-limit imparted to the respondent under Articles 982 to 991 shall run as from the notification of the re-entering of the matter on the list.

*Article 1010*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The incidental petition, even where issue shall be caused to be joined, shall have to, under penalty of it being declared inadmissible ex proprio motu, be brought by way of a memorandum and shall have to contain the same indications as the memorandum of the applicant.

The memorandum shall have to, under the same sanction:

- be filed to the clerk's office-registry of the *Cour de cassation* before the expiration of the time-limit provided for the filing of a memorandum in reply;

- be notified within the same time-limit to the *avocats* of the other parties to the incidental petition. Where, in matters of mandatory representation, the respondent has not retained an *avocat*, the memorandum shall have to be signified to him no later than the month following the expiration of the time-limit.

The respondent to such a petition shall have at his disposal a time-limit of a month to be reckoned from the notification to file, and where applicable to notify, his memorandum in reply.

*Article 1011*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

Save in the circumstances of foreclosure prescribed under Article 978, the matter shall be allocated as soon as the petitioner has filed his memorandum of case and not later than the expiration of the period imparted to that effect.

Article 1012

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The president of the bench to which the matter has been allocated shall designate an councillor or a deliberating councillor of that bench as acting in the capacity of a rapporteur.

He may thereafter fix the date of the hearing.

*Article 1013*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

A three-judge bench of the court-room to the which the matter is allocated shall pronounce itself only after an oral report.

*Article 1014*

[*Repealed*]

*Article 1015*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

*(Conseil d'Etat No. 21-893 of 5 July 1985, Gaz. Pal. 1985, 2, 742)*

The president shall have to bring to the attention of the parties the grounds of cassation which the court has occasion to consider ex proprio motu and shall have to invite them to comment on the same within a time-limit which he shall fix.

*Article 1015-1*

(*Inserted by Decree No. 99-131 of 26 February 1999, sec.12, Official Journal of 27 February 1999 in force on 1 March 1999*)

The court-room seised of a petition may invite the advice of another court-room on a point of law that shall appertain to the jurisdiction of the latter.

The parties shall be advised of the same by the president of the court-room seised of the petition. They may submit observations before the court-room called to give its advice.

*Article 1016*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

In accordance with Articles 11-1 and 11-2 of the Act no. 72-626 passed on the 5 July 1972 as amended, the oral arguments shall be in open court. The court may nevertheless reach the view that the oral arguments shall be held or pursued in chambers where their publicity shall cause to invade the privacy of personal lives, or where all the parties so request, or such disorder is brought about so as to disturb the serenity of justice.

Judgments shall be pronounced in open court.

*Article 1017*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The report shall be given at the hearing.

*Article 1018*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

*Avocats* shall be heard after the report where they so request. Parties may also be heard after permission has been given to that effect by the president.

*Article 1019*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 81-500 of 12 May 1981, sec.36, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

The *Cour de cassation* shall pronounce itself only after having been placed before the advice of the ministère public.

*Article 1020*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The judgment shall recite the legal disposition in relation to which the cassation is justified.

*Article 1021*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The judgment shall be signed by the president, the rapporteur and the registry.

*Article 1022*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

A copy of the judgment shall be addressed to the court ad quo which pronounced the impugned decision.

*Article 1022-1*

(*Inserted by Decree No. 84-618 of 13 July 1984, sec.19 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

In matters where the parties are dispensed with the auxiliary of an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*, decisions allowing cassation are notified by the clerk's office-registry of the *Cour de cassation* by recorded letter with the advice of delivery slip sought; decisions dismissing the cassation or decisions allowing cassation but without remand shall be brought to the knowledge of the parties who are not assisted or represented by an *avocat* au *Conseil d'Etat* et à la *Cour de cassation* by ordinary letter.

## CHAPTER V MISCELLANEOUS PROVISIONS

### SECTION 1 EXTENSION OF TIME-LIMITS

*Article 1023*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

*(Act No.2001-616 of 11 July 2001, sec.75, Official Journal of 13 July 2001)*

The time-limits prescribed under Articles 978 and 989 may be extended:

- to a month where the applicant resides in an overseas department, in the Mayetta islands, or in an overseas territory;
- to two months where he resides in a foreign country.

The time-limits prescribed under Articles 982, 991 and 1010 (ultimate sub-article) shall be similarly extended to a month or to two months depending on whether the respondent resides in an overseas department, in the Mayotte islands, in an overseas territory or in a foreign country.

SECTION II DISCONTINUANCE

*Article 1024*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The discontinuance of the petition shall be allowed where it shall contain provisos or where the respondent has already brought an incidental petition.

*Article 1025*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The provisions of Articles 396, 399, 400 and 403 shall apply to discontinuance of petition.

*Article 1026*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 99-131 of 26 February 1999, sec.13, Official Journal of 27 February 1999 in force on 1 March 1999*)

Discontinuance shall be ruled upon by way of order of the first president or of the president of the court-room to which the matter has been allocated.

Notwithstanding the above, discontinuance may be ruled upon by way of final judgment where it occurs after the lodgment of the report or where the consent of the respondent where the same is necessary is expressed after the said lodgment. The judgment shall amount to a dismissal of the cassation and shall entail the application of Articles 628 and 630.

SECTION III RECUSAL

*Article 1027*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The request to recuse a judge of the *Cour de cassation* shall be examined by the bench to which the matter shall be allocated.

SECTION IV IMPEACHMENT OF DOCUMENT

Article 1028

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The application in view of the impeachment of a document produced before the *Cour de cassation* shall be addressed by the first president.

It shall be lodged at the clerk's office-registry and signed by the *avocat* au *Conseil d'Etat* et à la *Cour de cassation*, where his auxiliary is mandatory in the matter in relation to which the application shall be made.

*Article 1029*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The first president shall pronounce himself only after having been placed before the advice of the procureur général.

He shall render a ruling in dismissal or a ruling allowing impeachment.

In cases of dismissal, the applicant may be ordered to pay a civil fine in the manner prescribed under Article 628.

*Article 1030*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The ruling allowing the impeachment shall be signified to the respondent within fifteen days, wherein shall be conveyed a precept to him to declare whether he contemplates relying on the alleged forged document.

To this precept shall be subjoined a copy of the petition and the ruling of the first president.

*Article 1031*

(*Decree No. 79-941 of 7 November 1979, sec.3, Official Journal of 9 November 1979 in force on 1 January 1980*)

The respondent shall have to signify to the applicant, within a period of fifteen days, whether or not he contemplates relying on the alleged forged document.

In the first case, or where there is no answer within the period of fifteen days, the first president shall direct the parties to petition before a court that he shall designate in view of a ruling upon the impeachment application.

## CHAPTER VI THE REFERRAL FOR ADVICE OF THE *COUR DE CASSATION*

*Article 1031-1*

*(Inserted by Decree No. 92-228 of 12 March 1992, sec.1, Official Journal of 14 March 1992)*

Where the judge contemplates seeking the advice of the *Cour de cassation* by virtue of Article L. 151-1 of the Code of Judicial Organisation, he shall so advise the parties and the ministère public. He shall put on record their ensuing written observations within a time-limit which he shall fix, save where he has already determined the matter in relation to that point.

As soon as he shall receive the observations or at the expiration of the time-limit, the judge may, by a decision not open to review, seek the advice of the *Cour de cassation* in addressing the issue of law which he shall tender before the latter. He shall stay the proceedings until the receipt of the advice or until the expiration of the time-limit referred to under Article 1031-3.

*Article 1031-2*

*(Inserted by Decree No. 92-228 of 12 March 1992, sec.1, Official Journal of 14 March 1992)*

The decision seeking the advice shall be addressed, with the pleadings and the written observations, by the clerk's office of the court to the registry of the *Cour de cassation* .

This, as well as the date the file has been transferred, shall be notified to the parties by recorded letter with the advice of delivery slip sought.

The ministère public attached to the court shall be advised as well as the first president of the court of appeal and the procureur général when the act seeking the advice does not emanate from the court.

*Article 1031-3*

*(Inserted by Decree No. 92-228 of 12 March 1992, sec.1, Official Journal of 14 March 1992)*

The *Cour de cassation* shall pronounce itself within three month since the receipt of the file.

*Article 1031-4*

*(Inserted by Decree No. 92-228 of 12 March 1992, sec.1, Official Journal of 14 March 1992)*

In matters where representation is mandatory, the ensuing observations of the parties shall have to be signed by an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

*Article 1031-5*

*(Inserted by Decree No. 92-228 of 12 March 1992, sec.1, Official Journal of 14 March 1992)*

The matter shall be brought to the attention of the procureur général attached to the *Cour de cassation*. The latter shall be told of the date of the sitting.

*Article 1031-6*

*(Inserted by Decree No. 92-228 of 12 March 1992, sec.1, Official Journal of 14 March 1992)*

The advice may mention that it shall be published in the Official Journal of the Republic of France.

*Article 1031-7*

*(Inserted by Decree No. 92-228 of 12 March 1992, sec.1, Official Journal of 14 March 1992)*

The advice shall be addressed to the court which sought it, to the ministère public attached to that court, to the first president of the court of appeal and to the procureur général where the request does not emanate from a court.

It shall be notified to the parties by the registry of the *Cour de cassation* .

## TITLE VII SPECIFIC PROVISIONS RELATING TO REMANDING AFTER CASSATION

*Article 1032*

(*Decree No. 79-941 of 7 November 1979, sec.4 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

The court shall be seised by a declaration to the clerk's office of that court.

*Article 1033*

(*Decree No. 79-941 of 7 November 1979, sec.4 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

The declaration shall contain the particulars required in the case of the originating process before that court; a copy of the cassation judgment shall be annexed to it.

*Article 1034*

(*Decree No. 79-941 of 7 November 1979, sec.4 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

(*Decree No. 85-1330 of 17 December 1985, sec.15, Official Journal of 18 December 1985 in force on 1 January 1986*)

Save where the court ad quo has been seised without any prior notification, the declaration shall have to, under penalty of it being inadmissible as pronounced ex proprio motu, be given before the expiration of the period of four months to be reckoned from the notification of the judgment of cassation given to the party. This time-limit shall run even against the person who shall so notify.

The absence of the declaration within the time-limit or its inadmissibility shall confer upon the judgment of first resort the authority of res judicata when the decision which has been quashed was pronounced on appeal against that judgment.

*Article 1035*

(*Inserted by Decree No. 79-941 of 7 November 1979, sec.4 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

The instrument of notification of the judgment of cassation shall have to, under penalty of it being null, indicate in clear terms the time-limit prescribed under the first sub-article of Article 1034 as well as the procedure whereby the court ad quo may be seised.

*Article 1036*

(*Inserted by Decree No. 79-941 of 7 November 1979, sec.4 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

The clerk of the court ad quo shall address forthwith, by ordinary letter, to each of the parties to the cassation proceedings, a copy of the declaration with, where applicable, the indication of the need to retain and *avocat* or *avoué*.

In case of non-appearance, the defaulting parties shall be cited in the same manner as are the respondents before the court from which the quashed decision emanates.

*Article 1037*

(*Inserted by Decree No. 79-941 of 7 November 1979, sec.4 and 16, Official Journal of 9 November 1979 in force on 1 January 1980*)

The clerk of the court ad quo shall request, without any delay, from the clerk's office-registry of the *Cour de cassation* the file of the case.

# BOOK THREE SPECIFIC PROVISIONS IN RELATION TO CERTAIN SUBJECT-MATTERS

## TITLE I LEGAL PERSONAE

### CHAPTER I THE NATIONALITY OF NATURAL PERSONS

*Article 1038*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The *tribunal de grande instance* shall be the only competent court to have cognisance, as a court of first resort, of disputes over French and or any foreign nationality of natural persons, subject to the provisions as laid down in the Code of Nationality in relation to criminal courts where a jury is empanelled.

Pleas of the exception of nationality or the exception of foreign nationality as well as pleas against jurisdiction are matters of public interests. They may be raised at any stage of the proceedings and shall be raised by the judge ex proprio motu.

*Article 1039*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The *tribunal de grande instance* territorially competent shall be the one in whose province the person whose nationality is in question has established his dwelling, and where this person has not established his dwelling in France, the *tribunal de grande instance* of Paris.

*Article 1040*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

*(Act No.93-933 of 22 July 1993, sec.50, Official Journal of 23 July 1993)*

(*Decree No.93-1362 of 30 December1993, sec.66 and 52, Official Journal of 31 December 1993*)

Any action whose main subject-matter shall be to seek a declaration that a natural person has or has not the status of a French National, shall be brought by the ministère public or shall be contended against any such action by the latter without prejudice to the right of intervention of any interested party in the proceedings.

*Article 1041*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where a court from the common court system shall be seised by way of incidental proceedings on a question of nationality in relation to which it lacks jurisdiction but which shall be necessary to the resolution of the dispute, the matter shall be brought to the attention of the ministère public.

The ministère public shall indicate by written and well-justified pleadings, his views whether or not there are grounds to conduct a prior referral issue.

*Article 1042*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where an issue of nationality is raised by a party before a court which shall hold the view that a prior referral issue shall lie, the court shall refer the issue to be petitioned before the competent *tribunal de grande instance* within a month, or within the same time-limit, to petition to the *Procureur de la République*. Where the person whose nationality is contested shall avail himself of a Certificate of French nationality, or where the issue of nationality has been raised ex proprio motu, the court seised with regard to aforementioned subject-matter shall impart the same time-limit of that of a month to the *Procureur de la République* to seise the competent *tribunal de grande instance*.

Where the time-limit of a month has not been complied with, the proceedings shall be prosecuted. Otherwise, the court seised of the substantive matter shall defer judgment until the issue of nationality has been determined.

*Article 1043*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

In all cases, where a dispute, whether as a main or incidental issue, over nationality has arisen, a copy of the summons or, should the occasion arise , a copy of the pleadings raising the contention shall be lodged before the Ministry of Justice, on the issuance of an acknowledgment of the same. The lodgment of the documents may be substituted by their posting by way of recorded letter with the advice of delivery slip sought.

The civil court may not pronounce itself on an issue of nationality before the expiration of a month which shall be reckoned from the issuance of the acknowledgment or from the receipt of advice of delivery. Notwithstanding the above, this time-limit shall be of ten days where the dispute regarding nationality has been the subject of a prior referral issue before a court hearing an electoral matter.

The summons shall lapse, the pleadings raising an issue of nationality shall be inadmissible, where the procedure laid down in the aforegoing sub-articles is not complied with.

The provisions of the present Article shall apply to appellate procedures.

*Article 1044*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The *Procureur de la République* shall be held to act under the conditions of Article 1040 where so required by a public administration or by a third person who has raised the exception of nationality before a court which has deferred judgment in the manner as prescribed under Article 1042.

The third intervening party shall have to be joined as a third party.

*Article 1045*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The time-limit to petition in cassation shall carry a stay of execution in relation to the judgment determining nationality; the petition in cassation brought within this period shall carry equally a stay of execution.

CHAPTER II INSTRUMENTS FORM THE CIVIL REGISTRY

## SECTION I RECTIFICATION OF INSTRUMENTS FROM THE CIVIL REGISTRY

### *Article 1046*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

An application to rectify an instrument from the civil registrar shall be brought either to the president of the *tribunal de grande instance* in whose province the instrument has been drawn or transcribed, or to the president of the *tribunal de grande instance* in whose province the interested party has established his dwelling.

### *Article 1047*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

An application to rectify a declarative or a suppletory judgment with regard to an instrument of the civil registry shall be brought either before the *tribunal de grande instance* which has rendered the judgment, or the one in whose province the judgment has been transcribed, or to the one in whose province the interested party has established his dwelling.

### *Article 1048*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

Where the interested party has established his dwelling outside France, he may also seise, as the case may be, the president of the *tribunal de grande instance* of Paris, or that court.

*Article 1048-1*

(*Decree No. 85-1330 of 17 December 1985, sec.16, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 93-1091 of 16 September 1993, sec.1 and 4, Official Journal of 17 September 1993*)

An application to rectify an instrument of the civil registry which is kept in the central department of the civil registry of the Ministry for Foreign Affairs shall be brought to the president of the *tribunal de grande instance* in whose province this department is situated.

*Article 1048-2*

(*Decree No. 85-1330 of 17 December 1985, sec.16, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

An application to rectify documents standing in lieu of an instrument from the civil registry on behalf of a refugee or a stateless person shall be brought to the president of the *tribunal de grande instance* of Paris.

*Article 1049*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

A president or the court who or which is territorially competent to order the rectification of an instrument or of a judgment shall be equally competent to prescribe the rectification of

any instrument, even drawn or transcribed outside his or its province, which reproduces an error or contains the original omission.

*Article 1050*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 85-1330 of 17 December 1985, sec.17, Official Journal of 18 December 1985 in force on 1 January 1986*)

(*Decree No. 93-1091 of 16 September 1993, sec.1 and 4, Official Journal of 17 September 1993*)

The *Procureur de la République* territorially competent to proceed to the rectification of clerical errors and omissions of an instrument of the civil registry shall be the one in whose province the instrument is drawn.

The *Procureur de la République* territorially competent to proceed to the rectification of clerical errors and omissions of an instrument of the civil registry kept by the central department of the Ministry of Foreign Affairs shall be the one in whose province the department is situated.

The *Procureur de la République* territorially competent to proceed to the rectification of documents standing in lieu of instruments from the civil registry of a refugee or a stateless person shall be the one who is attached to the *tribunal de grande instance* of Paris.

Notwithstanding the above, the application may be presented to the *Procureur de la République* in whose province the interested party has established his dwelling so that it may be transferred to the *Procureur de la République* who is territorially competent.

*Article 1051*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

An application for rectification of an instrument from the civil registry and that of a declarative and suppletive judgment to an instrument of the civil registry shall be brought, managed and determined as in non-contentious matters.

*Article 1052*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

Where it is not proceeded with on behalf of the ministère public, the application for rectification may be brought without any prescribed procedure before the *Procureur de la République* who, where applicable, shall transfer it to the competent court.

The application may be brought directly by way of petition to that court.

*Article 1053*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

The judge may order and the ministère public may request the joining of the proceedings of any interested person as well as the making of such orders so as to convene the board of family guardians.

*Article 1054*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

The appeal shall be brought, managed and determined as in non-contentious matters.

It shall be open to the ministère public, in any case, to exercise any means of review.

*Article 1055*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.1, Official Journal of 17 September 1993*)

The disposition of a judgment holding the rectification shall be transmitted immediately by the *Procureur de la République* to the keeper of registers of the civil registry in the province where is registered the rectified instrument. A marginal annotation shall be inserted in the instrument mentioning this disposition.

SECTION II CHANGE OF FIRST NAMES

*Article 1055-1*

(*Decree No. 93-1091 of 16 September 1993, sec.2, Official Journal of 17 September 1993*)

An application for a change of first name shall be brought to the judge in whose province the birth certificate of the interested party has been drawn or in the province where he has established his dwelling.

Where the birth certificate of the interested party is kept by the central department of the Ministry for Foreign Affairs, the application may be brought to the judge in whose province the department is situated.

*Article 1055-2*

(*Decree No. 93-1091 of 16 September 1993, sec.2, Official Journal of 17 September 1993*)

The application for a change of first name shall appertain to non-contentious matters.

Means of review shall be open to the ministère public.

*Article 1055-3*

(*Decree No. 93-1091 of 16 September 1993, sec.2, Official Journal of 17 September 1993*)

The disposition of a decision in relation to a change of first name is transmitted immediately by the *Procureur de la République* to the officer of the civil register who holds the birth certificate of the interested party.

## SECTION III TRANSCRIPTION AND MENTION OF DECISIONS IN REGISTERS KEPT BY THE CIVIL REGISTRY

### *Article 1056*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.3, Official Journal of 17 September 1993*)

Any decision ordering its transcription or mention in the registers kept by the civil registry, shall have to, in its disposition, identify the first names and names of the parties as well as, as the case may be, the venue where the transcription must be made or the venues and dates of the instruments in whose margin the mentions shall be inserted.

Only the disposition of the decision shall be transmitted to the keeper of the registers of the civil registry. Transcription and mention of the disposition shall be immediately proceeded with.

## CHAPTER III THE CIVIL DOCKET

### *Article 1057*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The civil docket shall be made of the totality of abstracts of applications, instruments and judgments which, by virtue of special provisions referring to that docket, shall be filed and kept in the clerks' offices-registries of the tribunaux de grande instance.

The abstracts shall be inscribed on a register, day by day, in numerical order.

### *Article 1058*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The filing and keeping of abstracts shall be carried out by the clerk's office-registry of the *tribunal de grande instance* in whose province the interested individual has taken birth and by the central department of the civil registry for those individuals born abroad.

