Title The Code of Criminal Procedure

Amended Date 2007.12.12

PART I GENERAL PROVISIONS

CHAPTER I APPLICATION OF THE CODE

Article 1 Criminal proceedings may not be initiated and punishment may not be imposed other than in conformity with the procedure specified in this Code or in other laws.

Crimes committed by military personnel in active service, except those military offenses subject to court-martial, shall be prosecuted and punished in accordance with this Code.

Where the criminal proceedings of a case were conducted pursuant to special laws owing to limitation of time or region and no final judgment has yet been rendered thereon, upon elimination of said limitation, the case shall be prosecuted and punished in accordance with this Code.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 2 A public official who conducts proceedings in a criminal case shall give equal attention to circumstances both favorable and unfavorable to an accused.
An accused may request the public official specified in the preceding paragraph to take necessary measures favorable to the accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 3 The term "party" as used in this Code refers to a public prosecutor, a private prosecutor, or an accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER II JURISDICTION OF COURTS

Article 4 The district court has the jurisdiction over the first instance of a criminal case,

provided that the high court has the jurisdiction over the first instance of the following cases:
(1) An offense against the internal security of the State;
(2) An offense against the external security of the State;
(3) An offense of interference with relations with other States.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 5 A court of the place where an offense is committed or where an accused is domiciled, resides, or is located shall have jurisdiction over the case.
If an offense is committed on a vessel or an aircraft of the Republic of China outside the territory of the Republic of China, the court of the place where the vessel is registered or from which the aircraft departed or landed after the commission of the offense shall also have jurisdiction.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 6 If related cases are subject to the jurisdiction of several courts of the same level, one of such courts may combine them and take jurisdiction over the cases.

The cases specified in the preceding paragraph which are pending in several courts may, by mutual consent of such courts, be transferred by a ruling to one of such courts to be tried together; if there are disagreements, a ruling by the court immediate superior to all such courts shall determine jurisdiction.

Related cases that are subject to the jurisdiction of several courts of different levels may be combined and jurisdiction taken by the highest of such courts; related cases pending in lower courts may, by a ruling of the higher court, be transferred to it to be tried together, provided

that the cases specified in Item 3 of Article 7 are not subject to the provisions of this paragraph.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 7 If one of the following circumstances exists, the cases are considered to be related:
(1) One person commits several offenses;
(2) Several persons jointly commit one or several offenses;
(3) Several persons separately commit offenses at the same time and place;
(4) The commission of concealment of offenders, destruction of evidence, perjury, or receipt of stolen property is related to the instant offense.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 8 If the same case is pending in several courts which have jurisdiction, the court in which the case was first pending shall try it, provided that by a ruling of a court immediately superior to all such courts the case may be tried by a court in which it was pending later in time.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 9 The immediately superior court shall, by a ruling, determine the court to take jurisdiction in one of the following circumstances:
(1) Several courts dispute jurisdiction;
(2) A court which has jurisdiction is, determined by a final judgment, lack of jurisdiction, and there is no other court which can exercise jurisdiction over the case;
(3) Uncertain judicial district boundaries make it impossible to determine which court has jurisdiction.

If jurisdiction cannot be determined by applying the provisions of the preceding paragraph or Article 5, the Supreme Court shall, by a ruling, determine the court to take jurisdiction.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 10 In one of the following circumstances, the immediate superior court shall, by a ruling, order the transfer of a case to another court within its judicial district and of the same level as the original court:
(1) The court which has jurisdiction is unable to exercise its judicial power because of law or fact;
(2) Due to special circumstances, it is considered that a trial by a court that has jurisdiction will probably lead to the disturbance of public peace or unfairness.
Where the immediate superior

court is unable to exercise its judicial power, the aforesaid ruling shall be made by the immediate higher court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 11 A motion by a party to determine or transfer jurisdiction shall be in writing, set forth the reasons therefore, and be filed with a proper court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 12 Proceedings shall not be void because of a court's lack of jurisdiction.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 13 A court may exercise its functions outside its judicial district if it is necessary to discover facts or in time of

emergency.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 14 A court shall, in time of emergency, take necessary measures within its judicial district notwithstanding that it has no jurisdiction.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 15 The cases specified in Article 6 may be jointly investigated or prosecuted by one public prosecutor; if another public prosecutor who is concerned disagrees, the chief public prosecutor of the immediate superior public prosecutors' office or the public prosecutor general shall issue an order.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 16 The provisions of Article 13 and 14 shall apply mutatis mutandis to a public prosecutor in an investigation.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER III DISQUALIFICATION OF COURT OFFICERS

Article 17 In one of the following circumstances, a judge shall disqualify himself from the case concerned on his own motion and may not exercise his functions:

(1) The judge is the victim;

(2) The judge is or was the spouse, blood relative within the eighth degree of kinship, relative by marriage within the fifth degree of relationship, family head, or family member of the accused or victim;

(3) The judge has been betrothed to the accused or victim;

(4) The judge is or was the statutory agent of the accused or victim;

(5) The judge has acted as the agent, defense attorney, or

assistant of the accused or as the agent or assistant of the private prosecutor or a party in the supplementary civil action;
(6) The judge has acted as the complainant, informer, witness or expert witness;
(7) The judge has exercised the functions of the public prosecutor or judicial police officer;
(8) The judge has participated in the decision at a previous trial.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 18 A party may motion to disqualify a judge in one of the following circumstances:
(1) Circumstances specified in the preceding article exist and the judge has not disqualified himself from the case concerned on his own motion;
(2) Circumstances other than those specified in the preceding article exist which are sufficient to justify the

apprehension that the judge may be prejudiced in the exercise of his functions.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 19 A party may, at any stage of the proceedings, motion to disqualify a judge in the circumstances specified in Item 1 of the preceding article.
A party who has already made an explanation or a statement of his case may not subsequently make a motion to disqualify a judge as provided in Item 2 of the preceding article, provided that if the reasons for such motion occur or are discovered thereafter, this limitation shall not apply.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 20 A motion to disqualify a judge shall be in writing, set forth the reasons therefore, and be

filed with the court to which the judge belongs, provided that such motion may be made verbally on the trial date or during examination.

Reasons for the motion to disqualify a judge and facts required by the proviso of the second section of the preceding article shall be set forth and explained.

A judge for whose disqualification a motion is made may file a written opinion.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 21 A motion to disqualify a judge shall be determined by a ruling of a panel of judges of the court to which the judge belongs; if a quorum of the panel is not present, the ruling shall be made by the president of the court; if it is impossible for the president to make the ruling, the court which is immediate superior to such court shall make

it.

A judge for whose disqualification a motion is made shall not participate in the ruling specified in the preceding section.

If a judge for whose disqualification a motion is made considers that such motion is well-grounded, he shall thereupon disqualify himself without making a ruling.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 22 If a motion is made for the disqualification of a judge, the proceedings shall be suspended except for emergency measures or in the case where the motion is based upon Item 2 of Article 18.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 23 If a motion to disqualify a judge is dismissed by a ruling, an interlocutory appeal may be

made.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 24 A court or its president concerned with a motion to disqualify a judge shall muto proprio make a ruling requiring such disqualification if it is considered that reasons exist which require the judge to disqualify himself on his own motion.

The ruling specified in the preceding section need not be served.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 25 The provisions of this chapter relating to the disqualification of a judge shall apply mutatis mutandis to a court clerk or interpreter, provided that the previous service as a clerk or interpreter in a lower court shall not be a reason for the

disqualification.
The disqualification of a court clerk or interpreter shall be determined by a ruling of the president of the court to which he is attached.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 26 The provisions of Articles 17 through 20 and Article 24 concerning the disqualification of a judge shall apply mutatis mutandis to a public prosecutor or a clerk attached to the public prosecutors' office, provided that previous service as a public prosecutor, clerk, or interpreter in a lower court shall not be a reason for the disqualification.
A motion to disqualify a public prosecutor or clerk, which is specified in the preceding section, shall be made to the chief public prosecutor or public prosecutor general concerned for appraisal and

decision.

A motion to disqualify a chief public prosecutor shall be made to the chief public prosecutor of the immediately superior public prosecutors' office or public prosecutor general for appraisal and decision; the same rule shall apply if there is only one public prosecutor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER IV DEFENSE ATTORNEYS, ASSISTANTS, AND AGENTS

Article 27 An accused may at any time retain defense attorneys. The same rule shall apply to a suspect being interrogated by judicial police officers or judicial policemen.

A statutory agent, spouse, lineal blood relative, collateral blood relative within the third degree of kinship, family head, or family member may independently retain defense attorneys for the accused or suspect.

In case an accused or a suspect is unable to make a complete statement due to unsound mind, the persons listed in the preceding section shall be notified of the same, provided that the said notification is not required if it can not be made practically.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 28 An accused may not retain more than three defense attorneys.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 29 A defense attorney shall be a lawyer, provided that if permission is obtained from the presiding judge at trial, a person who is not a lawyer may be retained as a defense attorney.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 30 The retention of a defense attorney shall be in the form of a power of attorney.
The power of attorney for the retention of a defense attorney specified in the preceding section shall be submitted to the public prosecutor or judicial police officer before initiation of prosecution or to the courts of different levels thereafter.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 31 In cases where the minimum punishment is no less than three years imprisonment, where a high court has jurisdiction over the first instance, or where the accused is unable to make a complete statement due to unsound mind, the presiding judge shall appoint a public defender or a lawyer to defend the accused if no defense attorney has been retained; in other cases, if no defense

attorney has been retained by an accused with low income and a request for appointing one has been submitted, or if it is considered necessary, the same rule shall apply.

If in the case specified in the preceding section a retained defense attorney fails to appear without good reason on the trial date, the presiding judge may appoint a public defender.

One public defender may be appointed to defend several defendants unless their interests conflict.

After a public defender has been appointed, such appointment may be cancelled upon the retention of a lawyer as a defense attorney.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 32 If an accused has several defense attorneys, documents shall be served upon them separately.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 33 A defense attorney may examine the case file and exhibits and make copies or photographs thereof.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 34 A defense attorney may interview and correspond with a suspect or an accused under detention, provided that if facts exist sufficient to justify an apprehension that such defense attorney may destroy, fabricate, or alter evidence or form a conspiracy with a co-offender or witness, such interviews or correspondence may be limited.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 35 A spouse, lineal blood relative, collateral blood relative within

the third degree of kinship, family head, or family member of an accused or private prosecutor or a statutory agent of an accused may, after initiation of prosecution, apply to the court in writing, or verbally on the trial date, for permission to act as the assistant of the accused or private prosecutor.

