

Procedural sanction as a tool to address deviations affecting the rights of the accused

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Abstract

Procedural sanctions are among the most important guarantees of procedural law (civil or criminal). They constitute the instrument ensuring respect for legal rules governing procedural acts. They represent the negative legal consequence resulting from the violation of procedural rules, and their objective is to protect the rights of litigants and ensure the proper administration of justice.

Procedural sanctions take various forms depending on the nature of the violation, most notably nullity, forfeiture, inadmissibility, and non-existence. They aim to achieve several functions, including deterrence, protection, and organization of litigation.

Since procedural sanctions are not an end in themselves but a means to ensure fair and orderly judicial proceedings, preventing form from prevailing over substance, the law has surrounded them with safeguards such as legality of procedure, achievement of purpose, and prohibition of abuse of rights.

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Introduction

The law established the concept of procedural sanction as a characterization of a procedural act that does not conform to its legal model, either because it was not performed or because it was performed defectively. Public authority enforces it coercively against the violator, and it takes several forms such as nullity, lapse of proceedings, suspension of the case, non-existence of the act, non-recognition of procedures and treating them as if they never existed, or it may take the form of a financial fine or compensation, etc. [1]

The ineffectiveness of procedural sanctions means that the defective act escapes sanction and produces its effects as if it were valid, i.e., it generates its legal consequences as if it were free of any violation. This situation creates disorder within the legal system, undermines respect for legal rules, and weakens their deterrent force, replacing compliance with disregard. [2]

Ensuring procedural regularity is achieved at different stages through technical corrective reforms embodied in procedural sanctions. [3]

What is meant by procedural sanction? (Chapter One), what are its characteristics and objectives? (Chapter Two), and what are its types and resulting effects? (Chapter Three).

Chapter One: Definition and Autonomy of Procedural Sanction

The idea of procedural sanction aims to ensure respect for procedural rules by monitoring acts that deviate from the legal model and affecting them with defects that prevent them

from producing their effects. The effectiveness of procedural rules is measured by their success in achieving their legal effect, and they are ineffective if they fail to produce it or are not properly applied.

Section One: Definition of Procedural Sanction

There is no linguistic equivalent for the term “procedural sanction” as it is a modern legal concept. However, if we analyze the meanings of “sanction” and “procedure” separately, the closest meaning is “punishment” and “method.”

Some scholars define procedural sanction as a legal qualification of a procedural act that does not comply with the conditions of validity and its legal model [4], while other definitions consider it a “description” or a “qualification” attached to the defective procedural act.

It appears from the above that procedural sanction consists in disregarding the act and depriving it of its intended purpose, for one of the following reasons:

- Either the act was not carried out in the manner prescribed by law.
- Or it was carried out outside the legally required time.
- Or it lacks the prerequisites required by law for its existence.
- Or it is preceded by conditions that legally prevent its performance. [5]

In essence, procedural sanction is a general abstract legal situation resulting from the violation of a procedural rule. It is inherently negative, consisting in the deprivation of a legal interest, and it takes several forms such as nullity, non-existence, inadmissibility, annulment, or procedural fines. [6]

Thus, procedural sanction serves as a mechanism for protecting principles ensuring the proper administration of justice, such as the adversarial principle, the right of defense, good faith, and judicial impartiality. [7]

Section Two: Distinction between Procedural and Civil Sanctions

Criminal sanctions are all legal consequences imposed for the violation of criminal rules, and they include penalties such as imprisonment, fines, confiscation, and others depending on the nature of the offense. [8]

Civil sanctions, on the other hand, are legal consequences attached to violations of civil legal rules, aimed at repairing harm and restoring balance between interests. [9]

Chapter Two: Characteristics and Objectives of Procedural Sanctions

Section One: Characteristics

1. Objectivity

Procedural sanctions are characterized by objectivity, meaning they attach to the procedural act itself, rendering it void and incapable of producing legal effects. [10]

2. Relativity

Procedural sanctions do not apply generally to all individuals, but only to procedural actors involved in the litigation (judge, prosecution, clerk, accused, civil party, etc.). [11]

3. Universality of Purpose

Procedural sanctions aim at broader objectives than substantive sanctions, ensuring respect for procedural rules so that substantive law can achieve its purpose. [12]

Section Two: Objectives of Procedural Sanctions

Through the following elements, we will explain the objectives of procedural sanctions, which are essentially the protection of legality (first branch), and the respect of procedural legal rules within the framework of criminal law (second branch).