*Article 1059*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

(*Decree No. 89-511 of 20 July 1989, sec.28, Official Journal of 25 July 1989 in force on 15 September 1989*)

The advertising of applications, instruments and judgments shall be carried out by the insertion of a mention in the margin of the birth certificate of the interested party. This mention shall be inserted at the suit of the registrar of the *tribunal de grande instance* or, should the occasion arise, at the suit of the central department of the civil registry. It shall be completed by the indication "civil docket" followed by the reference under which the application, instrument or judgment shall be kept.

The date on which the mention is appended shall be imprinted on the abstract which is kept a the clerk's office-registry or at the central department of the civil registry.

*Article 1060*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 89-511 of 20 July 1989, sec.29, Official Journal of 25 July 1989 in force on 15 September 1989*)

The mention inserted in the margin of a birth certificate, of a judgment dismissing an application or discharging a legal order appearing in the civil docket, shall be completed ex proprio motu by the indication that it shall carry the deletion of the previous mentions.

The indication of a deletion may also be imprinted below the mentions prescribed under Article 1292 where the interested party has shown cause of the extinction of the proceedings.

*Article 1061*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Copies of abstracts kept in the civil docket may be issued to any interested party.

They can only be so delivered on authorisation from the *Procureur de la République* where an indication of deletion has been inserted in the margin of a birth certificate by virtue of the present Article.

## CHAPTER IV THE ABSENTS

### SECTION I THE PRESUMPTION OF ABSENCE

*Article 1062*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

An application in relation to the presumption of absence shall be brought to the tutela judge who sits in office for the *tribunal d'instance* in whose province the person with regard to whom a presumption of absence must be ruled upon has established his dwelling or his last dwelling.

In default thereof, the competent judge shall be the one for the *tribunal d'instance* in whose province the applicant has established his dwelling.

*Article 1063*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The application shall be brought, managed and determined in the manner applicable to the tutela of minors.

*Article 1064*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

An abstract of any decision ruling in favour of a presumption of absence or designating a person to represent somebody presumed absent and to administer his property as well as any decision varying or discharging orders previously given shall be transmitted to the clerk's office-registry of the *tribunal de grande instance* in whose province the person presumed absent has taken birth, in view of its placement in the civil docket and its advertisement by way of a mention inserted in the margin of the birth certificate, in the manner as prescribed under Article 1057 to 1061. The transmission is effected to the central department of the civil registry for persons born abroad.

*Article 1065*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Where a declaration has been pronounced by a tutela judge, the transmission shall be effected by the registrar of the *tribunal d'instance* within fifteen days to be reckoned from the expiration of the period for review.

Where a decision has been pronounced by the *tribunal de grande instance*, the transmission shall be effected by the registrar of the *tribunal de grande instance* within fifteen days of judgment.

## SECTION II THE DECLARATION OF ABSENCE

*Article 1066*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

An application in relation to a declaration of absence of a person shall be brought before the *tribunal de grande instance* in whose province the latter has established his dwelling or had his last one.

In default thereof, the competent court shall be the one where the applicant has established his dwelling.

*Article 1067*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The application shall be brought, managed and determined as in non-contentious matters.

*Article 1068*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The period within which the abstracts of a declarative judgment of absence must be advertised shall not exceed six months to be reckoned from the pronouncement of that judgment; it shall be mentioned in the abstract to be advertised.

*Article 1069*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

An appeal shall be brought, managed and determined as in non-contentious matters.

The time-limit for appeal shall run against the parties and third parties who have been notified of the judgment, following the month wherein the time-limit fixed by the court for compliance with the formalities of advertisements under Article 127 of the Civil Code shall expire.

The time-limit to petition in cassation shall carry a stay of execution in relation to the declarative judgment of absence. The petition in cassation brought within this time-limit shall carry equally a stay of execution.

## CHAPTER IV *B* FOOD MAINTENANCE OBLIGATION AND THE CONTRIBUTION TO THE EXPENSES OF THE MARRIAGE

### SECTION I GENERAL PROVISIONS

*Article 1069-1*

(*Inserted by Decree No. 94-42 of 14 January 1994, sec.11, Official Journal of 16 January 1994 in force on 1 February 1994*)

As laid down under Article 52 of the Act no. 93-22 of 8 January 1993 amending the Civil Code in relation to the civil registry, to families and to the rights of children and which instituted the family judge, with regard to proceedings in view of fixing a contribution to the expenses of marriage, to food and upkeep maintenance obligation, the parties shall have at their disposal the right to be assisted or represented in accordance to the rules applicable before the *tribunal de grande instance*.

*Article 1069-2*

(*Inserted by Decree No. 94-42 of 14 January 1994, sec.11, Official Journal of 16 January 1994 in force on 1 February 1994*)

Proceedings in view of quantifying food obligations, contribution to the expenses of marriage and the upkeep maintenance obligation shall be ruled upon, but are amenable to appeal.

Oral arguments shall be held in chambers.

SECTION II SPECIFIC PROVISIONS RELATING TO THE CONTRIBUTION TO THE EXPENSES OF MARRIAGE

*Article 1069-3*

(*Inserted by Decree No. 94-42 of 14 January 1994, sec.11, Official Journal of 16 January 1994 in force on 1 February 1994*)

Where one partner to a marriage does not discharge his obligation to contribute to the expenses of the marriage in the manner as laid down under Articles 214, 1448 and 1449 of the Civil Code, the other partner may apply to the family judge in view of fixing the contribution of the other partner.

*Article 1069-4*

(*Inserted by Decree No. 94-42 of 14 January 1994, sec.11, Official Journal of 16 January 1994 in force on 1 February 1994*)

The application shall be brought by a written or oral declaration taken down by the clerk's office-registry of court or by ordinary letter. It shall mention the address or the last known address of the defendant.

The registrar shall convene the partners to the marriage by recorded letter with the advice of delivery slip sought. The convocation shall mention the subject-matter of the application and shall specify that the marriage parties must, save where there is a serious impediment to the same, be present in person.

*Article 1069-5*

(*Inserted by Decree No. 94-42 of 14 January 1994, sec.11, Official Journal of 16 January 1994 in force on 1 February 1994*)

The judgment shall be, as of right, provisionally enforceable. The notification given at the suit of a *huissier de justice*, by way of recorded letter with the advice of delivery slip sought, to the partner of the debtor or to a third person mentioned under Article one of the Act no. 73-5 of 2 January 1973 shall amount to, in that case, a direct demand for payment.

*Article 1069-6*

(*Inserted by Decree No. 94-42 of 14 January 1994, sec.11, Official Journal of 16 January 1994 in force on 1 February 1994*)

The fixing of the contribution may be the subject-matter of new proceedings at the suit of one of the partners to the marriage, where there is a change of circumstances with regard to one or the other partners to the marriage.

## CHAPTER V DIVORCE AND JUDICIAL SEPARATION

### SECTION I GENERAL PROVISIONS

#### SUB-SECTION I JURISDICTION

*Article 1070*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court territorially competent in divorce proceedings shall be:

- the court in whose province the family has established its dwelling;

- where the partners to the marriage have established different places of abode, the court in whose province the partner having custody of minor children;

- in other cases, the court in whose province the partner who did not initiate the proceedings has established his dwelling.

Where there is a joint application, the court of competent jurisdiction shall be, according to the choice of the partners, that of the province wherein one or the other of them has established his or her dwelling.

*Article 1071*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Territorial jurisdiction shall be determined by the residence on the date when the initial petition shall be brought.

*Article 1072*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No.87-578 of 22 July 1987, sec.1, Official Journal of 25 July 1987*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

Where, after the pronouncement of a decree of divorce, a dispute has arisen between the parties in relation to its consequences, the family judge competent to hear the matter shall be the one in whose province the partner who exercises parental authority has established his dwelling or, where there is a joint exercise, in whose province the partner having custody of minor children has established his dwelling; failing that, the family judge in whose province the partner who has not initiated the proceedings has established his dwelling.

Notwithstanding the above, where the dispute shall only be in relation to spousal maintenance or to a supplementary allowance, the competent court may be that where the party creditor or the parent or where the parent with care of the children, who may even be adults, has established his dwelling.

That family judge may request that the file be transferred to the court which pronounced the decree of divorce.

*Article 1073*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

An applications to vary orders given by the judge by virtue of Article 258 of the Civil Code shall be brought before the judge who would normally entertain jurisdiction to hear the matter were it not ancillary to a divorce proceedings.

SUB-SECTION 2 THE FAMILY JUDGE

*Article 1074*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.9 and 10, Official Journal of 16 January 1994 in force on 1 February 1994*)

In addition to the powers conferred upon him by virtue of Article 247 of the Civil Code, the family judge has as paramount consideration the attempt at conciliating the partners to the marriage before or during the court proceedings.

He shall be the pre-trial judge.

He shall exercise the office of the judge of summary interlocutory procedure.

He shall rule upon, where the same appears necessary, on the pleas against jurisdiction.

SUB-SECTION 3 THE APPLICATIONS

Article 1075

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 84-618 of 13 July 1984, sec.20, Official Journal of 18 July 1984, amendment JORF of 18 August 1984*)

(*Decree No. 85-1330 of 17 December 1985, sec.21, Official Journal of 18 December 1985 in force on 1 January 1986*)

From the start of the proceedings, the partners to the marriage shall, should the occasion arise, reveal, with such particulars as necessary as to their identification, the Medical Insurance Fund to which they are attached, the department or organisation providing for family benefits, occupational pension schemes or such allowance granted by reason of old age, as well as the denomination of these funds, departments or organisations.

*Article 1075-1*

(*Inserted by Decree No. 85-1330 of 17 December 1985, sec.18, Official Journal of 18 December 1985 in force on 1 January 1986*)

The partners to a marriage, shall have to, at the request of the judge, justify their claim for their expenses and income, namely by the production of tax returns, notice of assessment and a memorandum of taxation.

*Article 1076*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The partner who is petitioning for divorce may, at all events, and even on appeal, substitute the petition for one for judicial separation.

A reverse substitution of the above shall not be allowed.

*Article 1076-1*

(*Inserted by Decree No. 85-1330 of 17 December 1985, sec.19, Official Journal of 18 December 1985 in force on 1 January 1986*)

Where one of the party has only prayed for a spousal maintenance or a contribution to the expenses of the marriage, the judge may not decree a divorce without having first invited the parties to comment upon the provision of a supplementary allowance.

*Article 1077*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

In the course of the proceedings, a petition for divorce on one of the grounds of divorce may not be substituted for a petition based on another ground of divorce as listed under Article 229 of the Civil Code.

Notwithstanding the above, where they have reached an agreement to that effect in the course of proceedings, the partners to a marriage may bring before the judge, in the manner as prescribed under Article 246 of the Civil Code, a petition in the form as laid down under section II of the present chapter.

SUB-SECTION 4 SOCIAL INQUIRY AND DECISIONS IN RELATION TO THE EXERCISE OF PARENTAL RESPONSIBILITY

*Article 1078*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No.87-578 of 22 July 1987, sec.3, Official Journal of 25 July 1987*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

A social inquiry, as laid down under Article 287-2 of the Civil Code, may be ordered even ex proprio motu by the family judge where he shall deem himself insufficiently informed by the facts before him.

*Article 1079*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

The social inquiry shall occasion the compiling of a report wherein shall be noted down the findings made by the person in charge of the inquiry and the solutions proposed by the latter.

The judge shall provide copies of the report to the parties while fixing a time-limit during which they have at their disposal to apply for a further inquiry or a counter-inquiry.

*Article 1080*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No.87-578 of 22 July 1987, sec.4, Official Journal of 25 July 1987*)

Where it becomes necessary to rule upon parental responsibility, the partner who has not acquired previously this responsibility may draw up a detailed arrangement of the means he would deploy to provide for the upkeep and education of the children should this responsibility be conferred upon him; the same shall apply where a partner seeking the sole acquisition of parental responsibility which was previously shared jointly. Third parties, parents or friends may stand surety for the proper implementation of the arrangement.

The social inquiry shall deal, should the occasion arise, on the possibility of applying the above arrangement as well as dealing with the current position, without prejudice to any direction in force.

SUB-SECTION 5 SUPPLEMENTARY ALLOWANCE

*Article 1080-1*

(*Inserted by Decree No. 84-618 of 13 July 1984, sec.21 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

The supplementary allowance which has been fixed by the decision pronouncing the divorce cannot cause a provisional enforcement to take effect.

SUB-SECTION 6 THE ADVERTISEMENT OF DECREES OF DIVORCE

*Article 1081*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The holding of a decision shall specify, should the occasion arise, the date on which the partners to a marriage lived separately. It shall be read in open court.

*Article 1082*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 89-511 of 20 July 1989, sec.30, Official Journal of 25 July 1989 in force on 15 September 1989*)

(*Decree No. 97-854 of 16 September 1997, sec.1, Official Journal of 18 September 1997)*

(*Decree No. 98-508 of 23 June 1998, sec.2, Official Journal of 25 June 1998)*

A mention of the divorce shall be inserted in the margin of the marriage certificate, as well as in the birth certificate of each of the partners, on the examination of an abstract of the decision containing only its holdings and subjoined with such justifying documents as to bear out its enforceable status in accordance with Article 506.

Where the marriage was celebrated abroad and in the absence of a marriage certificate kept by a French authority, a mention of the holdings of the decision shall be inserted in the margin of the birth certificate of each partner, where this instrument is kept on a French register. In default thereof, the abstract of the decision shall be kept at the above-mentioned docket under Article 4-1 of Decree number 65-422 of 1st June 1965 establishing the central department of the civil registry at the Ministry for Foreign Affairs.

SUB-SECTION 7 VARYING INCIDENTAL ORDERS

*Article 1083*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where a decree of divorce has been appealed against, variation of incidental orders cause to take effect by way of provisional enforcement may only be applied for on the occurrence of a new fact, as the case may be, before the president of the court of appeal or before the pre-trial councillor.

*Article 1084*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981, in force on 1 January 1982*)

(*Decree No. 84-618 of 13 July 1984, sec.22 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

(*Decree No.87-578 of 22 July 1987, sec.12, Official Journal of 25 July 1987*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

Where it is necessary to rule upon, once the divorce has been pronounced, on the exercise of parental responsibility or on a variation of a spousal maintenance, the application shall be brought, even where a petition in cassation has been lodged, before the family judge by the interested parties, either in the manner laid down in relation to summary interlocutory procedures, or by simple petition.

The same shall apply, where the divorce has acquired the authority of res judicata, where it has become necessary to review the supplementary allowance as in the case referred to under Article 279, sub-article 3, of the Civil Code.

*Article 1085*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the application shall be brought by simple petition, it shall have, under penalty of it otherwise being inadmissible, be dated and signed by the petitioner or by his *avocat*. Under pain of the same, it shall specify the address of the applicant, indicate the subject-matter of the application and shall submit summarily the reasons justifying his application. The petition shall mention further the address or the last known address of the respondent.

The judge shall be seised by this petition which shall amount to the necessary pleadings.

*Article 1086*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Within fifteen days of the lodgment of the petition, the registrar shall notify the respondent by recorded letter with the advice of delivery slip sought, and shall indicate the date assigned for the hearing.

On the same day, the registrar shall address to him by ordinary letter a copy of the petition and of the recorded letter.

He shall inform equally of the date of the hearing by ordinary letter the one who has taken the initiative of the application, where the same appears necessary, his *avocat*.

*Article 1087*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

In all cases, the family judge shall rule upon, without any formality, the relevant applications. His decision, as of right, shall be provisionally enforceable.

The time-limit to lodge an appeal shall be fifteen days; it shall run from the notification. Where he has been seised by way of a simple petition, the judge may decide either ex proprio motu, or at the suit of one the interested parties, that the signification of the decision shall not be proceeded with but instead that the decision shall be notified by the registrar by recorded letter with the advice of delivery slip sought.

SECTION II DIVORCE BY WAY OF JOINT APPLICATION OF THE PARTNERS

*Article 1088*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Divorce by way of joint application shall appertain to non-contentious matters.

*Article 1089*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The joint application for divorce shall be brought in a single petition.

*Article 1090*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The petition, which shall not indicate the grounds of divorce, must contain, under penalty of it being inadmissible:

1° the surname, first names, occupation, residence, nationality, date and place of birth of each of the partners to the marriage; the date and place of marriage; the same indications, should the occasion arise, for each of their children;

2° the information prescribed under Article 1075;

3° indication of the court before which the application shall be brought;

4° the name of the *avocats* employed by the partners to represent them, or the one whom they have elected to that effect by way of a common agreement;

Under pain of the same penalty, the petition shall be dated and signed by the partners and their *avocats*.

*Article 1091*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Under penalty of its being otherwise inadmissible, the petition shall consist as an annex to it:

1° an interim agreement by virtue of which the partners to the marriage shall regulate, during the course of the proceedings, their reciprocal position in relation to the different issues otherwise amenable to various orders in line with Articles 255 and 256 of the Civil Code;

2° a final draft agreement, relating to the complete disposal of all the issues attendant upon divorce, with the indication, where necessary, of a notary whose services are employed to apportion the matrimonial régime.

Under pain of the same sanction, each of these documents shall be dated and signed by each of the partners to the marriage and their *avocat*.

*Article 1092*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

The family judge shall be seised by the filing at the clerk's office-registry of the initial petition, which shall amount to the necessary pleadings.

He shall convene each of the partners to the marriage by ordinary letter sent at least fifteen days before the date of the hearing. He shall advise the *avocat* or *avocats*.

*Article 1093*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

On the fixed date, the judge shall hear the partners to the marriage separately, then together, and shall address to them the advice which he deems appropriate.

In the presence of the *avocat* or *avocats*, after having checked the admissibility of the petition and ultimately having crossed out or amended the clauses of the interim agreement that appear to him to be contrary to the welfare of the children, he shall confer upon, by way of an order, that agreement, an entitlement to its enforcement which attaches on a pronouncement of a decision of a court of law.

*Article 1094*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The judge shall examine thereafter with the partners to the marriage and their *avocat* the draft of the final agreement which has been submitted to him.

He shall bring to their attention, should the occasion arise, that the homologation of the agreement and, consequently, the pronouncement of divorce, shall be subordinated to such conditions and undertakings that he shall deem proper, namely in relation to the custody of children and to the allowances and maintenance after divorce.

Where the draft agreement has been drawn up through the instrumentality of a notary, the judge may consult the latter.

*Article 1095*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

At the end of the examination, the judge shall indicate to the partners to the marriage that they must present anew their petition within the time prescribed under Article 231 of the Civil Code.

*Article 1096*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

This petition shall only make a reference to the initial one save where changes which have occurred in the interim are added.

*Article 1097*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Under penalty of it otherwise being declared inadmissible, the petition shall consist of as annex containing the following:

1° an account of the application of the interim agreement;

2° a final agreement relating to the complete disposal of the issues attendant upon divorce, and containing namely a schedule of apportionment of the matrimonial régime, or the declaration that there is no case for apportionment. The schedule of apportionment shall be drawn in accordance with the prescribed formality before a notary where the apportionment pertains to properties subject to land registration.

Under pain of the same sanction, each of the documents shall be dated and signed by each of the partners to the marriage and their *avocat*, as well as, should the occasion arise, by the notary.

*Article 1098*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The judge shall proceed to a new convocation within the forms and time-limit prescribed under Article 1092.

*Article 1099*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No.87-578 of 22 July 1987, sec.12, Official Journal of 25 July 1987*)

At the date fixed, the judge shall verify the admissibility of the petition; he shall ascertain the enduring consent as of their own volition of the partners to the marriage and shall call to their attention the importance of the commitments taken by them, namely as to the exercise of parental responsibility.

He shall render, there and then, a judgment by virtue of which he shall homologate the final agreement and shall pronounce the divorce.

*Article 1100*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the agreement shall appear to safeguard but insufficiently the welfare of the children or one of the interest of one the partners to the marriage, the judge may refuse to homologate it, and shall not then pronounce the divorce and shall defer, by way of an order, his decision until an amended agreement has been presented to him.

The order shall specify the time-limit to appeal and the point wherefrom it shall run.

*Article 1101*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The whole procedure shall lapse where the partners to the marriage fail to present an amended agreement within six months of the deferral order.

The time-limit of six months shall be suspended on appeal.

*Article 1102*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

The decisions of the family judge shall be amenable to appeal, save those homologating the agreement of the partners to the marriage or those which shall pronounce a divorce.

The time-limit to appeal shall be fifteen days; it shall be reckoned from the date of the decision.

*Article 1103*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The time-limit to petition in cassation shall be fifteen days to be reckoned from the pronouncement of the decision which homologated the agreement between the partners to the marriage and pronounced the divorce. It shall carry a stay of execution with regard to that decision. The petition instituted within this time-limit shall carry equally a stay of execution.