The assistant may take actions provided in this code, and may state his opinion in court not inconsistent with the expressed opinion of the accused or the private prosecutor.

In cases an accused or a suspect is unable to make a complete statement due to unsound mind, he shall be accompanied by one of the qualified assistant, under the first section of this article, or his authorized agent, or a social worker appointed by a governmental agency in charge thereof; provided that if, upon being properly served, the persons who shall accompany the accused or

suspect fail to appear without good reason, the provision of this section shall not apply.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 36 In cases where maximum punishment is detention or a fine only, an accused may, at trial or in the investigation, authorize an agent to appear before the court or public prosecutor, provided that if the court or public prosecutor considers it necessary, the accused may be ordered to appear in person.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 37 A private prosecutor shall authorize an agent to appear before the court by a power of attorney, provided that if the court considers it necessary, the private prosecutor may be ordered to appear in person. The agent referred to in the

preceding section shall be a lawyer.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 38 The provisions of Articles 28, 30, 32, 33 shall apply mutatis mutandis to an agent of an accused or private prosecutor, and the provision of Article 29 shall also apply to an agent of an accused mutatis mutandis.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER V DOCUMENTS

Article 39 A document prepared by a public official shall bear the date and name of the public office concerned and the signature of the official preparing it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 40 A document prepared by a public

official may not be changed by erasing, cutting out, or pasting over; if a character is added, crossed out, or appended, a seal must be affixed and the number of characters recorded; a trace must remain of a character crossed out so that it is recognizable.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 41 In examining an accused a private prosecutor, witness, expert witness, or interpreter, records shall be made, then and there, of the following matters:

(1) The questions asked of the person examined and his statements;

(2) The reason a witness, expert witness, or interpreter does not sign an affidavit to tell the truth;

(3) The date and place of examination.

The records specified in the preceding section shall be read

aloud to the person examined or he shall be permitted to read them; he shall then be asked whether there are mistakes.
If the person examined requests an addition, a crossing out, or a change, his statement shall be added to the records.
The person examined shall be ordered to affix his signature, seal, or fingerprint on the records immediately following the last line.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 42 Records shall be made of a search, seizure, or inspection recording date, time, place, and other necessary facts.
Things seized shall be enumerated in detail in the records, or a separate inventory shall be appended.
A drawing or photograph may be made in an inspection and appended to the records.
Persons ordered by this Code to

be present shall be ordered to affix his signature, seal, or fingerprint on records.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 43 The records referred to in the preceding two articles shall be prepared by a clerk who is present; the public official who asks questions or conducts the search, seizure, or inspection shall affix his signature on the records; in the absence of a clerk, the public official who asks questions or conducts the search, seizure, or inspection may either personally prepare the records, or appoint another on duty public official who is present to do it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 43-1 The provisions of Article 41 and Article 42 shall apply mutatis mutandis to a public prosecuting

affairs official, a judicial police officer, and a judicial policeman in conducting interrogation, search and seizure.

The interrogation records of a suspect as referred to in the preceding section shall be prepared by a person other than the one conducting the interrogation; provided that if the said can not be followed due to emergency or practical difficulty and if the proceeding has been audio or video recorded, it shall not be subject to the provision of the preceding paragraph.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 44 On the trial date, trial records shall be prepared by a clerk, which shall include the following items and the entire proceedings:

(1) The court and the date of trial;

(2) The title and full name of the judge, public prosecutor and clerk and the full name of the private prosecutor, accused, agent, defense attorney, assistant, and interpreter;
(3) The reason for the nonappearance of the accused;
(4) The reason for in camera proceedings;
(5) The principal points of the opening statements made by the public prosecutor or private prosecutor;
(6) The principal points of the arguments;
(7) The matter specified in Items 1 and 2 of Section I of Article 41. However, the presiding judge may, after consulting the persons concerned, order the inclusion of the principal point only if the judge deems proper;
(8) The document read or explained in principle points to the accused in open court;
(9) The exhibit shown to the accused in open court;
(10) The seizure or inspection

made in open court;
(11) The items recorded by the presiding judge's order and upon motion of the parties concerned with the approval of the presiding judge;
(12) The opportunity of making the final statement of the accused;
(13) The decision pronounced.
A person examined may request that parts of the record specified in the preceding section related to his statement be read aloud or that he be permitted to read it; if he requests an addition, crossing out, or alteration, his statements shall be recorded.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 44-1 The entire proceeding on the trial date shall be recorded in audio, and if necessary, in video.
If parties, agent, defense attorney, or assistant has

suspicion about mistakes or missing in trial records, he may make a motion prior to the next court session, or within seven days thereafter in the case the court argument has been completed, to request the playing of the audio or video records for the purpose of comparing and correcting the contents thereof. With the court's approval, the persons named in the preceding sentence may within the time period specified by the court, reduce the contents of the examination of the accused, private prosecutor, witness, expert witness, or interpreter and their statements to writing, based on the contents of the audio or video records recorded at the trial date, and present them to the court.

The contents of the documents specified in the last sentence of the preceding section, after affirmed by the clerk and deemed to be proper, may be made an

appendix to the trial records. In such a case, the provision of Article 48 shall apply mutatis mutandis to it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 45 Trial records shall be put in proper order within three days after each session.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 46 Trial records shall be signed by the presiding judge; if the presiding judge is unavailable, the records shall be signed by the senior associate judge; if the single judge who tried the case is unavailable, the records shall be signed by the clerk; if the clerk is unavailable, the records shall be signed by the presiding judge or other judges; the reason for the aforesaid unavailability shall be noted respectively.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 47 Trial records shall be the exclusive proof of the proceedings of the trial.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 48 If trial records incorporate a document as a part thereof or refer to it as appended thereto, matters recorded in such document have the same validity as the trial records.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 49 With the permission of the presiding judge, a defense attorney may bring a stenographer to the court on the trial date.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 50 A decision shall be made in writing by a judge, but a ruling pronounced in open court from which an interlocutory appeal may not be taken may be recorded only in the records.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 51 A written decision, unless otherwise specifically provided, shall give the full name, sex, age, occupation, and domicile or residence of the person tried; if the written decision is in the form of a judgment, the name of the public prosecutor or private prosecutor, agent, and defense attorney shall be recorded. The original of a written decision shall be signed by the trial judges; if the presiding judge is unavailable and unable to sign, the senior associate judge shall make a note of the

reason; if a judge is unavailable, the presiding judge shall make a note of the reason.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 52 A true copy of a written decision or the records containing such decision shall be made from the original by the clerk with the seal of the court and the following words thereon: "It is certified that this is an exact copy of the original."
The provisions of the preceding section shall apply mutatis mutandis to an indictment or a written ruling not to prosecute by a public prosecutor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 53 A written document made by a person, other than a public official, shall be dated and signed; where it is not made by such person himself, he shall

affix his signature thereon; where he cannot sign his name, he shall have someone else print his name for him and then affix his seal or fingerprint on the document, provided that the person printing his name for him shall indicate the reason thereof and sign his own name.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 54 Case documents which the court should preserve shall be filed by the clerk.
Disposition of case involving loss of court files shall be separately prescribed by law.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER VI SERVICE

Article 55 An accused, private prosecutor, complainant, party to a supplementary civil action, agent, defense attorney,

assistant, or victim of the case, shall, for the purpose of service, give his domicile, residence or office address to the court or public prosecutor; in case the victim died, the same shall be done by his spouse, children, or parents; if he has no domicile, residence or office address within the judicial district of the court, a person having a residence or office within such district shall be delegated to receive service for him.

The addresses specified in the preceding section shall be valid for courts of all levels in the same district.

Service on the person delegated shall be considered to be service on the principal.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 56 The provisions of the preceding article shall not apply to a person in prison or detention

house.

If a person to be served is in a prison or detention house, the service shall be entrusted to the officer in charge of such prison or detention house.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 57 If an address has not been given as provided in article 55, service may nevertheless be made at the domicile, residence, or office address of a person if it is known to the clerk; a document may also be served at such address by registered mail.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 58 The public prosecutor to be served shall be the public prosecutor in charge of the case concerned. When such public prosecutor is not in the office, service shall be made on the chief public prosecutor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 59 Service may be made on an accused, private prosecutor, complainant, or party to a supplementary civil action by publication under one of the following circumstances:
(1) The domicile, residence, office, and location are unknown;
(2) Service is made by registered mail, but such mail cannot be delivered;
(3) Residence is in a place outside the jurisdiction, and no other method of service can be found.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 60 Service by publication shall be executed by a clerk with the permission of the court, public prosecutor general, chief public prosecutor, or public

prosecutor. In addition to posting a document to be served or its abbreviated copy on the bulletin board of the court, the clerk shall publish it in a newspaper or give notification or publish it by other appropriate methods.
The service by publication specified in the preceding section shall be effective thirty days after the last publication in a newspaper, posting, or notification.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 61 A document shall be served by a judicial policeman, or through the post office.
If the document aforesaid is a judgment, ruling, decision not to prosecute, or decision to defer the prosecution, the person making service thereof shall prepare a certificate of acceptance listing therein particulars of a certificate of

service and sign his name thereon before giving it to the acceptor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 62 Unless otherwise provided by special provisions in this Chapter, the provisions of the Code of Civil Procedure shall apply mutatis mutandis to the service of a document.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER VII DATES AND PERIODS

Article 63 If a hearing date has been designated by a presiding judge, commissioned judge, requisitioned judge, or public prosecutor for the commencement of legal proceedings, the persons concerned shall be summoned or notified to appear, provided that this rule shall not apply if the persons concerned are present, or it is otherwise

provided by special provisions in this Code.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 64 A fixed date shall not be changed or postponed unless there is an important reason or otherwise provided by special provisions. If a hearing date is changed or postponed, the persons concerned shall be informed.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 65 The calculation of periods shall be according to the provisions of the Civil Code.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 66 Time occupied in travel shall not be counted against a person who is required to perform procedural acts within a period

prescribed by law whose domicile, residence or office is not within the judicial district of the court.
The time not counted as specified in the preceding section shall be determined by the highest judicial administrative agency.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 67 A person who without negligence fails to file within the prescribed time an appeal, interlocutory appeal, motion for retrial, motion for dismissal or change of a ruling made by a presiding judge, commissioned judge, requisitioned judge or of an order made by a public prosecutor may motion for restoration of original condition within five days after the disappearance of the reason.
In a case in which an agent is permitted, negligence of the agent shall be considered to be negligence of the principal.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 68 A person who fails within the prescribed time to file an appeal, interlocutory appeal, or motion for retrial and who motions for restoration of original condition shall submit a motion in writing to the original court. A person who fails within the prescribed time to file a motion for dismissal or change of a ruling made by a presiding judge, commissioned judge, or requisitioned judge, or of an order made by a public prosecutor shall make such motion to a court having jurisdiction.

