

Regulations for Drafting Reports in Criminal Matters

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Abstract :

This study aims to shed light on the various legal aspects related to the minutes written in criminal cases, as the research begins by defining the concept of criminal records, then addresses explaining the various formal and substantive conditions for writing criminal minutes, as well as the categories and bodies legally authorized to write these minutes. The topic of " Rules of records preparing in criminal matters" get a great importance in the field of criminal justice, as it works to ensure the transparency of criminal procedures taken against individuals, in addition to imposing a type of control over the work of judicial police in the early stages of criminal cases in general. At the end of the research, the problem raised will be answered according to the analytical method appropriate to the nature of the subject studied, which is the nature, types and conditions for writing criminal minutes, as well as the bodies and persons legally authorized to write and prepare these legal documents.

Key words: Rules - records - preparing - criminal – matters.

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Introduction:

Judicial reports stand as fundamental pieces of evidence in criminal proceedings, forming the core of the case file from preliminary investigations through to the final, definitive judgment.

It is well established that criminal prosecution, under the Code of Criminal Procedure, commences only after a public action is initiated. Once proceedings begin, they must be documented in writing. This involves written records, prepared, drafted, and formalized by qualified and trusted individuals. These individuals, representing a police or judicial authority, are sworn in and obligated to perform their duties with utmost professionalism and impartiality, ensuring that these reports accurately reflect all necessary information, statements, and data.

However, despite their training and commitment to following instructions or combating crime, these qualified individuals may make errors in their work. Such errors, particularly in the drafting of reports, can significantly affect the validity and trajectory of a criminal case. Consequently, modern legislation established that criminal prosecution, under the Code of Criminal Procedure, commences only after legislation, including Algerian law, has intervened by establishing a set of controls to govern the validity and integrity of criminal reports. This involves explicitly identifying the individuals empowered by law to prepare and draft reports, as well as setting forth the essential procedural and substantive conditions that ensure their soundness. Furthermore, these regulations define the evidentiary value of each minute, specifying whether it serves merely as a reference or possesses a particular probative force. The law also allows for challenging, debating, and excluding reports, and in some cases, asserting their nullity, with the possibility of holding the drafters accountable disciplinarily and criminally.

The role of the defense in scrutinizing, examining, and debating these reports and challenging their validity during investigation or trial is of paramount importance. This contributes significantly to safeguarding the rights of parties and achieving justice, while upholding the principle of the rule of law. The defense is empowered to submit requests, challenge

reports, and present defenses before all judicial authorities, thereby guaranteeing the rights and interests of the parties involved.

Therefore, a study of judicial reports necessitates an examination of their nature, concept, characteristics, types, and methods of drafting and formulation. This includes exploring their required form, the qualifications of their drafters, and the regulatory and legal texts governing each type. To address these issues, we pose the following question:

***What is the concept of criminal reports, what are their types, and who are the authorized individuals responsible for drafting them?
Furthermore, what are the conditions and regulations governing their preparation mechanisms?***

The answers to these questions will be provided through an analytical approach suited to the subject matter, aiming to study and analyze the various types of reports and the legal texts that regulate them. This will be structured around the following axes:

1. Concept of Official Reports Drafted in Criminal Matters

1.1. Definition of Official Reports and Documents in Criminal Matters

1.2. Categories and Entities Legally Authorized to Draft Valid Reports

2. Conditions for the Validity of Criminal Reports

2.1. Formal Requirements for the Validity of Criminal Reports

2.2. Substantive Requirements for the Validity of Criminal Reports

1. Concept of Official Reports Drafted in Criminal Matters

1.1. Definition of Official Reports and Documents in Criminal Matters

Reports are defined as "those written documents in which a public official or a person charged with a public service records what has been done by them or what they have received from interested parties, by legal procedures and within the limits of their authority and jurisdiction."

¹Drafting refers to the written preparation involved in transcribing information or data in a legible format. This can be handwritten or produced using approved typing devices, while adhering to professionalism, objectivity, and impartiality. Creative skills may also be employed in this process.

As for reports prepared by the judicial police, these are the written documents or papers drafted by individuals holding the status of judicial police during the exercise of their duties and within their temporal and spatial competencies. They encompass everything observed, witnessed, or received in statements, as well as all operations undertaken within their jurisdiction.

Some have defined reports as "a written instrument prepared by the legally competent official, following ethical and legal controls that must be respected and considered whenever there are facts with a criminal description, when documenting data related to complaints received directly or after direct observation."

Reports have also been defined as official documents that can only be challenged as stipulated by law. They must be prepared by a competent official and include all facts related to the crime observed by them, whether concerning the reception of statements, the documentation of a specific event, the conduct of a search, the execution of seizures, or the carrying out of interrogations. The drafter must adhere to all formal controls and procedures established by law, regarding both the capacity of the drafters and the formal requirements of the documents being prepared.

They are also defined as papers containing data concerning an event of significance in proving the commission of a crime and its attribution to

the accused, or as a set of conventional symbols expressing a coherent group of ideas and meanings.²

The draft law concerning the fight against forgery and the use of forged documents adopted a definition stating that a document is "any paper or electronic writing that allows the identification of the person who issued it and contains a statement of fact or an expression of will capable of establishing, modifying, or terminating a legal status, whether the document was primarily prepared for this purpose or this effect resulted from it by force of law."

The draft law, in Article 3, defined a "document" as "correspondence and records created or obtained by the state or its institutions, legislative, judicial, and executive bodies, public administrations, local communities, and any institution where the state owns all or part of its capital..."

