

The Flagrante Delicto System in the New Algerian Code of Criminal Procedure (Law 25-14): Concept, Forms, and Procedural Effects

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ABSTRACT:

This study examines the system of *flagrante delicto* in the new Algerian Code of Criminal Procedure, Law No. 25-14, by analyzing its concept, forms, and procedural effects. *Flagrante delicto* is considered an exceptional procedural mechanism that allows public authorities to intervene immediately in response to a crime, based on the existence of a close temporal proximity between its commission and its discovery, along with external indications demonstrating its occurrence. The Algerian legislator has adopted a restrictive approach by exhaustively defining the cases of *flagrante delicto*, thereby reinforcing the principle of legality and limiting expansive interpretations. Moreover, the scope of its application has been extended to include misdemeanors punishable by imprisonment, while granting broader powers to judicial police officers, balanced by the establishment of legal safeguards for suspects, particularly regarding police custody and the right to defense. The study concludes that the new legal framework seeks to strike a balance between procedural efficiency and the protection of rights and freedoms; however, its effectiveness ultimately depends on proper implementation and effective judicial oversight.

Keywords: *Flagrante delicto* – Law 25-14 – Judicial Police – Police Custody

INTRODUCTION

The *flagrante delicto* system constitutes one of the fundamental pillars of the Code of Criminal Procedure, as it is the legal mechanism that enables public authorities to intervene immediately to address crime at its earliest stages, when evidence is still available, the traces of the offense remain evident, and the possibility of apprehending the offender is at its highest. The distinctive feature of this system lies in its exceptional nature, as it justifies a temporary departure from the general procedural rules, particularly with regard to certain formal safeguards, such as obtaining prior judicial authorization, with the aim of ensuring efficiency and promptness in uncovering the truth.

The significance of this topic has become even more apparent following the enactment of Code of Criminal Procedure Law No. 25-14 of 3 August 2025, which represents a major development in the Algerian criminal procedural system. The law introduced profound reforms affecting the various stages of criminal proceedings, foremost among them the *flagrante delicto* system. Through this modern legislative text, the Algerian legislature sought to redefine this system in a manner consistent with contemporary developments in criminal activity and responsive to the requirements of modern criminal justice, whether by expanding its scope of application, refining its cases, or strengthening the legal safeguards associated with it.

From this perspective, the present study is of particular importance as it examines a procedural system that has recently been reorganized under Algerian legislation. It seeks to analyze the innovations introduced by the new law and to assess its ability to strike a balance between the requirements of

effective crime control, on the one hand, and the protection of individual rights and freedoms, on the other. The study also highlights its practical significance in guiding judicial and law enforcement practice toward the proper application of this system, particularly in light of the interpretative and practical issues that may arise due to its recent enactment.

Accordingly, the following research question is raised:

To what extent has the Algerian legislature, through Law No. 25-14, succeeded in reconciling the requirements of effective crime control with the guarantees for the protection of rights and freedoms through its regulation of the flagrante delicto system and the determination of its cases and procedural effects?

To answer this question, the study is divided into the following two parts:

First: The Concept of Flagrante Delicto in Felonies and Misdemeanors and Its Cases.

Second: The Immediate Effect of Flagrante Delicto on Jurisdiction and Criminal Procedures.

FIRST: THE CONCEPT OF FLAGRANTE DELICTO IN FELONIES AND MISDEMEANORS

Flagrante delicto is considered one of the oldest procedural systems known to criminal legislation. It is of paramount importance in the field of investigation, inquiry, and evidence gathering, as it justifies granting exceptional powers to judicial police officers for the purpose of preserving evidence of the crime and apprehending its perpetrator before its traces disappear or the offender escapes. The Algerian legislature addressed it in the new Law No. 25-14 dated 3 August 2025, containing the Code of Criminal Procedure ¹, in Chapter One of Title Two of Book One, under the heading “Felonies or Misdemeanors in Flagrante Delicto.”

1. Definition of Flagrante Delicto

Defining flagrante delicto constitutes the basis for understanding the nature of this exceptional situation and its procedural effects. Given the importance of this concept, it must be explained from three complementary perspectives: the linguistic perspective, which clarifies the linguistic origin of the term and its meanings; the doctrinal perspective, which reviews scholarly opinions concerning the nature of flagrante delicto; and the legal perspective, which analyzes the legislative provision regulating this situation under the new Algerian law.

1.1. Linguistic Definition of Flagrante Delicto

In the Arabic language, the term talabbus is derived from the triliteral root “labasa,” which carries several closely related meanings revolving around ambiguity, intermingling, extreme proximity, and close attachment. In Ibn Manzur’s *Lisan al-Arab*, it is stated: “The matter became confused to him: it became mixed and intertwined, and he was no longer able to distinguish anything.” The term “lubsah,” with the letter lam pronounced with dammah, is also used to mean suspicion, that is, an unclear matter ². Likewise, “a man’s wife is his garment, and her husband is her garment,” indicating the meaning of close attachment and intimate association ³. Al-Mu‘jam Al-Wasit states: “Talabbus derives from the expression that the matter was made confusing to him, meaning that it was mixed up for him until he could no longer recognize its true nature” ⁴.