The reason for failure without negligence to comply with the time limit and the date of its disappearance shall be stated in the written motion.

If a motion for restoration of original condition is made, all necessary procedural acts which

should have been performed within the lapsed period shall be made up at the time of the motion.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 69 The court to which a motion is made shall make a joint decision both on the motion for restoration of original condition and the supplementary procedural acts. If the original court considers that the motion should be approved, the appeal or interlocutory appeal shall be forwarded by the original court with a written opinion to the higher court for a joint decision.

The court to which a motion is made may suspend the execution of the original decision before passing upon such motion.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 70 If a motion for review of a decision not to prosecute is not filed within the prescribed period of time, the original public prosecutor may grant restoration of original condition in accordance with the provisions of the preceding three articles, mutatis mutandis.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER VIII SUMMONS AND ARREST OF ACCUSED

Article 71 A summons shall be issued for the appearance of an accused.
A summons shall contain the following matters:
(1) Full name, sex, age, native place and domicile or residence of the accused;
(2) Offense charged;
(3) Date, time, and place for appearance;
(4) That a warrant of arrest may be ordered if there is a failure to appear without good reason.
If the name of an accused is

unknown or other circumstances make it necessary, special identifying marks or characteristics must be included; if the age, native place, domicile or residence of an accused is unknown, it does not need to be included.
A summons shall be signed by a public prosecutor during the stage of investigation or by a presiding or commissioned judge during the stage of trial.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 71-1 A judicial police officer or judicial policeman, for the necessity of investigating a suspect's involvement in a crime and collecting relevant evidence, may call by a notice the suspect to appear for interrogation. If the suspect, without good reason, fails to appear after a notice has been legally served, the public prosecutor may be sought to issue

an arrest warrant.

The notice specified in the preceding section shall be signed by the head of the judicial police office. Item 1 through Item 3 of section II of the preceding Article shall apply mutatis mutandis to the matters to be stipulated in the notice.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 72 The fact that an accused has appeared and is personally informed of the date, time, and place for his next appearance and that an arrest warrant may be ordered if he fails to appear, all of which is made a matter of record, shall have the same effect as the service of a summons. The same rule shall apply if an accused states in writing that he will appear at the appointed time.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 73 If an accused who is to be summoned is in a prison or detention house, the officer in charge of such prison or detention house shall be notified thereof.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 74 An accused who appears when summoned shall be examined at the scheduled time unless there are circumstances which make such examination impossible.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 75 An accused, who without good reason fails to appear after he has been legally summoned, may be arrested with a warrant.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 76 If an accused is strongly suspected of having committed an offense, and if one of the following circumstances exists, he may be arrested with a warrant without first being served with a summons:

(1) He has no fixed domicile or residence;

(2) He has absconded or there are facts sufficient to justify an apprehension that he may abscond;

(3) There are facts sufficient to justify an apprehension that he may destroy, forge, or alter evidence, or conspire with a co-offender or witness;

(4) He has committed an offense punishable with death penalty or life imprisonment, or with a minimum punishment of imprisonment for no less than five years.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 77 An arrest warrant is required to execute the arrest of an accused. An arrest warrant shall contain the following matters:
(1) Full name, sex, age, native place, and domicile or residence of the accused. If the age, native place, domicile or residence is unknown, it does not need to be included;
(2) Offense charged;
(3) Reason for the arrest;
(4) Place to which the accused is to be taken.
The provisions of sections III and IV of Article 71 shall apply mutatis mutandis to an arrest warrant.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 78 An arrest warrant shall be executed by a judicial policeman or judicial police officer, and the period for making such an arrest may be prescribed.
Several copies of an arrest warrant may be issued and given

to several persons for execution.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 79 An arrest warrant shall consist of two slips, and in making an arrest one slip thereof shall be handed to the accused or members of his family.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 80 After an arrest with a warrant is made, the place, date, and time of execution shall be noted on such warrant; if no arrest can be made, the reason therefor shall be noted, and the warrant shall be signed by the person who executed the arrest warrant and forwarded to the public official who ordered the arrest.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 81 If it is necessary, a judicial policeman or judicial police officer may make an arrest with a warrant outside his judicial district or request a judicial police officer of that place to make the arrest.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 82 A presiding judge or public prosecutor may specify the matters which should be contained in a warrant and request the public prosecutor of a place where the accused may be found to make an arrest with a warrant; if the accused is not at such place, the requisitioned public prosecutor of such place may in turn entrust the matter to the public prosecutor of the place where the accused may be found.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 83 If the accused is in active service in the military, his arrest shall be executed by informing his superior officer of the warrant and requesting the officer's assistance in executing it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 84 If an accused has absconded or is in hiding, a circular order may be issued for his arrest.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 85 A circular order for the arrest of an accused must be in writing. A circular order shall contain the following matters:
(1) Full name, sex, native place, domicile or residence, and other identifying marks or characteristics of the accused. If the age, native place,

domicile or residence is unknown, it needs not be included;
(2) Facts charged;
(3) Reason for the circular order;
(4) Date, time, and place of the commission of the offense unless unknown;
(5) Place to which the accused is to be taken;
A circular order for the arrest of an accused shall be signed by the public prosecutor general or the chief public prosecutor during the stage of investigation and by the president of a court during the stage of the trial.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 86 Public prosecutors and judicial police officers of neighboring or other judicial districts shall be informed of the issuance of a circular order; if it is necessary, the order may be

published in a newspaper or via other mediums.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 87 After notice has been given of the issuance of a circular order or it has been published, a public prosecutor or judicial police officer may arrest the accused with or without a warrant.

An interested party may arrest an accused designated in a circular order to arrest and turn him over to the public prosecutor or judicial police officer or request the public prosecutor or judicial police officer to arrest him.

When the reason for the issuance of a circular order to arrest no longer exists or a circular order to arrest is apparently unnecessary, the order shall be canceled immediately.

Provisions of the preceding Article shall apply mutatis

mutandis to the notification or publication of the cancellation of a circular order to arrest.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 88 A person in flagrante delicto may be arrested without a warrant by any person.

A person in flagrante delicto is a person who is discovered in the act of committing an offense or immediately thereafter.

A person is considered to be in flagrante delicto under one of the following circumstances:

(1) He is pursued with cries that he is an offender;

(2) He is found in possession of a weapon, stolen property, or other items sufficient to warrant a suspicion that he is an offender or his body, clothes and the like show traces of the commission of an offense sufficient to warrant such suspicion.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 88-1 In investigating an offense when one of the following circumstances exists and it is exigent, a public prosecutor, judicial officer, or judicial policeman may arrest without a warrant:

(1) The person who is implicated to be a co-offender by one in flagrante delicto and there are facts sufficient to warrant the strong implication;

(2) The person who has escaped from the execution of punishment or from detention;

(3) The person who is strongly suspected of having committed an offense by facts sufficient in themselves and runs away when being interrogated, provided that this rule shall not apply if the offense committed is obviously punishable with maximum punishment of imprisonment for not more than one year, or detention, or sole

fine;

(4) The person who is strongly suspected of having committed an offense punishable with death penalty or life imprisonment, or with minimum punishment of imprisonment for not less than five years, and there are facts sufficient to justify an apprehension that he may abscond.

The arrest specified in the preceding section, when executed by a public prosecutor in person, may be made without a warrant. If the arrest is executed by a police officer or judicial policeman, it may be made without a warrant only when the circumstance is too urgent to report to a public prosecutor; an application for the issuance of an arrest warrant shall be made to a public prosecutor immediately after the arrest. If the public prosecutor rejects to issue a warrant, the arrestee shall be released immediately.

The provisions of Article 130 and

section I of Article 131 shall apply mutatis mutandis to the section I hereof, provide that the public prosecutor should be reported immediately.

A public prosecutor, judicial officer or judicial policeman, who arrests a suspect in accordance with the procedure as stipulated in section I hereof, shall notify the arrestee and his family member immediately that a defense attorney may be retained to be present.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 89 In executing an arrest with or without a warrant, due care shall be taken of the person and reputation of the accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 90 If an accused resists the arrest made with or without a warrant or if he escapes, he may be arrested

by force with or without a warrant, but such force may not be excessive.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 91 If an accused is arrested with a warrant or because of a circular order to arrest without a warrant, he shall be brought immediately to the place designated; if such a place cannot be reached within twenty four hours, the arrestee shall be brought to the nearest court or public prosecutor's office, depending on whether the arrest warrant or circular order to arrest was ordered by the former or the latter, for examination to determine whether there has been mistakes as to his identity.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 92 When a person who has no authority to investigate an

offense arrests without a warrant a person in flagrante delicto, he shall immediately hand the arrestee over to a public prosecutor, judicial police officer, or judicial policeman.

A judicial police officer or judicial policeman who arrests without a warrant or receives a person in flagrante delicto shall immediately send the arrestee to a public prosecutor.

If the offense committed is punishable with maximum punishment of imprisonment for no more than one year, or detention, or sole fine, or if the offense committed is one that prosecution may be instituted only upon complaint or request and that the time period to initiate such compliant or request has lapsed, then with the public prosecutor's approval, the arrestee needs not be sent to a public prosecutor.

A person who arrests without a warrant a person in flagrante

delicto as specified in section I shall be questioned concerning his full name, domicile or residence, and the reasons for the arrest.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 93 An accused or a suspect who is arrested with or without a warrant shall be examined immediately.

At the stage of investigation, the public prosecutor shall, if he deems a detention is necessary after examining the arrestee, apply for a detention order from the court, having jurisdiction over the case, within twenty-four hours from the time of making the arrest with or without a warrant.