Subsection One: Protection of Procedural Legality

Procedural legality has two aspects: the first relates to criminal law, meaning the principle of “no crime and no punishment without a legal text”; the second aspect prevents the violation of rights and freedoms, and refers to procedural legality, which is considered the second link of criminal legality and also a fundamental principle in the criminal procedural system. Procedural legality is one of the forms of legality in general, and a link within criminal legality in particular. If the principle of legality in the field of crimes and punishments means that there is no crime, no punishment, and no precautionary measure except by legislative text, then procedural legality in general includes the principle of the presumption of innocence. It also includes the prohibition of taking any criminal measure against the accused except on the basis of law and under judicial supervision, within the limits of guarantees established on the basis of the presumption of innocence.

From procedural criminal legality derive several principles, such as the principle of the presumption of innocence, which is one of the fundamental principles in modern procedural systems. It presumes the accused innocent until proven guilty by a final judicial decision. This means that every person accused of a crime, regardless of its seriousness, must be treated as innocent until guilt is established. This principle is well established in most procedural legislations, and it will be explained in detail in the following sections.

Another principle is the legality of criminal procedures: every procedure at different stages of the case must be governed by law, and no authority or person, regardless of rank, may invent procedures to be applied at any stage, since the law alone governs these procedures as they relate to the protection of personal freedoms guaranteed by the constitution and applicable only by law.

Among these principles is also judicial supervision over criminal procedures, meaning the necessity of trying the accused before his natural judge¹. This principle represents an important guarantee against all forms of deviation and lack of impartiality caused by interference of other authorities in judicial matters. The natural judge is the judge whose organization and functioning are governed by laws that ensure independence. He exercises judicial functions in accordance with procedural laws and has general jurisdiction over all individuals and crimes, with an independent structure separate from the executive and legislative branches.

Another principle is the removal of barriers to litigation and the recognition that the right to resort to justice is guaranteed to all without exception. This is a constitutional right that no authority may deny, and it constitutes an important constitutional limitation on the criminal legislator to ensure respect for personal freedom in the face of authority.

Subsection Two: Respect for Procedural Rules

After examining the protection of procedural legality, it can be said that the main objective of protecting procedural legality is the respect of procedural rules, which is a direct consequence of it. Ensuring this protection necessarily requires respecting the rules governing the effectiveness. If justice requires granting parties in criminal proceedings the right to carry out certain procedures, the same justice also requires disregarding any

procedure carried out in violation of its legal conditions. For example, if the law sets a specific time limit for a procedure, compliance is mandatory, and sanctions must be imposed on procedures that violate it, in order to achieve legal stability¹³.

This stability means that procedural rules must be strictly respected by the parties in the case, and no procedure should depend on personal will or be carried out at any chosen time, as this would contradict the requirement of expeditious adjudication. Proper management and organization of the case is one of the most important objectives of procedural sanctions, achieved through ensuring respect for procedural rules and subjecting every procedure to the conditions and requirements stipulated by law.

Chapter Three: Types of Procedural Sanctions and Their Consequences

The Criminal Procedure Code (C.P.C) includes the procedures that constitute the criminal case at all its stages, from its initiation to the issuance of a final judgment. It also establishes rules and standards for the parties or the judge to carry out these procedures within a legal framework. The criminal case derives its legitimacy from the validity and legality of the procedures carried out therein.

There are two types of procedures: the first is intended only for guidance and instruction, without any consequences for failure to observe it; the second type is considered essential procedures due to their importance for the proper functioning of justice and the protection of the parties' rights, particularly the rights of defense. The foundation of procedures is validity and compliance with the legal model; therefore, any defective procedure is null and void¹⁴.

The judge plays an active role in ensuring procedural integrity, granting real protection to the accused by applying procedural sanctions and correcting irregularities that prevent him from benefiting from legal guarantees¹⁵.

Procedural sanctions, as a means of judicial control and protection of personal liberty, take several forms. A procedural act may be defective, leading the judiciary to impose one of the procedural sanctions, resulting in legal consequences affecting legal positions both within and outside the proceedings. The first of these consequences appears in the impact of sanctions on the case, especially criminal cases.

Section One: Types of Procedural Sanctions

We will study the different forms of procedural sanctions by dividing this requirement into four elements: nullity (first), inexistence (second), lapse/forfeiture (third), and inadmissibility (fourth).

Subsection One: Nullity (Batlān)

Nullity is a procedural sanction that targets any procedural act lacking one or more of its essential legal elements⁵. It is a form of sanction not imposed on a person (as in fines or compensation), but on a legal act itself, which is considered an essential procedural act whose omission leads to nullity.