This latter meaning, namely close association and attachment, is the closest to the concept of flagrante delicto in criminal law. It implies that the crime has “clothed” its perpetrator in the same manner that clothing adheres to the body, meaning that its evidence has become apparent and visible, and that there is an extremely close temporal connection between the moment when the criminal act is committed and the moment when it is discovered, with virtually no significant

interval separating them ⁵. This meaning is consistent with the notion of an “observed offence” used in certain Arab legislations, although the latter term is less precise because it confines observation to the sense of sight alone, whereas a crime may also be perceived through other senses, such as hearing or smell ⁶.

1.2. Doctrinal Definition of Flagrante Delicto

The concept of flagrante delicto is one of the precise procedural concepts that has received extensive scholarly attention. Legal scholars have attempted to define it by focusing on its essential elements, foremost among which are temporal proximity and the external manifestations indicating that a crime has occurred.

In this context, Dr. Fathi Sorour views flagrante delicto as “a factual situation based on external manifestations which, in themselves, indicate that the crime has occurred or is about to occur, with no lapse of time or only a brief interval between the act and its discovery” ⁷. This definition indicates that flagrante delicto is not based on mere suspicion, but rather on tangible sensory evidence. It also extends to include the attempted commission of an offence, reflecting the flexibility of the concept and the breadth of its scope.

This approach intersects with the definition provided by Dr. Bassiouni Ibrahim Abu Atta, who emphasizes that flagrante delicto is “a situation associated with the discovery of a crime through witnessing it at the time of its commission or shortly thereafter” ⁸. Accordingly, the element of direct observation or temporal proximity constitutes the basis for the existence of this situation. It may also be noted that this definition adds an important analytical dimension, represented by the implicit distinction between actual flagrante delicto and constructive flagrante delicto, which assists in regulating the practical applications of this concept in the field of criminal procedure.

Dr. Abdallah Ouahibia, for his part, seeks to highlight the functional dimension of flagrante delicto, defining it as “a situation of temporal proximity between the occurrence of the crime and its discovery, resulting in the granting of exceptional powers to the judicial police” ⁹. The importance of this definition lies in its direct connection between the concept and its legal effects. Flagrante delicto is therefore not regarded as an abstract situation, but rather as a ground justifying departure from the general rules of procedure, which reflects its legal significance within the procedural system.

From another perspective, Dr. Abdel Hamid Al-Shawarbi provides a more comprehensive definition, considering flagrante delicto to be “a tangible factual situation based on witnessing the crime while it is being committed or observing its traces shortly after its commission, thereby requiring the granting of exceptional powers to judicial police officers” ¹⁰. This conception is distinguished by combining two elements: the sensory element, represented by observation and traces, and the procedural element, represented by exceptional powers. It is therefore one of the most comprehensive definitions from a practical perspective.

Dr. Mohamed Mahda focuses concisely and precisely on the essence of the concept, considering flagrante delicto to be “the discovery of the crime during its commission or immediately after its completion, such that temporal proximity constitutes the basis for its existence” ¹¹. Despite the simplicity of this definition, it clearly expresses the decisive element of flagrante delicto, namely the direct temporal connection between the crime and its discovery.

Although the foregoing definitions differ in the perspectives from which they approach the matter, they converge on several essential elements: the factual nature of flagrante delicto, the necessity

of external manifestations, the importance of temporal proximity, and its procedural effects, represented by the expansion of the powers of the judicial police. These elements give the concept a central position in the Code of Criminal Procedure.

1.3. Legal Definition of Flagrante Delicto under Law No. 25-14

The Algerian legislature did not provide a comprehensive definition of flagrante delicto in the new Law No. 25-14. Instead, it merely specified its cases in Article 72, which provides:

“A felony or misdemeanor shall be described as being in flagrante delicto if it is being committed at that moment or immediately after its commission.

A felony or misdemeanor shall also be deemed to be in flagrante delicto where, within a very short period following the commission of the crime, the person suspected of having committed it is pursued by members of the public raising an outcry, or where objects, traces, or evidence are found in his possession which give rise to the presumption that he participated in the felony or misdemeanor.

Any felony or misdemeanor committed, even outside the circumstances provided for in the two preceding paragraphs, shall be characterized as being in flagrante delicto where it was committed inside a dwelling, the owner of the dwelling discovered it immediately after its occurrence, and promptly called upon a judicial police officer to establish it”¹².