Referring to Article 212 of the Code of Criminal Procedure, we find that it stipulates, "Crimes may be proven by any means of evidence..." This indicates that the legislator did not restrict the judiciary to a single, conclusive piece of evidence; rather, it allows the crime to be proven by all available methods. While the principle of "confession being the master of evidence" exists, the aforementioned article places the accused's confession on par with other forms of evidence, rather than elevating it as the sole master of evidence.³

In this context, Article 214 stipulates that "a minute or report shall only have probative force if it is formally valid, prepared by its drafter during the performance of their official duties, and contains observations or information regarding a matter within their jurisdiction that they saw, heard, or witnessed."

Article 215 considered reports and reports documenting felonies or misdemeanors as mere investigative inferences unless otherwise stipulated by law. However, despite these reports having inferential probative value, the law does not permit their exclusion or removal from the case file. On the contrary, the law requires their presence in the case file as they are a means of proof and an important element of the

procedures that constitute the file, ensuring that the discussion of the case facts is subject to judicial discretion.

In this regard, Article 216 of the Code of Criminal Procedure states that "in cases where the law, by special provision, grants judicial police officers or their assistants, or officials and their assistants entrusted with certain judicial police tasks, the authority to establish misdemeanors in reports or reports, these reports or reports shall have probative force unless disproven by counter-evidence in writing or by witness testimony." Article 218, however, affirmed that materials for which reports are drafted possess probative force until challenged by forgery, and are governed by specific laws.

It is worth noting that there is a clear distinction between a report and reports. Reports differ from a report or summary prepared by the judicial police because a report is what must be communicated to the supervisory authorities, based on the instructions directed to them. Reports, however, can only be drafted by a judicial police officer and must be in written form. Both share the characteristic of being auxiliary tools for uncovering the truth, playing a role in evidence, and being issued by a competent person authorized by law to do so.⁴

In this vein, it is also important to distinguish between a preliminary investigation and a judicial investigation. Reports prepared by judicial police categories or the prosecution and investigation authority⁵ are those drafted during the preliminary investigation and the judicial investigation. The preliminary investigation is defined as the phase related to search, inquiry, and the collection and securing of crime evidence concerning criminal acts, per the Penal Code and supplementary laws.⁶ This is as stipulated in Article 63 of the Code of Criminal Procedure.⁷ As for the judicial investigation, the legislator did not define it but rather provided illustrations of the investigating judge's work and conferred judicial status upon it. The legislator did not differentiate between them, as Article 66 of the Code of Criminal Procedure stipulates that preliminary investigation is mandatory in felonies, and used the same term twice in Articles 63 and 66, despite the preliminary investigation referring to the work managed by the judicial

police, while the judicial investigation refers to the work supervised by the investigating judge.⁸

The preliminary investigation phase is often referred to as the quasi-judicial phase, falling within the jurisdiction of judicial police agencies. This body plays a crucial role in preparing the case for criminal justice in general.⁹ The judicial investigation, on the other hand, embodies the judicial phase, which takes place before the judicial investigation authority, represented by the investigating judge, or the final investigation authority, which is the trial court. The preliminary investigation ceases upon the execution of prosecutorial instructions and does not extend to interrogation, ordering provisional detention, or subjecting the accused to judicial supervision. If it concerns the execution of judicial delegations, it may not exceed the scope of the assigned tasks.¹⁰

Judicial reports have several types in terms of their probative force. Referring to Article 1 of the Code of Criminal Procedure, we find that it explicitly states: "This law is based on the principles of legality, fair trial, respect for human dignity and rights, and takes into account the presumption of innocence and the inadmissibility of prosecuting a person for the same act twice, even if the legal characterization is different..."

Documents prepared by the judicial system, whether represented by the judicial police or judges, must adhere to ethical, humanitarian, and legal controls that preserve human dignity. These reports, regardless of their types and forms, must not deviate from the principle of procedural legality and must respect human dignity and rights.

Based on the foregoing reports, in terms of the probative force of each type, they have conclusive (absolute) probative force that can only be challenged by forgery. These reports are regulated by specific laws, such as physical observations of traffic violations, customs reports, and labor inspector reports. Article 218 of the Code of Criminal Procedure states that "materials for which reports are drafted shall have probative force until challenged by forgery, and are governed by specific laws."

As for reports for reference (inferential), these include every inferential minute as stipulated in Article 215 of the Code of Criminal Procedure, which states: "Reports and reports documenting felonies or misdemeanors shall be considered mere inferences unless otherwise stipulated by law." Here, the hearing reports prepared are considered formally valid, and their content remains subject to the discretion of the trial judges.¹¹ However, reports prepared by the investigating authority are characterized as conclusive reports with probative force that can only be challenged by forgery.

There is another type of minute that can be refuted and excluded. This includes any minute that has probative force unless disproven by counter-evidence in writing or by witness testimony, following Article 216 of the Code of Criminal Procedure, which states: "In cases where the law, by special provision, grants judicial police officers or their assistants, or officials and their assistants entrusted with certain judicial police tasks, the authority to establish misdemeanors in reports or reports, these reports or reports shall have probative force unless disproven by counter-evidence in writing or by witness testimony."

Additionally, reports can be excluded in cases of forgery under Article 2 of Law No. 24-02, dated 26/02/2024, concerning the fight against forgery and the use of forged documents, as well as Articles 6 and 3 thereof, where the latter defined forgery as: "...any alteration of the truth by deception in one of the documents or records..."