*Article 1104*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Creditors of one or the other partners to the marriage may cause to declare that the agreement homologated is unenforceable against them by instituting a third party application to set aside against the decision of homologation in the year following the compliance of the formalities referred to under Article 262 of the Civil Code.

*Article 1105*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The taxable charges of the action shall be contributed by halves between the partners to the marriage where their agreement does not stipulate otherwise.

SECTION III DIVORCE SOUGHT BY ONE THE PARTNERS TO THE MARRIAGE

SUB-SECTION I COMMON RULES

§ 1 The original petition

*Article 1106*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

A partner to a marriage who wishes to petition for divorce shall bring a petition by an *avocat* to the judge. He shall be held to appear in person when he prays for urgent orders.

In the case of an impediment, duly ascertained, the judge shall hold his office at the place of the partner to the marriage.

*Article 1107*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

At the bottom of the petition, the judge shall indicate the date, time and venue at and on which he shall attempt a conciliation.

He shall provide for, where the same appears necessary, such urgent measures prescribed under Article 257 of the Civil Code.

The order shall not be the subject of appeal.

§ 2 The attempt at conciliation

*Article 1108*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The partner who has not instituted the petition shall be convened by the registrar to an attempt at conciliation, by recorded letter with the advice of delivery slip sought, confirmed on the same day, by ordinary letter. Under penalty of it otherwise being null, the recorded letter must be sent fifteen days at least before and subjoined with a copy of the order. The registrar shall advise the *avocat*.

To the notification by recorded letter is enclosed also, by way of information, an explanation accounting for, namely, the provisions of Articles 252 to 252-3 of the Civil Code.

*Article 1109*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

In case of urgency, a family judge may grant leave to one of the partners to the marriage, further to a petition, to summon the other partner to a fixed date proceedings in view of conciliation.

*Article 1110*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

At the specified date, the judge shall determine his jurisdiction first, where the same appears necessary.

He shall bring to the attention of the partners to the marriage the provisions of Articles 252-3 of the Civil Code; he shall then proceed to an attempt at conciliation in accordance with the disposition of Articles 252 to 252-2 of the same code.

Where one of the partners is not in a position to attend at the indicated venue, the judge may designate another one, go on circuit, even outside his province, to hear on the spot the impeded partner or shall delegate to another judge to proceed with the testimony-hearing.

*Article 1111*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The conciliation of the partners to the marriage shall be noted down by way of procès-verbal.

In default of conciliation or where one of the partners is not present, the judge shall render a judgment by virtue of which he may refer the parties, in accordance with Article 252-1 of the Civil Code, to a new attempt at conciliation, or grant leave immediately to the partner who has filed the original petition to summon the other partner.

In one or the other case, he may provide for all or part of such interim orders as prescribed under Articles 254 to 257 of the Civil Code.

The judge may, on granting leave to issuing a summons, recite in his order the time-limit under Article 1113 within which the summons shall be served.

*Article 1112*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The order rendered by virtue of Articles 1110 and 1111 shall be amenable to appeal within fifteen days of the notification but only on grounds of jurisdiction and interim orders.

*Article 1113*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

Where a partner has not exercise the right to serve a summons within three months of the pronouncement of the divorce, his other partner may, within another time-limit of three months, issue a summons against the former and seek a judgment on the merits.

Where both partners to the marriage have not seised the family judge at the expiration of six months, the interim orders shall lapse.

§ 3 THE PROCEEDINGS

*Article 1114*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Counter-claims shall be admissible even on appeal.

*Article 1115*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No.87-578 of 22 July 1987, sec.5, Official Journal of 25 July 1987*)

The only admissible joinder of parties shall be that of a member of the family acting by virtue of Articles 289 and 291 of the Civil Code.

*Article 1116*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

The family judge may, even ex proprio motu, engage the services of a notary or a professional person qualified to draft a schedule relating to the settlement of allowances and contributions after divorce. He may also instruct a notary to draw an arrangement of apportionment of the matrimonial régime.

§ 4 INTERIM ORDERS

*Article 1117*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where he shall provide for interim orders, the judge may take into consideration the arrangement that the partners to the marriage have concurred between them.

*Article 1118*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where there shall be the occurrence of a new fact, the judge may, until the matter shall be brought out of the court's congnisance, discharge, vary or supplement an interim order that has been given.

*Article 1119*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The decision relating to interim orders shall be amenable to appeal within fifteen days of their notification.

Where there is an appeal, the variation of interim orders, on the occurrence of a new fact, may only be applied for, as the case may be, to the first president of the court of appeal or to the pre-trial councillor.

§ 5 MEANS OF REVIEW

*Article 1120*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The decree pronouncing the divorce shall be open to a confession of judgment, save where it is rendered against a protected adult or by virtue of Article 238 of the Civil Code.

In these same cases, the discontinuance of the appeal shall be null.

Article 1121

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The time-limit to petition for cassation shall carry a stay of execution on the decree of divorce. The petition in cassation brought within the time-limit shall carry equally a stay of execution.

*Article 1122*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981, in force on 1 January 1982*)

(*Decree No. 84-618 of 13 July 1984, sec.23 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

(*Decree No.87-578 of 22 July 1987, sec.12, Official Journal of 25 July 1987*)

The stay of execution which shall attach to the petition in cassation as well as to its time-limit shall not apply to the provisions of the decision pertaining to maintenance, the exercise of parental responsibility, the enjoyment of accommodation and furniture.

SUB-SECTION 2 DIVORCE BY REASON OF BREAKDOWN OF MARITAL LIFE

*Article 1123*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where a divorce IS sought by reason of a breakdown of marital life, the original petition, brought by an *avocat*, shall only be admissible where it shall specify the means whereby the partner to the marriage shall ensure, for the duration of the proceedings until the dissolution of the marriage, his duty to provide assistance as well as his obligation towards his children.

*Article 1124*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

With reference to Article 238 of the Civil Code, the petition shall be, under penalty of it being inadmissible, be subjoined with such documents establishing, according to the views petitioner, the truth with regard to that situation as prescribed by that Article.

*Article 1125*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

The family judge may not pronounce a decree of divorce where Article 238 of the Civil Code applies except on the examination of a medical report made by three expert medical practitioners whom he shall appoint from a list prescribed under Article 493-1 of the Civil Code.

*Article 1126*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where a decree of divorce IS pronounced by reason of a breakdown of marital life, the disposition of the decree shall make no mention as to the cause of divorce.

*Article 1127*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The taxable charges of the proceedings shall be borne by the partner who has initiated the proceedings.

SUB-SECTION 3 DIVORCE BY REASON OF UNREASONABLE BEHAVIOUR

*Article 1128*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

The application in view of dispensing the family judge to recite in the holdings of his decisions the harm and grievances of the partners to the marriage must be pleaded clearly and consistently in the pleadings of the partners to the marriage.

The family judge shall limit himself only to record that the dispositive facts determinative of a divorce are satisfied according to the Civil Code, under the Title of "Of Divorce", Section III of Chapter I.

SECTION IV DIVORCE SOUGHT BY ONE PARTNER AND CONSENTED BY THE OTHER

*Article 1129*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the ground relied upon shall be that as referred to under Article 233 of the Civil Code, the original petition shall be brought by an *avocat*; it is only admissible where it is

subjoined with a personal memorandum drawn, dated and signed by the partner taking the initiative of the petition.

*Article 1130*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

In his memorandum, the partner shall endeavour to describe objectively the marital situation without seeking to define the facts nor to impute the same to one or the other partner.

*Article 1131*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Within fifteen days of the presentation of the petition and of the memorandum, the registrar shall address a copy of the same to the other partner by recorded letter with the advice of delivery slip sought.

The registrar shall address on the same day to that partner an ordinary letter informing him of the content of the recorded one.

*Article 1132*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

By means of these same letter, the other partner shall be informed that he may, according to his choice:

- refuse to give his assent to the memorandum, either expressly, either impliedly in refraining from replying to it within a month of the receipt of the recorded letter. In that case, the petition shall lapse and the procedure may not then be prosecuted;

- declare to give his assent to the memorandum. In that case, the procedure shall be prosecuted.

*Article 1133*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The declaration of assent once drawn up, dated and signed by the other partner, shall be filed, by an *avocat*, at the clerk's office-registry within the month that follows the receipt of the documents addressed by recorded delivery.

The other partner may add to it another memorandum wherein, without disputing the narration of facts, he shall provide, in the same form, his personal version.

*Article 1134*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

After examination, the family judge shall convene the parties by recorded letter with the advice of delivery slip sought fifteen days at least before and which shall be confirmed on the same day by ordinary letter. He shall advise the *avocats*.

The originator of the original memorandum shall be invited to verify the same, his other partner to verify his declaration of assent, and should the occasion arise, his memorandum. Where the judge shall form the view that these documents, or where on the confronting of the indicia which they give rise to, would give to understand a persistency of marital feelings between the partners, he shall direct their reasonings to that effect.

The rules laid down in view of an attempt at conciliation under Articles 1110 and 1111 shall be then applicable.

*Article 1135*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

Where an attempt at conciliation has failed, the family judge shall render a judgment whereby he shall record that there are two varying accounts of the facts which result in the marital community of life being unbearable. He shall direct the partners to the marriage to petition before him in view of pronouncing a decree of divorce and to rule upon the ancillary matters, the cause of divorce having been determined. He shall provide for, where the same appears necessary, part or all the interim orders referred to under Articles 255 and 256 of the Civil Code.

The judgment shall be amenable to appeal within a time-limit of fifteen days to be reckoned from the notification.

*Article 1136*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

Any one of the partners to the marriage may institute the proceedings before the family judge by way of summons in view of a determination in relation to a divorce.

The family judge shall pronounce a decree of divorce whose cause has been definitively determined without any reason other than a reference of the judgment in pursuance of Article 1135.

He shall rule upon the ancillary matters as in the case of divorce with apportioned blame.

*Article 1137*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.10, Official Journal of 16 January 1994 in force on 1 February 1994*)

The taxable costs of the procedure, up to and including the summons in view of pronouncing a decree of divorce shall be borne by halves between the partners to the marriage save where there is a contrary decision from the judge to that effect.

*Article 1138*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The provisions of Articles 1106 and 1122 are, furthermore, applicable in cases of divorce sought by one partner and consented by the other.

## SECTION V JUDICIAL SEPARATION

### *Article 1139*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The procedure for judicial separation shall observe the rule laid down in relation to the procedure for divorce.

### *Article 1140*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 89-511 of 20 July 1989, sec.31, Official Journal of 25 July 1989 in force on 15 September 1989*)

A declaration of resumption of marital community life shall be mentioned in the margin of the marriage certificate and of the birth certificate of each of the partners to the marriage.

The same mention shall be carried out at the suit of the notary who has drawn up the instrument establishing the resumption of marital community life.

## SECTION VI DIVORCE IN CONVERSION FURTHER TO AN APPLICATION FOR A JUDICIAL SEPARATION

### *Article 1141*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The territorial jurisdiction shall be determined in accordance with rules laid down under Article 1070.

*Article 1142*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Except for the case where there is a joint petition, the petition in conversion shall be brought, managed and determined in accordance with the procedure appertaining to non-contentious matters.

No counter-claim shall be admissible, except in relation to ancillary matters.

*Article 1143*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

In case of joint petition, the petition in view of conversion, under penalty of it being otherwise inadmissible, shall contain the mention required under Article 1090, the particulars of the decision which pronounced the judicial separation, and shall be subjoined with a draft definitive agreement relating to ancillary matters.

Under penalty of the same sanction, the petition and the draft agreement shall be dated and signed by each of the partners to the marriage and their *avocat*.

*Article 1144*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

With reference to aforegoing Article, the judge may not have to hear the partners to the marriage but may limit himself to an examination of the draft agreement with their *avocat*.

In the absence of any difficulty, he shall homologate the agreement and pronounce the divorce.

Otherwise, he may, without any other formality, request that the partners to the marriage present anew the petition after having carried out such modifications to the agreement; where this request has not been complied with, the judge shall render a judgment whereby he shall refuse to homologate the agreement.

The judgment shall mention the time-limit for appeal and the starting point of that time-limit.

*Article 1145*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The judgment shall be amenable to appeal within fifteen days of the decision.

The appeal shall be brought, managed and determined in accordance with the rules applicable to non-contentious matters.

*Article 1146*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The management of the matter and the testimony-hearing of the partners to the marriage are limited, whatever the case may be, to the ancillary matters attendant upon the decision.

*Article 1147*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The taxable charges of the proceedings in conversion shall be divided as in the case of judicial separation.

Taxable charges appertaining to the proceedings on appeal shall be considered as those appertaining to a new action.

## SECTION VII MISCELLANEOUS PROVISIONS

*Article 1148*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

One shall be considered to have shown cause for, in relation to third parties, a divorce or a judicial separation by the production only of an abstract of the decision having pronounced the matter which may comprise only its holdings, subjoined by a statement as to its entitlement to enforcement in accordance with Article 506.

## CHAPTER VI AFFILIATION PROCEEDINGS AND AFFILIATION MAINTENANCE

### SECTION I GENERAL PROVISIONS

*Article 1149*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.9, Official Journal of 17 September 1993*)

Affiliation proceedings and those in view of obtaining an affiliation maintenance shall be managed and argued in chambers.

The judgment shall be pronounced in open court, save with reference to Articles 1150 to 1153.

*Article 1149-1*

(*Decree No. 93-1091 of 16 September 1993, sec.10, Official Journal of 17 September 1993*)

Where, in case of a change of parentage, a major child consents to a modification to his surname, this consent shall be received by an officer of the civil registry, a notary, a diplomatic or French consular agent or by the court which pronounced the legitimation; in the latter case, it shall be mentioned in the holdings of the decision.

### SECTION II LEGITIMATION

*Article 1150*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Petition in view of legitimation after wedlock or by leave of the court shall be brought by one of the two parents before the *tribunal de grande instance* in whose province he has established his dwelling or by both of them jointly before the court in whose province one of them has established his or her dwelling.

*Article 1151*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Legitimation shall appertain to non-contentious matters.

SECTION III NONMARITAL PARENTAGE

*Article 1152*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 89-511 of 20 July 1989, sec.32, Official Journal of 25 July 1989*)

(*Decree No. 93-1091 of 16 September 1993, sec.14, Official Journal of 17 September 1993*)

(*Decree No. 94-42 of 14 January 1994, sec.21, Official Journal of 16 January 1994 in force on 1 February 1994*)

Joint declarations as laid down under Articles 334-2 and 334-5 of the Civil Code shall be made before the family judge in whose province the child has established his dwelling.

The family judge shall advise forthwith the *Procureur de la République* competent for the province of the place of birth of the child who shall then proceed with the necessary mention to be inserted in the margin of the birth certificate of the latter child.

Where he turns down an application, a judge shall rule upon by a reasoned judgment.

*Article 1153*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.14, Official Journal of 17 September 1993*)

The change of surname of the nonmarital child by joint declaration shall appertain to non-contentious matters.

*Article 1153-1*

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.15, Official Journal of 17 September 1993*)

The ministère public shall represent the State in an action for a declaration of paternity brought in the absence of heirs to the presumed father or where the former have renounced the inheritance.

SECTION IV AFFILIATION MAINTENANCE

*Article 1154*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where there occasion arises, in view of payments towards affiliation maintenance, by virtue of Article 342-3 of the Civil Code, the court may designate as a court guardian any such person who shall appear to be able to look after the child.

*Article 1155*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The legal guardian of the child may request from the person appointed to collect the indemnity any useful information.

Where any dispute shall arise between them, the court, seised by the filing at the clerk's office-registry of a reasoned note, shall rule upon it without any formality after having caused to provide such explanations from the interested parties.

*Article 1156*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The services for social security benefits, the charitable organisation or the guardian designated by the court shall be, for the purposes of the collection of the affiliation maintenance, subrogated in the rights of the creditor.

The amount owed to the child shall be transmitted back to the legal guardian as soon as possible at latest within a month of its receipt.

## SECTION V CERTIFICATE OF IDENTITY AND NOTORIOUSNESS

*Article 1157*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Before the drafting of a certificate of identity and notoriousness, a judge, where he shall deem the testimonies and documents produced to be insufficient, may cause to investigate ex proprio motu by such a person of his choice the facts that are to be established.

*Article 1157-1*

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.11, Official Journal of 17 September 1993*)

The judge issuing a certificate of identity and notoriousness recording the presumed civil status of a legitimate child or of a nonmarital child shall advise forthwith the *Procureur de la République* in whose province the birth certificate of the interested person is kept.

The *Procureur de la République* shall cause to proceed with the mention of the blood relationship as established in the margin of the birth certificate of the child.

## SECTION VI CONSENT TO ARTIFICIAL INSEMINATION

*Article 1157-2*

(*Inserted by Decree No. 95-223 of 24 February 1995, sec.1, Official Journal of 3 March 1995*)

Partners to a marriage or cohabitees having recourse to artificial insemination necessitating the assistance of a third party donor, as referred to under Article 311-20 of the Civil Code, shall consent by way of joint declaration before the president of the *tribunal de grande instance* of their choice or his locum tenens, or before a notary.

The declaration shall be deposed to in the form of an authenticated instrument of record without the presence of third parties.

A certified copy or a copy of the instrument may only be issued to those whose consent has been recorded.

*Article 1157-3*

(*Inserted by Decree No. 95-223 of 24 February 1995, sec.1, Official Journal of 3 March 1995*)

Before recording the consent, the judge or notary shall inform those giving it:

- that it is impossible to establish parentage between a child artificially procreated and the donor, or to call on the responsibility of the latter;

- of the prohibition to institute proceedings contesting parentage or claiming status in the name of the child, save where it is maintained that the latter did not take birth by artificial insemination or that the consent is ineffective.

- that there are cases where the consent has been ineffective;

- of the possibility of causing to seek a court declaration of paternity acquired out of wedlock of the one who, having consented to an artificial insemination, does not recognize the child so taking birth, and to bring an action for parental responsibility against him on that basis.

The instrument prescribed under Article 1157-2 shall mention that these information have been conveyed.

## CHAPTER VII THE DECLARATION OF ABANDONMENT

*Article 1158*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

An application for a declaration of abandonment shall be brought before the *tribunal de grande instance* of the province wherein the child has established his dwelling; where it is prosecuted on behalf of the social services department for the protection of children, it shall be brought before the *tribunal de grande instance* of the administrative centre of the department in which the child has been found.

*Article 1159*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The proceedings shall observe the rules relating to non-contentious matters.

*Article 1160*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

(*Decree No. 84-618 of 13 July 1984, sec.24 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

The application shall be brought by petition and filed at the clerk's office-registry .

It may also be brought by simple petition by the applicant himself, filed before the *Procureur de la République* who shall have to transmit it to the court.

The registrar shall convene the interested parties by recorded letter with the advice of delivery slip sought.

*Article 1161*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

(*Decree No. 84-618 of 13 July 1984, sec.25 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

The matter shall be managed and argued in chambers in the presence of the petitioner, after having placed before the opinion of the ministère public. The auxiliary of an *avocat* shall not be mandatory.

The parents or tutors are heard or called. In cases where they are no more to be found, the court may cause to effect a search in the interest of the families; it shall then defer its decision for a period not exceeding six months.

The judgment shall be pronounced in open court. It shall be notified by the registrar to the applicant, to the parents, and should the occasion arise, to the tutor.

*Article 1162*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the same appears necessary, the court shall rule upon, in the manner and by virtue of the same judgment, on the delegation of parental responsibility.

*Article 1163*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 84-618 of 13 July 1984, sec.26 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

An appeal shall be brought in accordance with the rules of procedure relating to non-mandatory representation. It is managed and determined in conformity with the rules applicable to the court of first instance.

The means of review are open to the persons who have been notified of the judgment as well as to the ministère public.

*Article 1164*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

An application for the return of a child shall be subject to the provisions of the present chapter.

## CHAPTER VIII ADOPTION

### SECTION I CONSENT IN RELATION TO ADOPTION

*Article 1165*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Persons empowered to receive a consent in relation to adoption shall have to inform the one giving his consent of the possibility of being able to revoke this consent and the formalities of revocation.

The instrument prescribed under Article 348-3 of the Civil Code shall mention that this information has been given.

### SECTION II THE PROCEDURE FOR ADOPTION

*Article 1166*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

An application in view of adoption shall be brought before the *tribunal de grande instance*.

The competent court shall be:

- the one in whose province the applicant has established his dwelling where he dwells in France;
- the one in whose province the person whose adoption is sought where the applicant has established his dwelling abroad;
- the court chosen by the applicant where the latter and the person whose adoption is sought have established their dwellings abroad.

*Article 1167*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The proceedings in view of adoption shall appertain to non-contentious matters.