Unless a detention order has been applied for under the provision of the preceding section, the public prosecutor shall release the accused immediately. If it is considered that application for

detention is not necessary notwithstanding the existence of one of the circumstances listed in section I of Article 101 or section I of Article 101-1, the arrestee may be released on bail, to the custody of another, or with a limitation on his residence; if these requirements cannot be met, and if the circumstances justify such necessity, the public prosecutor may apply for detention order. The provisions of sections one through three of this article shall apply, mutatis mutandis, to cases where the public prosecutor takes an accused transferred from a court in accordance with the Code of Juvenile Matter Arrangement, or from the court martial in accordance with Code of Martial Trial.

A court, after receiving application for detention order in accordance with the preceding three sections, shall examine the arrestee immediately.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 93-1 Time spent in one of the following circumstances shall not be counted against the twenty-four hour limitation in Article 91 and the second section of the preceding article, provided that there is no unnecessary delay:

(1) Unavoidable delay caused by traffic obstruction or force majeure;

(2) In the transfer of arrestee;

(3) Interrogation cannot be made according to the first section of Article 100-3;

(4) Examination cannot be made due to health emergency of the accused or suspect;

(5) Examination is not made because of waiting for the presence of a defense attorney when the accused or suspect has made the presentation that a defense attorney has been retained. The said waiting time

allowed shall not exceed four hours. The same rule applies to the case while waiting for the presence of the persons named in the third section of Article 35 if the accused or the suspect is unable to make a clear and complete statement due to unsound mind;

(6) Examination is not made because of waiting for the presence of the interpreter if there is a need for having an interpreter for the accused or suspect, provided that the waiting time shall not exceed six hours;

(7) If the public prosecutor orders the release of the arrestee on bail or to the custody of another, while waiting for bonds to be presented or for the acceptance of custody, provided that the waiting time allowed shall not exceed four hours;

(8) The time when the suspect was examined by the court according to the Habeas Corpus Act.

No examination shall be made in the above period of time described in the preceding section.

If the accused cannot be sent to a court with jurisdiction within twenty-four hours due to the existence of one of the reasons specified in the first section of this article, the public prosecutor shall specify the reason in his application of detention order.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER IX EXAMINATION OF ACCUSED

Article 94 In an examination, an accused shall be first asked his full name, age, native place, occupation, and domicile or residence to determine whether a mistake as to his identity has been made; if there is a mistake, he shall be immediately released.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 95 In an examination, an accused shall be informed of the following:
(1) That he is suspected of committing an offense and all of the offenses charged. If the charge is changed after an accused has been informed of the offense charged, he shall be informed of such change;
(2) That he may remain silent and does not have to make a statement against his own will;
(3) That he may retain defense attorney;
(4) That he may request the investigation of evidence favorable to him.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 96 In an examination, an accused shall be given an opportunity to explain the offense of which he is suspected; if there is an explanation, the accused shall

be ordered to make a detailed statement of the complete matter; if the explanation contains facts favorable to him, he shall be ordered to explain his method of proof.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 97 If there are several accused, they shall be examined separately; those who have not been examined shall not be permitted to be present, provided that if it is necessary to discover the truth, the accused may be confronted with each other. The accused may also request a confrontation.
A request by an accused for a confrontation shall not be rejected, unless it is apparently unnecessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 98 An accused shall be examined in an honest manner; violence, threat, inducement, fraud, exhausting examination or other improper means shall not be used.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 99 If an accused is deaf or dumb, or not conversant with the language, an interpreter may be used; such accused may also be examined in writing or ordered to make a statement in writing.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 100 The confession of an accused and other statements unfavorable to him as well as facts stated in his favor and the method of proof indicated shall be clearly noted in the record.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 100-1 The whole proceeding of examining the accused shall be recorded without interruption in audio, and also, if necessary, in video, provided that in case of an emergency, after clearly stated in the record, the said rule may not be followed.

Except for the circumstances prescribed in the Proviso of the preceding section of this article, if there is an inconsistency between the content of the record and that of the audio or video record regarding the statements made by the accused, the said portion of the statement shall not be used as evidence.

The means of preservation of the audio or video record specified in the first section of this article shall be prescribed by the Judicial Yuan and the Executive Yuan.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 100-2 The provisions of this chapter shall apply mutatis mutandis to the interrogation of suspects by judicial police officer or judicial policeman.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 100-3 The interrogation of criminal suspects by judicial police officer or judicial policeman shall not proceed at night, except for the following circumstances:
(1) Express consent by the person being interrogated;
(2) Identity check of the person arrested with or without a warrant at night;
(3) Permission by a public prosecutor or judge;
(4) In case of emergency.
Upon the request of a suspect, the interrogation shall proceed immediately.
The night herein means the time between sunset and sunrise.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER X DETENTION OF ACCUSED

Article 101 An accused may be detained after he has been examined by a judge and is strongly suspected of having committed an offense, and due to the existence of one of the following circumstances it is apparent that there will be difficulties in prosecution, trial, or execution of sentence unless the detention of the accused is ordered:

(1) He has absconded, or there are facts sufficient to justify an apprehension that he may abscond;

(2) There are facts sufficient to justify an apprehension that he may destroy, forge, or alter evidence, or conspire with a co-offender or witness;

(3) He has committed an offense punishable with the death penalty, life imprisonment, or a minimum punishment of

imprisonment for no less than five years.

At the time a judge is making the examination in accordance with the provision of the preceding section, the public prosecutor may be present and state the reason for applying detention order and present necessary evidence.

The accused and his defense attorney shall be informed of the facts based to support the detention of an accused as specified in section I of this article. The same shall be stated in the record.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 101-1 An accused may be detained, if necessary, after he has been examined by a judge and is strongly suspected of committing one of the following offenses, and if there are facts sufficient to justify an apprehension that he may re-commit the same offense

again:

(1) The offense of Arson as provided in sections I, II, and IV of Article 174, and sections I and II of Article 175, and the offense of constructive arson as provided in Article 176 of Criminal Code;

(2) The offense of Forced Sexual Intercourse as provided in Article 221, the offense of Forced Obscene Act as provided in Article 224, the offense of Aggravated Forced Obscene as provided in Article 214-1, the offense of Sexual Intercourse or Obscene Act against an insane person as provided in Article 225, the offense of Sexual Intercourse or Obscene Act against under aged child as provided in Article 227, the offense of Battery as provided in Article 277-1 of the Criminal Code. For the case chargeable only upon a complaint, if a complaint is not filed or has been withdrawn, or if the period of time for filing the compliant

has lapsed, then this section shall not apply;
(3) The offense of False Imprisonment as provided in Article 302 of Criminal Code;
(4) The offense of Forcing as provided in Article 304, and offense of Threaten to Personal Security as provided in Article 305 of Criminal Code;
(5) The offense of Larceny as provided in Articles 312 and 322 of Criminal Code;
(6) The offense of Abrupt Taking as provided in Articles 325 through 327 of Criminal Code;
(7) The offense of commission of Fraudulent as an Occupation as provided in Article 340 of Criminal Code;
(8) The offense of Extortion as provided in Article 346 of Criminal Code.
The provisions of sections II and IV of the preceding article shall apply mutatis mutandis to the preceding section.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 101-2 After examining the accused, despite the existence of the circumstances specified in section I of Article 101 and section I of Article 101-1, the judge may nevertheless order that the accused be released on bail, or to the custody of another, or with a limitation on his residence if the detention is deemed unnecessary. If the circumstances specified in Article 114 exist, detention shall not be permitted unless that the accused is released on bail, or to the custody of another, or with a limitation on his residence is not workable.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 102 A writ of detention is necessary to detain an accused.
A writ of detention shall be fingerprinted by the accused, and specify the following

matters:

(1) Full name, sex, age, place of birth, and domicile or residence of the accused;

(2) Offense and article of the Code charged;

(3) Reason for detention and the facts based upon;

(4) Place of detention;

(5) Time period of detention and its starting date;

(6) Remedy available for challenging the order of detention.

The provisions of section III of Article 71 shall apply mutatis mutandis to a writ of detention.

A writ of detention shall be signed by a judge.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 103 The execution of detention shall be, during the stage of investigation, administered by a public prosecutor, and during the stage of trial, administered by the presiding or commissioned

judge. A writ of detention shall be executed by a judicial policeman by sending the accused to the specified detention house; the officer in charge of the house shall, after confirming the identity of the accused, note the date and time of the admission on the writ of detention and sign his name.

In the execution of a writ of detention, the writ shall be sent to the public prosecutor, the detention house, the defense attorney, the accused, and the relative or friend appointed by the accused.

The provisions of Articles 81, 89, and 90 shall apply mutatis mutandis to the execution of detention.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 103-1 In the proceeding of investigation, if the public prosecutor, the accused, or his defense attorney deems that it is

necessary for the protection of the detention house and for the preservation of the safety of the accused detained, or for other proper reasons, he may apply to the court to change the place of detention.

A notice of change shall be sent to the public prosecutor, the detention house, the defense attorney, the accused, and the relative or friend appointed by the accused, if the court makes a change in the place of detention based on the application according to the provisions of the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 104 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 105 A detained accused may be placed under restraint only if such

restraint is necessary to accomplish the purpose of the detention house or to maintain order in the detention house. An accused may have his own food and daily necessities, may receive visitors, may send and receive mail, and receive books or other things, but the detention house may censor them. If a court deems that the meeting with visitors, and the sending or receiving of mails or things as specified in the preceding section produce facts sufficient to justify an apprehension that the accused may escape or destroy, forge, or alter evidence or conspire with a co-offender or witness, the court may, upon the application of the public prosecutor or muto proprio, prohibit the meeting, sending and receiving or seize the things received. In case of emergency, the public prosecutor or the detention house may take necessary actions, provided that the same shall be referred

immediately to the court concerned for approval.

The object, scope, and time period subject to the prohibition or seizure made in accordance with the provisions of the preceding section shall be decided, in the stage of investigation, by the public prosecutor, and in the stage of trial, by the presiding judge or commissioned judge. The same shall be enforced by the detention house under the instruction of the above referenced persons, provided that nothing can be done to restraint the accused's justified right of defending himself.