1.2. Categories and Entities Legally Authorized to Draft Valid Reports

Article 12 of the Code of Criminal Procedure (CCP) designates the individuals entrusted with judicial police duties, stating: "Judicial police functions shall be performed by the judges, officers, agents, and officials specified in this chapter." In this context, Article 14 of the CCP further clarifies that "judicial police include judicial police officers, judicial police agents, and officials and agents legally assigned certain judicial police duties."¹² Consequently, judicial police officers commence their duties by receiving complaints and reports, gathering preliminary

evidence, and conducting initial investigations under the supervision and control of the competent Public Prosecutor.

Therefore, according to Article 18 of the CCP, judicial police officers are required to draft reports of their actions and promptly provide the Public Prosecutor with the originals of the reports they prepare, accompanied by a copy attested as identical to the originals, along with any seized items. These reports must clearly state the judicial police capacity of their drafters. Any official authority, officer, or public servant who, in the course of their duties, becomes aware of a felony or misdemeanor must immediately inform the Public Prosecution without delay, providing all relevant information and forwarding any related reports and documents (Article 32 CCP).

It should be noted that certain judicial police powers, assigned to officials and agents of public administrations and services by special laws and within the conditions and limits stipulated therein, subject them to the provisions of Article 13 of the CCP¹³ when performing judicial police duties. This article mandates judicial police officers to execute the delegations and comply with the requests of investigative bodies.

Accordingly, judicial applications necessitate adherence to procedural and formal controls when the judicial police perform their duties, especially concerning capacity and jurisdiction. These crucial controls require an understanding of the judicial police organization, which is governed by legal rules, some contained within the Code of Criminal Procedure and others in various specialized laws. The Code of Criminal Procedure addresses the initiation of public action and the conduct of investigation, search, and inquiry into crimes in Chapter 1 of Book 1, following Article 11.¹⁴ It specifically covers judicial police in Chapter 1, from Article 12 to Article 14; judicial police officers from Article 15 to Article 18 bis; judicial police agents in Articles 19 and 20; and in Section 4, it discusses officials and agents assigned certain judicial police duties from Article 21 to Article 27. Furthermore, the powers of governors in the realm of judicial police are addressed in Section 5, through Article 28.

To comprehensively cover all aspects of judicial reports, it is also essential to define the judicial police themselves. They are the authority tasked with the preliminary investigation of crimes stipulated in the Penal Code, the collection of evidence related to them, and the search for their perpetrators, provided that a judicial investigation has not yet commenced.

The categories of judicial police are divided according to Article 12 of the CCP, which states that "judicial police functions shall be performed by judges." The legislator explicitly granted judges judicial police duties in the aforementioned Article 12. These include public prosecutors and investigating judges. The judicial police operate under the supervision of the Public Prosecutor General, with the Public Prosecutor managing their activities under the oversight of the Indictment Chamber. In this regard, Article 36 of the CCP stipulates: "The Public Prosecutor shall manage the activity of judicial police officers and agents within the court's jurisdiction and possesses all powers and authorities associated with the status of a judicial police officer." Article 56, paragraph 01, further emphasizes this, stating: "The judicial police officer shall cease investigation upon the arrival of the Public Prosecutor at the scene." The same applies to the investigating judge, as Article 38 of the same law states: "The investigating judge is entrusted with search and inquiry procedures." Article 60 confirms their judicial police capacity, stating: "If the investigating judge attends the scene, they shall complete the duties of the judicial police officers stipulated in this chapter."¹⁵ Thus, both enjoy the status of judicial police.¹⁶

Judicial police officers include the individuals specified in Article 15 of the CCP, as amended by Law 15-02 and Law 19-10 CCP. These are:

1. Presidents of Municipal People's Assemblies.
2. Officers of the National Gendarmerie.
3. Officials belonging to the specialized corps of controllers, as well as prefects and officers of the National Security Police.
4. Non-commissioned officers who have served in the National Gendarmerie for at least three years and have been appointed by a joint decision issued by the Minister of Justice, Keeper of the

Seals, and the Minister of National Defense, after the approval of a special committee.

5. Officials belonging to a specialized corps of inspectors and officers and agents of the National Security Police who have served for at least three years in this capacity and have been appointed by a joint decision issued by the Minister of Justice and the Minister of Interior and Local Communities, after the approval of a special committee.
6. Officers and non-commissioned officers belonging to military security services who have been specifically appointed by a joint decision issued by the Minister of National Defense and the Minister of Justice.

In addition to those who acquire judicial police status based on a joint ministerial decision, this category does not automatically possess judicial officer status under the law. Instead, the candidate must have a joint decision from the designated ministers, the Minister of Justice, and either the Minister of Defense or the Minister of Interior. This decision applies to categories specified by the Code of Criminal Procedure, provided certain conditions are met, most notably having served for at least three actual years and obtaining the approval of a committee composed of ministerial representatives. The composition of this committee is determined by Decree No. 66-167, dated June 8, 1996.¹⁷ A joint decision is also issued by the aforementioned ministers, alongside personnel from military security services. For the latter, the law does not stipulate specific conditions other than the candidate being an officer or non-commissioned officer of military security services, in addition to the issuance of a joint decision.

As for judicial police agents, they include police service personnel, officers of various ranks, National Gendarmerie personnel, and military security service personnel. In addition to these categories, there is the municipal police, mentioned in Article 26 of the CCP, based on Legislative Decree No. 93-14 dated December 4, 1993. This article defines the relationship between this category and the Public Prosecutor and the deadlines for sending prepared reports. Another category

comprises officials and agents specializing in forests, land protection, and reclamation, following Article 21 of Law No. 85-02, dated January 26, 1985. This article stipulates that each of them is responsible for investigating and inquiring into crimes related to misdemeanors and infractions committed in violation of forestry law and hunting legislation, and regulations.¹⁸

Governors of the Republic also possess judicial police status, being entrusted with this capacity as regulated by Article 28 of the CCP. This applies when a felony or misdemeanor against state security occurs, or in urgent situations where they have not been informed that judicial authorities have been notified of the incident. In such cases, the governor personally takes necessary measures to document the felonies or misdemeanors and must immediately notify the Public Prosecutor within 48 hours of commencing the procedures.