*Article 1168*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 84-618 of 13 July 1984, sec.27 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

The application shall be brought by way of petition.

Where the person whose adoption is sought has been found at the home of the petitioner before the age of fifteen, the petitioner may bring by himself the application by simple petition addressed to the *Procureur de la République*, who shall transmit it to the court.

*Article 1169*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The petition shall have to specify whether the application is in view of a plenary adoption or a mere adoption.

*Article 1170*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The matter shall be managed and argued in chambers, after having placed before the opinion of the ministère public.

*Article 1171*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.16, Official Journal of 17 September 1993*)

The court shall consider whether the legal conditions for adoption are satisfied within a time-limit of six months to be reckoned either from the lodgment of the petition, or from its transmission in the event referred to by the second sub-article of Article 1168. Where the same appears necessary, he shall cause to proceed with an inquiry by a qualified person. He may appoint a medical practitioner in view of carrying out such examination as deemed necessary by him.

He may record such information in relation to a child in care in the manner as laid down under Article L. 81 of the Family and Social Assistance Code.

*Article 1172*

[*Repealed*]

*Article 1173*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court may, with the consent of the petitioner, pronounce mere adoption, even where it shall be seised with a petition for plenary adoption.

*Article 1174*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The judgment shall be pronounced in open court. Its holdings shall specify whether it is in relation to a plenary adoption or to a mere adoption and shall contain the particulars prescribed under Article 1056. It shall contain, further, where the plenary adoption is pronounced by virtue of sub-article 2 of Article 356 of the Civil Code, the indication of the first names and surname of the birth parent of the adoptive child with whom there subsist a blood relationship.

*Article 1175*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 93-1091 of 16 September 1993, sec.18, Official Journal of 17 September 1993*)

Where the same appears necessary, the court shall pronounce itself, in the same manner, on the modifications relating to the first names of the adoptive child, and in the event of mere adoption, on those relating to the surname of the latter.

*Article 1176*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Means of review shall be open to the ministère public.

SECTION III THE PROCEDURE IN RELATION TO THE REVOCATION OF A MERE ADOPTION

*Article 1177*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The proceedings shall observe the rules of procedure applicable in non-contentious matters.

The matter shall be managed and argued in chambers, after having been placed before the opinion of the ministère public.

The judgment shall be pronounced in open court.

*Article 1178*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

An appeal shall be brought as in contentious matters. It shall be managed and determined in accordance with the rules applicable to the court of first instance.

## CHAPTER IX PARENTAL RESPONSIBILITY

### SECTION I THE EXERCISE OF PARENTAL RESPONSIBILITY

*Article 1179*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.14, Official Journal of 16 January 1994 in force on 1 February 1994*)

Proceedings in relation to the application of Article 372-1-1 of the Civil Code shall be instituted, managed and determined in chambers, in accordance with the rules enacted under Articles 1084 to 1087.

As indicated under Article 52 of the Act no. 93-22 of 8th January 1993 amending the Civil Code in relation to the civil registry, to the family and to the rights of children and establishing the family judge, the parties shall have the right to be assisted or represented in accordance with the rules applicable before the *tribunal d'instance*.

*Article 1179-1*

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.19, Official Journal of 17 September 1993*)

The territorially competent judge to issue a Certificate of marital community as prescribed under Article 372-1 of the Civil Code shall be the one in whose province the applicant has established his dwelling.

*Article 1179-2*

(*Inserted by Decree No. 93-1091 of 16 September 1993, sec.19, Official Journal of 17 September 1993*)

Where the evidence produced before the judge seised of an application to issue a Certificate of marital community are insufficient to allow him to assess the existence of the latter, the judge may invite the applicant to produce such other document and may request the holding of a testimony-hearing of the persons who issued the certificates produced.

*Article 1180*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No.87-578 of 22 July 1987, sec.15, Official Journal of 25 July 1987*)

Proceedings brought by virtue of Article 371-4 of sub-article 2 of Article 373-3 of the Civil Code shall observe the rules of procedure in contentious matters; they shall be managed and determined in chambers, once the ministère public has indicated his opinion.

*Article 1180-1*

(*Decree No.87-578 of 22 July 1987, sec.6, Official Journal of 25 July 1987*)

(*Decree No. 94-42 of 14 January 1994, sec.15, Official Journal of 16 January 1994 in force on 1 February 1994*)

The joint declaration prescribed under Article 374 of the Civil Code shall be taken down by the family judge in whose province the child has established his dwelling. The judge shall draw a procès-verbal of which he shall remit a copy to each of the parents.

In the event of a refusal, the judge shall rule upon by a reasoned judgment.

The attribution of parental responsibility by joint declaration shall appertain to non-contentious matters.

*Article 1180-2*

(*Decree No.87-578 of 22 July 1987, sec.6, Official Journal of 25 July 1987*)

(*Decree No. 94-42 of 14 January 1994, sec.16, Official Journal of 16 January 1994 in force on 1 February 1994*)

Applications in relation to a variation of the conditions to render eligible to exercise parental responsibility before a family judge as prescribed under Article 374 of the Civil Code shall be brought, managed and determined in accordance with the rules enacted under Articles 1084 to 1087. Oral arguments shall not be carried out in open court.

SECTION II PROTECTION OF WELFARE ORDER

*Article 1181*

*(Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982)*
*(Decree No.87-578 of 22 July 1987, sec.7, Official Journal of 25 July 1987)*
*(Decree No. 2002-361 of 15 March 2002, sec. 2, Official Journal of 17 March 2002, in force on 1 September 2002)*

Educational support measures shall be taken by a judge in charge of children's affairs, as the case may be, of the place where the father, the mother or the tutor of the minor lives or by the judge of the place where the person or institution that has the child's custody or, failing that, by the judge of the place where the child lives.

When the person mentioned in the preceding paragraph changes his place of residence, the judge shall relinquish the case in favour of the judge of the place of the new residence except a contrary legitimate ruling.

As it is provided for in Article L228-4 of the Social Action and Families Code, in case of change of *département*, the president of the Regional Council of the previous residence and that of the new one shall be informed of the relinquishment.

*Article 1182*

*(Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982)*

*(Decree No.87-578 of 22 July 1987, sec.8, Official Journal of 25 July 1987)*

*(Decree No. 2002-361 of 15 March 2002, sec. 3, Official Journal of 17 March 2002, in force on 1 September 2002)*

The judge shall inform the public prosecutor about the opening of the proceedings. Likewise, he shall inform the father, mother, tutor, the person or institution that has the child's custody when they are not applicants.

He shall hear the father, mother, tutor, the person or the institution that has the child's custody as well as the minor capable of judgement and shall bring to their knowledge the purposes of the proceedings.

He shall hear every other person whose hearing deems to him useful.

The notice about the opening of the proceedings and the summons sent to the father and mother, tutor, person or representative of the institution that has the child's custody and the minor shall make reference to the rights of the parties to choose an attorney or ask for designation of one ex officio in conformity with the provisions of Article 1186. The notice and summons shall inform the parties about their right to consult the file in conformity with the provisions of Article 1187.

*Article 1183*

*(Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982)*

*(Decree No.87-578 of 22 July 1987, sec.14, Official Journal of 25 July 1987)*

*(Decree No. 2002-361 of 15 March 2002, sec. 4, Official Journal of 17 March 2002, in force on 1 September 2002)*

The judge may, either ex officio or at the suit of parties or that of the public prosecutor, order a preliminary investigation on the personality and the living conditions of the minor and that of his parents, in particular by means of a social inquiry, medical, psychiatric and psychological examinations or by virtue of educational investigation and guidance.

*Article 1184*

*(Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

*(Decree No.87-578 of 22 July 1987, sec.14, Official Journal of 25 July 1987)*

*(Decree No. 2002-361 of 15 March 2002, sec. 5, Official Journal of 17 March 2002, in force on 1 September 2002)*

The interim measures provided for in the first sub-article of Article 375-5 of the Civil Code and the measure of notice provided for in Article 1183 of this code may be taken, except in case of specially motivated emergency, only if the hearing, as it is provided for in Article 1182, of the father, mother, tutor, the person or the representative of the institution that has the child's custody and that of the minor capable of judgement is done.

When the custody has been urgently decided by the judge without hearing the parties, he shall summon them within fifteen days from the date of his decision. Want of this, the minor shall be returned, at their suit, to his father, mother, tutor, the person or institution that has the child's custody.

When the public prosecutor, after ordering the temporary custody as a matter of urgency, refers the case, in conformity with the provisions of Article 375-5 of the Civil Code, to the judge, the latter shall summon the parties and shall rule the case within fifteen days. Want of that, the minor shall be returned, at their suit, to his father, mother, tutor, the person or institution that has his custody.

The judge in charge of children's affairs of the place where the minor has been found, too, may take temporary measures, if urgency justifies them, without prejudice to the provisions of the second sub-article of Article 375-5 of the Civil Code, on condition that he relinquishes the case within one month in favour of the territorially competent judge.

*Article 1185*

*(Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

*(Decree No.87-578 of 22 July 1987, sec.9, Official Journal of 25 July 1987)*

*(Decree No. 2002-361 of 15 March 2002, sec. 6, Official Journal of 17 March 2002, in force on 1 September 2002)*

The ruling on the substance of the case shall be made within six months' period from the date said ruling on the interim measures. Want of that, the child shall be returned to his father, mother, tutor, the person or institution that has the child's custody at their suit.

If the investigation is not completed within the time limit provided for in the preceding sub-article, the judge may, after the opinion of the public prosecutor, prolong this time limit for a period not exceeding six months.

*Article 1186*

*(Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*
*(Decree No.87-578 of 22 July 1987, sec.10, Official Journal of 25 July 1987)*
*(Decree No. 2002-361 of 15 March 2002, sec. 7, Official Journal of 17 March 2002, in force on 1 September 2002)*

The minor capable of judgement, the father, mother, tutor, the person or the representative of the institution that has the child's custody may choose an attorney or ask the judge that the president of the bar designates one for them ex officio. The designation shall intervene within eight days from the date of request.
This right shall be noticed to the interested parties during their first hearing.

*Article 1187*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*
(*Decree No.87-578 of 22 July 1987, sec.13, Official Journal of 25 July 1987*)

(Decree No. 2002-361 of 15 March 2002, sec. 8, Official Journal of 17 March 2002, in force on 1 September 2002)

The minor's, his father's, mother's, tutor's attorney or that of the person or institution that has the child's custody may consult the file at the Clerk's office from the date on which the opening of the proceedings has been notified till the eve of the court session. The attorney may ask a copy of the whole or part of the file's documents for the exclusive use of educational support proceedings. He may not transmit to his client neither the copies obtained in this manner nor their reproduction.

Furthermore, at their suit and on days and hours set out by the judge, the father, tutor, the person or the representative of the institution that has the child's custody and the minor capable of the judgement may consult the file until the eve of the court session.

The minor capable of judgement may consult his file only accompanied by his father, mother or his attorney. In case of his parents' refusal or if the minor doesn't have an attorney, the judge shall ask the president of the bar for the designation of an attorney who shall advise the minor or shall authorise the educational institutions responsible for the measure to accompany him for this consultation.

By a reasoned ruling, the judge may, when an attorney is not present, exclude the whole or part of the documents from the consultation by one or the other parent, the tutor, the person or the representative of the institution who has the child's custody or the minor if this consultation would cause grave physical or moral damage to the minor, a party or a third party.

Furthermore, the institutions responsible for the measures provided for in Article 1183 of this code and in articles 375-2 and 375-4 of the Civil Code may consult the file.

At the completion of the investigation, the file shall be transmitted to the public prosecutor who shall send it to the judge within fifteen days together with his written opinion on the next step to be followed or with a simple indication that he intends to present his opinion during the court session.

*Article 1188*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No.87-578 of 22 July 1987, sec.13, Official Journal of 25 July 1987*)

The hearing may be held at the venue of the child's court or that of the *tribunal d'instance* situated in the province, that the convocation shall indicate.

The father, mother, tutor or entity or department in whose care the child has been placed and, should the occasion arise, the minor, are convened to the hearing eight days at least before the date of the hearing; the representatives of the parties are equally advised of the same.

*Article 1189*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No.87-578 of 22 July 1987, sec.14, Official Journal of 25 July 1987*)

At the hearing, the judge shall hear the minor, father and mother, tutor or entity or representative of the department in whose care the child has been placed as well as any other person whose testimony shall be deemed proper. He may dispense the minor with the need to appear or may order that he shall not be present in court for part or all of the oral arguments.

The representatives of the parties shall be heard in their submissions.

The matter shall be managed and determined in chambers, once the ministère public has indicated his opinion.

*Article 1190*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No.87-578 of 22 July 1987, sec.13, Official Journal of 25 July 1987*)

Any decision of the judge shall be notified within eight days to the father and mother, tutor or entity or representative of the department in whose care the child has been placed, as well as to the representative of the minor where one has been so designated; advice of the same shall be given to the *Procureur de la République*.

The holdings of the decision shall be notified to the minor who is above sixteen years of age save where his state does not allow of it.

*Article 1191*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No.87-578 of 22 July 1987, sec.13, Official Journal of 25 July 1987*)

The decisions of the judge shall be appealable:

- on behalf of the father and mother, tutor or entity or department in whose care the child has been placed until the expiration of a time-limit of fifteen days to be reckoned from the notification;

- on behalf of the minor himself until the expiration of a time-limit of fifteen days to reckoned from the notification or, in default thereof, to be reckoned from the day where he took cognisance of the decision;

- on behalf of the ministère public until the expiration of the time-limit of fifteen days following the receipt of the advice given to him.

*Article 1192*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

(*Decree No.87-578 of 22 July 1987, sec.13, Official Journal of 25 July 1987*)

The appeal shall be brought in accordance with the rules enacted under Articles 931 to 934.

The registrar shall advise of the appeal, by ordinary letter, to the father and mother, tutor or entity or department in whose care the child has been placed and to the minor over sixteen years of age himself who did not institute the appeal proceedings and shall inform them that they shall ultimately be convened before the court. Simultaneously, he shall transfer to the clerk's office-registry of the court the file of the case with a copy of the declaration and a copy of the judgment.

*Article 1193*

*(Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

*(Decree No. 2002-361 of 15 March 2002, sec. 9, Official Journal of 17 March 2002, in force on 1 September 2002)*

As a matter of priority, the appeal shall be examined and judged in court chambers by the chamber of the court of appeal responsible for minors' affairs according to the procedure applicable before the judge of children.

The court rules on the appeal against rulings of temporary custody of the judge for children in implementation of provisions of Article 375-5 of the Civil Code within three months from the notification of the appeal.

*Article 1194*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The decisions of the court of appeal shall be notified as prescribed under Article 1190.

*Article 1195*

*(Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

*(Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982)*

*(Decree No. 2002-361 of 15 March 2002, sec. 10, Official Journal of 17 March 2002, in force on 1 September 2002)*

The Clerk's office shall send summons and notifications by registered letter with confirmation of receipt and by a simple letter. However, the judge may decide that the summons and notifications shall be done by an act of a bailiff or an administrative means.

The delivery of a copy of the judgement against a dated and signed receipt shall be deemed notification.

*Article 1196*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

In cases of petition in cassation, the parties shall be dispensed with the auxiliary of an *avocat* au *Conseil d'Etat* et à la *Cour de cassation*.

The petition in cassation shall be open to the ministère public.

*Article 1197*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

Where the father and mother cannot provide for all the legal expenses incumbent upon them, the judge shall fix the amount up to which they shall contribute.

*Article 1198*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The judge may inspect or cause to inspect any minor placed in care by virtue of Articles 375-3 and 375-5 of the Civil Code.

*Article 1199*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The judge may delegate his powers to the judge in whose province the minor has been placed in care either voluntarily or by decision of court, in view of the orders prescribed under Articles 375-2 and 375-4 of the Civil Code or of in view of supervising the course of its application.

*Article 1199-1*

(*Inserted by Decree No.86-939 of 30 July 1986, sec.1, Official Journal of 9 August 1986*)

The institution or department entrusted to apply the order shall address to the judge for child's affairs who ruled upon the matter or who has received a delegation of powers a report on the situation and the development of the minor in accordance with the periodicity fixed by the decision, or otherwise in default thereof, annually.

*Article 1200*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

During the course of the application of a protection of welfare order, the religious or philosophical convictions of the minor or of his family shall be taken into consideration.

*Article 1200-1*

(*Inserted by Decree No.86-939 of 30 July 1986, sec.2, Official Journal of 9 August 1986*)

Protection of welfare orders which shall be renewed by virtue of the third sub-article of Article 375 of the Civil Code shall be provided for by the judge for child's affairs in the conditions prescribed under Articles 1181 to 1200.

SECTION III DELEGATION, FORFEITURE OR WITHDRAWAL OF PARENTAL RESPONSIBILITY

*Article 1201*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The declaration prescribed under Article 377-1 of the Civil Code shall be made before a mayor or a police officer of the grade of a superintendent. It shall be transmitted within fifteen days to the prefect who shall proceed to the necessary notifications.

*Article 1202*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.17, Official Journal of 16 January 1994 in force on 1 February 1994*)

Applications in view of forfeiting or in view of partial withdrawing of parental responsibility shall be brought before the *tribunal de grande instance* in whose province the ascendant against whom the action is brought has established his dwelling

Applications in view of the delegation of parental responsibility shall be brought before the family judge in whose province the minor has established his dwelling.

*Article 1203*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.18, Official Journal of 16 January 1994 in force on 1 February 1994*)

The court or the judge shall be seised by way of petition. Parties shall be dispensed with the auxiliary of an *avocat*. The petition may be addressed to the *Procureur de la République* who must then transmit it to the court or to the judge.

*Article 1204*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Where an application shall seek the forfeiture or the partial withdrawal of parental responsibility, and where it shall emanate from the ministère public, from a member of the family or tutor of the child, the petition shall be notified by the registrar to the ascendant against whom the action is brought.

*Article 1205*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.18, Official Journal of 16 January 1994 in force on 1 February 1994*)

The court or judge, even ex proprio motu, shall proceed or cause to proceed with all such inquiries deemed proper and namely to such investigations as prescribed under Article 1183. He may to that end nominate another judge for child's affairs.

Where the procedure on a protection of welfare order has been implemented with regard to one or more children, the file is transmitted to the court or to a judge.

*Article 1206*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The *Procureur de la République* shall gather such information he shall deem proper in relation to the family circumstances surrounding the minor or in relation to the morality of his parents.

*Article 1207*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No.87-578 of 22 July 1987, sec.11, Official Journal of 25 July 1987*)

(*Decree No. 94-42 of 14 January 1994, sec.19, Official Journal of 16 January 1994 in force on 1 February 1994*)

In view of the prosecution of the proceedings, the court-room or the judge may provide for any such interim order in relation to the exercise of parental responsibility.

*Article 1208*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No.87-578 of 22 July 1987, sec.14, Official Journal of 25 July 1987*)

(*Decree No. 93-1091 of 16 September 1993, sec.21, Official Journal of 17 September 1993*)

(*Decree No. 94-42 of 14 January 1994, sec.19, Official Journal of 16 January 1994 in force on 1 February 1994*)

The court or the judge shall hear the father and mother, tutor or entity or representative of the department in whose care the child has been placed as well as any person whose testimony shall be deemed proper.

The matter shall be managed and determined in chambers. Oral arguments shall be held in the presence of the ministère public.

*Article 1209*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.20, Official Journal of 16 January 1994 in force on 1 February 1994*)

The provisions of Article 1186, of the second sub-article of Article 1187, of the second sub-article of Article 1188, of the first sub-article of Article 1190, of Articles 1191 to 1197 shall be applicable in relation to procedures relating to delegation, forfeiture or partial withdrawal of parental responsibility, the powers and duties of the judge for child's affairs vesting, as the case may be, on the court or the family judge.

*Article 1210*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

(*Decree No. 94-42 of 14 January 1994, sec.19, Official Journal of 16 January 1994 in force on 1 February 1994*)

Applications for the restitution of rights delegated or withdrawn shall be brought by way of petition before the court or the judge in whose province the person onto whom they are conferred has established his dwelling. The same shall be notified to the latter by the

registrar. They shall observe, furthermore, the rules governing application for delegation of parental responsibility.

## SECTION IV PROVISIONS RELATING TO A GUARDIAN APPOINTED AD HOC

*Article 1210-1*

(*Inserted by Decree No.99-818 of 16 September 1999, sec.7, Official Journal of 19 September 1999*)

Where by virtue of the provisions of Articles 388-2 and 389-3 of the Civil Code, the court shall proceed with the designation of an ad hoc guardian and where in view of the interests of the child, the former may not be chosen among his family or relatives, the court may appoint the ad hoc guardian among the persons on the list referred to under Article R.53 of the Code of Criminal Procedure.