No restraint shall be placed upon the body of an accused unless sufficient facts exists to support the apprehension of violence, escape, or suicide; such restraint shall be taken by the officer in charge of the detention house only in the case of urgent necessity, and such

action shall be referred immediately to the court for approval.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 106 A public prosecutor shall diligently inspect a place where an accused is detained, report the result of his inspection to the competent superior officer, once every ten days, and notify the court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 107 As soon as the reason for detention ceases to exist, the detention shall be canceled immediately and the accused released.

An accused, the defense attorney, and the person qualified to be the assistant of the accused may apply to the court for cancellation of the detention; the public prosecutor

may, also make the said application during the stage of investigation.

The court in deciding whether to approve the application for cancellation of detention referred to in the preceding section may consider statements made by the accused, the defense attorney, or the person qualified to be the assistant of the accused.

During the stage of investigation, upon the public prosecutor's application, the court shall cancel the detention; the public prosecutor may release the accused prior to submitting the application.

During the stage of investigation, the court shall consult with the public prosecutor prior to cancellation of the detention except the application for cancellation of detention is made by the public prosecutor.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 108 Detention of an accused may not exceed two months during the stage of investigation and three months during the stage of trial, provided that if it is necessary to continue the detention, the court may, prior to the expiration of the period, after examining the accused in accordance with the provision of Article 101 or Article 101-1 extend such period by a ruling. Application for a ruling for extension of the detention period during the stage of investigation shall be made by the public prosecutor with reasons and submitted to the court no later than 5 days prior to the expiration of the period. The ruling made in accordance with the provision of the preceding section shall, unless pronounced in court, be effective upon serving a true copy on the accused prior to the expiration of the detention

period and the period shall be extended accordingly. If the ruling has not been legally served by the expiration of the detention period, the detention shall be deemed canceled.

During the stage of trial, the detention period shall be counted from the date the case file and exhibits had been sent to the court; the detention period from the date the prosecution has initiated or judgment is rendered, but prior to being sent out shall be counted against the detention period at the investigation stage or that of the original trial court.

Detention period shall be counted from the date the writ of detention is issued; the period of time that the accused is kept in custody after the arrest is made with or without a warrant shall be counted as the detention period before final judgment on a day-by-day basis.

Extension of the period of

detention, during the investigation stage, may not exceed two months, and only one extension is allowed; during the trial stage, each extension may not exceed two months; if the maximum punishment for the offense charged does not exceed imprisonment of ten years, extension may be allowed three times during the first instance and the second instance, and one time only during the third instance.

If a case is remanded, the number of extensions for the period of detention shall be counted anew.

If no prosecution has been initiated or no judgment has been rendered at the expiration of the detention period, the detention shall be deemed canceled, and the public prosecutor or the court shall release the accused; if the accused is released by the public prosecutor, the public prosecutor shall immediately notify the court of the same.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 109 If a case is appealed and the period during which the accused has been detained exceeds the term of imprisonment imposed by the original judgment, the detention shall be immediately canceled and the accused released; if the public prosecutor appeals against the interests of the accused, the accused may be released on bail or to the custody of another, or with a limitation on his residence.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 110 An accused or persons who may act as his assistants or the defense attorney may at any time apply to the court for the suspension of detention of the accused on bail..

During the investigation stage the public prosecutor may apply

to the court for the suspension of detention of the accused on bail.

The provision of section III of Article 107 shall apply mutatis mutandis to the examination of the application for suspension of detention on bail as specified in the preceding section.

The court, in deciding whether to grant the suspension of detention, during the investigation stage, shall consult the public prosecutor for his opinion, unless the circumstances specified in Article 114 or section II of this Article exist.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 111 If an application for suspension of detention is permitted, an order shall be issued requiring a bail bond and specifying an appropriate amount of bail.

The bail bond shall be signed only by a reliable person within

the judicial district of the court; it shall contain a statement of the amount of the bail and a statement that payment will be made in accordance with law.

If an applicant is willing to provide the specified bail or a third party is permitted to supply it, a bail bond is not necessary.

A negotiable instrument may be substituted for the bail.

In cases where an application for suspension of detention is permitted, the residence of an accused may be limited.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 112 If the offense charged is punishable only by a fine, the amount of bail may not exceed the maximum amount of the fine.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 113 If an application for suspension of detention is permitted, the accused shall be released upon receipt of the bail bond or bail.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 114 An application for suspension of detention of an accused under detention who has provided a bail bond, shall not be denied if one of the following circumstances exists:

(1) The maximum punishment for the offense charged is imprisonment for a period of less than three year, detention, or a fine. If the accused detained is a recidivist, or a person who makes the commission of crime a habit or occupation, a person who commits a crime during the period of parole, or a person detained under section I of Article 101, then the said rule shall not apply;

(2) The accused has been pregnant for five months or more or has

given birth during the preceding two months;
(3) The accused is ill, and it appears that cure will be difficult unless he is released for medical treatment.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 115 Detention of an accused may be suspended without bail and the accused committed to the custody of a person who may act as his assistant or another suitable person within the judicial district of the court.
A person who has been given custody of an accused shall give a written assurance obligating himself for the appearance of such accused at any time summoned.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 116 Detention of an accused may be suspended without bail, but

limitation on his residence imposed.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 116-1 The provisions of section II through section IV of Article 110 shall apply mutatis mutandis to the release of the accused to the custody of another or with a limitation on his residence.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 116-2 In granting the suspension of detention, the court may set the following conditions to be complied by the accused:
(1) Report to the court or public prosecutor periodically;
(2) No threat of causing personal injury or property damage made to or action taken against the victim, witness, expert witness, the public official in charge of investigation or trial of the subject case, or the spouse,

lineal blood relatives, collateral blood relatives within the third degree of kinship, relative by marriage within the second degree of relationship, family head or family member of the said public official;

(3) If suspension of detention is granted under the provisions of Item III of Article 114, no activities unrelated to medical treatment are permitted without consent of the court or public prosecutor, except for the activities necessary to maintain normal life or profession;

(4) Other activities the court deems suitable.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 117 An accused who has been released from detention may be detained again under one of the following circumstances:

(1) He has failed to appear without due reasons after having

been legally summoned;
(2) He has violated the limitation placed upon his residence;
(3) The circumstances specified in section I of Article 101 or section I of Article 101-1 have newly arisen;
(4) Violation of the conditions needs to be complied with as set forth by the court under the preceding article;
(5) He has committed an offense punishable with death penalty, life imprisonment or with a minimum punishment of imprisonment for no less than five years, and was released under Item III of Article 114, but the reasons for suspension of detention have disappeared and there is a necessity for his detention.
If one of the circumstances specified in the preceding section exists at the investigation stage, the public prosecutor may apply for the re-detention of the accused to

the court.

The time period of re-detention shall be counted together with the time period of detention prior to the suspension of the detention.

A court in re-detaining the accused in accordance with the provision of section I of this article may apply mutatis mutandis the provision of section I of Article 103.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 117-1 The provisions of the preceding two articles shall apply mutatis mutandis to the situations where the public prosecutor releases the accused on bail, to the custody of another, or with a limitation on his residence in accordance with the proviso of section III of Article 93, or section IV of Article 228. The same rule applies when the court releases the accused on bail, to the custody of another, or with

limitation on his residence under Article 101-2.

In detaining the accused under the preceding section by court, the provisions of Article 101 and 101-1 shall apply; if the public prosecutor applying for the detention of the accused to the court, the provision of section II of Article 93 shall apply.

The bail bond obligation shall be terminated, if the detention of an accused is made under the provision of section I of this article.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 118 If an accused who has been released on bail absconds or conceals himself, the court shall order the surety to pay the amount of money specified in the order fixing bail and forfeit it; if the bail is not paid, compulsory execution shall be levied; if the cash bail bond has already been supplied, it shall

be forfeited.

The provision of the preceding section shall apply mutatis mutandis to the case where the public prosecutor orders the release of the accused on bail under the proviso of section III of Article 93, and section IV of Article 228.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 119 The obligation under a bail bond shall be terminated, if the detention of an accused is canceled, or if he is again detained, or if the detention is nullified by a decision not to indict or a judgment or ruling.

If a third party who furnished a written or cash bail bond reports to the court, public prosecutor, or judicial police officer the circumstances of an attempt by an accused to abscond or to conceal himself so that such abscondence or concealment may be prevented, his application to withdraw the

bond may be granted, unless the law provides otherwise.
If the obligation under a bail is terminated or a bail bond is withdrawn, the bond shall be canceled or the cash bail bond which has not been forfeited shall be returned.
The provisions of the preceding three sections shall apply mutatis mutandis to a person who has been given custody of an accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 120 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 121 The cancellation of detention specified in section I of Article 107, the release on bail, to the custody of another, or with a limitation on residence specified in Article 109, the suspension of detention

specified in section I of Article 110, Article 115, and Article 116, the forfeiture of cash bail bond specified in section I of Article 118, the withdrawal of the bond specified in section II of Article 119, shall be made by a court in the form of a ruling.

A ruling relating to the matter specified in the preceding section shall be made by the court of the second instance while the case appeal is pending at the court of the third instance and the case file and exhibits have already been sent to the said court.

In making the ruling specified in the preceding section, the court of the second instance may request the delivery of the case file and exhibits from the court of the third instance.

During the investigation stage, the forfeiture of cash bail bond specified in section II of Article 118, the withdrawal of the bond specified in section II of Article 119 and the order to

furnish bail, release to the custody of another, or with limitation on residence specified in the proviso of section III of Article 93 and section IV of Article 228, shall be made by a public prosecutor in the form of an order.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER XI SEARCH AND SEIZURE

Article 122 If necessary, the person, property, electronic record, dwelling, or other premises of an accused or a suspect may be searched.

The person, property, electronic record, dwelling, or other premises of a third party may be searched only when there is probable cause to believe that the accused or the suspect, or property or electronic record subject to seizure is there.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 123 Search of the person of a female shall be conducted by a woman unless it is impossible.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 124 A search shall be kept secret, and attention shall be paid to the reputation of the person searched.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 125 If no property subject to seizure is found, a certificate to that effect shall be given to the person who was searched.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 126 If a document or other thing held or kept by a public office or public official is to be seized, a request shall be made for its

surrender, provided that a search may be made if necessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 127 A place which must be kept secret for military purposes shall not be searched without the permission of the officer in charge.
Under the circumstance specified in the preceding section, the permission cannot be withheld except for the possibility of violation of major national interests.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 128 A search warrant is required to conduct a search.
A search warrant shall contain the following matters:
(1) Offense charged;
(2) The accused or suspect to be searched or the property to be seized; if the accused or suspect

is unknown the, same can be waived;

(3) The place, person, property or electronic record to be searched;

(4) The period that the warrant remains valid shall be specified; no search can be made after the expiration date; search warrant shall be returned after its execution.