It is clear from this provision that the legislature has surrounded the state of flagrante delicto with precise legal safeguards. It has made the temporal element an essential criterion for its establishment through varying degrees of proximity between the commission of the crime and its discovery. It has also exhaustively limited its cases, without permitting analogy, thereby reinforcing the principle of procedural legality. The clarity of the state of flagrante delicto and its connection with evident external manifestations reduce the likelihood of arbitrariness and error, thus justifying the granting of exceptional powers to judicial police officers in such circumstances. At the same time, the legislature left the assessment of the degree of temporal proximity to the discretion of trial judges in light of the circumstances of each case, with judicial practice tending toward a flexible interpretation of this criterion. Furthermore, the scope of flagrante delicto is confined to felonies and misdemeanors, excluding contraventions, while recognizing certain special cases. This was also confirmed by constitutional review, which emphasized the necessity for the legal provision to be clear and foreseeable as a safeguard for the protection of rights and freedoms.

2. Cases of Flagrante Delicto

Distinguishing between the cases of flagrante delicto is one of the fundamental issues in the Code of Criminal Procedure because of its direct impact on determining the scope of the exceptional powers granted to judicial police officers. Flagrante delicto is not a single homogeneous situation; rather, it takes multiple forms that differ according to the degree to which the crime is observed or the strength of the evidence indicating its commission. Accordingly, defining these cases aims to achieve a careful balance between the necessity of rapidly detecting crimes and the protection of individual rights and freedoms. This prompted the legislature to specify them through precise and clearly defined provisions in Article 72 of the new Code of Criminal Procedure, as a preliminary step toward clarifying the scope of each form and its legal effect.

2.1. Actual Flagrante Delicto

Actual flagrante delicto—also referred to as genuine flagrante delicto—represents the original form that is closest to the natural meaning of flagrante delicto¹³. It refers to the situation in which the crime is observed while it is being committed or immediately after its commission within a very short period. This is provided for in the first paragraph of Article 72 of the new Code of Criminal Procedure, which states: “A felony or misdemeanor shall be described as being in a state of flagrante delicto if it is being committed at that moment or immediately after its commission”¹⁴.

a. Forms of Actual Flagrante Delicto

This type of flagrante delicto is established in either of the following two forms:

- **First form: Observing the crime while it is being committed:** This form is established when a judicial police officer observes the crime being committed before him, whether through sight, hearing, or smell. It is sufficient for such observation to occur at any stage in the execution of the crime, even if it takes place during its final stage¹⁵. Thus, if the officer sees a person shooting another person and killing him, or sees a thief stealing another person’s property, actual flagrante delicto is established¹⁶. Where the officer is informed of the crime by a third party, he must personally proceed to the scene and inspect its traces; mere reporting is insufficient. This is pursuant to Article 73 of the new Law, which requires the officer to immediately notify the Public Prosecutor and then proceed to the scene of the felony¹⁷.
- **Second form: Observing the crime immediately after its commission:** This form is established where the crime has already been completed, but its traces remain apparent and observable, such as where the officer sees a thief leaving a house while carrying the stolen property, or sees a killer holding the weapon used in the crime shortly after its commission, such that it may be said that “the crime is still fresh”¹⁸. Algerian case law has adopted a broad interpretation of the phrase “immediately after the commission of the crime,” considering that a period of twenty-four hours may, in certain circumstances, constitute a very short period, pursuant to a decision issued by the Supreme Council on 28 October 1964¹⁹. This interpretation remains applicable under the new Law.

b. Legal Nature and Constitutional Legitimacy of Actual Flagrante Delicto

Actual flagrante delicto is characterized by two fundamental legal features: its objective nature and its exceptional nature. Its objective nature means that flagrante delicto is a characterization attached to the crime itself rather than to the person who committed it. What matters is the occurrence of the criminal act and the external manifestations indicating it, regardless of whether the perpetrator is known or when he is arrested²⁰. Its exceptional nature is reflected in the fact that actual flagrante delicto removes investigative procedures from the general rules governing them and grants judicial police officers powers that were originally reserved for the investigating authorities, namely the investigating judge and the Public Prosecutor’s Office. These include the power of immediate arrest under Article 83 of the new Law²¹, the search of persons and dwellings under Articles 75 to 78²², and the placement of the suspect in police custody under Articles 83 to 86²³.

The state of flagrante delicto derives its constitutional legitimacy from the balance established by the Algerian Constitution between the protection of individual rights and freedoms, on the one hand, and the necessity of combating crime and protecting society, on the other hand²⁴. In its

Decision No. (02/CC/DD/2025), the Constitutional Court ruled that the provisions of the new Code of Criminal Procedure relating to flagrante delicto were constitutional, provided that constitutionally guaranteed rights and freedoms are respected ²⁵.