Furthermore, there are categories specifically defined by special legal texts that possess judicial police status, including but not limited to:

- ✓ Labor inspectors, as stipulated in Article 14 of Law No. 90/03, dated 06/02/1990, concerning the powers of the Labor Inspectorate.
- ✓ Customs agents, as stipulated in Law 98/10 concerning the Customs Law, which grants customs agents judicial police status, enabling them to conduct searches of individuals, goods, and other items.
- ✓ Officials belonging to specialized control corps under administrations responsible for trade and taxes, as stipulated in Articles 30 and 31 of Law 04/08 concerning the conditions for practicing commercial activities.
- ✓ Anti-fraud agents belonging to the Ministry responsible for consumer protection, following Articles 25, 26, 27, and 28 of Law No. 09/03 concerning consumer protection and fraud suppression.
- ✓ Water police, following Articles 159, 160, 161, 162, 163, 164, and 165 of Law No. 12/05 concerning water.

- ✓ Agents for documenting violations specified in Law 08/15, dated July 20, 2008, which defines rules for building conformity and completion, in Articles 62, 63, 64, 65, 66, 67, 68, 69, 70, and 71 thereof.
- ✓ Qualified agents for investigating and documenting crimes related to assaults on state lands, following Law No. 23/18, dated 28/11/2023, Article 11 et seq.

The judicial police are vested with a range of powers. Their mission is to investigate and inquire into crimes stipulated in the Penal Code and its supplementary laws, and to collect evidence concerning them and their perpetrators. The judicial police agents, as defined in Article 19 of the CCP, have a more limited role, assisting and supporting officers in performing judicial police duties. Some are granted certain powers by law due to the nature of their work.¹⁹ Their activities are governed by local and national jurisdiction regulations, depending on each case, the type of crime, and the responsible prosecution and investigation authority.²⁰ Furthermore, investigation and inquiry procedures differ between ordinary and exceptional circumstances. For instance, in cases of flagrante delicto misdemeanors, as per Article 42 of the CCP, their performance is characterized by swiftness; they proceed without delay to the crime scene, undertake all necessary inquiries, ensure the preservation of evidence at risk of disappearance, seize anything that may lead to the discovery of the truth, and present seized items to suspects for identification. In this regard, any person is prohibited from altering the state of the premises; otherwise, they face penalties stipulated in Article 43, except for matters related to public health or those necessitating treatment for victims.²¹

Among the duties of this category is also the power to issue orders to not leave or depart, following Article 50, paragraph 01, of the CCP, and to apprehend and detain suspects for the necessary duration, bringing them to the nearest police station, or to hold them for up to 48 hours for questioning whenever investigative requirements demand. This must be done while respecting their legal rights, including presentation to a

doctor, contact with their families and lawyers, and the right for their lawyers to visit them if the detention period is extended.

Similarly, search procedures, including searches of residences and suspects (male and female), are conducted. The law grants the investigating authority the power to delegate some investigative procedures to others²², particularly if the investigating judge is unable to conduct the investigation. Therefore, for such delegation, it is required that it be issued by the competent authority in terms of nature and territory, that it be specific and not a general delegation, and that the delegation order include all relevant details concerning the investigating judge who issued the order, their capacity, signature, and date of the order, as well as the recipient of the order, the specific actions to be investigated, and the type of crime, while strictly adhering to the limits of the delegation.²³

During the execution of a judicial delegation, the officer may detain any person deemed necessary for 48 hours, renewable with the permission of the investigating judge. The judicial police officer must then draft reports regarding the procedures undertaken and submit them to the investigating judge within eight days following the completion of the procedures carried out under the judicial delegation.²⁴

It is important to note that the actions of judicial police officers are subject to regulatory oversight mechanisms prescribed by law. Judicial police personnel are subject to dual subordination: they report to their direct superiors within the police and gendarmerie, and the management and supervision of the Public Prosecution, as well as the oversight of the Indictment Chamber regarding matters related to their official capacity. Referring to Article 12, paragraph 2, of the CCP, it states that the Public Prosecution exercises supervision: "The judicial police within the jurisdiction of each judicial council shall be placed under the supervision of the Public Prosecutor General."

This implies that judicial police officers have established duties, including immediately informing the Public Prosecutor of crimes that come to their knowledge, drafting reports concerning them, and providing the originals, signed and accompanied by a copy attested by

the officers as conforming to the originals of the reports. The law also grants the Public Prosecutor certain powers vis-à-vis police officers for matters such as entering residences. The officer's subordination is evident, for example, in requiring authorization for searches or when tasking a doctor to examine a person detained by the judicial police, either on their initiative or at the request of a detainee's family member.