A search warrant shall be signed by a judge; the judge may specify proper instructions, to be followed by the person executing the search, on the search warrant.

The procedure in issuing of the search warrant shall not be open to the public.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 128-1 During the investigation stage, if the public prosecutor deems that a search is necessary, he shall apply for a search warrant to the court concerned in

writing, containing the matters specified in section II of the preceding article, together with the reason thereof, except for the circumstances specified in section II of Article 131.
A judicial police officer, for the purpose of investigating the details of offense committed by the suspect and gathering evidences of the offense, may, if necessary, after obtaining permission from the public prosecutor, apply for a search warrant from the court concerned.
If the application specified in the preceding two sections is denied, the ruling is not appealable.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 128-2 A search shall be conducted by a public prosecuting affairs official, judicial police officer, or judicial policeman unless it is personally made by

a judge or public prosecutor. A public prosecuting affairs official in conducting a search, may seek assistance from the judicial police officer or judicial policeman if necessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 129 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 130 An accused or a suspect arrested with or without a warrant or detained by a public prosecutor, public prosecuting affairs official, judicial police officer, or judicial policeman, may be searched without a search warrant. The same shall apply to the items he is carrying, the transportation vehicle he is using, and the premises within his immediate control.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 131 A public prosecutor, public prosecuting affairs official, judicial police officer, or judicial policeman may search a dwelling or other premises without a search warrant, under one of the following circumstances:

(1) To arrest an accused or a suspect with or without a warrant or to detain him, provided that there are facts sufficient to justify a conclusion that the accused or criminal suspect is therein;

(2) To pursue a person in flagrante delicto or to arrest, without a warrant, a person who has escaped, provided that there are facts sufficient to justify a conclusion that the said person is therein;

(3) When there are obvious facts to believe that a person inside the premise is committing a crime and the circumstances are urgent.

During the investigation stage, a public prosecutor may conduct a search without a warrant or instruct the public prosecuting affairs official, judicial police officer, or judicial policeman to do it and report the same to the public prosecutor general, if there really are probable cause to believe that circumstances are exigent and there are sufficient facts to justify an apprehension that the evidence shall be destroyed, forged, altered, or concealed within twenty four hours unless a search is conducted immediately.

If the search specified in the preceding two sections is conducted by a public prosecutor, the same shall be reported to the court concerned within three days. If it is conducted by a public prosecuting affairs official, judicial police officer, or judicial policeman, the same shall be reported to the public

prosecutor of the public prosecutor office concerned and the court within three days. If the court decides that the search should not be approved, the court shall cancel it within five days. If the search conducted under section I or II has not been reported to the court concerned, or has been canceled by the court, the court at trial may declare the things seized inadmissible as evidence.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 131-1 A search may be made without a search warrant with the voluntary consent of the person being searched, provided that the person conducting the search shall show his proof of identity to the person being searched, and put the fact of the consent being given in the records.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 132 If a search is resisted, force may be used, but such force may not be excessive.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 132-1 After executing the search warrant issued upon application, the public prosecutor, or judicial police officer shall report the results to the court issuing the search warrant; if it cannot be executed, the reasons shall be explained thereof.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 133 A thing which can be used as evidence or is subject to confiscation may be seized. The owner, possessor, or custodian of the property subject to seizure may be ordered to surrender or deliver it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 134 A document or other property in the possession or custody of a public office, public official, or former public official which should be kept confidential for official reasons may not be seized without the permission of a supervisory public office or the public official in charge. The permission specified in the preceding paragraph may not be withheld unless it is contrary to the interests of the State.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 135 Mail or a telegram which is in the possession or custody of a post office, telegraph office, or an official thereof may be seized under one of the following circumstances:

(1) If there is probable cause to believe that it is connected to the case.

(2) If it is sent by or to an accused, provided that mail or a telegram between an accused and his defense attorney may not be seized unless it is considered to be evidence of an offense; or it is apprehended that the addressee or the addresser may destroy, forge, or alter evidence or conspire with a co-offender or witness, or the accused has absconded.
If the seizure specified in the preceding section is executed, the addressee or the addresser of the mail or a telegram shall be notified unless it would interfere with judicial proceeding.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 136 A seizure shall be executed by a public prosecuting affairs official, judicial police officer, or judicial policeman, unless it is personally executed by a judge or public prosecutor.

If a public prosecuting affairs official, judicial police officer or judicial policeman is ordered to execute a seizure, the matters concerned shall be entered on the search warrant given to him.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 137 Property which should be seized for the same case and which is discovered by a public prosecutor, public prosecuting affairs officer, judicial police officer or judicial policeman during the execution of a search or seizure may be seized notwithstanding that it is not listed in the search warrant. The provision of section III of Article 131 shall apply mutatis mutandis to the circumstances under the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 138 If an owner, possessor, or custodian of property which should be seized refuses to surrender or deliver it or resists the seizure without justified cause, such seizure may be effected by force.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 139 A receipt listing in detail the property seized shall be given to the owner, possessor, or custodian.
Seized property shall be sealed up or otherwise marked; the public office or official executing the seizure shall place a seal on the property seized.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 140 Appropriate measures shall be taken to protect property against loss or damage.
A person may be ordered to guard

seized property which is inconvenient to transport or preserve, or the owner or other proper person may be ordered to preserve it.
Seized property which is dangerous may be destroyed.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 141 If it is apprehended that seized property which may be forfeited will be lost or damaged, or if it is inconvenient to preserve it, it may be sold at an auction and the proceeds retained.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 142 If it appears unnecessary to retain seized property until the conclusion of a case, it shall be returned by a ruling of the court or an order of the public prosecutor; if a third party does not claim the seized stolen property, it shall be returned to

the victim.

Seized property may temporarily be returned to the owner, possessor, or custodian if he asks for return of property and undertakes to preserve it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 143 The provisions of the preceding four articles shall apply mutatis mutandis to property which has been left at the scene of the crime by an accused, suspect, or third person, or voluntarily surrendered or delivered over by its owner, possessor or custodian and which has been retained.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 144 Locks and seals may be broken or other necessary measures taken to execute a search or seizure. In executing the search or seizure, the premises subject to

search may be closed to public and the person therein be ordered not to leave, or any person other than the accused, suspect, or a third person, specified in the preceding article may be prohibited to enter the premises.

A violator of the restraining order specified in the preceding section shall be ordered to leave or put into the custody of an appropriate person until the executing proceeding is completed.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 145 In executing a search or seizure, the judge, public prosecutor, public prosecuting affairs officer, judicial police officer, or judicial policeman shall show the warrant to the person present as specified in Article 148, unless the search or seizure is the one that may be effected without a warrant as

specified in other provisions.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 146 No occupied or guarded dwelling or other premises may be entered and searched or property seized at night unless the occupant, watchman, or his representative gives permission, or the circumstances are urgent.
If a search or seizure is executed at night, the reason therefore shall be stated in the record.
A search or seizure begun during the day may be continued till night.
The provision of section III of Article 100-3 shall apply mutatis mutandis to search and seizure executed at night.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 147 The following premises may be entered at night for a search or

seizure:
(1) A place occupied or used by a person on parole;
(2) A hotel, restaurant, or other premises open to the public at night during the period that it is open;
(3) A place frequently used for gambling, committing sexual offense against victim's free will, or committing offenses against morality.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 148 If a search or seizure is executed in an occupied or guarded dwelling or other premises, the occupant, watchman, or his representative shall be ordered to be present; in their absence, a neighbor or an official of a nearby self-governing body may be ordered to be present.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 149 If a search or seizure is to be executed in a public office, military camp, naval vessel, or secret military place, the officer in charge thereof or his representative shall be notified to be present.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 150 The parties and the defense attorney during the stage of trial may be present at a search or seizure unless an accused is in confinement or it is considered that his presence would interfere with the search or seizure.

If it is considered to be necessary, an accused may be ordered to be present when a search or seizure is executed.

The time, date, and place of a search or seizure shall be communicated to the person who may be present in accordance with the preceding two sections

unless circumstances are urgent.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 151 If a search or seizure is temporarily suspended, the premises shall be locked and a person ordered to guard such premises if necessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 152 If property which should be seized for another case is discovered while executing a search or seizure, such property may be seized and delivered to the court or public prosecutor having jurisdiction.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 153 The presiding judge or public prosecutor may request the judge or public prosecutor of the place

where a search or seizure is to be made to execute such search or seizure.

If the requisitioned judge or public prosecutor discovers that the search or seizure shall be executed at another place, the judge or public prosecutor of such place may in turn forward such request to the judge or public prosecutor concerned.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER XII EVIDENCE

Section 1 - GENERAL PROVISIONS

Article 154 Prior to a final conviction through trial, an accused is presumed to be innocent.

The facts of an offense shall be established by evidence. The facts of an offense shall not be established in the absence of evidence.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 155 The probative value of evidence shall be determined at the discretion and based on the firm confidence of the court, provided that it cannot be contrary to the rules of experience and logic. Evidence inadmissible, having not been lawfully investigated, shall not form the basis of a decision.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 156 Confession of an accused not extracted by violence, threat, inducement, fraud, exhausting interrogation, unlawful detention or other improper means and consistent with facts may be admitted as evidence. Confession of an accused, or a co-offender, shall not be used as the sole basis of conviction and other necessary evidence shall still be investigated to see if the confession is consistent with facts.