Unlike other legislations, the Algerian legislator did not establish a precise criterion to define essential procedures, but adopted a general criterion: violation of the rights of defense. Article 159 of the Criminal Procedure Code provides that violation of essential procedures in the investigation stage—particularly those in Articles 100 and 105—leads to nullity if it affects the rights of defense or the rights of any party in the case.

For example, interrogating the accused before issuing a detention order, the right of the accused to choose a lawyer, and interrogation by the investigating judge in the presence of the court clerk are all essential procedures, and their violation results in nullity¹⁶.

The Supreme Court has confirmed this principle in many rulings, emphasizing that formality is essential when it affects rights of the party invoking it¹⁷.

Conversely, non-essential (guiding) procedures are those intended for organization and instruction and do not aim to protect rights; therefore, their violation does not lead to nullity¹⁸.

Thus, nullity is a legal description attached to a procedural act that fails to conform to its legal model, rendering it incapable of producing its legal effects. The general rule is that procedural acts are presumed valid, while nullity is exceptional. Proof of nullity may be established by all means of evidence¹⁹.

Modern procedural law rejects nullity for every formal violation; it must be of sufficient importance. Nullity may be statutory or judicial (essential nullity). Its cause lies in the absence of essential formal conditions, while subjective conditions (consent, capacity, object, cause) are generally subsumed under formal requirements.

Nullity may be absolute (related to public order) or relative (protecting private interests). Its effect is to render the act void and deprive it of legal effects, and may extend to subsequent acts based on it, provided they are dependent upon it²⁰.

Subsection Two: Inexistence

The theory of inexistence originated within civil law in connection with certain legal acts, and later its echoes extended to other branches of law. It can be said that what is called the inexistence of a criminal procedural act refers to a defective procedural act that reaches a level of gravity exceeding that of nullity. Inexistence is thus the sanction applied to a procedural act that violates the law in such a way that it loses all legal value.

Inexistence is a procedural sanction imposed on an act that has lost the essential elements of its existence, and it results in the non-production of any legal effects that the act could have produced had it existed, whether the inexistence is factual (logical) or legal. Inexistence is based on the idea that a procedural act, in order to be described as valid or void, must first exist; if it does not exist, it cannot be characterized by either status. It is also a sanction imposed by reality and logic and does not require any legal text to regulate it. It is unreasonable to expect the legislator to regulate the inexistence of what does not exist, since a non-existent procedural act, although materially present, is legally absent. It should be noted that a non-existent act differs from a void act, even though both result in the suspension of legal effects. They differ in the cause of this suspension. Inexistence, by its nature, means that the act does not exist and therefore produces no effect. Nullity, however, means that the act exists but must be deprived of its legal effects.

Inexistence is divided into two main types: factual inexistence and legal inexistence. Factual inexistence occurs when one of the elements without which material existence cannot be conceived is missing. This occurs in two cases: absence of writing, and absence of any procedural action. Legal inexistence occurs when the act exists materially but is legally nonexistent.

Subsection Three Lapse (Forfeiture)

Lapse is one form of procedural sanctions. As a procedural sanction, it is based on the idea that criminal proceedings are a means by which the state exercises its power of punishment, and procedural acts are merely tools of this mechanism.

Lapse differs from nullity in that it affects the right to perform a procedural act, not the act itself. It applies only to procedural rights and not to obligations. Accordingly, it concerns the right of parties to carry out procedural acts within a specific time limit. Nullity, on the other hand, arises from violation of essential procedural rules.

Lapse does not apply to acts performed by the judge, because the law does not grant the judge a right to perform procedural acts but rather imposes a duty on him. His failure to act is considered a denial of justice, which may constitute a legal offense. Moreover, procedural time limits imposed on judges are intended to ensure speed and efficiency in justice delivery; they are merely organizational deadlines. Therefore, the expiry of such deadlines does not prevent the judge from performing the act later.

The legislator has defined cases of lapse exhaustively, as it is a serious sanction that leads to the permanent extinction of a right. Therefore, analogy is not permitted to extend its scope. It is always a matter of public order, as it is linked to legislative policy in regulating litigation, ensuring its resolution and legal stability.

Subsection Four: Inadmissibility (Non-acceptance)

Inadmissibility is a procedural sanction imposed by law for violating rules relating to the validity conditions of a specific type of procedural act. It results in the refusal to adjudicate the merits of the claim, or it may arise from failure to meet one of the procedural prerequisites required by law, which give the procedural act legal recognition and admissibility.

For example, Article 427 of the Criminal Procedure Code provides that an appeal against an interlocutory judgment is inadmissible except when combined with the final judgment on the merits²².

Inadmissibility is also a preventive procedural sanction against abuse of procedural rights. It applies specifically to procedural requests submitted by parties to the court for adjudication. These include claims, appeals, objections, or any procedural request seeking judicial intervention.