*Article 1210-2*

(*Inserted by Decree No.99-818 of 16 September 1999, sec.7, Official Journal of 19 September 1999*)

The appointment of an ad hoc guardian may be contested by appellate procedures on behalf of the legal guardians of the minor within a time-limit of fifteen days. The appeal shall not operate a stay of execution.

The appeal shall be brought, managed and determined as in non-contentious matters.

*Article 1210-3*

(*Inserted by Decree No.99-818 of 16 September 1999, sec.7, Official Journal of 19 September 1999*)

Where the ad hoc guardian has been chosen among the persons on the list referred to under Article R. 53 of the Code of Criminal Procedure, the remuneration of that person shall be fixed as laid down under 3° of Article R. 216 of the same code.

The costs of the remuneration shall be recovered by Treasury from the person standing liable to the taxable charges, in accordance with the procedure and undertaking provided for in criminal fines. In the absence of an order for the taxable charges against that person, the costs shall be recovered against the party specified by the judge who has appointed the ad hoc guardian.

CHAPTER X THE TUTELA OF MINORS

*Article 1211*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The tutela judge territorially competent shall be the one in whose province the minor has established his dwelling.

*Article 1212*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

Save where he shall be seised ex proprio motu, the judge shall be seised by simple petition or by written or oral declaration made to the clerk's office-registry of the court.

*Article 1213*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The sittings of the judge shall not be open to the public. Certified copies of his decisions may, except where leave is granted by the president of the *tribunal de grande instance*, only be issued to the parties and to such persons upon whom an obligation of tutorship vests.

*Article 1214*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The decision of the judge shall be notified, at the suit of the latter, within three days, to the applicant, tutor, legal administrator and to all those whose rights or duties are affected where they are not present.

Further, in the case of Article 389-5 of the Civil Code, it shall be notified to the partner who did not consent to the operation, and in the case of Article 468, to the subrogated tutor.

*Article 1215*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 84-618 of 13 July 1984, sec.28 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

At all events, the decision of the judge shall be amenable to review within fifteen days before the *tribunal de grande instance*. The review shall be open to the persons referred to under the aforegoing Article to be reckoned from the notification or, where they were present, from the pronouncement of the decision.

Except where the interim enforcement has been ordered, the time-limit to review and the review itself exercised within the time-limit shall operate a stay of execution in relation to the decision.

*Article 1216*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The review shall be brought by petition signed by an *avocat* and filed or addressed by registered letter to the clerk's office-registry of the *tribunal d'instance*.

Within eight days of the filing of the petition or of its receipt, the clerk of the court shall transmit the file to the president of the *tribunal de grande instance*.

*Article 1217*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The registrar of the *tribunal de grande instance* shall advise of the date of the hearing to the *avocat* on behalf of the petitioner, and by recorded letter with the advice of delivery slip sought, to such persons who could have brought a review against the decision.

These persons have the right to intervene before the court regarding whom the latter may even order that they shall be impleaded by process of a *huissier de justice*.

*Article 1218*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

Where the *tribunal de grande instance* has ruled upon a matter, the tutela file, to which shall be added a certified true copy of the judgment, shall be sent back to the registrar of the *tribunal d'instance*.

SECTION II THE BOARD OF FAMILY GUARDIANS

*Article 1219*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The sessions of the board of family guardians shall not be open to the public.

A third party may not obtain a certified copy of the deliberations except with the leave of the president of the *tribunal de grande instance*.

*Article 1220*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The deliberation of the board of family guardians shall be well-justified; each time they are reached unanimously, the opinion of each of its members are mentioned in the procès-verbal.

*Article 1221*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

The deliberation of the board of family guardians shall be enforceable per se.

Notwithstanding the above, where the judge did not confer upon it the force of an interim enforceable disposition, its enforcement shall be suspended during the time-limit for review as prescribed under Article 1222 and by the review itself as exercised within this period.

*Article 1222*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 84-618 of 13 July 1984, sec.29 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984*)

At all events, the deliberation of the board of family guardians shall be open to review before the *tribunal de grande instance*, either on behalf of the tutor, the subrogated tutor or any other member of the board of family guardians, or by the tutela judge, irrespective of their opinion during the deliberation.

The time-limit for review shall be fifteen days; it shall run from the day of the deliberation, except as in the case of Article 413 of the Civil Code where it shall only run, against the members of the board of family guardians, as of the date the deliberation shall be notified to them.

*Article 1223*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The procedure prescribed under Article 1216 to 1218 shall be applicable to reviews brought against the deliberations of the board of family guardians.

Where the review is brought by the tutela judge, the latter shall include in the file a note disclosing the grounds of the review.

The registrar of that court shall advise of the date of the hearing to the *avocat* of the petitioner and, by recorded letter with the advice of delivery slip sought, to the tutor, to the subrogated tutor, as well as to the members of the board of family guardians who did not institute any proceedings.

SECTION III COMMON PROVISIONS

*Article 1224*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

Notifications that are to be given at the suit of the tutela judge shall be effected by way of recorded letter with the advice of delivery slip sought; the judge may, notwithstanding the above, decide that they shall be effected by process of a *huissier de justice* or by administrative channels.

The issuance of a certified true copy of a decision of the judge or of a deliberation of the board of family guardians by the clerk's office-registry on the issuance of a dated and signed acknowledgement shall amount to a notification.

*Article 1225*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Reviews brought against the decisions of the tutela judge or the deliberation of the board of family guardians shall be entered on a register kept at the clerk's office-registry of the *tribunal d'instance*. Shall be mentioned therein the name of the originator of the review, that of his *avocat*, the date on which the review has been brought as well as that on which it has been transmitted to the *tribunal de grande instance*.

*Article 1226*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where a review brought against a decision of the tutela judge or against a deliberation of the board of family guardians is dismissed, the one who brought it, any other save where it pertains to a judge, may be ordered to provide for the taxable charges and, even, for damages and interests.

*Article 1227*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The review shall be managed and determined as by way of order of preference in chambers.

The court may request from the tutela judge such information as it shall deem proper.

*Article 1228*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court may even ex proprio motu, substitute a new decision to that of the tutela judge or to the deliberation of the board of family guardians.

*Article 1229*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The decision of the *tribunal de grande instance* shall not be open to appeal.

Article 1230

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The amount of civil fines prescribed under Articles 389-5, 395, 412 and 413 of the Civil Code shall be F 50 at the lowest scale and F 500 at the highest one.

The decisions pronouncing them shall not be open to the review prescribed under Article 1215.

*Article 1231*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the amicable sharing has been allowed in accordance with Article 466 of the Civil Code, the schedule of apportionment, approved by the parties, shall be lodged at the clerk's office-registry of the *tribunal d'instance* where the members of the board of family guardians

may take cognisance of the same, in conformity with the warning notified to them at the suit of the tutela judge.

Fifteen days after the lodgment or, in the case of tutela, fifteen days after the notification of the warning to the members of the board of family guardians, the homologation of the schedule of apportionment may be prosecuted with, either by the legal administrator or the tutor, or by the other parties interested in the apportionment.

The members of the board of family guardians who shall object to this homologation shall have to make it known by way of third party proceedings before the *tribunal de grande instance*; the tutela judge may oppose the homologation by a reasoned note addressed to that court.

The provisions of Articles 1228 and 1229 shall be applicable in homologation proceedings.

## SECTION IV SPECIFIC PROVISIONS IN RELATION TO CHILDREN IN CARE

### *Article 1231-1*

(*Inserted by Decree No. 85-1330 of 17 December 1985, sec.20, Official Journal of 18 December 1985 in force on 1 January 1986*)

Notwithstanding the provisions in relation to Article 1223, the review against the deliberations of the board of family guardians of children in care shall be brought by way of petition signed by an *avocat* and filed, or addressed by registered letter, to the registry of the *tribunal de grande instance*.

The applicable procedure shall be that as laid down under Article 1217.

### *Article 1231-2*

(*Inserted by Decree No. 85-1330 of 17 December 1985, sec.20, Official Journal of 18 December 1985 in force on 1 January 1986*)

Application in relation to a review against an Order of admission in the capacity of a child in care prescribed under Article 61 of the Family and Social Assistance Code shall be brought before the *tribunal de grande instance* in whose province the Order has been given.

Articles 1159, 1160, 1161, (sub-article 1) and 1162 shall be applicable to the application and to the proceedings.

The judgment shall be pronounced in open court. It shall be notified by the registrar to the applicant, to the tutor and the president of the council of the department.

## CHAPTER XI PROTECTION OF ADULT REGIMES

SECTION I COMMON PROVISIONS

*Article 1232*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The *Procureur de la République* in whose province the treatment shall be carried out and the tutela judge may, by virtue of Article 490-3 of the Civil Code, without prejudice to any other measures, cause protected persons to be examined by a medical practitioner.

*Article 1233*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 86-951 of 30 July 1986, sec.3 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where the property of a protected adult by virtue of law as in line with Articles 488 and 490 of the Civil Code could be imperilled, the judge of the *tribunal d'instance* shall order, ex proprio motu or at the suit of the *Procureur de la République*, such protective measures as necessary. He may namely order the affixation of seals in the manner prescribed for seals after death.

Article 1234

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 86-951 of 30 July 1986, sec.4 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where it shall appear that the compoundness of the property does not necessitate any such measure, the *Procureur de la République* or the judge of the *tribunal de grande instance* may request the registrar-in-chief of the *tribunal d'instance*, a police officer of the grade of a superintendent, a superior of the gendarmerie brigade or the mayor, to draw a

schedule in descriptive terms only of the furniture and, where the premises are unoccupied, to ensure that they are properly closed and to keep the keys.

The keys are handed back, on the issuance of a receipt only, to the protected person on his return to the premises. They cannot be handed to any other person except by virtue of a leave granted from the *Procureur de la République* or a judge of the *tribunal d'instance*.

*Article 1235*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The tutela judge may, in all cases where he shall deem proper to hear the protected person, go on circuit throughout the situs of the jurisdiction of the court of appeal, as well as throughout those adjoining departments, of the one in which he exercises his functions. The judge may go on circuit without the assistance of the registrar.

The same rules shall be applicable where a protected person is heard by a judge of the *tribunal de grande instance*.

SECTION II PROTECTION OF THE COURT

*Article 1236*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The declaration in view of a court protection order prescribed under Article L.326-1 of the Code for Public Health shall be transmitted to the *Procureur de la République* in the area of the treatment. The latter shall advise, should the occasion arise, the *Procureur de la République* in whose province the person concerned is domiciled.

*Article 1237*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court protection order shall become obsolete over a period of two months to be reckoned from the declaration; orders renewed to that effect shall become obsolete over a period of six months to be reckoned from the declaration.

*Article 1238*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The declaration whereby the tutela judge shall place the person to be protected under the court's protection, by virtue of the second sub-article of Article 491-1 of the Civil Code, shall be conveyed by him to the *Procureur de la République* of his jurisdiction. The latter shall tender an advice, should the occasion arise, to the *Procureur de la République* having jurisdiction over the domicile in question or over the place of treatment.

*Article 1239*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The declaration whereby the tutela judge shall place the person to be protected under the court's protection, by virtue of the second sub-article of Article 491-1 of the Civil Code, may not be subjected to any means of review per se.

*Article 1240*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The designation or revocation of attorneys of persons placed under the court's protection as well as the determination of the powers of these attorneys shall be effected in accordance with the procedure prescribed in relation to tutela.

*Article 1241*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Person having the standing to exercise a right of review against the decision that instituted the tutela, may bring a review against that decision whereby the tutela judge designated, by virtue of Article 491-5 of the Civil Code, an attorney with limited powers.

*Article 1242*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The *Procureur de la République* who is in receipt of the declaration in view of the protection of the court or of the decision of the tutela judge shall enter the declaration and the decision on a register kept to that effect.

The declaration in view of lifting the court's protection, as well as removals off the register are marked in the margin of the original mention.

Declaration for renewals are entered as according to their dated in the register; references are made in the margin of the intial mention.

SECTION III TUTELA

*Article 1243*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The tutela of adults shall observe the rules prescribed for the tutela for minors, save as the following provisions.

*Article 1244*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The petition in view of instituting the tutela shall designate the person to protect and shall narrate the facts that call for this protection. To be enclosed with the same, is a certificate delivered by a specialist medical practitioner, in accordance with Article 493-1 of the Civil Code. The petition shall enumerate the close relatives of the person to be protected, to the

extent that there existence is known to the petitioner; it shall indicate the name and address of the medical practitioner dispensing the treatment.

Where the judge shall be seised ex proprio motu in view of instituting the tutela, he shall appoint a specialist medical practitioner, chosen from the list prescribed under Article 493-1 of the Civil Code, in view of assessing the state of the person to be protected.

The registrar shall advise the *Procureur de la République* of the procedure instituted.

*Article 1245*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The list of specialist medical practitioners shall be drawn up each year by the *Procureur de la République*, subsequent to having consulted the prefect.

*Article 1246*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The tutela judge shall hear the person to be protected and shall apprise him of the procedure instituted. His testimony-hearing may be held at the venue of the court, at the locus of his dwelling, at the place of treatment or at any appropriate premises.

The judge may, where he deems appropriate, proceed to conduct this testimony-hearing in the presence of a medical practitioner dispensing the treatment, and ultimately, before other persons.

The *Procureur de la République* and the representative of the person to be protected shall be informed of the date and venue of the testimony-hearing; they may attend to the same.

A procès-verbal of the testimony-hearing shall be drawn.

*Article 1247*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the testimony-hearing of the person to be protected shall be such that it harms his health condition, the judge may, by way of reasoned disposition, on the advice of a medical practitioner, declare that it shall not be proceeded with. He shall advise the *Procureur de la République* of the same.

By virtue of the same decision, he shall order that the person to be protected shall be apprised of the procedure instituted in a manner appropriate to his condition.

A mention shall be inserted in the tutela file with regard to the execution of this decision.

*Article 1248*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The judge may, either ex proprio motu, or at the suit of the parties or the ministère public, provide for investigations. He may namely cause to proceed with a social inquiry or with the recording of such findings by a person of his choice.

He shall hear himself, as far as that may be possible, the parents, affines and friends of the person to be protected.

*Article 1249*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The tutela judge may before determining a matter, convene a board of family guardians formed in the manner as determined by the Civil Code in relation to the tutela of minors.

The board of family guardians shall be called to advise on the condition of the person in relation to whom the institution of tutela is sought, as well as on the propriety of a protection regime.

The advice of the board of family guardians shall not bind the judge; it shall not be open to any review.

*Article 1250*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The file shall be transmitted to the *Procureur de la République* a month before the date fixed for the hearing. Fifteen days before that date, the *Procureur de la République* shall tender his written advice to the clerk's office-registry. These time-limit may be abridged by the judge in cases of urgency.

The judge shall apprise the petitioner and the person to be protected, where the latter appears to him in a condition fit to receive this notification, or their representatives, that they may consult the file at the clerk's office-registry until the day before the hearing.

*Article 1251*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

At the hearing, the judge shall hear, where he deems appropriate, the petitioner and the person to be protected.

The representatives of the parties shall be heard in relation to their comments.

The matter is managed and determined in chambers, subsequent to the advice of the ministère public.

*Article 1252*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The petition in view of commencing the operation of the tutela shall lapse where the decision in relation to that petition is not effectuated within the year of the petition.

In case of cognisance taken ex proprio motu by the judge, the processual papers shall be void where the decision to commence the operation has not been effectuated within the year.

*Article 1253*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The judgment in relation to commencing the operation of tutela shall have to be notified to the protected adult; the *Procureur de la République* is advised of the same.

Notwithstanding the above, the judge may, by way of reasoned disposition, decide that there is no need to notify the protected adult of the judgment pronouncing the commencement of tutela owing to his condition. In the latter event, the judgment shall be notified to his representative where he has one, as well as to such persons, partners, ascendants, descendants, brother or sister, whom the judge shall consider most apt to receive the notification.

The judgment may be notified, where the judge deems appropriate, to such persons that he shall designate among those upon whom standing to exercise a right to a review shall vest.

*Article 1254*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Judgment reached by virtue of Article 501 and 507 of the Civil Code shall always be notified to the concerned person himself.

*Article 1255*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The review against the decision which has refused the operation of tutela shall be open only to the petitioner.

*Article 1256*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 84-618 of 13 July 1984, sec.30 and 31, Official Journal of 18 July 1984 amendment JORF of 18 August 1984, in force on 1 October 1984*)

The review against the decision commencing the operation of tutela or refusing to vacate the same shall be brought, either in accordance with the provisions of Article 1216, or by letter summarily argued and signed by one of the person having locus standi to act by virtue of Article 493 of the Civil Code; that letter shall be filed, or addressed by recorded letter with the advice of delivery slip sought, to the clerk's office-registry of the *tribunal d'instance*.

Irrespective of the form of review, the auxiliary of an *avocat* shall not be mandatory to prosecute the action.

*Article 1257*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The reviews prescribed under Article 1255 and 1256 shall have to be brought within fifteen days of the judgment. With reference to those persons who have been notified of the decision, the time-limit shall run as from the notification.

*Article 1258*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The ministère public may institute a review until the expiration of the time-limit of fifteen days following the filing of the advice tendered to him.

*Article 1259*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The registrar of the *tribunal de grande instance* shall inform of the date of the hearing to the person bringing a review against the decision, to those to whom that decision has been notified as well as, should the occasion arise, to their *avocats*.

*Article 1260*

(*Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

An abstract of any decision ruling on the commencement, variation or vacation of the operation of tutela shall be conveyed to the clerk's office-registry of the *tribunal de grande instance* in whose province the protected adult is born, in view of its conservation in the civil docket and of its advertisement by way of an insertion in the margin of the birth certificate in the manner as prescribed in Chapter III of the present book.

Where the decision has been pronounced by the tutela judge, the transmission shall be carried out by the registrar within fifteen days following the expiration of the time-limit for review.

Where the decision has been pronounced by the *tribunal de grande instance*, the transmission shall be implemented by the *Procureur de la République* within fifteen days of the judgment.

*Article 1261*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

In all proceedings relating to the commencement, variation and vacation of the operation to tutela, the judge may, at any stage of the procedure, cause to be appointed ex proprio motu a representative of the person to be protected where he has not employed any one.

SECTION IV CURATIO

*Article 1262*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The operation of curatio shall observe the rules prescribed in relation to the tutela of adults.

*Article 1263*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the adult under curatio seeks suppletory leave, the judge may rule upon the matter subsequent only to having heard or called the curator.

TITLE II PROPERTY

CHAPTER I POSSESSORY ACTIONS

*Article 1264*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Subject to the rules relating to public domain, possessory actions are to be commenced within the year in which the disturbance occurred to those who had quiet possession or ownership of the property for at least a year; however, an action of ejectment against the perpetrator of a forceful act may be brought albeit the victim of the dispossession had possession or ownership for a period of less than a year.

Article 1265

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Possessory protection and droitural consideration shall never be consolidated.

The judge may, notwithstanding the above, examine the titles in view of verifying whether the conditions in relation to the possessory protection are satisfied.

Directions may not bear upon droitural considerations.

*Article 1266*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

A litigant acting in droitural proceedings shall lost his standing in relation to a possessory action.

*Article 1267*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The defendant in a possessory action may only have standing to act in droitural proceedings after that he has caused to abate the disturbance.

## CHAPTER II THE RENDERING OF ACCOUNTS AND THE APPORTIONMENT OF PRODUCE

*Article 1268*

*(Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

An application in view of causing to render an account shall be brought, as the case may be, before the court in whose province the accountant has established his dwelling, or where the accountant has been appointed by the court, before the judge who appointed him.

*Article 1269*

(*Inserted by Decree No. 81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

No application for rendering of accounts shall be admissible save where it shall be brought in view of the rectification of an error, omission or in view of an inexact presentation.

The same shall apply to the apportionment of produce in cases where there restitution shall have to be effected.

## CHAPTER III LEASES ON BEHALF OF USUFRUCTARIES ON LEAVE OF COURT

*Article 1270*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The leave prescribed under Article 595 of the Civil Code shall observe the rules prescribed under Articles 1286 to 1289.

## CHAPTER IV THE SALE OF IMMOVABLES AND BUSINESS ASSETS BELONGING TO MINORS AND ADULT IN TUTELA

*Article 1271*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The judicial sale of the immovables and business assets belonging to minors and adult in tutela can only be pronounced subsequent to an examination of a deliberation of the board of family guardians considering the nature of the property and their estimated value.

This deliberation shall not be mandatory where the property belongs jointly to capable adults or where the sale shall be carried out by them. The matter shall then proceeded with in accordance with the rules prescribed in relation to judicial apportioning of property.

*Article 1272*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

On a petition from the tutor or subrogated tutor, bidding offers shall be made either to a notary appointed to that effect by the *tribunal de grande instance*, or at the judicial audience of bidders held by a judge designated by the court.