If the accused states that his confession was extracted by improper means, his confession shall be investigated prior to investigating other evidences; if the said confession is presented by the public prosecutor, the court shall order the public prosecutor to indicate the method to prove that the confession is obtained under the free will of the accused. Where an accused has made no confession nor has there been any evidence, his guilt shall not be presumed merely because of his refusal to make a statement or remaining silent.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 157 No evidence is needed to be adduced to prove facts commonly known to the public.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 158 No evidence is required to be adduced to prove such facts that are obvious to the court or become known to it in performing its functions.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 158-1 The court shall give the parties opportunities to state his opinion regarding the facts that are not required to be proven as specified in the preceding two articles.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 158-2 Any confession or other unfavorable statements obtained from the accused or suspect in violation of the provisions of section II of Article 93-1 or section I of Article 100-3 shall not be admitted as evidence, provided that if lack of bad faith in such violation and the voluntariness of the confession

or statement has been proven, the preceding section shall not apply.

The provision of the preceding section shall apply mutatis mutandis to the case where the public prosecuting affairs official, judicial police officer, or judicial policeman violates the provisions of Items II and III of Article 95 in interrogating an accused or suspect arrested with or without a warrant.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 158-3 If a witness or expert witness fails to sign an affidavit to tell the truth, as required by law, his testimony or expert opinion shall not be admitted as evidence.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 158-4 The admissibility of the evidence, obtained in violation of the procedure prescribed by the law by an official in execution of criminal procedure, shall be determined by balancing the protection of human rights and the preservation of public interests, unless otherwise provided by law.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 159 Unless otherwise provided by law, oral or written statements made out of trial by a person other than the accused, shall not be admitted as evidence.
The provision of the preceding section shall not apply to the circumstances specified in section II of Article 161, nor to the case in a summary trial proceeding or where sentencing is ordered by a summary judgment; the same rule shall apply to the review of the application for detention, search, detention for

expert examination, permission for expert examination, perpetuation of evidence and other compulsive measures.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 159-1 Statements made out of trial by a person other than the accused to the judge shall be admitted as evidence.
Statements made in the investigation stage by a person other than the accused to the public prosecutor, shall be admitted as evidence unless it appears to be obviously unreliable.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 159-2 When the statements made, in the investigation stage, by a person other than the accused to the public prosecuting affairs official, judicial police officer, or judicial policeman

are inconsistent with that made in trial, the prior statement may be admitted as evidence, provided that special circumstances exist indicating that the prior statements are more reliable, and that they are necessary in proving the facts of the criminal offense.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 159-3 Statements made in the investigation stage by a person other than the accused to the public prosecuting affairs official, judicial police officer, or judicial policeman may be admitted as evidence, if one of the following circumstances exists in trial and after proving the existence of special circumstances indicating its reliability and its necessity in proving the facts of criminal offense:

(1) The person died;

(2) The person has lost his

memory or has been unable to make a statement due to physical or emotional impairment;
(3) The person cannot be summoned or has failed to respond to the summons due to the fact that he is staying in a foreign country or his whereabouts are unknown;
(4) The person has refused to testify in court without justified reason.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 159-4 In addition to the circumstances specified in the preceding three articles, the following documents may also be admitted as evidence:
(1) Documents of recording nature, or documents of certifying nature made by a public official in performing his duty, unless circumstances exist making it obviously unreliable;
(2) Documents of recording nature, or documents of

certifying nature made by a person in the course of performing professional duty or regular day to day business, unless circumstances exist making it obviously unreliable;
(3) Documents made in other reliable circumstances in addition to the special circumstances specified in the preceding two Items.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 159-5 Statements made out of trial by a person other than the accused, although not consistent with the provisions of the preceding four articles, may be admitted as evidence, if the party consents to its admissibility as evidence in the trial stage and the court believes its admissibility is proper after considering the circumstances under which the oral or written statement was made.
The party, agent, or defense

attorney shall be deemed to have granted his consent specified in the preceding section, if during the investigation of evidence in the court he has knowledge of the existence of the circumstances specified in section I of Article 159 as to the inadmissibility of the evidence and fails to object to its admission before the conclusion of oral argument.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 160 Personal opinion or speculation of a witness shall not be admitted as evidence, unless it is based on his personal experience.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 161 The public prosecutor shall bear the burden of proof as to the facts of the crime charged against an accused, and shall indicate the method of proof.

Prior to the first trial date, if it appears to the court that the method of proof indicated by the public prosecutor is obviously insufficient to establish the possibility that the accused is guilty, the court shall, by a ruling, notify the public prosecutor to make it up within a specified time period; if additional evidence is not presented within the specified time period, the court may dismiss the prosecution by a ruling.

Once the ruling on dismissing the prosecution becomes final, no prosecution can be initiated for the same case, unless one of the circumstances specified in the Items of Article 260 exists.

Judgment of "Case Not Established" shall be pronounced if prosecution has been re-initiated in violation of the provision of the preceding paragraph.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 161-1 The accused may indicate methods of proof favorable to him against the facts charged.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 161-2 The parties, agent, defense attorney or assistant of the accused shall present opinion concerning the scope, order, and methods of evidence to be investigated.
The court shall make the ruling according to the opinions presented under the preceding section; changes can be made based on the motion from the parties, agent, defense attorney, or assistant of the accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 161-3 The court shall not investigate

the confession of the accused that is admissible as evidence prior to investigating other evidence concerning the facts of the crime, unless otherwise specifically provided by law.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 162 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 163 The party, defense attorney, agent, or assistant may request an investigation of evidence and may examine a witness, an expert witness, or the accused during such investigation; such examination shall not be prohibited unless the court deems improper.

The court may, for the purpose of discovering the truth, ex officio investigating evidence; in case for the purpose of maintaining justice or

discovering facts that are critical to the interest of the accused, the court shall ex officio investigate evidence. The court shall, prior to conducting investigation of evidence in accordance with the preceding section, provide the parties, agent, defense attorney or assistant the opportunity to state their opinions.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 163-1 Motion filed by parties, agent, defense attorney, or assistance of evidence investigation shall be in writing and contain the following matters in detail:
(1) The evidence to be investigated and its relationship with the fact to be proven;
(2) The name, gender, domicile or resident of the witness, expert witness, or interpreter to be subpoenaed and the estimated time spent for examination;

(3) A list of the evidential document, or other documents to be investigated; if part of the same shall be investigated, only that portion shall be filed.

The copies of the written motion shall be filed, according to the number of persons in the other party; the court shall deliver it promptly after receiving the same.

In case the written motion specified in section I of this Article cannot be filed for good reasons, or in case of emergency, the motion may be made orally.

In circumstances specified in the preceding section, the oral motion shall state clearly, the matters specified in the Items of section I of this article and it shall be put in the record by the clerk; if the other party is not present, the record shall be delivered to him.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 163-2 The court may overrule, by a ruling, the motion for investigation of evidence filed by a party, agent, defense attorney, or assistant, if it deems to be unnecessary.
The following circumstances shall be deemed unnecessary:
(1) Inability to investigate;
(2) It bears no critical relationship with the fact to be proven;
(3) It is unnecessary to investigate because the facts to be proven is clear;
(4) Filing the motion again for the same evidence.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 164 The presiding judge shall show the exhibit to the party, agent, defense attorney, or assistant and ask him to identify it.
If the exhibit specified in the preceding section is a document and the accused does not understand its meaning he shall

be informed of its essential points.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 165 Records and other documents in the file which may be used as evidence shall be read, by the presiding judge, to the party, agent, defense attorney, or assistant, or their essential points explained.
If the documents referred to in the preceding section are those against morality, public safety, or possibly defamatory, it shall be handled to the party, agent, defense attorney, or assistant for reviewing instead of reading it to these persons; if the accused does not understand its meaning, the essential points shall be explained.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 165-1 The provision of the preceding article shall apply mutatis mutandis to other evidential items other than documents which have the same effect as the document.

Audio recording, video recording, electronic record or other similar evidential items that can be used as evidence, shall be played, by the presiding judge, with appropriate equipment to reveal the sound, picture, signals, or information to the party, agent, defense attorney, or assistant to identify, or their essential points explained.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 166 After a witness, or an expert witness, subpoenaed because of the motion of a party, an agent, a defense attorney, or an assistant, has been examined by the presiding judge for his identity, the party, agent, or

defense attorney shall examine these persons; if an accused, not represented by a defense attorney, does not want to examine these persons, the court shall still provide him with appropriate opportunities to question these persons.

The examination of a witness or an expert witness shall be in the following order:

(1) The party, agent, or defense attorney calling the witness or expert witness shall do the direct examination first;

(2) Followed by the opposing party's, his agent's or defense attorney's cross examination;

(3) Then, the party, agent, or defense attorney calling the witness or expert witness shall do the redirect examination;

(4) Finally, the opposing party, his agent or defense attorney shall make the recross examination.

After completing the examination as specified in the preceding section, the party, agent, or

defense attorney may, with the court's approval, examine the witness or expert witness again. After examined by the party, agent, or defense attorney, the witness or expert witness may be examined by the presiding judge.
If the one and the same accused or private prosecutor is represented by two or more agents or defense attorneys, the said agents or defense attorneys shall choose one of them to examine the one and the same witness or expert witness, unless otherwise permitted by the presiding judge.
If the witness or expert witness is called by both parties, the order of doing the direct examination shall be decided by both parties' agreement; if it can not be decided by such agreement, the presiding judge shall determine it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 166-1 Direct examination shall be made on the facts to be proven and other matters concerned.

To examine the probative value of the statement of the witness or expert witness, the direct examination may be made as to the necessary points thereof.

No leading question may be asked in direct examination, except for the following circumstances:

(1) The personal identity, education, experience of the witness or expert witness, and matters necessary to his social relationships prior to getting into the substantive matter being examined;

(2) The matter clearly not in dispute;

(3) For the purpose of refreshing the memory of the witness or expert witness in case the witness or expert witness has a vague memory;

(4) The witness or expert witness appears to be hostile or antagonistic to the examiner;

(5) The matters which the witness

or expert witness is trying to avoid answering;
(6) The prior statement of the witness or expert witness, if it is inconsistent with his current statement;
(7) Other special circumstances that will validate the necessity of a leading question.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 166-2 The scope of cross examination shall be limited to the matters or its related matter revealed in direct examination, or the matters necessary for examining the probative value of the statements made by the witness or expert witness.
Leading question may be asked in cross examination if necessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 166-3 Matters in supporting of new allegation by the cross-examiner

may be brought out in cross examination with the court's permission.
The examination made as specified in the preceding section shall be treated as direct examination.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 166-4 The scope of redirect examination shall be limited to the matters or its related matters revealed in cross examination.
The redirect examination shall apply the rules of direct examination.
The provision of the preceding article shall apply mutatis mutandis to this article.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 166-5 The scope of recross examination shall be limited to the matters necessary for examining the

probative value of the evidence revealed in redirect examination.