Thus, inadmissibility is a matter of public order because it relates to the court's jurisdiction to hear the request. The court must therefore raise it of its own motion, even if none of the parties invoke it. It may also be raised at any stage of the proceedings, even for the first time before the Supreme Court. In some cases, an inadmissible request may be reintroduced if the defects are corrected and the right to act still exists.

Section Two: Consequences of Procedural Sanctions

Procedural sanctions produce specific consequences affecting the criminal case (first branch), affecting judgments and decisions in the civil action dependent on the criminal case (second branch), and giving rise to the liability of the procedural actor for procedural defects (third branch).

Subsection One: Effect of Procedural Sanctions on the Criminal Case

The criminal case is among the types of cases most affected by procedural sanctions, as it constitutes the natural field for such sanctions, which serve as an effective remedy for defects affecting procedural instruments. This raises the question of the basis of this effect and its consequences.

First: Basis of the Effect of Procedural Sanctions

The effect of procedural sanctions is primarily manifested through their imposition on procedural acts that constitute the means of the criminal case. Therefore, this effect varies

according to the type of sanction on the one hand, and the nature of the procedural act on the other.

Second: Consequences of Applying Procedural Sanctions

Generally, the consequence of imposing a procedural sanction on a defective act is the removal of its capacity to produce legal effects that it would have produced had it been validly formed. For example, nullity of a defective search renders it incapable of producing its effects, and the items seized cannot be attributed to the accused, and all consequences arising from the invalid search are also void.

Similarly, declaring a confession void because it was obtained under coercion means that it is considered as if it was never made by the accused; therefore, it cannot be used as a basis for conviction, especially if it is the only evidence in the case. A conviction based on such a confession is itself void due to the absence of a legal basis. Such a judgment does not remove the case from the jurisdiction of the court that issued it, because a void judgment cannot terminate criminal proceedings, and it also has no binding authority in civil proceedings where there is a connection between the two actions.

Subsection Two: Effect of Procedural Sanctions on Judgments in the Civil Action

In addition to the general harm caused to society, a crime may also cause private harm to individuals. While the criminal action addresses public harm, the civil action is the means of redressing private harm.

The civil action may be brought before the criminal court hearing the criminal case, which must decide it in accordance with the criminal judgment. It may also be brought directly before the civil court. This raises two questions: the conditions of *res judicata* of the criminal judgment before the civil court, and the fate of the civil action after procedural sanctions are imposed.

First: Conditions of Res Judicata of the Criminal Judgment before Civil Courts

One of the most important effects of the criminal case on the civil case is the binding force of the criminal judgment (*res judicata*). This means that what is decided in the criminal judgment is binding on the civil court, which must comply with it and may not reconsider issues already decided by the criminal court when such determination was necessary.

For a criminal judgment to have binding force before civil courts, it must be issued by a competent authority in a criminal case, declaring either the acquittal or conviction of the accused with determination of the applicable penalty²³. It must also be final and definitive.

Second: Fate of the Civil Action after the Imposition of a Procedural Sanction on the Criminal Judgment

If the civil action is brought before the civil court, and the latter suspends its decision pending the criminal case, and a criminal judgment is subsequently issued, and after it is challenged it is declared null due to a defect, then such nullity has no effect on the civil action²⁴. This is because the civil case is decided only after the criminal judgment has acquired final authority. Once the criminal judgment becomes final, it is purified from all defects that may have led to its nullity; therefore, the civil action is not affected by such nullity.

However, if the civil action has already been decided by the criminal court as a subsidiary claim to the criminal action, then—even though the criminal judgment is not binding on the civil action in this situation—it remains connected to it. This appears when the criminal judgment is annulled after appeal but before it becomes final, and the

consequence of such nullity is the acquittal or release of the accused. In this case, and according to general principles, the civil judgment is also annulled, because when the principal falls, what is based upon it also falls²⁵.

On the other hand, if the nullity of the criminal judgment is discovered after it has acquired final authority, it has no effect on the compensation ruling, because such nullity is considered cured by the judgment becoming final. Therefore, it has no effect on the criminal judgment, and a fortiori it has no effect on the civil compensation judgment.

As for inexistence, it should be noted that if the civil action is brought before the civil court and a criminal judgment is issued which is no longer subject to appeal, but is nevertheless legally non-existent, then it has no effect on the civil action. The civil court cannot rely on such a judgment, because it is established that a non-existent judgment has no *res judicata* effect before the civil court¹⁵. In this case, since the inexistence of the criminal judgment has been declared and set aside through reopening of proceedings, reference must be made—by analogy—to the legal provisions governing the effects of retrial with respect to the civil action.