2.2. Constructive Flagrante Delicto

Constructive flagrante delicto—also referred to as deemed flagrante delicto—is a situation in which the crime is not observed while it is being committed or even immediately after its commission, but strong external evidence exists that gives rise to the firm belief that a person committed or participated in the crime within a very short period following its occurrence ²⁶.

a. Forms of Constructive Flagrante Delicto

In the second and third paragraphs of Article 72 of the new Law, the Algerian legislature provided for three forms of constructive flagrante delicto and added a fourth form relating specifically to an offence committed inside a dwelling, as follows:

- **The suspect being pursued by members of the public raising an outcry:** This form is established where, within a very short period following the occurrence of the crime, the person suspected of having committed it is pursued by members of the public who raise an outcry and chase him ²⁷. It is not required that the pursuit be undertaken by a large group of people; it is sufficient that the suspect be pursued by a small number of persons or even by the victim alone. It is also sufficient for the pursuit to be limited to raising an outcry and making accusations without an actual physical chase ²⁸.
- **The suspect's possession of objects indicating his participation in the crime:** This form is established where, within a very short period following the occurrence of the crime, objects are found in the suspect's possession from which it may be inferred that he is the perpetrator or an accomplice, such as the weapon used in the crime, stolen property, or any other objects closely connected to the committed offence ²⁹. In this respect, the Algerian legislature adopted a broader approach than other legislatures, as it did not confine this form to specific situations but merely required circumstances giving rise to the presumption of participation ³⁰.
- **The presence of traces or evidence on the suspect giving rise to the presumption of his participation in the crime:** This form is established where traces indicating the commission of the crime are found on the suspect's body or clothing ³¹, such as recent wounds or bruises, bloodstains, or torn clothing, within a very short period following the occurrence of the crime.
- **An offence committed inside a dwelling:** This form consists of a felony or misdemeanor committed inside a dwelling, subsequently discovered by the owner of the dwelling immediately after its occurrence, where the owner promptly calls upon a judicial police officer to establish it, pursuant to the third paragraph of Article 72 ³². The legislature subjected this situation to the rules governing flagrante delicto even though it does not satisfy the requirement of temporal proximity in its strict sense, taking into consideration its particular circumstances.

b. Legitimacy and Safeguards of Constructive Flagrante Delicto

The forms of constructive flagrante delicto derive their legitimacy from the clear legal provisions laid down by the legislature in Article 72. These forms are stated exhaustively rather than illustratively; therefore, a judge may not create new cases of flagrante delicto that are not provided for by law ³³. The constitutional legitimacy of constructive flagrante delicto is also based on the principle of “necessity,” which permits the restriction of certain rights only to the extent required

by the necessity of detecting the crime, and on the principle of “judicial oversight,” which requires all procedures relating to flagrante delicto to be subject to judicial supervision ³⁴.

2.3. Difference Between Actual and Constructive Flagrante Delicto

The fundamental differences between actual and constructive flagrante delicto may be summarized as follows: in actual flagrante delicto, the crime itself or its visible traces are observed, whereas constructive flagrante delicto involves only the existence of external evidence giving rise to the belief that the crime was committed ³⁵. Actual flagrante delicto also involves a high degree of certainty, whereas constructive flagrante delicto is based on strong evidence that does not necessarily reach the level of absolute certainty ³⁶. Furthermore, in constructive flagrante delicto, it is not required that the officer personally observe the external manifestations indicating the crime, as he may become aware of them through information provided by a third party ³⁷.

SECOND: THE IMMEDIATE EFFECT OF FLAGRANTE DELICTO ON JURISDICTION AND PROCEDURES

The state of flagrante delicto represents the highest degree of immediate intervention by public authorities in criminal proceedings, as its nature, characterized by temporal concurrence between the commission of the crime and its discovery, requires the adoption of swift and decisive measures ³⁸. The former Code of Criminal Procedure (Ordinance No. 66-155 ³⁹) recognized this situation and surrounded it with certain safeguards. However, the new Law No. 25-14 introduced a qualitative transformation in the regulation of these procedures, particularly following the crisis experienced by the immediate appearance system, which was introduced under Ordinance No. 15-02 ⁴⁰ and whose practical application revealed numerous obstacles that necessitated its reconsideration ⁴¹. Accordingly, this issue will be examined through two sections: the first concerns the immediate duties and procedures of the judicial police officer in cases of flagrante delicto, while the second addresses the scope of application of the provisions governing flagrante delicto and the procedural safeguards established under the new Law.

1. Immediate Duties and Procedures of the Judicial Police Officer in Cases of Flagrante Delicto

In the Code of Criminal Procedure No. 25-14, the Algerian legislature attached considerable importance to regulating the role of the judicial police officer upon being informed of a felony committed in flagrante delicto ⁴². In addition to the traditional duties of notification and proceeding to the scene, substantial amendments were introduced to enhance the effectiveness of these procedures, regulate their time limits, and establish new safeguards aimed at achieving a balance between the speed of intervention and respect for human rights.

1.1. Immediate Notification and Proceeding to the Crime Scene

Article 73 of Law No. 25-14 requires the judicial police officer, immediately upon being informed of a felony committed in flagrante delicto, to fulfil two interrelated duties: to notify the Public Prosecutor “immediately” and then proceed “without delay” to the crime scene ⁴³. The importance of these two duties lies in the fact that they constitute the cornerstone of the successive chain of procedures. Prompt notification enables the Public Prosecution Office to exercise its supervisory and directive powers from the earliest moments ⁴⁴, while proceeding “without delay” constitutes a strict temporal obligation aimed at preserving traces that are liable to disappear ⁴⁵.