Furthermore, the officer's subordination can extend to the oversight of the Indictment Chamber. Article 206 of the CCP²⁵ stipulates the Indictment Chamber's oversight of the actions of judicial police officers, according to the conditions specified in Article 21 of the same law. This oversight is conducted either during the chamber's consideration of a case presented to it or at the request of the Public Prosecutor General or its president. This jurisdiction is defined by the scope of each judicial council, whereby members of the judicial police apparatus are subject to the oversight of the Indictment Chamber within whose jurisdiction they operate. However, the Indictment Chamber of the Algiers Judicial Council is considered to have exclusive jurisdiction concerning judicial police officers and their agents from military security services, as stipulated in Article 207, paragraph 02, of the Code of Criminal Procedure.²⁶

The Indictment Chamber has the authority to conduct investigations when an offense is committed by a member of the judicial police or when they exceed the limits of their jurisdiction, according to the procedures stipulated in Article 208 of the CCP, by ordering an investigation into the matter. It hears the requests of the Public Prosecutor General and the defenses of the judicial police officer after the latter has been granted access to their file and the right to defense with the assistance of a lawyer.²⁷ Subsequently, it may impose disciplinary sanctions and judicial prosecutions, including disciplinary penalties on the judicial police member, or issue necessary observations, such as temporarily suspending them from duty or permanently revoking their judicial police status, following Article 209 of the CCP.²⁸

2. Conditions for the Validity of Criminal Reports

2.1. Formal Requirements for the Validity of Criminal Reports

Article 214 of the Code of Criminal Procedure (CCP) explicitly states: "A minute or report shall only have probative force if it is formally valid, prepared by its drafter during the performance of their official duties, and contains observations or information regarding a matter within their jurisdiction that they saw, heard, or witnessed." Consequently, the drafting and formulation of reports are not arbitrary; they require the investigator to adhere to specific conditions and to take seriously everything they document. They must bear in mind their moral, ethical, professional, and legal responsibility, being accountable for any errors that may occur during their duties. Despite this, the legislator has provided procedural mechanisms through which a document can be refuted or excluded, its nullity asserted, the procedure annulled, or forgery alleged, provided the necessary conditions are met. This serves to protect both the drafter and the parties to the criminal litigation.²⁹ The most crucial elements for a minute to be valid and derive its probative force are a set of formal and substantive conditions, summarized below.

Regarding formal conditions, the law mandates adherence to a set of formal requirements when drafting reports. Some of these are organizational, with their violation not leading to nullity, while others are substantive, and their omission results in the nullity of the preliminary investigation minute. The formal conditions required in reports pertain either to the form of the minute itself or to its data. Concerning the form of reports, the Code of Criminal Procedure does not prescribe a specific format to be followed. However, regulations have imposed models that must be adhered to concerning the authority or body responsible for the procedure, the directorate it belongs to, designated areas for hearings, and the names, ranks, and capacities of all investigators. This also includes the signature area and the minute number, which should contain information such as the date the minute's drafting began.

As for the body of the minute, it must include all material observations made by the judicial police officer, as well as all statements given by individuals in the statements log. These are often accompanied by field diagrams or a field sketch of the crime scene.

The preamble of the minute must also contain the declarations of the individuals whose statements were taken, whether the person heard was a suspect, the aggrieved party, the civilly liable party, or a witness, each according to their position. Here, the judicial police officer must not direct accusations or determine the positions of the parties, but merely hear their statements.

The minute concludes by stating the number of copies sent to the competent authorities, the signatures of the drafters, and confirmation of forwarding the original reports to the Public Prosecution (Public Prosecutor) along with a certified true copy. The date and time of closing the minute are then indicated and signed. Care must be taken to ensure that the individuals heard sign at the end of their statements or that their refusal to sign is noted, or that it is indicated that the declarant read their statements themselves or had them read to them. Any additions, changes, or observations made by the declarant are then recorded. If no observations, additions, or changes are made, this should be noted. The declarant then signs next to the judicial police officer's signature on the minute, writing their name in their hand. If they are unable to write or sign, they should place their fingerprint, and the minute should indicate their inability to write or sign. If they refuse to sign or fingerprint, or are unable to do so, this must be noted, along with the reasons for refusal or inability.³⁰

For the formal conditions of the minute to be complete, it must be written legibly or typed, with a clear and organized layout that facilitates tracking and understanding. Each statement must be highlighted separately, avoiding deletions, insertions, or extraneous remarks. Pages must be numbered, and the number and nature of attachments must be stated. Seized items must be mentioned and detailed, including their description, type, quantity, and dimensions. In principle, reports should be drafted in Arabic, as it is the official language of the state.

The law also requires the inclusion of data concerning the name of the minute's drafter, their capacity, place of work, and signature to facilitate the determination of responsibilities regarding spatial jurisdiction and the drafter's specific authority. The date and time of the procedure's execution and the time of drafting the minute (if it differs from the

execution time) must also be noted. The importance of specifying the time of the procedure's execution lies in the fact that most preliminary investigation procedures, such as provisional detention or searches, are time-sensitive. Furthermore, determining the time and date of minute drafting is crucial for calculating the statute of limitations.

2.2. Substantive Requirements for the Validity of Criminal Reports

It is a prerequisite for minute drafters to possess the legal capacity that authorizes them to draft reports. This capacity is that of a "judicial police officer" following Article 18 of the CCP, which states: "Judicial police officers must draft reports of their actions and promptly notify the Public Prosecutor of felonies and misdemeanors that come to their knowledge... Those reports must specify the judicial police capacity of their drafters." The minute must be prepared by the judicial police officer with subject-matter and territorial jurisdiction, according to Article 17 of the CCP. Subject-matter jurisdiction is generally broad for judicial police officers; they can conduct investigations and prepare reports concerning cases typically handled by officials or agents assigned certain judicial police duties, in their absence or when they are unable to perform their assigned tasks. Subject-matter jurisdiction can also be specific, as is the case for customs and forestry officials who are granted judicial police officer status under special provisions.

The territorial jurisdiction of judicial police officers is generally limited to the court's jurisdiction. However, recent amendments to certain articles of the Code of Criminal Procedure have extended their powers to the entire national territory, particularly after the establishment of specialized criminal hubs.