The competent court is the one in whose province the person in tutela has established his dwelling.

Where the property is situated in various districts, the court may appoint a notary in each district and may issue rogatory commissions to each of the court of competent situs over the property.

*Article 1273*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court shall determine the reserve price of each of the item of property to be put on sale and the essential conditions for the sale. The court may specify that in the absence of a bid reaching this reserve price, the sale may be effected according to a lower price to be fixed.

The court may, where the value or the compoundness of the property so demands, cause to proceed to their total or partial valuation.

*Article 1274*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court shall fix the manner in which advertisements shall be made, taking into account the value, nature and situation of the property.

*Article 1275*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The appointed notary or *avocat* shall draw a memorandum of sale. Where the sale is held by way of a judicial audience of bidders, this document shall be lodged at the clerk's office-registry of the court.

The memorandum of sale shall indicate the judgment ordering the sale, the goods to be sold, the reserve price and the conditions of sale. Where the sale shall pertain to business assets, the memorandum of sale shall specify the nature and situation in relation to the assets and the various items of which it is comprised, as well as the obligations binding the purchaser, namely, as with regard to the merchandise making up the assets.

*Article 1276*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

By virtue of the provisions of sub-article one of Article 459 of the Civil Code, the subrogated tutor shall be called at the auction, a month at least before the same, at the suit of the drafter of the memorandum of sale and shall be informed that the sale shall be proceeded with even in his absence.

*Article 1277*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where reserve price has been underbid, the judge or the notary, as the case may be, may put on record the highest underbidding offer and auction the property in the interim for the amount of that offer.

Save where the seller renounces, the court which has fixed the reserve price, seised at the suit of the notary, of the *avocat* or any interested party, may, either declare the auction definitive and the sale concluded, or order that a new auction be held; in the latter event, he

shall fix the time-limit of the new auction which shall not be less than fifteen days, and the reserve price as well as the modes of advertisements.

*Article 1278*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The following Articles are repeated herein form the old Code of Civil procedure, to which they are of common application, namely Articles 701, 705 to 707, 733 to 741 b and 742.

Notwithstanding the above, where they are to be directed to a notary, the bidding offers may be submitted without the auxiliary of an *avocat*. In the case of a sale before notary, where there has been an irresponsible bid, the matters shall be prosecuted with before the court. The certificate establishing that the adjudicatee has not performed his duties and obligations is delivered by the notary. The procès-verbal of the judicial sale shall be lodged at the clerk's office-registry.

*Article 1279*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

Within ten days following the definitive judicial sale, anybody may make subsequent overbiddings raised to one tenth while acting in conformity with the forms and time-limit prescribed under Articles 708 to 710 of the old Code of Civil procedure.

Where the judicial sale was held before a notary, the court, by virtue of the judgment upholding the subsequent overbidding, shall refer the new judicial sale before the same notary who shall proceed in accordance with the memorandum of sale as previously drawn.

Where a second judicial sale shall be conducted following an overbid, no other overbidding in relation to the same property may be made.

*Article 1280*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The overbid prescribed under the second sub-article of Article 459 of the Civil Code shall be offered, within ten days following the judicial sale, by way of declaration to the clerk's

office-registry of the court in whose province the notary who carried out the sale has established his dwelling.

That declaration shall be denounced to the natural person and domicile of the adjucatee within the time-limit under Article 709 of the old Code of Civil Procedure.

Furthermore, the rules of Article 1279 shall be applicable to the above.

*Article 1281*

(*Inserted by Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981 in force on 1 January 1982*)

The respective jurisdiction of the various public officers in matters of the sale of the business assets shall not be departed from.

## CHAPTER V THE DISTRIBUTION OF FUNDS AS DISTINCT FROM ENFORCEMENT PROCEDURES

*Article 1281-1*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

Where the same appears necessary, irrespective of enforcement procedures, in view of apportioning a sum of money between creditors, a first mover may petition by way of summary interlocutory procedure before the president of the *tribunal de grande instance* in whose province the debtor has established his dwelling, which shall appoint a person for the apportionment.

The appointed person for the apportionment is a sequester of funds, save where a consignation has not been ordered.

*Article 1281-2*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

The appointed sequester for the apportionment shall offer undertakings in relation to the sum to be apportionned.

*Article 1281-3*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

The registry shall notify by ordinary letter a copy of the order to the person appointed for the apportionment and, where consignation has been ordered, to the Deposit and Consignation Office.

The person appointed for the apportionment shall advise the creditors, by recorded letter with the advice of delivery slip sought, that they are held to, within a time-limit of a month, address to him a declaration including a breakdown of the sum claimed, of the interests and other incidental expenses. Should the occasion arise, this declaration shall mention the preferential rights and security attached to the credit. Supporting documents shall be subjoined to the declaration.

In default of the declaration within the time-limit referred to under the aforegoing sub-article, the creditor shall be precluded from having a share out of the apportionment.

*Article 1281-4*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

The person appointed for the apportionment shall draw a schedule of apportionment within two months following the last advice as prescribed under the second sub-article of Article 1281-3.

He shall notify it to the debtor and to each creditor by recorded letter with the advice of delivery slip sought.

Under penalty of it being null, the notification shall indicate to the recipients:

1° That he has at his disposal a period of fifteen days, to be reckoned from the receipt of the letter, to raise a reasoned contention by recorded letter with the advice of delivery slip sought, subjoined with the necessary supporting documents, to the attention of the person appointed for the apportionment;

2° That in default of a reply within the imparted time-limit he shall be deemed to have accepted the schedule of apportionment and that the latter shall become definitive on no contention being raised.

In case of any obstacle, the time-limit referred to under the first sub-article of the present Article may be extended by the president of the *tribunal de grande instance* seised by way of simple petition on behalf of the person appointed for the apportionment.

*Article 1281-5*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

In default of any contention within fifteen days following the last notification referred to under the second sub-article of Article 1281-4, the schedule of apportionment shall become definitive.

Where he is placed in funds of the amount to be apportioned, the person appointed for the apportionment shall then proceed to paying the creditors within fifteen days.

Where the amount has been paid into consignation, the person appointed for the apportionment shall notify the Deposit and Consignation Office of the schedule of apportionment which has become definitive, which shall then proceed to paying out within fifteen days.

*Article 1281-6*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

In case of dispute, the person appointed for the apportionment shall convene the parties by recorded letter with the advice of delivery slip sought, in view of an attempt at conciliation which shall be held within the month following the first contention.

The convocation shall recite the terms of the second sub-article of Article 1281-7.

*Article 1281-7*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

Where an agreement is reached, it shall be recorded by an instrument of writing of which copy is remitted or addressed by ordinary letter to all parties. Payment shall be proceeded with in the conditions prescribed under the second and third sub-article of Article 1281-5.

A person duly convened who does not make an appearance shall be deemed to have accepted the agreement reached.

*Article 1281-8*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

In default of conciliation, the parties appointed for the apportionment shall record the issues in dispute.

Amounts produced to be shared are immediately paid into consignation, where they have not been so paid by virtue of the decision appointing the person for the apportionment.

The first mover may seise the *tribunal de grande instance*, which shall proceed to the division.

*Article 1281-9*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

In the absence of a schedule of apportionment within the time-limit imparted, the matter shall be proceeded with as indicated under the second and third sub-article of Article 1281-8.

*Article 1281-10*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

Payments shall be effected in not less than fifteen days after the notification of the judgment of apportionment to the Deposit and Consignation Office which shall carry the authority of res judicata.

*Article 1281-11*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

The remuneration of the person appointed for the apportionment shall be appropriated from the fund to be apportioned and borne by the creditors, on a pro rata basis in relation to the sum returned to each of them.

In case of dispute, it shall be fixed by the president of the *tribunal de grande instance*.

*Article 1281-12*

(*Decree No. 96-740 of 14 August 1996, sec.1, Official Journal of 23 August 1996*)

In commercial matters, the jurisdiction conferred upon the *tribunal de grande instance* and to the president of the same are exercised by the Commercial Court and by the president of the latter.

TITLE III MATRIMONIAL REGIMES - SUCCESSION AND DONATION.

CHAPTER I THE RIGHTS OF PARTNERS TO A MARRIAGE AND MATRIMONIAL REGIMES.

SECTION I LEAVE AND EMPOWERMENTS

*Article 1286*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

An application for leave and empowerment prescribed by law, and namely under Articles 217, 219, under the second sub-article of Article 1426 and Articles 2139, 2140 and 2163 of the Civil Code, shall be brought by way of petition before the *tribunal de grande instance*.

*Article 1287*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

The application shall be managed and determined as in non-contentious matters save where it shall carry the effect of acting against the refusal of one of the partners.

*Article 1288*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

Where the application for leave tends to carry the effect of acting against the refusal of one of the partners to the marriage, the applicant partner shall present a petition to the president in view of summoning his other partner for a return date. The court shall hear the other partner before ruling upon the matter save where the latter, duly cited to appear in court, does not make an appearance. The matter shall be managed and determined in chambers.

*Article 1289*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

An appeal shall be brought, managed and determined, as the case may be, as in non-contentious or contentious matters; in the latter event, the matter shall be managed and determined in chambers.

SECTION II INJUNCTIONS

*Article 1290*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12 and 13, Official Journal of 16 January 1994 in force on 1 February 1994*)

Injunctions referred to under Article 220-1 of the Civil Code shall be provided for by the family judge sitting by way of summary interlocutory procedure, and where necessary, by way of decree to a petition.

SECTION III JUDICIAL TRANSFER OF ADMINISTRATION AND THE ANTICIPATED APPORTIONING OF THE EQUITY OF ENTITLEMENT

*Article 1291*

(*Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

The procedure prescribed under sub-articles 1 and 3 of Article 1426 and of Articles 1429 and 1580 of the Civil Code shall be governed by the rules applicable to application for separation of property.

## SECTION IV JUDICIAL SEPARATION OF PROPERTY

### *Article 1292*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

An application for separation of property shall be brought before the *tribunal de grande instance* for the situs where the family has established its dwelling.

An abstract of the application shall be transmitted by the *avocat* of the applicant to the clerk's office-registries of the tribunaux de grande instance in whose province any one of the partners to the marriage has taken birth, in view of its placement in the civil docket and of its advertisement by inserting a note in the margin of the birth certificate in accordance with the manner prescribed in chapter III of Title I of the present book.

An extract of the application may, further, be published in a newspaper distributed in the jurisdiction of the court seised of the matter.

### *Article 1293*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 89-511 of 20 July 1989, sec.33, Official Journal of 25 July 1989*)

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

(*Decree No. 98-508 of 23 June 1998, sec.3, Official Journal of 25 June 1998)*

The judgment may only be pronounced a month after the note referred to in the aforegoing Article has been inserted in the margin of the birth certificate of each of the partners to the marriage, or where this instrument is not kept in a French register, after that the abstract of the application has been entered in the civil docket as referred to under Article 4 of Decree n. 65-411 of 1st June 1965 instituting the central department of the civil registry at the Ministry for Foreign Affairs.

*Article 1294*

(*Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

(*Decree No. 98-508 of 23 June 1998, sec.4, Official Journal of 25 June 1998)*

The judgment pronouncing the separation shall be published in the newspaper distributed in the jurisdiction of the court that rendered it.

The holding of the judgment shall be notified to an officer of the civil registry of the situs where the marriage has been celebrated in view of inserting a note in the margin of the instrument of celebration. Where the matrimony has been celebrated abroad and that a marriage certificate has been drawn up or transcribed on a French register, the holding of the judgment shall be notified in view of the same to the authority keeping this register.

Where a nuptial agreement has been entered into by the partners to the marriage, the holding of the decision shall be notified by recorded letter with the advice of delivery slip sought to the notary keeping the originals of record of the contract. The notary shall be held to cause to furnish a note of the decision on the originals of record and may not, under penalty of damages and interests, deliver any copy of the same, whether it be enforceable or otherwise, without having so reproduced this note.

In the event referred to in the aforegoing two sub-articles, the notification shall be subjoined with such cause being shown as in relation to the enforceable nature of the decision in accordance with Article 506.

*Article 1295*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

The formalities prescribed under Article 1294 shall be implemented at the suit of the applicant.

*Article 1296*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

The judgment dismissing the application for separation of property shall be published in accordance with sub-article 2 of Article 1292.

*Article 1297*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

The enforcement of the decision shall not be demurrable to creditors of the partners to the marriage where it has been enforced prior to the implementation of the formalities prescribed under Article 1294.

*Article 1298*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

Within the year following the implementation of these formalities, the creditors of one or the other partners to the marriage may institute third party application to set aside proceedings against the judgment of separation of property.

*Article 1299*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

The admission of the respondent partner to the marriage may not substantiate the facts, even where there is no creditor.

## SECTION V JUDICIAL HOMOLOGATION OF A CHANGE OF MATRIMONIAL RÉGIME

*Article 1300*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

The application for homologation of a change of matrimonial régime shall be brought before the *tribunal de grande instance* for the situs where the family has established its residence.

*Article 1301*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

The homologation of a change of a matrimonial régime shall appertain to non-contentious matters.

*Article 1302*

(*Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

A certified copy of the notarial instrument that modifies or changes entirely the matrimonial régime shall be subjoined to the petition.

*Article 1303*

(*Decree No. 81-500 of 12 May 1981, Official Journal of 14 May 1981 amendment JORF of 21 May 1981*)

(*Decree No. 94-42 of 14 January 1994, sec.12, Official Journal of 16 January 1994 in force on 1 February 1994*)

Sub-article 2 and 3 of Article 1292, Articles 1293 to 1296 and Article 1298 shall be applicable to homologations of changes of matrimonial regimes.

SECTION VI ADVERTISEMENTS IN INTERNATIONAL MATTERS

§ 1 The designation of the law applicable to the matrimonial régime on the marriage

*Article 1303-1*

(*Inserted by Decree No. 98-508 of 23 June 1998, sec.1, Official Journal of 25 June 1998)*

Where the marriage certificate is kept by a French authority, the latter shall mention in the margin of that instrument, at the request of the partners to the marriage or any one of them, the instrument wherein mention is made as to the law applicable to matrimonial regimes, and regarding which its advertisement is referred to under the second sub-article of Article 1397-3 of the Civil Code.

In the absence of a marriage certificate kept by a French authority, and where the instrument wherein mention is made as to the law applicable to matrimonial régime has been drawn in France in the authentic form of record or where one of the partners to the marriage is French, the said instrument or certificate delivered by the empowered person to establish it, shall be at the request of one of or both partners to the marriage, registered for the purposes of its placement in the annex to the civil docket referred to under Article 4-1 of Decree n. 65-422 of 1st June 1965 establishing a central department of the civil registry at the Ministry for Foreign Affairs.

*Article 1303-2*

(*Inserted by Decree No. 98-508 of 23 June 1998, sec.1, Official Journal of 25 June 1998)*

Where a nuptial agreement has been entered into in France, the partners to the marriage or any one of them shall address to the notary holding the originals of record of the agreement, by recorded letter with the advice of delivery slip sought, a copy of the instrument wherein mention is made as to the applicable law to matrimonial régime. Where the nuptial agreement was received by a diplomatic or French consular agent, the partners to the marriage or any one of them shall advise the Minister for Foreign Affairs.

The notary, diplomatic or French consular agent or the minister for Foreign Affairs shall cause to mention the applicable law as referred to in the originals of record of the nuptial agreement and may not deliver further copies or abstract without reproducing this mention.

§ 2 Change of matrimonial régime by virtue of foreign laws

*Article 1303-3*

(*Inserted by Decree No. 98-508 of 23 June 1998, sec.1, Official Journal of 25 June 1998)*

Where the marriage certificate is kept by a French authority, the change of a matrimonial régime allowed by virtue of foreign law governing the consequences of matrimony shall be mentioned in the margin of the instrument.

In the absence of the marriage certificate kept by a French authority, this change of matrimonial régime, where it has given rise to a decision of a French court or to an instrument drawn in France in the authentic form of record or where one of the partners to the marriage is French, shall be registered for the purposes of its placement in the annex to the civil docket referred to at Article 4-1 of Decree no. 65-422 of 1st June 1965 establishing a central department of the civil registry at the Ministry for Foreign Affairs.

Article 1303-4

(*Inserted by Decree No. 98-508 of 23 June 1998, sec.1, Official Journal of 25 June 1998)*

Where this change has given rise to a decision from a French court, the mention in the margin of the birth certificate or its registration in the annex to the civil docket shall be effected in accordance with the second, third and fourth sub-article of Article 1294. In other cases, the *Procureur de la République* for the situs where the birth certificate or the annex to the civil docket is kept shall cause to proceed with the mention or registration, at the suit of one or both partners to the marriage.

*Article 1303-5*

(*Inserted by Decree No. 98-508 of 23 June 1998, sec.1, Official Journal of 25 June 1998)*

Where a nuptial agreement has been entered into in France, the partners to the marriage or any one of them shall address to the notary holding the originals of record of the agreement, by recorded letter with the advice of delivery slip sought, a copy or abstract of the marriage certificate updated in accordance with Articles 1303-3 and 1303-4 or a certificate of registration in the annex to the civil docket referred to under Article 4-1 of Decree no. 65-422 of 1st June 1965 establishing a central department of the civil registry at the Ministry for Foreign Affairs.

The notary, diplomatic or French consular agent or the minister for Foreign Affairs shall cause to mention the change of the matrimonial régime on the originals of record of the nuptial agreement and may not deliver further copies or abstract without reproducing this mention.

§ 3 The change of matrimonial régime effected abroad by virtue of French law

*Article 1303-6*

(*Inserted by Decree No. 98-508 of 23 June 1998, sec.1, Official Journal of 25 June 1998)*

The formalities of advertisements prescribed at paragraph 2 shall apply equally in cases of change of matrimonial régime effected abroad by virtue of French law.

CHAPTER II SUCCESSION AND DONATION

SECTION I PROTECTIVE MEASURES AFTER THE COMMENCEMENT OF THE OPERATION OF SUCCESSION

SUB-SECTION 1 SEALS

§ 1 The affixation of seals

*Article 1304*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The affixation of seals may be applied for:

1° by the marriage partner;

2° by any person claiming a right in the succession;

3° by the testamentary executor;

4° by the ministère public;

5° by the owner of the premisses;

6° by any creditor put in possession of an enforceable title or a leave from the judge;

7° in the case of absence of one of the partners or heirs, or there are among the heirs minors not represented by operation of law, by the persons who were living with the deceased, by the mayor, or a police officer of the grade of a superintendent, or a superior of the gendarmerie brigade.

*Article 1305*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The decision shall be taken by the registrar-in-chief of the *tribunal d'instance* in whose province the property is situated the subject-matter of the measures contemplated.

*Article 1306*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The registrar-in-chief shall affix the seals by way of a special impressing device which shall stay in his possession and the impression of which shall be lodged at the registry.

*Article 1307*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The affixation can only be carried out after the completion of the inventory, save where the latter is challenged or that it shall be so ordered by a judge of the *tribunal d'instance*.

*Article 1308*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The registrar-in-chief may take such measures necessary for the affixation of seals.

Where the premises are closed, he may gain access to them by any means or affix the seals on the door where the applicant does not seek its opening.

*Article 1309*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The registrar-in-chief shall designate a watchman over the seals where the compoundness and the apparent value of the property so demands.

Where the premises wherein the affixation has been carried out are inhabited, the watchman shall be chosen among those so inhabiting the premises.

The watchman cannot be chosen from the team forming part of the staff of the registry.

*Article 1310*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where papers or closed parcels are found, they shall be placed in a furniture on which the seals shall be affixed.

*Article 1311*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where a will is found, the registrar-in-chief shall initial it together with the individuals present. He shall then place it in the hands of a notary.

*Article 1312*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The registrar-in-chief shall place either at the registry, or in the hands of a notary or a banking institution the titles, sums, shares, jewels or any precious object with regard to which the affixation of seals may not constitute a sufficient precaution.

*Article 1313*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where papers or closed parcels appear, by their superscription or such other written indication, to belong to third parties, the registrar-in-chief shall place them in the custody of the registry.

The judge of the *tribunal de grande instance* shall call these third parties before him within a time-limit that he shall fix so that they may be present when they shall be opened.

Where, when they are opened, it shall be established that these papers or documents are extraneous to the succession, he shall remit them to the relevant persons. Where the latter do not make any appearance or where the papers and parcels shall pertain to the succession, the judge shall order their consignment, either at the registry, or in the hands of a notary.