It should be noted that Law No. 25-14 did not specify a maximum time limit for proceeding to the scene, leaving its assessment to the circumstances of each case, while requiring the officer not to delay under any pretext, failing which he may incur disciplinary liability ⁴⁶. Proceeding to the

scene also includes undertaking all necessary inquiries that may assist in uncovering the truth. This requires the officer to examine the crime scene carefully and record observations concerning the location of objects and their relationship to one another ⁴⁷. The new Law also introduced the possibility of seeking the assistance of qualified persons to conduct examinations that cannot be postponed, provided that they take a written oath ⁴⁸.

1.2. Prohibition on Altering the Condition of the Premises and Seizure of Traces

Article 74 of Law No. 25-14 establishes a comprehensive prohibition preventing any person who has no official capacity in the investigation from making any alteration to the condition of the places where the crime occurred or removing any object therefrom before the initial judicial investigation procedures are carried out. It provides that any person who violates this prohibition shall be punished by a fine ranging from DZD 20,000 to DZD 100,000 ⁴⁹. The purpose of this prohibition is to preserve the “crime scene” as living physical evidence through which the facts of the crime may be reconstructed and its circumstances uncovered ⁵⁰.

The Law provides for only two circumstances in which departure from this prohibition is permitted: where it is necessary for public safety or public health, or for the treatment of victims. However, where traces are deliberately obliterated or the features of the scene are intentionally altered with the purpose of obstructing the course of justice, this constitutes an aggravating circumstance. The offender shall be punished by imprisonment for a term ranging from three months to three years and a fine ranging from DZD 50,000 to DZD 150,000 ⁵¹.

The judicial police officer is also required to “seize everything that may lead to the discovery of the truth” and to present the seized objects to the suspected persons for identification ⁵². Unlike the former Law, which did not distinguish between the purposes underlying the alteration, the new Law differentiates between unintentional alteration and deliberate obliteration, reflecting a precise understanding of criminal intent. The new Law also introduced deterrent penalties for any person who discloses documents resulting from a search to an unauthorized person, consisting of imprisonment for a term ranging from two months to two years and a fine of up to DZD 150,000 ⁵³.

1.3. Prohibition on Leaving the Scene and Police Custody

Article 82 authorizes the judicial police officer to prevent any person from leaving the crime scene until the completion of his inquiries. This is a precautionary measure aimed at ensuring that evidence is neither dispersed nor tampered with ⁵⁴. Where strong and consistent evidence exists indicating that a person committed a felony or a misdemeanor punishable by imprisonment, the officer may place that person in police custody for a maximum period of 48 hours, subject to the obligation to immediately notify the Public Prosecutor and submit a detailed report stating the reasons for the custody measure ⁵⁵.

Law No. 25-14 addressed a legislative gap that existed under Ordinance No. 66-155, namely the absence of precise regulation governing the extension of the period of police custody. It expressly provides that police custody may be extended, by written authorization from the competent Public Prosecutor, twice (2) where the matter concerns offences of intentional homicide and kidnapping; three (3) times where the matter concerns offences of trafficking in narcotic drugs and psychotropic substances, offences related to information and communication technologies, money-laundering offences, offences relating to the special legislation governing foreign exchange and the movement of capital to and from abroad, corruption offences, smuggling offences, human

trafficking offences, organ trafficking offences, and migrant smuggling offences; four (4) times where the matter concerns offences against State security and transnational organized crime; and five (5) times where the matter concerns offences classified as terrorist or subversive acts ⁵⁶.

Article 85 guarantees persons placed in police custody important procedural rights, including immediate communication with members of their family and their lawyer, access to an interpreter where necessary, and a medical examination upon expiry of the custody period ⁵⁷. An ordinary person, and not only police officers, may also “apprehend the offender and take him to the nearest judicial police station” in cases of a felony or misdemeanor committed in flagrante delicto and punishable by imprisonment ⁵⁸. Law No. 25-14 further emphasized the necessity of drawing up official reports immediately and signing each page thereof ⁵⁹, and required that all information be entered in a specially numbered and stamped register ⁶⁰.

1.4. Relationship with the Public Prosecution Office and the Investigating Judge

Article 90 provides that “the judicial police officer shall relinquish control of the investigation upon the arrival of the Public Prosecutor at the scene of the incident” ⁶¹, whereupon the latter shall assume responsibility for completing the judicial police operations. This ensures the timely intervention of the Public Prosecution Office in order to exercise its supervisory and directive powers. The Public Prosecutor or the investigating judge may also proceed to the territorial jurisdictions of courts adjoining their own jurisdiction in order to continue the inquiries where the requirements of the investigation so necessitate ⁶².

Where the investigating judge arrives at the scene of the incident, he replaces the judicial police and personally undertakes the procedures. He may also assign one of the judicial police officers to continue those procedures ⁶³. The new Law further granted the Public Prosecutor, in the case of a felony committed in flagrante delicto, the authority, where the investigating judge has not yet been notified, to issue an order to bring the suspect before him and interrogate him in the presence of his lawyer ⁶⁴.

