

Chapter 9_Post Judgment Proceedings

- I. Right of Appeal and Powers of the Appellate Court
- II. Review in Cassation
- III. Execution
- IV. Pardon and amnesty

Right of Appeal and Powers of Appellate Court.

Who may Appeal? [Art 185]

- ❖ the accused,
- ❖ the public prosecutor or
- ❖ both as the case may be .

The convicted person may appeal against

- ***Conviction***
- ***penalty***
- ***both.***

If the accused pleaded guilty as per Art 134 of the CPC, he cannot appeal against his conviction rather only in respect of the extent and legality of the penalty.

Public or private prosecutor against

- the ***acquittal***
- the ***penalty***

Limitations on appeal right.

1. No interlocutory appeal Art 184

- interlocutory decisions are decisions which ***do not dispose the case finally-*** finally in respect of that particular court which is trying the case
- appeal is possible only in respect of final decisions.

Interlocutory matters

- i) granting or refusing an adjournment under Art 94; or
- ii) regarding an objection under Art 131; or
- iii) regarding the admissibility or non admissibility of evidences under Art 146

2) Appeal ***could only be exercised once.***
However, there is what we call “second appeal” in respect of matters that were decided by Federal First Instance Court. That is if the Federal High Court, in its appellate jurisdiction varies or reverses the decision of the Federal First Instance Court, a party dissatisfied with such decision may lodge his appeal to Federal Supreme Court.

Notice of Appeal [Art 187]

- *Notice of appeal to the court which renders the judgment in respect of which appeal is sought .*
- *It should be files within **fifteen days** of the delivery of the judgment.*
- The court then prepares the copy of the judgment appealed against and hands to the appellant or his advocate without delay.
- The date on which the copy is handed to the appellant, his lawyer or the superintendent of the prison shall be fixed on the copy by the registrar of the court.

Memorandum of appeal [art 189]

❖ *Content of memorandum of appeal*

- List of grounds of objection without any arguments
- It shall be accompanied by a copy of the judgment appealed against.
- It shall state the nature of the relief sought.
- It shall be signed by the appellant and his advocate,
- ***The law provides that the memorandum of appeal, the notice of appeal and the copy of the judgment shall be filed in the registrar of the court, which renders the judgment appealed against.***

Application for stay of execution [art 188]

- if the applicant has been convicted and is serving the sentence, he may also request for the ***stay of the execution of the sentence of imprisonment.***
- Such application, for stay of execution of the judgment may be made ***to the court of appeal*** at any time before the appeal is heard or during the hearing of the appeal.

Applications for leave to appeal out of time [191]

- Appeal after lapse of the time provided by the law
- Before granting such appeal be made, the court must be satisfied that the cause for the appellants delay is not within his control.
- Whilst the court grants leave to appeal out of time, it shall fix the date within which the memorandum of appeal be field to the registrar.

Non appearance and its effect [art 193]

- ***If the appellant or his advocate fail to appear after dully being notified of the date for hearing, the appeal shall be struck off***, unless he can show to the satisfaction of the court that he was absent for reasons that are beyond his control, after which the case may be restored to the list.
- ***if the respondent fails to appear, the appeal shall be heard in his absence.***

Additional evidence [Art 194]

- If the appellate court deems the production of additional evidences is ***necessary for justice***, it may order the production of such additional evidences ***on its own motion*** or ***accept the application of the parties*** to this effect.

Powers of appellate court [Art 195]

- 1) On an appeal from an order of ***acquittal*** reverse such order and direct that the accused be tried by a court of competent jurisdiction or find him guilty and sentence him according to the law ; or
- 2) On an appeal from ***conviction*** and ***sentence***
 - a) Reverse the finding and sentence and acquit the accused; or
 - b) With or without altering the finding maintain , increase or reduce the sentence.
- 3) On an appeal from ***conviction*** only reverse the finding and sentence and

II) Review in cassation

- Art 78/2/ of the FDRE Constitution provides that the supreme federal judicial authority is vested in the Federal Supreme Court and thus, it has the power of cassation over **any final** court; decision containing **basic error of law**.
- Decisions over which the Federal Supreme Court has cassation power are listed under Art 80/3/a/ of the FDRE Constitution as:
 - final decision of the Federal High Court rendered in its appellate jurisdiction;
 - final decision of the regular division of the Federal Supreme Court; and
 - final decision of the regional supreme court rendered as a regular division or in its appellate jurisdiction.

- An application for review of a case by way of cassation shall be filed within ***ninety days***