Substantive conditions also require adherence to an objective description. This means that when drafting reports, the judicial police officer must limit themselves to documenting what they observed, without offering any personal conclusions about what they witnessed. Nevertheless, in practice, a summary or conclusion is often included in the concluding statements of reports.

In addition to the aforementioned substantive conditions for minute validity, the officer must adhere to the statements they receive. This applies whether the statements received constitute a complaint from the aggrieved party, information from a third party about the commission of a crime, statements from the suspect regarding the alleged facts, or statements from witnesses or any other person whose testimony might help uncover the truth. However, statements must be received by the judicial police officer during the performance of their duties and without resort to coercion or torture. The officer is not permitted to manipulate or force anyone to make any statement, as suspects have the right to remain silent or refuse to sign the minute.

The judicial police officer must also adhere to the procedures undertaken within the framework of preliminary investigation and inquiry, such as conducting searches, detaining suspects, wiretapping, infiltration, taking photographs, recording calls, or seizing property. All procedures that a judicial police officer must undertake require authorization from the Public Prosecutor or the investigating judge.³¹

Adherence to objective description requires presenting facts without legal characterization, as characterization is within the Public Prosecution's jurisdiction, being a judicial act. Nevertheless, if a minute includes a characterization, it does not affect its validity; rather, this characterization is considered an interpretation by the judicial police officer. Its absence does not affect the minute's validity, nor does its presence bind the judicial authority.

Furthermore, the performance must be commensurate with the duty of expeditious completion and without infringing on rights and freedoms. The judicial police officer should draft reports with the speed required by the procedures, without undue haste or delay, but only to the necessary extent that facilitates the completion of procedures before the crime's traces vanish or before suspects escape the scene. Although the law does not bind the judicial police officer to a specific deadline for drafting reports, in cases involving a detainee, the period of provisional detention is sufficient to determine the minute preparation period, and the theoretical legal duration of custody is 48 hours. In cases of *flagrante delicto*, the judicial police officer must immediately draft the reports they

prepare, by Article 54 of the CCP, which states: "Reports drafted by a judicial police officer following the law must be prepared immediately, and they must sign every page."

To achieve speed and effectiveness in minute drafting, the judicial police must have the necessary tools, including means of transport and movement, sealing and impoundment equipment, police seals for measurement, and other tools that help them complete their work quickly and efficiently. The use of any methods or maneuvers that would coerce individuals into making statements must be avoided.³²

Regarding the nullity of reports, the legislator has established controls such that their violation results in the nullity of the minute. Nullity is a procedural sanction that may affect only the minute and not extend to other procedures, or it may extend to subsequent procedures, such as a search minute that violates the provisions of Article 44, paragraph 03, of the CCP, which would render it null.³³

Among the reports that can be annulled, for example, is the search minute prepared by the judicial police officer when moving to search premises. A written authorization is strictly required for searching, and the timing of the search must be respected as stipulated in Articles 44, 45, 47, and 48 of the CCP. Article 44, under penalty of nullity, specifies the requirement of written authorization for a search and the places to be searched, in addition to describing the crime for which evidence is sought. Article 45 details the conduct of search operations, while Article 47 sets the timings for commencing searches. The investigating judge may also conduct searches under paragraph 04 of Article 47 of the CCP.³⁴

The same applies to reports of witness hearings, interrogation reports, and confrontation reports prepared before the investigating judge. The law also permits the drafting of a minute for receiving a defendant's statements, hearing a witness, or conducting an on-site inspection to reveal the truth by the investigating judge in the presence of the investigation registrar, following Article 69 bis of the CCP. This must occur after notifying the Public Prosecutor under Article 79 of the CCP.

The investigating judge must adhere to the requirements of Articles 45 and 47 when searching, following Articles 82 and 83 of the CCP.

When a witness is summoned for testimony, their testimony cannot be heard if strong and consistent evidence against them suggests an accusation, to thwart defense rights, following Article 89 of the CCP. The witness gives their testimony before the investigating judge without the presence of the accused, and reports of their statements are drafted. Before hearing their testimony, they are asked to state their full name, age, status, profession, residence, and whether they have any kinship, affinity, or are in service to, or are legally incapacitated from testifying for, the accused. The minute notes the questions and answers. The witness, following Articles 90 and 93 of the CCP, takes an oath after raising their right hand.

For the validity of a minute recording a witness's statement, the witness must sign each page of the investigation minute, along with the registrar and the witness, after it has been read to them, noting their signature or refusal to sign. The reports must not contain insertions between lines, or be signed in a manner contrary to the provisions of Articles 94 and 95 of the CCP.

As for the interrogation minute upon first appearance and the confrontation minute, under Articles 100 and 105 of the CCP, and given the importance of this procedure and its unique implications for determining the fate of the accused's liberty, the legislator has stipulated that interrogation and confrontation reports must be drafted following the procedures outlined in Articles 94 and 95 of the CCP. This requires noting that the accused has been informed of the order for their provisional detention. The Code of Criminal Procedure also permits experts, within the scope of their duties, to interrogate the accused in the presence of the investigating judge, while observing the provisions of Articles 105 and 106 of the CCP, following Article 151 of the same law. Nullity is imposed on investigative procedures that have not observed the provisions of Article 100 concerning interrogation and Article 105 concerning hearing the civil plaintiff, with nullity extending to subsequent procedures (Article 157 of the CCP). Article 159 also imposes nullity if its violation results in an infringement of defense rights

or the rights of any party in the case. Consequently, annulled documents are withdrawn from the investigation file according to Article 160 of the CCP, with the Indictment Chamber being the authority to decide nullity by Articles 191 and 201 of the aforementioned law.