This regulatory framework demonstrates a hierarchy of jurisdiction: procedures begin with the judicial police officer during the first moments requiring the utmost speed, then pass to the Public Prosecution Office upon its arrival, and finally to the investigating judge where necessary.

2. Scope of the Application of the Provisions Governing Flagrante Delicto and Procedural Safeguards

The effects of flagrante delicto are not confined solely to felonies but also extend to misdemeanors under the conditions prescribed by the new Law. At the same time, the legislature has surrounded search procedures in such cases with strict safeguards, establishing a clear distinction between the former system of immediate appearance and the new system of immediate notification ⁶⁵.

2.1. Scope of the Application of the Provisions Governing Flagrante Delicto

Article 89 of Law No. 25-14 provides that the provisions of Articles 73 to 88—relating to notification, proceeding to the crime scene, the prohibition on altering the condition of the premises, the preservation of evidence, and police custody “shall apply to misdemeanors committed in flagrante delicto in all cases where the law prescribes a penalty of imprisonment” ⁶⁶. This expansion in the scope of application constitutes a significant development compared with the former Law, under which the application of the procedural rules governing felonies to misdemeanors was limited and subject to restrictive conditions ⁶⁷. The purpose of this expansion

is to simplify and expedite criminal procedures even in serious misdemeanors punishable by imprisonment, such as aggravated theft or intentional assault and battery ⁶⁸.

Nevertheless, the application of these provisions remains conditional upon the existence of a valid state of *flagrante delicto* as defined in Article 72, namely where the offence is committed while it is taking place, immediately after its commission, where the suspect is pursued by members of the public raising an outcry, where objects or traces indicating participation in the offence are found, or where the offence is discovered inside a dwelling accompanied by immediate notification ⁶⁹. In the absence of any of these situations, the ordinary procedural rules remain applicable. The new Law expressly excludes certain misdemeanors from the application of these procedures, including press offences, offences involving juveniles, and misdemeanors governed by special procedural rules ⁷⁰.

2.2. Legal Safeguards for the Suspect and the Person Placed in Police Custody

The new Law establishes a comprehensive set of legal safeguards for suspects and persons placed in police custody in response to the criticisms directed at the former immediate appearance system. Article 84 requires the judicial police officer to inform the person placed in police custody of the rights provided for in Article 85, including the right to communicate immediately with members of his family and with his lawyer, the right to the assistance of an interpreter, and the right to undergo a medical examination upon the expiry of the custody period ⁷¹.

Article 86 further requires the judicial police officer to record in the interview report the duration of the interrogation, the periods of rest, and the date and time at which the person was either released or brought before the competent judicial authority. Failure to include these particulars renders the police custody arbitrary ⁷². In addition, Article 87 requires these particulars to be entered into a special numbered and stamped register maintained at every police station, gendarmerie unit, and coast guard station likely to receive persons placed in police custody ⁷³. These safeguards represent a significant development compared with the former Law, which regulated this area in considerably less detail.

2.3. Extension of Territorial Jurisdiction and Supervision of Judicial Police Activities

Article 91 authorizes the Public Prosecutor or the investigating judge, when conducting proceedings in a case of *flagrante delicto*, to extend their investigations into the territorial jurisdiction of neighboring courts whenever the requirements of the investigation so necessitate. In such circumstances, they must notify in advance the Public Prosecutor of the jurisdiction to which they are proceeding, state the reasons in the official report, and inform the Attorney General accordingly ⁷⁴. This provision reflects a new degree of flexibility in territorial jurisdiction, intended to avoid unnecessary delays resulting from procedural formalities whenever urgency so requires. Moreover, investigating judges and the Indictment Chamber exercise judicial supervision over the activities of the judicial police. The Indictment Chamber is empowered to issue observations, suspend judicial police officers, or withdraw their judicial police status in cases of misconduct ⁷⁵. It is therefore evident that the new Code of Criminal Procedure, Law No. 25-14, has introduced a substantial reform in regulating the immediate effects of *flagrante delicto*. It has done so by extending the application of the procedural rules governing felonies to misdemeanors committed in *flagrante delicto*, specifying in detail the duties of judicial police officers and the time limits governing their actions, strengthening the protection of the inviolability of the home by requiring a reasoned judicial authorization for searches even in cases of *flagrante delicto*, regulating the

relationship between the judicial police, the Public Prosecution Office, and the investigating judge in a manner that ensures oversight and institutional balance, and introducing important legal safeguards for persons placed in police custody ⁷⁶. These reforms were designed to remedy the shortcomings revealed by the practical application of the former immediate appearance system and to reaffirm the principle that the prompt administration of criminal justice must never come at the expense of respect for fundamental rights and freedoms ⁷⁷.