Subsection Three: Liability of the Procedural Actor for Procedural Defects

Procedural sanctions have a negative effect resulting from the violation of procedural rules governing the act. This effect consists in the inability of the act to produce its legal consequences that it would have produced had it been validly performed. In addition to this negative effect, a positive effect may also arise, consisting in the imposition of non-procedural sanctions on the person responsible for the violation, as a punishment for breaching procedural rules.

First: Administrative Liability

Administrative or disciplinary liability of the procedural actor arises when he breaches the duties of his function or mission, which he is required to respect under the rules of the Criminal Procedure Code. This leads to the imposition of disciplinary sanctions on him²⁶. This liability is specific to public procedural actors. Private procedural actors are generally not subject to it, except for lawyers, who, although acting in their own name and account, may breach their professional duties, thereby incurring disciplinary liability before their professional body, which may sanction them accordingly.

The sources of administrative liability are varied²⁷. It may arise under the internal rules of the professional body to which the person belongs, or under public service disciplinary law, or under the Criminal Procedure Code itself.

For judges, procedural law provides that their administrative liability may arise from legal errors committed in the performance of their duties, constituting a breach of professional obligations. When such breach is established, the judge may be subject to disciplinary proceedings. These errors are detected either through supervision of judicial work or through investigations. If the error is serious, or if the judge behaves in a manner that undermines the dignity of justice, the matter is referred to the Minister of Justice for appropriate measures.

Second: Criminal Liability

Criminal liability means that procedural sanctions alone are no longer sufficient to remedy the breach of legal rules¹⁸. A violation of procedural rules may, in addition to the procedural defect requiring a procedural sanction, constitute a criminal offence when it also breaches criminal law provisions.

Penalties vary depending on whether liability is established, and on the applicable law governing such liability. For public procedural actors, liability differs depending on whether the person is a member of the prosecution, a judge, a judicial police officer, or another person. As for private procedural actors, criminal liability for procedural defects is generally difficult to establish as principal offenders, although it may arise through participation with a public procedural actor.

Third: Civil Liability

A procedural act committed by a procedural actor may cause material or moral damage to one of the parties, which gives rise to civil liability requiring compensation.

1. Civil liability of public procedural actors

Civil liability varies depending on whether the actor is a member of the prosecution, a judge, a judicial police officer, or another person.

A defective procedural act by a public prosecutor—such as failing to appeal judgments within legal time limits—does not usually give rise to civil liability, as this is difficult to establish in practice. By contrast, a judge may incur civil liability, for example where he issues an arbitrary detention order later declared void, in which case he may be required to compensate the accused for the resulting damage.

Judicial police officers and investigators may also incur civil liability if their defective acts cause material or moral harm, such as in cases of abusive search.

Generally, civil liability of public procedural actors for procedural defects that cause damage is governed in most legal systems by the system of judicial misconduct (recusal proceedings)²⁸. Accordingly, compensation is only available through a special action for judicial misconduct.

2. Civil liability of private procedural actors

Private procedural actors may also incur civil liability if their procedural defects cause damage. A lawyer may be held contractually liable and required to compensate his client if he fails to file appeals within legal deadlines, resulting in the loss of the right to appeal and harm to the client's legal position. This is recognized in both French and Algerian law as contractual liability for professional fault²⁹.

As for other persons such as the accused, complainant, civil party, or civilly liable person, no civil liability arises for procedural defects committed by them. However, they may be subject to civil obligations such as payment of fees paid upon appeal, which may be retained by the public treasury in cases where the appeal is accepted or the right to appeal is lost.

Conclusion

Procedural sanctions constitute the safety valve that protects the body of justice from distortion or deviation. They are not merely rigid punitive tools, but the real guarantee that transforms legal rules from theoretical texts into binding realities.

Modern legal doctrine shows a shift toward the principle of purposiveness and procedural correction, reflecting a humanistic orientation that refuses to sacrifice justice to excessive formalism. Procedural sanctions must therefore remain a means of correcting judicial proceedings, not destroying them.

Ultimately, the effectiveness of any legal system is measured by the precision and organization of these sanctions and by the judiciary's ability to apply them with a spirit of

justice rather than mere textual rigidity, ensuring fair, transparent, and efficient proceedings, and ultimately achieving legal stability and confidence in the justice system.

Footnotes

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- See: Ben Aarab Mohammed, *Structural and Procedural Guarantees of the Right to a Fair Trial*, PhD thesis, Faculty of Law and Political Science, University of Mohamed Lamine Debaghine, Setif 2, 2014, p. 224.
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