Conclusion

This study centered on understanding the nature of documents and records prepared by the judicial police and investigative authorities when dealing with parties to criminal proceedings. We explored the concept of reports, recognizing them as written documents whose drafting and formulation necessitate a clear understanding of the qualifications of those involved. Additionally, we delved into the essence of jurisdictional controls outlined in the Code of Criminal Procedure, while also defining the defense's role in scrutinizing the legality of procedures. All actions undertaken by the Public Prosecution must adhere to the legal legitimacy prescribed by the Constitution (Articles 34, 39, 41, 43 et seq., and 164, 165) and the Code of Criminal Procedure, particularly its first article, which states that it "is based on the principles of legality, fair trial, respect for human dignity and rights, and takes into account the presumption of innocence." Furthermore, reports sent to the prosecution by the judicial police after completion must be reviewed to ensure they align with the case file, as per Article 36 et seq. of the CCP.

Implementing the principle of appropriateness leads to significant outcomes, notably the possibility of archiving case documents through a reversible decision if the facts do not warrant prosecution, whether due to legal or substantive reasons. Alternatively, it may lead to issuing a direct summons for parties to appear before the court, opening a judicial investigation by requesting it from the investigating judge, applying immediate appearance procedures, enacting penal orders, or summoning parties to explore criminal mediation under Article 37 bis et seq. of the CCP.

We concluded that for criminal reports to serve as valid evidence, they must meet the required formal and substantive conditions and be drafted by legally authorized individuals. Both the Public Prosecutor and the investigating judge possess judicial police authority, and their actions are

embodied in these reports, as previously indicated. Moreover, investigation procedures must be confidential and not infringe upon defense rights. Anyone involved in these procedures is obligated to maintain professional secrecy, following Article 11 of Law 06/22 and Law 15/02, dated 23/07/2015.

We also found that the validity of reports requires the drafter to possess proper capacity and jurisdiction. The reports must record everything stated before the drafter, whether it involves oral declarations, interpretations of specific gestures, or observations made visually, by touch, or by measurement (e.g., meters, liters). Violating these requirements can lead to disciplinary action against the perpetrator, prosecution before the Indictment Chamber, and the right to annul the procedure. Furthermore, we determined that the probative force of reports remains subject to judicial discretion: some reports have inferential value, some can be refuted by written evidence or witness testimony, and others can only be challenged on grounds of forgery.

The study concludes by offering several recommendations, which are summarized as follows:

- Provide specialized training for certain categories of legally authorized individuals to draft criminal reports. This aims to reduce the documented violations observed in practice within this domain.
- Limit the absolute probative force of certain criminal reports, particularly in customs cases. Such absolute reliance often leads to infringements of the presumption of innocence and the imposition of severe penalties disproportionate to the nature of the offense committed.
- Reduce the number of entities authorized to draft criminal reports to avoid inconsistencies occasionally observed in these documents.
- Implement a unified oversight mechanism for all types of criminal reports. This is crucial to prevent overlaps or contradictions in the

discretionary powers of the various authorities responsible for monitoring these reports.

¹In accordance with Article 10 of Law No. 06/02, the notary, in their capacity as a public officer, is responsible for drafting contracts. This includes both declaratory and consensual agreements. The notary must adhere to the legal and regulatory controls for each named or unnamed contract, particularly regarding the legal capacity of the contracting parties, the permissibility of the contract's subject matter, and compliance with legally prescribed forms and templates during drafting.

² Marouk, N. (2009). *Lectures in Criminal Evidence, Part Two: Evidence, Book One: Confessions and Documents* (3rd ed.). Dar Houma Publishing and Distribution, Algiers. p. 201.

³ In this context, the legislator considers confessions open to discussion, allowing them to be accepted in full, disaggregated, or excluded. This approach renders hearing reports drafted by the judicial police as merely indicative, maintaining the formal legality of the report while subjecting its content to judicial discretion. This stands in contrast to Article 341 of the Civil Code, which stipulates that an admission serves as conclusive proof against the confessing party.

⁴ Marouk, N. (2009). *Ibid.* p. 205.

⁵ Here, we find judicial assistants to whom the law grants the status of public officer, such as the notary or the judicial bailiff. The contracts, documents, and reports prepared by each, within their respective jurisdictions, are characterized by their official nature, meaning they are official instruments that can only be challenged through allegations of forgery in accordance with the draft law on combating forgery and its fraudulent use, or through procedures outlined in the Code of Civil and Administrative Procedures for the judicial bailiff.

⁶ Jabbari, A. M. (2012). *Legal Studies in Criminal Matters in Light of the Most Important New Amendments*. Dar Houma, Algiers. p. 9.

⁷ Judicial police officers, under their supervision, and judicial police agents are mandated to conduct preliminary investigations as soon as they become aware of an offense, either based on instructions from the Public Prosecutor or on their own initiative.

⁸ Article 138 addresses judicial delegation, while Article 139, as amended by Law No. 82-03 of February 13, 1982, prohibits judicial police officers from interrogating the accused, conducting confrontations, or hearing the statements of the civil claimant. Article 140, on the other hand, specifies the procedures for hearing witnesses, administering oaths, and outlines penalties for witnesses who refuse to appear and testify after being summoned by the delegating judge.

⁹ With full adherence to professional secrecy.

¹⁰ In this context, exceeding these boundaries can expose them to disciplinary and even criminal liability

¹¹ This refers to hearing reports where the judicial police officer records statements from the suspect, complainant, or civilly responsible party. The legal value of such statements remains indicative.