Conclusion

The flagrante delicto system occupies a central position in the Algerian Code of Criminal Procedure, given its decisive role in enabling the competent authorities to intervene swiftly and effectively to address crime at its earliest stages. Law No. 25-14 reflects a modern legislative approach aimed at developing this system by precisely defining its cases, extending its scope of application to include certain misdemeanors, and strengthening the powers of the judicial police within a clearer legal framework. However, this expansion of powers is accompanied by the legislature's evident commitment to safeguarding the fundamental guarantees of suspects, both through the precise regulation of police custody procedures and through enhanced judicial oversight of judicial police activities, thereby reinforcing the principle of balance between authority and individual liberty.

Although flagrante delicto is essentially factual in nature, it remains a precise legal concept that requires cautious interpretation to avoid an unjustified expansion of its application, particularly in light of the flexibility inherent in the element of temporal proximity. Consequently, the proper application of this system ultimately depends on the extent to which law enforcement authorities adhere to the spirit and objectives of the legal provisions, in addition to the vital role of the judiciary in exercising oversight over the legality of investigative procedures.

Accordingly, it can be concluded that the success of the flagrante delicto system in achieving its objectives depends not only on the quality of the legal provisions but also on their prudent practical implementation based on respect for rights and freedoms, which constitutes the very essence of the rule of law.

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25. Law No. 25-14 of 9 Safar 1447 AH, corresponding to 3 August 2025, Containing the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 54, issued on 13 August 2025.

FOOTNOTES

¹ Law No. 25-14 of 9 Safar 1447, corresponding to 3 August 2025, containing the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria (OG), No. 54, issued on 13 August 2025.

² Ibn Manzur, *Lisan al-Arab*, Vol. 5, Dar Al-Maaref, Cairo, p. 3989.

³ Ibrahim Mustafa et al., *Al-Mu'jam Al-Wasit*, Dar Al-Da'wah, Academy of the Arabic Language, p. 812.

⁴ Ibid., p. 813.

⁵ Boualem Dribine, "The Provisions of Flagrante Delicto in the Algerian Code of Criminal Procedure: A Comparative Study with Egyptian Law," *Maaref Journal*, Vol. 19, No. 2, 2024, p. 17.

⁶ Article 72 of Law No. 25-14, which employs the terms "is described as," "is deemed," and "is characterized by," indicating that flagrante delicto encompasses various means of perception.

⁷ Fathi Sorour, *Al-Wasit fi Qanun Al-Ijra'at Al-Jina'iyah (Intermediate Treatise on the Code of Criminal Procedure)*, Vol. 1, Dar Al-Nahda Al-Arabia, Cairo, 1990, p. 354.

⁸ Bassiouni Ibrahim Abu Atta, *Flagrante Delicto and Its Effects in Islamic Jurisprudence and Positive Law*, Dar Al-Jami'a Al-Jadida, Alexandria, 2008, pp. 49-50.

⁹ Abdallah Ouahibia, *Explanation of the Code of Criminal Procedure (Investigation and Judicial Inquiry)*, Dar Houma, Algeria, 2015, p. 260.

¹⁰ Abdel Hamid Al-Shawarbi, *Flagrante Delicto in the Light of Case Law and Jurisprudence*, Mansha'at Al-Maaref, Alexandria, 1996, p. 8.

¹¹ Mohamed Mahda, *Guarantees of the Suspect During Preliminary Investigations*, Vol. 2, Dar Al-Houda, Algeria, 1991, p. 159.

¹² Article 72 of Law No. 25-14, cited above, p. 16.

¹³ Fadi Mohammad Aqlah Musleh, *The Powers Granted to Judicial Police Officers in Cases of Flagrante Delicto*, Dar Wael Publishing, Jordan, 2013, p. 16.

¹⁴ Article 72, paragraph 1, of Law No. 25-14, cited above.

¹⁵ Ahmed Ghai, *A Concise Guide to the Organization and Functions of the Judicial Police*, Dar Houma, Algeria, 2008, p. 32.

¹⁶ Abdallah Ouahibia, op. cit., pp. 261-262.

¹⁷ Article 73 of Law No. 25-14, cited above, p. 16.

¹⁸ Ishaq Ibrahim Mansour, *Fundamental Principles of the Algerian Code of Criminal Procedure*, National Office for University Publications, Algeria, 1993, p. 78.

¹⁹ Decision of the Supreme Council, Criminal Chamber, 28 October 1964, cited in Mohamed Mahda, *Guarantees of the Suspect During Preliminary Investigations*, Vol. 2, Dar Al-Houda, Algeria, 1991, pp. 162-163.

²⁰ Bassiouni Ibrahim Abu Atta, op. cit., p. 51.

²¹ Article 83 of Law No. 25-14, cited above, pp. 18-19.

²² Articles 75-78 of Law No. 25-14, cited above, pp. 17-18.

²³ Articles 83-86 of Law No. 25-14, cited above, pp. 18-20.

²⁴ See Articles 34, 37, 38, and 39 of the 2020 Constitution.