*Article 1314*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The procès-verbal of affixation shall be signed and dated by the registrar-in-chief. It shall contain:

- 1° the grounds for the affixation;

- 2° the names and addresses of one or all the claimants and in the capacity in which they have sought affixation;

- 3° a summarized narrative of the decisions of the person who were present and the consideration, should the occasion arise, shown to them;

-4° the designation of the premises and the furniture on which the seals were affixed;

- 5° a summary description of the objects which were not put under seals;

- 6° a reference to the steps taken to ensure the safeguard of the premises and goods and as those in relation to the safeguard of domesticated animals;

- 7° a reference to the formalities complied with, where the same appears necessary, by virtue of Articles 1310 to 1313;

- 8° should the occasion arise, the particulars of the watchman appointed.

*Article 1315*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where there is no movable belongings, the registrar-in-chief shall draw a memorandum of nulla bona.

Where there are belongings for the use of those persons dwelling on the premises, or on which seals cannot be affixed, the registrar shall draw an itemized schedule.

§ 2 The breaking of seals

*Article 1316*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The breaking of seals may be requested by the person having standing to request their affixation, and by the custom services where they have been requested to administer the succession.

*Article 1317*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The applicant shall tender to the registrar-in-chief a list of persons who shall have to be called for the breaking of the seals, including those who requested the affixation, and those known who are entitled to inherit or the Department for Domains designated to administer the succession, and should the occasion arise, the testamentary executor.

The registrar-in-chief shall fix the date and time when the seals shall be removed.

Save where the persons who ought to be present at the breaking of the seals did not explicitly dispense with the same, the applicant shall cite them to court, by recorded letter with the advice of delivery slip sought or by process of a *huissier de justice*, to be present at the operation of the breaking of the seals. In the latter event, he may only proceed with these operations where cause is shown to him that the precepts have been acknowledged eight days before the one fixed for the breaking of the seals.

*Article 1318*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The registrar-in-chief shall advise of the breaking of the seals to such person who by written reasoned declaration sought to be present.

*Article 1319*

(*Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

(*Decree No. 2001-650 of 19 July 2001, sec. 76, Official Journal of 21 July 2001 in force on 1 October 2001*)

The seals may be lifted without an inventory where all parties called are present or are represented and do not oppose that the matter be proceeded with in this manner.

Otherwise, an inventory shall be drawn even where some parties do not appear, ever since that they have been duly called. Marital community estate partners, inheritors, testamentary executors, universal legatees or universal-share legatees may concur on a choice of one or two notaries, auctioneers or experts. Where they cannot concur as above, or are not present or represented, the matter shall be proceeded with by the appointment of one or two notaries or auctioneers or experts by the judge of the *tribunal d'instance*.

*Article 1320*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The procès-verbal for the breaking of seals shall be dated and signed by the registrar-in-chief. It shall contain:

1° a reference to the application for the breaking of seals and the decision of the registrar-in-chief fixing the day and time of the breaking;

2° the name and address of the applicant or applicants;

3° the name and address of the parties who were present, or represented or called;

4° the consideration of the seals whether they are subsisting and in full, or where they are not, the state of the alterations;

5° the observations of the applicants and appearing parties and the consideration that was shown to them;

6° the particulars of the notary who shall draw the inventory.

*Article 1321*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The seals shall be lifted successively, and step by step in line with the drawing up of the inventory; they are re-affixed at the end of each session.

*Article 1322*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where the need arises, the registrar-in-chief may proceed to provisionally breaking the seals, which should thereafter be re-affixed as soon as the operation rendering the breaking necessary has been accomplished.

The registrar shall draw a procès-verbal of the steps undertaken.

The provisional breaking followed by an immediate re-affixation shall not be governed by the provisions of Articles 1316 to 1321.

SUB-SECTION 2 OTHER PROTECTIVE MEASURES

*Article 1323*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where it appears that the compoundness of the property shall not justify the affixation of seals, the competent registrar-in-chief in relation to the latter shall draw an itemized schedule of the movables; in the absence of inheritors being present, he shall ensure the locking of the premises where the same is unoccupied and shall store the keys to the registry.

An inheritor may have the keys handed back to him on causing to release the movables listed on the itemized schedule, after having acknowledged as to their compoundness in the presence of the registrar-in-chief. In the same manner, the keys may be remitted, on leave from the judge of the *tribunal d'instance*, to a universal legatee having seisin or possession of the succession.

The Department for Domains may equally seek the remittance of keys, in case where it has been designated to administer the succession.

*Article 1324*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

A month after the death, where there is no known inheritor and where the rent agreement has terminated, the judge of the *tribunal d'instance* may grant leave to the landlord of the property the subject matter of an affixation of seals or in relation to which an itemized schedule was drawn to move the movables either to a different locality or to earmark them in a part of the premises which was occupied by the deceased. The outlays for the moving and placement of the movables are advanced by the landlord.

The registrar-in-chief shall be present during the moving of the movables and shall draw a procès-verbal of the operations.

Where seals have been affixed, he shall break them, but shall thereafter re-affixed them in the premises regarding which the judge granted leave to use as storage or wherein the movables are earmarked.

Where he drew an itemized schedule, the registrar-in-chief shall ensure the locking of the premises wherein shall be stored or earmarked the movables and he shall place the keys at the registry.

*Article 1325*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

The provisions of Articles 1307, 1308 and 1311 to 1313 shall be applicable to protective measures as laid down by the present sub-section.

SUB-SECTION 3 COMMON PROVISIONS

*Article 1326*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

In the case of an impediment, the registrar-in-chief may delegate, for any measure provided for in this present section, to a registrar from his court.

*Article 1327*

(*Inserted by Decree No. 86-951 of 30 July 1986, sec.2 and 7, Official Journal of 13 August 1986 in force on 1 October 1986*)

Where obstacles are met in relation to the measures provided for in this present Section, the parties or the registrar-in-chief may seise the judge for the *tribunal d'instance* by way of simple petition.

Where a dispute shall divide the parties between themselves, the judge for the *tribunal d'instance* shall be seised by way of summary interlocutory procedure.

*Articles 1328 to 1404*

[*Reserved*]

TITLE IV OBLIGATIONS AND CONTRACTS

CHAPTER I THE PROCEDURE FOR INJUNCTIVE DECREES

SECTION I INJUNCTIVE DECREE TO PAY

*Article 1405*

(*Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No.81-862 of 9 September 1981, Official Journal of 19 September 1981*)

The recovery of debts may be applied for by way of injunctive decrees to pay where:

1° the debt has a contractual origin or has resulted from a regulated obligation and has a determined amount; in contractual matters, the determination shall be reached by virtue of the stipulations of the contract including, should the occasion arise, a penalty clause;

2° the obligations shall result from the acceptance or drawing up of a bill of exchange, of the subscription to a promissory note, of the endorsement or backing of one or the other bill or note or the acceptance of the assigning of debts or shares in accordance with the Act no. 81-1 of 2 January 1981 facilitating business loans.

The territorially competent judge shall be the one in whose province one or more debtors sued has established their dwelling.

The rules laid down under the aforegoing sub-articles shall pertain to matters of public interests. Any contrary clause shall be deemed unwritten. The judge must bring up ex proprio motu his lack of jurisdiction.

Article 1406

*(Decree No. 81-500 of 12 May 1981 Official Journal of 14 May, Recapitulatory JORF 21 May 1991, into force on 1 January 1982)*

(Decree No.2003-542 of June 2003, sec. 21, Official Journal of 25 June 2003, in force 15 September 2003)

The action shall be brought, as the case may be, before the first instance court, the jurisdiction of the community judge or before the president of the commercial court within the limits of the material competence of the last two jurisdictions.

The judge territorially competent shall be the one in whose province shall reside the or one of the debtors.

The provisions provided for in the preceding paragraphs shall be mandatory. Any contrary clause shall be deemed non written. The judge shall raise ex officio his incompetence, article 847-4 being applicable.

*Article 1407*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The application shall be brought by petition filed or addressed, as the case may be, to the clerk's office-registry or at the registry by the creditor or any representative.

The petition shall contain:

- the surnames, first names, professions and domiciles of the creditor and debtors or, for corporate bodies, their form, denomination and registered address;

- the precise indication of the amount of the sum claimed with a breakdown of the various items of the credit, as well as the grounds for the same.

It shall be subjoined with supporting documents.

*Article 1408*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The creditor may, in the petition for an injunctive decree to pay, request where there is an objection to the same, that the matter shall be immediately set down before the court which he considers competent.

*Article 1409*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where, on the examination of the documents submitted, the claim appears to be well-founded in part or in full, the judge shall pronounce an order bearing an injunctive decree to pay for the sum that he has given judgment for.

Where the judge dismisses the petition, his decision shall not be the subject of a review on behalf of the creditor, save that the latter may proceed by means of the common jurisdiction.

Where the judge has given judgment for part only of the petition, his decision shall not be, similarly, open to a review on behalf of the creditor, save that the latter has the right not to signify the decree and proceed instead by means of common jurisdiction.

*Article 1410*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The order bearing an injunctive decree to pay and the petition shall be recorded by way of minutes at the clerk's office-registry or at the registry. The documents submitted in support of the petition are provisionally placed at the clerk's office-registry or at the registry.

Where the petition is dismissed, the latter and other documents submitted are returned to the applicant.

*Article 1411*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

A certified true copy of the petition and of the order shall be signified, at the suit of the creditor, to each of the debtors.

The order bearing an injunctive decree to pay shall be void where it has not been signified within six months of its date.

*Article 1412*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The debtor may contend against the order bearing an injunctive decree to pay.

*Article 1413*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Under penalty of it otherwise being null, the process of signification of the order bearing an injunctive decree to pay shall contain, in addition to the particulars prescribed for process of the *huissier de justice*, a precept to:

- either to pay to the creditor the amount of the sum fixed by the order as well as the interests and cost of registry which shall be specified;

- or, where the debtor is held to show cause in defence, to set aside the judgment, which shall mean that the court hearing the original claim of the creditor and that of the action shall be seised.

Under the same sanction, the process of signification:

- shall indicate the time-limit within which the application for setting aside is to be brought, the court before which it is to be brought and the manner in which it shall be to be carried out;

- warn the debtor that he may take cognisance at the clerk's office-registry or at the registry of the documents submitted on behalf of the creditor and that in default of the judgment being set aside he may not then exercise any means of review and may be compelled by any appropriate legal means to pay the sum claimed.

*Article 1414*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the signification is served on the natural person of the debtor, the *huissier de justice* shall have to bring orally to the cognisance of the debtor the particulars referred to under Article 1413; the compliance with this formality shall be mentioned in the process of signification.

*Article 1415*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, Recapitulatory JORF 21 May 1991, into force on 1 January 1982)*

(Decree No.2003-542 of June 2003, sec. 22, Official Journal of 25 June 2003, in force 15 September 2003)

The objection shall be brought, as the case may be, before the first instance court, the community jurisdiction which pronounced the order to pay or before the commercial court whose president has given the order.

It shall be presented to the clerk's office-registrar or to the registrar, either by a declaration, on the issuance of an acknowledgement, or by registered letter.

*Article 1416*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

An application to set aside shall be brought within the month following the signification of the order.

Notwithstanding the above, where the signification has not been served by way of service to a natural person, the application to set aside shall be admissible until the expiration of a time-limit of a month following the first process which has been signified to a natural person, or, in default thereof, following the first measure of enforcement having the effect of rendering unavailable in part or in whole the property of the debtor.

*Article 1417*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court shall rule upon the claim for recovery.

It shall take cognisance, within the limit of the specific jurisdiction which it entertains, of the original claim and of interlocutory claims and defences on the merits.

Where it pronounces a decision declining jurisdiction, or in the case referred to under Article 1408, the matter shall be set down before the competent court in accordance with the rules laid down under Article 97.

*Article 1418*

(*Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

(*Decree No. 82-716 of 10 August 1982, sec. 1, Official Journal of 17 August 1982*)

The clerk-registrar or the registrar shall convene the parties to a hearing by recorded letter with the advice of delivery slip sought.

The convocation shall be addressed to all the parties, even to those who have not applied to set aside the judgment.

*Article 1419*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where no party has made an appearance, the court shall record the extinction of the proceedings; the latter shall render void the order bearing an injunctive decree to pay.

*Article 1420*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The judgment of the court shall supersede the order bearing an injunctive decree to pay.

*Article 1421*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court shall rule upon, subject to appeal, where the amount of the claim shall exceed its jurisdictional value-limit of last resort.

*Article 1422*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

In the absence of an application to set aside within the month following the signification of the order bearing an injunctive decree to pay, irrespective of the nature of the signification, or in case of discontinuance on behalf of the debtor who has applied to set aside the judgment, the creditor may ask for the apposition on the order of a certificate of enforcement. The discontinuance of the debtor shall observe the rules prescribed under Articles 400 to 405.

The order shall cause to effect the significance as that of a contested judgment. It shall not be open to appeal even where it has made allowance for a time-limit for payment.

*Article 1423*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The application to set aside the certificate of enforcement shall be brought to the clerk's office-registry or to the registry, either by declaration, or by ordinary letter.

The order shall be void where the claim of the creditor has not been enforced within the time-limit of a month following the expiration of the time-limit to set aside the order or to discontinue the action on behalf of the debtor.

*Article 1424*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The documents submitted on behalf of the creditor and which are placed provisionally at the clerk's office-registry or at the registry shall be returned to him at his suit as soon as there shall be an application to set aside or at the time the order is endorsed with a certificate of enforcement.

*Article 1425*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Before the commercial Court, the costs for the order bearing an injunctive decree to pay shall be advanced by the creditor and deposited at the registry no later than fifteen days from the application referred to under Article 1405, failing which the latter shall lapse.

The application to set aside shall be received without any costs by the registrar. The latter shall invite forthwith the creditor, by recorded letter with the advice of delivery slip sought, to deposit the sum of the application to set aside at the registry within a time-limit of fifteen days under penalty that the application referred to under Article 1405 shall lapse.

## SECTION II INJUNCTIVE DECREES TO DO

### *Article 1425-1*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

(Decree No.2003-542 of June 2003, sec. 23, Official Journal of 25 June 2003, in force 15 September 2003)

The performance in kind of an obligation resulting from a contract entered into between individuals not having the standing of a tradesman may be asked before the first instance court provided the value of the obligation whose performance is sought shall not exceed the jurisdictional value-limit of this jurisdiction.

The community judge shall be competent within the limits defined in the judicial organisation code and within the terms of article 847-4 of this code.

### *Article 1425-2*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

(Decree No.2003-542 of June 2003, sec. 24, Official Journal of 25 June 2003, in force 15 September 2003)

The action shall be presented, depending on the choice of the plaintiff, either before the jurisdiction of the place of the defendant, or before the jurisdiction of the place of performance of the obligation.

*Article 1425-3*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

The application shall be brought by way of petition lodged or addressed at the registry by the person in whose favour the obligation is contracted or by the person referred to under Article 828.

The petition shall contain:

1° in relation to natural person, the surname, names, occupation, address of the parties, or in relation to corporate bodies, their denomination and registered seat.

2° the particulars of the precise nature of the obligation of which performance is sought as well as the grounds justifying the same.

It shall be subjoined with supporting documents.

Prescription and time-limit to act shall be suspended by the registering at the registry of the petition.

*Article 1425-4*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

Where, on examination of the documents submitted, the claim appears to be well-founded, the judge shall pronounce an order bearing an injunctive decree to do which shall not be open to review.

He shall determine the subject-matter of the obligation as well as the time-limit and the conditions within which the same shall be performed.

The order shall specify, further, the venue, date and time of the hearing at which the matter shall be examined, save where the respondent has caused to show that the injunction has been complied with.

*Article 1425-5*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

The registry shall notify the parties of the order, by recorded letter with the advice of delivery slip sought. He shall address on the same day a copy of that notification by ordinary letter. The letter of notification shall specify the provisions of Articles 1425-7 and 1425-8.

*Article 1425-6*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

The order bearing an injunctive decree to do and the petition shall be placed by way of minutes at the registry wherein shall be kept provisionally the documents submitted in support of the petition.

*Article 1425-7*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

Where the injunctive decree to do has been complied with within the time-limit imparted, the applicant shall inform the registry. The matter shall be taken off the list.

In default of such information or where the applicant does not appear at the hearing without any lawful cause, the court shall declare time-barred the procedure for an injunctive decree to do.

The declaration of the operation of time-bar may be withdrawn where the applicant cause to show to the registry within a time-limit of fifteen days a lawful excuse which could not have provided within the necessary time. In the latter event, the parties shall be convened to a subsequent hearing.

*Article 1425-8*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

The court, in case of total or partial non-compliance with the injunctive decree to do which it has pronounced, shall rule upon the claim, after having attempted to reconcile the parties.

It shall take cognisance, within the limits of its specific jurisdiction, of the original claim and of all interlocutory ones and of defences on the merits.

Where it pronounces a decision declining jurisdiction, the matter shall be set down before the competent court in accordance with the rules laid down under Article 97.

*Article 1425-9*

(*Inserted by Decree No. 88-209 of 4 March 1988, sec.3 and 6, Official Journal of 5 March 1988, in force on 1 January 1989*)

Where the judge dismisses the petition, his decision shall not be the subject of a review on behalf of the creditor, save that the latter may proceed by means of the common jurisdiction. The petition and the documents submitted shall be returned to the applicant.

## CHAPTER II OFFERS FOR PAYMENT AND CONSIGNATION

*Article 1426*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The procès-verbal of real offers shall specify the thing offered; where it is in relation to a sum of money, it shall specify the amount thereof and the method of payment.

It shall indicate, in any event, the venue where consignation shall be effected where the offers are not accepted.

*Article 1427*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The procès-verbal shall mention the reply, the rejecting or acceptance on behalf of the creditor, and shall indicate whether he has signed or refused to sign or has stated not be in a position to sign in relation to the same.

*Article 1428*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where the creditor rejects the offer, the debtor may, so as to release himself, divest himself of the sum or thing offered, in consigning it, with, should the occasion arise, the interests as of the date of consignation.

The concerned third party in relation to whom an application to set aside shall prevent from effecting payment may release himself by consigning the same as above without having to make real offers.

The *officier ministériel* shall draw a procès-verbal of the consignation and shall signify it to the creditor.

*Article 1429*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Pleas against the validity of offers or consignation shall appertain to the jurisdiction of the judge seised of the main action where they are raised on an interlocutory procedure.

## CHAPTER III THE RECONSTRUCTION OF DESTROYED INSTRUMENTS

*Article 1430*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

An application in view of the reconstruction of the original of an authentic instrument of record or under private signature which has been destroyed, in any place whatsoever, by reason of war or disaster shall be brought before the *tribunal de grande instance*.

*Article 1431*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The competent court shall be that in whose province the instrument was drawn and where the instrument was drawn abroad, the one in whose province the applicant has established his dwelling; where the latter has established his dwelling abroad, the *tribunal de grande instance* of Paris shall be the competent court.

*Article 1432*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The reconstruction of a decision of a court shall be carried out by the court pronouncing it.

*Article 1433*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The application shall be brought, managed and determined as in non-contentious matters.

*Article 1434*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The court may proceed to a partial reconstruction of the instrument in cases where evidence in relation to some clauses, which can stand on their own, are the only one brought forward.

## CHAPTER IV THE ISSUANCE OF COPIES OF INSTRUMENTS AND OF REGISTERS

*Article 1435*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The public officers or *officiers ministériels* or any other keepers of records shall be held to issue, on satisfying their dues, a certified copy or a copy of the instruments to the parties themselves, to their inheritors and privies.

*Article 1436*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Where a keeper so refuses or exhibits no response, the president of the *tribunal de grande instance*, seised by way of petition, shall rule upon the same, the applicant and the keeper having been heard or called.

*Article 1437*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The decision shall be enforced provisionally.

An appeal shall be brought, managed and determined as in non-contentious matters.

*Article 1438*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

A party may obtain a copy of an instrument which is not registered or which is defective; he shall be held to apply to the president of the *tribunal de grande instance*. The application shall be brought by petition.

In cases of refusal or where there is no response on behalf of the keeper of the instrument, the matter shall be referred to the president of the *tribunal de grande instance*.

*Article 1439*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

The party seeking the issuance of a second enforceable copy of an authentic instrument of record must apply to the president of the *tribunal de grande instance*. The application shall be brought by petition.

In cases of refusal or where there is no response on behalf of the keeper of the instrument, the matter shall be referred to the president of the *tribunal de grande instance*.

*Article 1440*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

Registrars and keepers of records or public registers are held to issue a copy or an abstract thereof to an applicant for the same, on satisfying their dues.

*Article 1441*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982*)

In cases of refusal or where there is no response, the president of the *tribunal de grande instance*, or where the refusal shall emanate from a registrar, the president of the court to which his office is attached, seised by way of petition, shall rule upon the same, the applicant and the registrar or keeper having been heard or called.

An appeal shall be brought, managed and determined as in non-contentious matters.