*For further discussion, see: Afaf, Conditions De Validité Du Jugement Pénal Dans La Législation Algérienne, Revue des sciences humaines, Vol 8, N 2, 2021, pp. 1259-1272

¹² Article 15 of the Code of Criminal Procedure (CCP) specifies who holds the status of a judicial police officer, while Article 16 defines their local jurisdiction in normal and urgent circumstances. An exception is made for judicial police officers affiliated with military security services, who possess jurisdiction across the entire national territory, or for the extension of jurisdiction across the entire national territory in the investigation and reporting of drug offenses, transnational organized crime, cybercrime, money laundering, terrorism, and currency offenses.

¹³ See Article 27 of the CCP.

¹⁴ Refer to Law No. 17-07, dated March 27, 2017.

¹⁵ Ouahibia, A. (2005). Explanation of the Algerian Code of Criminal Procedure: Investigation and Inquiry. Dar Houma, Algiers. p. 135.

See also: Kellou, L. (2022). La contrainte par corps en droit pénal Algérien, Revue de droit et des sciences politiques de L'université de Khenchla, Vol 09, N 01, pp. 1169-1183.

¹⁶ This has led most researchers to emphasize the flexibility of the independence enjoyed by the investigating judge, considering them independent of the prosecution because they stand between the prosecution and trial phases. Furthermore, the law grants them judicial police authority, leading some to advocate for the separation of investigative and inquiry functions, as well as decisions on liberties, from the investigating judge. This would allow the judge to truly dedicate themselves to purely judicial work, specifically investigating evidence for and against.

¹⁷ Hadidi, M. (2000). *Concise Guide to Criminal Procedures*. D.R.T., D.D.N. p. 114.

¹⁸ The law concerning the General Forest System was amended by Law No. 23/21, dated December 23, 2023, regarding Forests and Forest Resources (Official Gazette No. 83, 2024).

¹⁹ Ouahibia, A. (2005). *Ibid.* p. 202.

²⁰ Articles 211 bis to 211 bis 15 establish the Economic and Financial Criminal Hub, created by Order 20/04. Its jurisdiction was extended to include terrorism and transnational organized crime in Articles 211 bis 16 to 211 bis 21. Furthermore, Article 211 bis 22 and subsequent articles establish the National Criminal Hub for Combating Crimes Related to Information and Communication Technologies, incorporated by Order 21/11, which the Constitutional Council declared constitutional by Decision No. 389/11 issued on August 24, 2021.

²¹ Refer to Article 43 of the Code of Criminal Procedure.

²² Article 68, paragraph 06, stipulates that: "Whenever the investigating judge is unable to personally carry out all investigative procedures, they may delegate judicial police officers to execute all necessary investigative actions under the conditions stipulated in Articles 138 to 142." Article 138, in Part VIII of the Code of Criminal Procedure, also allows the investigating judge to delegate, by judicial commission, any competent judicial police officer to act within their jurisdiction to carry out any necessary investigative measures. Conversely, Article 139 prohibits the investigating judge from granting a general delegation to a judicial police officer, and the latter may not interrogate the accused, conduct confrontations, or hear statements from the civil claimant.

²³ See Article 138 of the Code of Criminal Procedure.

²⁴ In this regard, Article 141, last paragraph, of the Code of Criminal Procedure states: "... If no deadline is specified, the reports must be submitted within eight days following the completion of the measures taken under the judicial delegation."

²⁵ Amended by Law No. 82-03, dated February 13, 1982.

²⁶ Article 207, amended and supplemented by Law No. 07-2017, dated March 27, 2017.

²⁷ Article 208, amended and supplemented by Law No. 07-2017, dated March 27, 2017.

²⁸ See Article 211 of the Code of Criminal Procedure.

²⁹ Shahat, A. Q., & Sakr, N. (2006). *Evidence in Criminal Matters in Light of Jurisprudence and Judicial Precedent*. Dar Al-Huda, Algiers. p. 32.

³⁰ Bouskik, A. (2008). *Judicial Investigation*. Dar Houma for Printing, Algiers. p. 65.

³¹ Kaderi, O. (2013). *Frameworks of Investigation* (2nd ed.). Dar Houma for Printing. p. 43.

³² Al-Maaytah, M. O. (2011). *Forensic Evidence and Criminal Investigation* (2nd ed.). Dar Al-Thaqafa Publishing, Amman. p. 54.

*For further discussion, see: David, C. (1970). *Les Particularités Du Droit Pénal Général Algérien*, *Revue Algérienne des Sciences Juridiques et Politiques*, Vol 7, N 2, pp. 293-328

³³ Shafi'i, A. (2006). *Nullity in the Code of Criminal Procedure: A Comparative Study* (3rd ed.). Dar Houma for Printing, Algiers. p. 61.

³⁴ The legislator did not prescribe any penalty for issues arising concerning the report on the inventory of seized items and documents, as per Article 45, paragraph 06, of the CCP. However, it did prescribe nullity as a penalty for the disclosure of any secret document resulting from or accessed during a search without authorization, as per Article 46 of the CCP, provided the search report violated the provisions of Articles 45 and 47 of the CCP.

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Legal Texts

1. Constitutional Amendment issued by Presidential Decree No. 20/442, dated December 30, 2020.
2. Law No. 24-02, dated February 26, 2024, concerning the Combatting of Forgery and the Use of Forged Documents.
3. Law No. 17/07, amending and supplementing the Code of Criminal Procedure, dated March 27, 2017.
4. Law No. 13/07, regulating the Legal Profession, dated October 29, 2013.
5. Ordinance No. 15-02, amending and supplementing the Code of Criminal Procedure, dated July 23, 2015.