²⁵ Constitutional Court Decision No. 02/CC/DD/2025, dated 16 July 2025, Official Gazette, No. 54, pp. 3-6.

²⁶ Maamoun Mohammad Salama, *Code of Criminal Procedure*, Dar Al-Fikr Al-Arabi, Cairo, 1980, p. 510.

²⁷ Article 72, paragraph 2, of Law No. 25-14, cited above.

²⁸ Moulay Miliani Baghdadi, *Criminal Procedure in Algerian Legislation*, National Book Institution, Algeria, 1992, p. 179.

²⁹ Suleiman Barash, *Explanation of the Algerian Code of Criminal Procedure*, Dar Al-Shihab, Algeria, 1986, pp. 147-148.

³⁰ Mohammad Odeh Al-Jubour, *Judicial Jurisdiction of the Judicial Police Officer*, Arab House of Encyclopedias, Beirut, 1986, p. 238.

³¹ Article 72, paragraph 3, of Law No. 25-14, cited above.

³² Boualem Dribine, op. cit., p. 17.

³³ Fadi Mohammad Aqlah Musleh, op. cit., p. 24.

³⁴ Abdel Rahman Khalfi, *Criminal Procedure in Algerian and Comparative Legislation*, Dar Belkis, Algeria, 2016, pp. 351-353.

³⁵ Nejma Jbeiri, *Flagrante Delicto and Its Impact on Personal Liberty*, Dar Al-Jami'a Al-Jadida, Egypt, 2010, p. 37.

³⁶ Bassiouni Ibrahim Abu Atta, op. cit., p. 54.

³⁷ Tantawi Ibrahim Hamed, *Flagrante Delicto and Its Impact on Personal Liberty*, Legal Library, Egypt, 1990, p. 34.

³⁸ Bouanad Fatima Zahra, "Immediate Appearance Before the Court in Light of the New Code of Criminal Procedure No. 25-14," *Sawt Al-Qanun Journal*, Vol. 12, No. 01, 2025, pp. 180-181.

³⁹ Ordinance No. 66-155 of 8 June 1966, containing the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria (OG), No. 49, issued on 11 June 1966.

⁴⁰ Ordinance No. 15-02 of 23 July 2015, amending and supplementing Ordinance No. 66-155 of 8 June 1966 containing the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria (OG), No. 40, issued on 23 July 2015, p. 28.

⁴¹ Bousaida Faisal, "Immediate Appearance as an Alternative to the Flagrante Delicto System," *Journal of Human Rights Studies*, Vol. 5, No. 1, 2021, p. 95.

⁴² Brahimi Djamel, "Recent Developments Introduced by Code of Criminal Procedure No. 25-14 in the Field of Judicial Investigation," *Academic Journal of Legal and Political Research*, Vol. 10, No. 1, 2026, p. 1522.

⁴³ Article 73 of Law No. 25-14, cited above.

⁴⁴ Bouanad Fatima Zahra, op. cit., p. 185.

⁴⁵ Article 73, paragraph 2, of Law No. 25-14, cited above.

⁴⁶ Article 73 of the same Law.

⁴⁷ Article 73, paragraph 3, of the same Law.

⁴⁸ Article 81 of the same Law.

⁴⁹ Article 74, paragraph 1, of the same Law.

⁵⁰ Omar Khouri, op. cit., p. 29.

⁵¹ Article 74, paragraph 3, of the same Law.

⁵² Article 73, paragraphs 3 and 4, of the same Law.

⁵³ Article 77 of the same Law.

⁵⁴ Article 82, paragraph 1, of the same Law.

⁵⁵ Article 83, paragraphs 1 and 2, of the same Law.

⁵⁶ Article 83, paragraph 5, of Law No. 25-14, cited above.

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⁵⁸ Article 94 of the same Law.

⁵⁹ Article 88 of the same Law.

⁶⁰ Article 86 of the same Law.

⁶¹ Article 90, paragraph 1, of the same Law.

⁶² Article 91, paragraph 1, of the same Law.

⁶³ Article 93, paragraphs 1 and 2, of the same Law.

⁶⁴ Article 92 of the same Law.

⁶⁵ Bouanad Fatima Zahra, op. cit., p. 178.

⁶⁶ Article 89 of Law No. 25-14, cited above.

⁶⁷ Bouanad Fatima Zahra, op. cit., pp. 189-190.

⁶⁸ Ibid., p. 182.

⁶⁹ Article 72 of Law No. 25-14, cited above.

⁷⁰ Bouanad Fatima Zahra, op. cit., p. 183.

⁷¹ Articles 84 and 85 of Law No. 25-14, cited above.

⁷² Article 86 of the same Law.

⁷³ Article 87 of the same Law.

⁷⁴ Article 91 of the same Law.

⁷⁵ Brahimi Djamel, op. cit., pp. 1531-1532.

⁷⁶ Bouanad Fatima Zahra, op. cit., p. 192.

⁷⁷ Bousaida Faisal, op. cit., p. 93.