## CHAPTER V LITIGATION IN RELATION TO THE DRAWING UP OF SOME CONTRACTS FOR SERVICES

### *Article 1441-1*

(*Inserted by Decree No.92-964 of 7 September 1992, sec.1, Official Journal of 11 September 1992*)

Any person empowered to bring a review in the manner prescribed under the first sub-article of Article 11-1 of the Act no. 91-3 of 3 January 1991 in relation to the public accountability and to the legality of procedures subjecting the drawing up of some contracts to some rules of advertisement and of invitations of tenders shall have to, where he contemplates such a course of action, put on default notice the corporate body who are bound by the rules of advertisement and of invitation of tenders to which the drawing up of the contract is subjected to, to act in conformity with the same.

In case of a refusal or where there is no response within a time-limit of ten days, the originator of the default notice may seise the president of the competent court or his locum tenens, who shall rule upon the matter within a time-limit of twenty days.

### *Article 1441-2*

(*Inserted by Decree No.92-964 of 7 September 1992, sec.1, Official Journal of 11 September 1992*)

Article 1441-1 shall be applicable to the ministère public in the case provided for under the second sub-article of Article 11-1 of the Act no. 91-3 of 3 January 1991.

### *Article 1441-3*

(*Inserted by Decree No.92-964 of 7 September 1992, sec.1, Official Journal of 11 September 1992*)

The decision of the president of the court seised or of his locum tenens shall be open to a petition in cassation within fifteen days of its notification.

CHAPTER VI. SETTLEMENT AGREEMENT

Article 1441-4

(*Inserted by Decree No.98-1231 of 28 December 1998, Article30 , Official Journal of 30 December 1998 into force 1 March 1998*)

The president of the Tribunal de Grande Instance, seised by way of petition by a party to the settlement agreement, shall confer an entitlement to enforcement to the Consent Agreement produced before him.

*BOOK FOUR ARBITRATION*

TITLE I ARBITRATION AGREEMENTS

CHAPTER I ARBITRATION CLAUSE

*Article 1442*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

An arbitration clause shall be the agreement whereby the parties to a contract commit themselves to refer to arbitration the disputes that that contract may give rise to.

*Article 1443*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

An arbitration clause shall have, under penalty of it otherwise being null, to be stipulated in writing in the principal agreement or in a document to which the latter shall incorporate.

Under the same sanction, the arbitration clause shall have to, either appoint the arbitrator or arbitrators, or provide for the means of their appointment.

*Article 1444*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where, once a dispute has arisen, the constitution of the arbitration tribunal is impeded by reason of the act of one of the parties or in relation to the manner of its appointment, the president of the *tribunal de grande instance* shall appoint the arbitrator or arbitrators.

Notwithstanding the above, this appointment shall be effected by the president of the commercial Court where the agreement has explicitly made provision for it in this manner.

Where the arbitration clause is, either on the face of it, null, or insufficient to allow for the constitution of an arbitration tribunal, the president shall record the same and declare that there is no need to so appoint a tribunal.

*Article 1445*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Disputes shall be referred to an arbitration tribunal either jointly by the parties or by the first mover.

*Article 1446*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where it is null, the arbitration clause shall be deemed unwritten.

## CHAPTER II CONSENT TO A REFERENCE

### *Article 1447*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

A consent to a reference shall be the agreement whereby the parties to a dispute which has arisen shall refer it to arbitration before one or more persons.

### *Article 1448*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The consent to a reference shall have to, under penalty of it otherwise being null, determine the subject-matter of the dispute.

Under the same sanction, it shall have to appoint the arbitrator or arbitrators, or provide for the manner of their appointment.

The consent to a reference shall lapse where an arbitrator who is appointed declines the assignment entrusted upon him.

### *Article 1449*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The consent to a reference shall be recorded in writing. It may be incorporated in a procès-verbal signed by the arbitrator or the parties.

*Article 1450*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The parties shall have at their disposal the right to consent to a reference even where they are in the course of proceedings instituted before another court.

## CHAPTER III COMMON RULES

*Article 1451*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The assignment of the arbitrator may only be entrusted upon a natural person; the latter must enjoy the full exercise of his civil rights.

Where the arbitration agreement shall appoint a corporate entity, the latter may only exercise the powers of organizing the arbitration.

*Article 1452*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The constitution of the arbitration tribunal shall be completed only where the arbitrator or arbitrators shall accept the assignment entrusted upon them.

The arbitrator who shall consider himself open to being recused shall inform the parties. In that case, he may only agree to his assignment under the approval of the parties.

*Article 1453*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitration tribunal shall consist of one or more arbitrators in odd numbers.

*Article 1454*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where the parties have appointed arbitrators in even numbers, the arbitration tribunal shall be completed by an additional arbitrator chosen, either in accordance with the expectations of the parties, or in the absence of such expectations, by the appointed arbitrators, or in default of an agreement between the latter, by the president of the *tribunal de grande instance*.

*Article 1455*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where a natural person or corporate entity is entrusted to organise the arbitration, the task of arbitration shall be entrusted to one or more arbitrators under the approval of all the parties.

In default of agreement, the person or entity entrusted to organise the arbitration shall invite each party to appoint an arbitrator and shall proceed, should the occasion arise, to the appointment of that arbitrator that has become necessary in view of completing the arbitration tribunal. Where the parties fail to appoint an arbitrator, the latter shall be appointed by the person or entity entrusted to organise the arbitration.

The arbitration tribunal may also be directly constituted in accordance with the manner provided for under the aforegoing sub-article.

The person or entity entrusted to organise the arbitration may make provision for the fact that the arbitration tribunal shall render a draft award and that where this draft shall be contested by one of the parties, the matter shall be submitted to a second arbitration tribunal. In the latter event, the members of the second tribunal shall be appointed by the

person or entity entrusted to organise the arbitration, each party having at his disposal the right to cause the substitution of one of the arbitrators thus appointed.

*Article 1456*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where the arbitration agreement does not specify the time-limit, the assignment of the arbitrators shall be within a period of six months to be reckoned from the date on which the last of them accepted the said assignment.

The legal or contractual time-limit may be extended either by virtue of the agreement of the parties, or, at the suit of one of them or of the arbitration tribunal, by the president of the *tribunal de grande instance*, or in the case referred to under Article 1444, sub-article 2, by the president of the Commercial Court.

*Article 1457*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

In the case referred to under Articles 1444, 1454, 1456 and 1463, the president of the court, seised as in a matter of summary interlocutory procedure on behalf of one of the parties or by the arbitration tribunal, shall rule upon by way of an order not open to review.

Notwithstanding the above, this order may be appealable where the president declares against the appointment of arbitrators in view of the grounds referred to under Article 1444 (sub-article 3). The appeal shall be brought, managed and determined as in an appellate plea against jurisdiction.

The competent president shall be the one of the court which has been specified in the arbitration agreement or, in default thereof, the one in whose province the agreement made provisions for the arbitration proceedings. Where the agreement is silent upon the same, the competent president shall be the one for the court of situs where one or more respondents to the interlocutory matter have established their dwelling, or where the respondent has not established any dwelling in France, the court of situs where the applicant dwells.

*Article 1458*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where in a dispute regarding which the arbitration tribunal is seised by virtue of an arbitration agreement is brought before a court of law of the State, the latter shall have to decline jurisdiction.

Where the arbitration tribunal is not yet seised, the court shall equally have to decline jurisdiction save where the arbitration agreement is manifestly null.

In both cases, the court may not raise ex proprio motu its lack of jurisdiction.

*Article 1459*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Any provision or agreement contrary to the rules herein laid down shall be deemed unwritten.

## TITLE II ARBITRATION PROCEEDINGS

*Article 1460*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitrators shall lay down the rules for the arbitration proceedings without being bound by the rules governing the courts of law, save where the parties have decided otherwise as stipulated in the arbitration agreement.

Notwithstanding the above, the governing principles of proceedings as enacted under Articles 4 to 10, 11 (sub-article 1) and 13 to 21 shall always be applicable to arbitration proceedings.

Where a party has in his possession an item of evidence, the arbitrator may enjoin him to produce the same.

*Article 1461*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Process with regard to the management and procès-verbaux are executed by the arbitrators where the consent to a reference does not give them powers to commission one of them.

Third parties shall be heard without an oath being administered.

*Article 1462*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

An arbitrator must undertake his assignment until its completion.

An arbitrator cannot be revoked save on a unanimous consent from the parties.

*Article 1463*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

An arbitrator may not withdraw himself nor be recused save for a ground of recusal that would have become apparent or which had supervened subsequent to his appointment.

Difficulties arising in relation to the application of the present Article shall be brought before the president of the competent court.

*Article 1464*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Arbitration proceedings shall terminate, save where there are specific agreement between the parties:

1° by the revocation, death or impediment of an arbitrator as well as his lost of the full exercise of his civil rights;

2° by the withdrawal or recusal of an arbitrator;

3° by the lapsing of the time-limit for arbitration.

*Article 1465*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Abatement of an arbitration proceedings shall be governed by the provisions of Articles 369 to 376.

*Article 1466*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where, before an arbitrator, one of the parties has challenged as by way of principles, or with reference to its compass, the vires of the arbitrator, it shall belong to the latter to rule upon the validity and limits of his nomination.

*Article 1467*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Save where there is a contrary agreement to the same, an arbitrator shall entertain vires to determine the subsidiary interlocutory issues in relation to the verification of writing or of forgery in accordance with the provisions of Articles 287 to 294 and of Article 299.

Where there shall be a plea of forgery, Article 313 shall be applicable before the arbitrator. The time-limit for arbitration shall run from the day on which the subsidiary interlocutory issue has been determined.

*Article 1468*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitrator shall fix the date on which the matter shall be deliberated.

After that date, no claim may be brought or new issue raised. No observation may be submitted nor any document be produced, save where it shall be at the request of the arbitrator.

TITLE III ARBITRAL AWARD

*Article 1469*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The deliberation of arbitrators shall be in camera.

*Article 1470*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitral award shall be given by way of majority votes.

*Article 1471*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitral award shall have to recite summarily the respective claims of the parties and grounds relied upon.

The ruling shall have to be reasoned.

*Article 1472*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitral award shall contain the following particulars:

- the name of arbitrators who gave it;
- the date;
- the venue where it was given;
- the surname, first names and denomination of parties, as well as their domicile or registered address;
- should the occasion arise, the name of *avocats* or any person who represented or assisted the parties.

*Article 1473*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitral award shall be signed by all the arbitrators.

Notwithstanding the above, where a minority among them have refused to sign it, the others shall recite the same and the award shall bear the same significance as where it has been signed by all the arbitrators.

*Article 1474*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

An arbitrator shall determine a dispute in accordance with the rules of law, save where, in the arbitration agreement, the parties assigned him as an amicable compounder.

*Article 1475*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

An award shall have the effect of bringing the contention which he has determined out of the cognisance of the arbitrator.

The arbitrator nevertheless shall entertain vires to interpret the award, to correct clerical errors and omissions that shall impair it and to complete it where he has omitted a ruling on an issue raised. Articles 461 to 463 shall be applicable. Where an arbitration tribunal cannot be convened de novo, such vires shall appertain to the court which would have otherwise been competent in default of arbitration.

*Article 1476*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitral award, from the moment that it has been given, shall carry the authority of res judicata in relation to the dispute which it has determined.

*Article 1477*

(*Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

(*Decree No. 92-755 of 31 July 1992, sec.305, Official Journal of 5 August 1992*)

The arbitral award may not be subjected to compulsory enforcement save by virtue of an enforceable judgment of exequatur to enforce the arbitral award from the *tribunal de grande instance* in whose province the award was given.

To this end, the minutes of the award subjoined with a copy of the arbitration agreement shall be lodged by one of the arbitrators or by the first mover to the clerk's office of the court.

*Article 1478*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The enforceable judgment of exequatur shall be appended on the minutes of the arbitral award.

The judgment disallowing the enforceable judgment of exequatur must be reasoned.

*Article 1479*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Rules governing interim enforcement of judgment shall be applicable to arbitral awards.

In cases of appeal or review to vacate, the first president or the judge having the management of the matter ever since that he has been seised, may grant the enforceable judgment of exequatur to the arbitral award supported with a certificate of interim enforcement. He may also order the interim enforcement in the manner prescribed under Articles 525 and 526; his decision shall amount to an enforceable judgment of exequatur.

*Article 1480*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The provisions of Articles 1471 (sub-article 2), 1472 in relation to the names of arbitrators and the date of the award, and 1473 are laid down under penalty of the matter being otherwise null.

## TITLE IV MEANS OF REVIEW

### *Article 1481*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitral award shall not be open to application to set aside nor to a petition in cassation.

It may be amenable to third party application to set aside before the court which would otherwise have been competent in default of arbitration, subject to the provisions of Article 588 (sub-article 1).

### *Article 1482*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitral award shall be appealable save where the parties have renounced to an appeal in the arbitration agreement. However, it is not open to appeal where the arbitrator has been appointed as an amicable compounder, save where the parties have expressly provided for this right in the arbitration agreement.

### *Article 1483*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where, following the distinction drawn under Article 1482, the parties did not renounced to the possibility of appeal, or where they have expressly provided for this right in the arbitration agreement, an appeal only shall lie, whether it shall be in view of reversing the

arbitral award or in view of its vacation. The appeal judge shall determine the matter as an amicable compounder where the arbitrator was so appointed.

*Article 1484*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where, following the distinctions drawn under Article 1482, the parties have renounced to a right of appeal, or where they have not expressly provided for this right in the arbitration agreement, a review to vacate an instrument termed arbitral award may nevertheless be brought albeit contrary stipulations to the same.

The same shall lie in the following cases:

1° where the arbitrator has ruled upon the matter without an arbitration agreement or where this agreement is null or has lapsed;

2° where the arbitration tribunal has been unlawfully constituted or a sole arbitrator unlawfully appointed;

3° where the arbitrator has ruled upon the matter contrary to the assignment given to him;

4° where the adversarial principle has not been respected;

5° in cases of nullity as referred to under Article 1480;

6° where the arbitrator has acted in contravention of a rule of public interest.

*Article 1485*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where a court seised of a review to vacate, has vacated an arbitral award, it shall rule upon the merits within the vires of the assignment of the arbitrator, save where a contrary intention is exhibited from all the parties concerned.

*Article 1486*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The appeal and the review to vacate shall be brought before the court of appeal in whose province the arbitral award was given.

These reviews shall be admissible ever since the award has been given; they shall cease to be so where they have not been brought within the month of the signification of the award endorsed with the enforceable judgment of exequatur.

The time-limit to bring these reviews shall operate a stay of execution in relation to the arbitral award. The review brought within the time-limit shall equally operate a stay of execution.

*Article 1487*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The appeal and the review to vacate shall be brought, managed and determined in accordance with the rules governing the procedure in contentious matters before the court of appeal.

The legal definition given by the parties to the means of review at the time where the declaration is made may be amended or particularized until the cognisance of the court of appeal.

*Article 1488*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The judgment granting an enforcement by exequatur shall not be open to any review.

Notwithstanding the above, an appeal or review to vacate of an award shall signify as of right, within the vires of the cognisance of the appellate forum, a review against the judgment of the judge allowing an execution by exequatur or shall have the effect of taking the matter out of the latter’s cognisance.

*Article 1489*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The judgment disallowing enforcement by exequatur shall be amenable to appeal until the lapsing of a time-limit of a month to be reckoned from its signification. In the latter event, the court of appeal shall take cognisance of the grounds that they would have otherwise raised against the arbitral award, by way of appeal or review to vacate as the case may be.

*Article 1490*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The dismissing of the appeal or the review to vacate shall confer upon the arbitral award the entitlement to enforcement by exequatur or upon such disposition which shall not be the subject of the condemnation of the court.

*Article 1491*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

A review to reconsider shall be open against the arbitral award in the case and in the conditions provided for in relation to judgments.

It shall be brought before the court of appeal which would have otherwise been competent to have cognisance of the other reviews against the award.

TITLE V INTERNATIONAL ARBITRATION

*Article 1492*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where international commercial interests are involved the arbitration shall be an international one.

*Article 1493*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Directly or by way of reference to a resolution by arbitration, the arbitration agreement may appoint the arbitrator or arbitrators or provide for the manner of their appointment.

Where, for arbitration held in France or for those in relation to which the French procedure has been contemplated, the convening of the arbitration tribunal is facing difficulties, the first mover may, save where there is a contrary clause, seise the president of the *tribunal de grande instance* of Paris in accordance with the manner laid down under Article 1457.

*Article 1494*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitration agreement may, directly or by way of reference to a resolution by arbitration, lay down the procedure to apply in the course of the arbitration proceedings; it may equally bring the latter under a law of procedure which shall be specified.

Where the agreement is silent, the arbitrator shall lay down the procedure, to the extent that the same is necessary, either directly, or by way of reference to a law or to a rule of arbitration.

*Article 1495*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

Where an international arbitration shall be amenable to French law, the provisions of titles I, II and III of the present book shall only apply in default of specific agreements and subject to Articles 1493 and 1494.

*Article 1496*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitrator shall determine the dispute in accordance with the rules of law that the parties have chosen; in default of such a choice, in accordance with those which he shall deem appropriate.

He shall consider in any case the customs in commercial activities.

*Article 1497*

(*Inserted by Decree No.81-500 of 12 May 1981, Official Journal of 14 May 1981, amendment JORF of 21 May 1981*)

The arbitrator shall rule upon as an amicable compounder where the agreement between the parties shall appoint him in that manner.

TITLE VI RECOGNITION, COMPELLED ENFORCEMENT AND MEANS OF REVIEW IN RELATION TO ARBITRAL AWARDS GIVEN ABROAD OR IN MATTERS OF INTERNATIONAL ARBITRATION

CHAPTER I RECOGNITION AND COMPELLED ENFORCEMENT IN RELATION TO ARBITRAL AWARDS GIVEN ABROAD OR IN MATTERS OF INTERNATIONAL ARBITRATION

*Article 1498*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981 in force on 1 January 1982)*

Arbitral awards shall be recognized in France where their existence has been established by the one claiming a right under it and where recognition of the same would not manifestly be contrary to public international order.

Under the same conditions, they shall be rendered enforceable in France by the judge for enforcement.

*Article 1499*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

The existence of a arbitral award shall be established by the production of the original subjoined with the arbitration agreement or copies of the same but shall satisfy the conditions required as to their authenticity.

Where those documents are not drawn up in the French language, a party shall produce a certified translation from a translator registered on the list of experts.

*Article 1500*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

The provisions of Articles 1476 to 1479 shall not be applicable.

CHAPTER II MEANS OF REVIEW IN RELATION TO ARBITRAL AWARDS GIVEN ABROAD OR IN MATTERS OF INTERNATIONAL ARBITRATION

*Article 1501*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

The decision disallowing the recognition or enforcement of an award shall be amenable to appeal.

*Article 1502*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

An appeal against the decision which shall confer recognition or enforcement shall be open only in the following cases:

1° where the arbitrator has ruled upon the matter without an arbitration agreement or where this agreement is null or has lapsed;

2° where the arbitration tribunal has been unlawfully constituted or a sole arbitrator unlawfully appointed;

3° where the arbitrator has ruled upon the matter contrary to the assignment given to him;

4° where the adversarial principle has not been respected;

5° where the recognition or enforcement shall be contrary to public international order.

*Article 1503*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

The appeal referred to under Articles 1501 and 1502 shall be brought before the court of appeal to which the judge who ruled upon the matter is amenable. It may be brought until the expiration of the time-limit of a month to be reckoned from the signification of the decision of the judge.

*Article 1504*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

The arbitral award given in France in matters of international arbitration may be the subject-matter of a review to vacate in the case provided for under Article 1502.

The judgment allowing the enforcement of this award shall not be open to any review. Notwithstanding the above, the review to vacate shall signify as of right, within the vires of the cognisance of the appellate forum, a review against the judgment of the judge allowing execution or shall have the effect of taking the matter out of the latter's cognisance.

*Article 1505*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

The review to vacate referred to under Article 1504 shall be brought before the court of appeal in whose province the award was given. This review shall be admissible ever since the award has been given; it shall cease to be admissible where this right has not been exercised within the month of the signification of the award which has been rendered enforceable.

*Article 1506*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

The time-limit to bring a review as referred to under Articles 1501, 1502 and 1504 shall operate a stay of execution of the arbitral award. The review brought within this time-limit shall equally operate a stay of execution.

*Article 1507*

(*Inserted by Decree No.81-500 of 12 May 1981, sec.5 and 52, Official Journal of 14 May 1981, amendment JORF of 21 May 1981)*

The provisions of Title IV of the present Book, save those of sub-article 1 of Article 1487 and of Article 1490, shall not be applicable to means of review.