The recross examination shall apply the rules of cross examination.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 166-6 After examining a witness or an expert witness subpoenaed by the court on its own motion, the party, agent, or defense attorney may examine him, the order of doing the examination shall be determined by the court.

The presiding judge may continue to examine a witness or an expert witness after he has been examined by the party, agent, or defense attorney.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 166-7 The examining of a witness or an expert witness and the answers thereof shall be specific as to

a particular point.

The following ways of examination shall be prohibited, unless the circumstances specified in items 5 through 8 exist and there is a good reason not to apply it:

(1) The question is unrelated to the subject case or the matter revealed by examination;

(2) The examination is conducted by ways of threat, insult, inducement, fraud, or other improper means;

(3) The question is abstract and lack of specification;

(4) The question is unjustifiable leading;

(5) The examination is based on hypothetical facts or facts unsupported by evidence;

(6) Repeated question;

(7) Asking the witness to state his personal opinion, speculation, or comment;

(8) The testimony may seriously injure the reputation, credit, or property of the witness or the persons who have the

relationship with him as specified in section I of Article 180;
(9) The examination is addressed to matters that the witness has not personally experienced, or things that the expert witness has not personally examined;
(10) Other ways prohibited by law.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 167 The presiding judge shall not restrict or prohibit the examination of witness or expert witness by the party, agent, or defense attorney, unless the examination is inappropriate.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 167-1 The party, agent, or defense attorney may object to the examination of witness or expert witness and the answer thereof for the reasons that it violates

the law or regulation, or it is inappropriate.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 167-2 The objection specified in the preceding article shall be made to a particular question or answer and it shall be immediately accompanied by brief reasons thereof.

The presiding judge shall make immediate ruling on the objection specified in the preceding section.

The opposing party, agent, or defense attorney may state his opinion about the objection prior to the presiding judge's making ruling.

The witness or expert witness shall not make statement between the time objection is made and the time a presiding judge's ruling is announced.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 167-3 The presiding judge shall overrule an objection if it is determined that it was not timely made, it was made for delaying the proceeding or for other illegitimate purposes, unless the subject matter of objection, not timely made, has a critical relationship with the case at bar.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 167-4 The presiding judge shall overrule an objection if it is determined that it is was not supported by good reason.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 167-5 The presiding judge shall make a ruling to order the termination, withdrawal, cancellation, alteration, or other appropriate measures of the question being

asked and the answer thereto as the case may be, if the objection is supported by good reason.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 167-6 No appeal shall be made to the rulings specified in the preceding three articles.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 167-7 The provisions of section II of Article 166-7, and Articles 167 through 167-6 shall apply mutatis mutandis to examination specified in section I of Article 163.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 168 A witness or an expert witness may not leave the court without permission of the presiding judge notwithstanding that he

has finished testifying.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 168-1 The party, agent, defense attorney, or assistant may be present at the time a witness, an expert witness, or an interpreter is being examined. The court shall send notice in advance regarding the date, time, and place of examination specified in preceding section, unless the unwillingness of being present had been declared ahead of time.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 169 If a presiding judge foresees that a witness, an expert witness, or the other co-defendants will not freely state what he knows in the presence of the accused, he may, after considering the opinion of the public prosecutor and

defense attorney, order the accused to leave the court, provided that after the testimony is concluded, the accused shall be ordered to reenter the court and the important points of the testimony shall be related to him. Also, the accused shall be offered the opportunity to examine or to confront that person.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 170 An associate judge who participates in a trial by panel of judges may, after informing the presiding judge, examine an accused, or examine a witness or expert witness by applying mutatis mutandis the provisions of section IV of Article 166 and section II of Article 166-6.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 171 The provisions of Articles 164 through 170 shall apply mutatis mutandis to a court or commissioned judge in making examination according to the provisions of section I of Article 273, or Article 276 prior to the trial date.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 172 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 173 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 174 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Section 2 - WITNESS

Article 175 A witness shall be called to testify by a subpoena.

A subpoena shall contain the following matters:

(1) Full name, sex, domicile and residence of the witness;

(2) Principal facts of the case to be testified;

(3) Date, hour, and place of appearance;

(4) That the witness may be fined or an arrest warrant may be issued if he fails to appear without good reason;

(5) That the witness may request daily fees and traveling expenses.

A subpoena shall be signed by the public prosecutor during the stage of investigation or by the presiding judge or commissioned judge during the stage of the trial.

A subpoena shall be served at least twenty-four hours before the date of appearance unless the circumstances are urgent.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 176 The provisions of Articles 72 and 73 shall apply mutatis mutandis to the subpoenaing of a witness.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 176-1 Everyone shall have the obligation to be a witness in other's case unless otherwise provided by law.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 176-2 In case a court deems it is necessary to subpoena a witness due to the motion of the party, agent, defense attorney, or assistant, the person making the motion shall urge the witness to be present.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 177 If a witness is unable to appear or there are other necessary circumstances, after considering the opinion of the party or defense attorney, he may be examined where he is found or in the court of the judicial district in which he resides.
In circumstances specified in the preceding section, if there is audio and video transmission technical equipments that can communicate between the place where the witness is located and the court, the court may conduct the examination by utilizing the said technology if the court deems appropriate to do so.
In conducting the examination specified in the preceding two sections, the party, defense attorney, and agent may be present and may examine the witness; the court shall send notice in advance regarding the date and place of examination.
The provisions of the preceding two sections shall apply mutatis mutandis to the investigation

stage.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 178 A legally subpoenaed witness who fails to appear without good reason may be imposed a pecuniary penalty of not more than thirty thousand NT; in addition, he may be arrested with a warrant; if he fails to appear when being subpoenaed again, the same rule may be applied.

The pecuniary penalty specified in the preceding section shall be imposed by a ruling of the court; if the witness is subpoenaed by a public prosecutor, the said court shall be requested to make a ruling.

An interlocutory appeal may be taken from the ruling specified in the preceding section.

The provisions of Articles 77 through 83 and 89 through 91 shall apply mutatis mutandis to the arrest of a witness with a warrant.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 179 In examining a witness who is or was a public official on matters which should be kept confidential for official reasons, the permission of the competent supervising public office or officer must be obtained.

The permission specified in the preceding section may not be withheld unless the testimony would be harmful to the interests of the State.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 180 A witness may refuse to testify under one of the following circumstances:

(1) The witness is or was the spouse, lineal blood relative, blood relative within the third degree of kinship, relative by marriage within the second

degree of relationship, family head, or family member of the accused or private prosecutor;
(2) The witness is betrothed to the accused or private prosecutor;
(3) The witness is or was the statutory agent of the accused or private prosecutor or the accused or private prosecutor is or was the statutory agent of such witness.
A person who has the relationship to one or more accused or private prosecutors specified in the preceding section may not refuse to testify on matters which relate only to the other accused or private prosecutors.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 181 A witness may refuse to testify if his testimony may subject himself or the person having the relationship to him specified in section I of the preceding article to criminal prosecution

or punishment.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 181-1 A person other than the accused may not refuse to testify in cross-examination on matters relating to the accused that has been revealed in direct-examination.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 182 A witness who is or was a medical doctor, pharmacist, obstetrician, clergy, lawyer, defense attorney, notary public, accountant, or one who is or was an assistant of one of such persons and who because of his occupation has learned confidential matters relating to another may refuse to testify when he is questioned unless the permission of such other person is obtained.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 183 A witness who refuses to testify shall clearly state the reason for such refusal, provided that if one of the circumstances specified in Article 181 exists, such witness may be ordered to make an affidavit in lieu of stating the reason.
Approval or disapproval of a refusal to testify shall be by order of a public prosecutor during the stage of investigation or by the ruling of a presiding or commissioned judge during the stage of trial.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 184 If there are several witnesses, they shall be examined separately; one who has not been examined may not be present without permission.
If it is necessary to discover the truth, witnesses may be

ordered to confront each other or the accused, and such a confrontation between witnesses may also be ordered at the request of the accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 185 In examining a witness, his identity and whether he has the relationship to an accused or private prosecutor specified in section I of Article 180 must first be investigated.
If a witness is found to have the relationship to an accused or private prosecutor specified in section I of Article 180, he shall be informed that he may refuse to testify.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 186 A witness shall be ordered to make an affidavit that he will tell the truth unless one of the following circumstances exists:

(1) He is under the sixteenth year of his age;
(2) He is unable, because of mental disability, to understand the meaning and effect of an affidavit.
If a witness is under the circumstances specified in Article 181, he shall be informed that he may refuse to testify.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 187 Before a witness signs an affidavit to tell the truth, he shall be informed of the obligation which it imposes and the punishment for perjury.
A witness who is not required to sign an affidavit to tell the truth shall be informed that he must tell the truth without concealment, qualification, addition, or modification.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 188 An affidavit to tell the truth shall be signed before an examination starts, provided that if doubt exists as to whether such affidavit is required, it may be ordered to be signed after the examination.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 189 An affidavit to tell the truth shall state that the testimony to be given is based upon actual facts without concealment, qualification, addition, or modification; if an affidavit to tell the truth is signed after an examination, it shall state that the testimony given was based upon actual facts without concealment, qualification, addition, or modification.
A witness shall be ordered to read aloud an affidavit to tell the truth; if the witness cannot read, the clerk shall be order to read aloud the affidavit to him and, if necessary, its meaning

shall be explained.

A witness shall be ordered to place his signature, seal, or fingerprint on the affidavit to tell the truth.

If the witness is examined by utilizing technical equipments specified in section II of Article 177, the context of the affidavit to tell the truth may be transmitted to the court, or public prosecutor's office by electronic facsimile or other technical equipments followed by the original.

The rules governing the examination of a witness and the transmission of the content of affidavit to tell the truth specified in section II of Article 177 and the preceding section shall be set up by the Judicial Yuan and the Executive Yuan jointly.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 190 A witness who is examined may be

ordered to relate the facts of the matter about which he is being examined in order from beginning to end.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 191 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 192 The provisions of Article 74 and 99 shall apply mutatis mutandis to the examination of a witness.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 193 A witness who refuses without good reason to sign an affidavit to tell the truth or to testify may be imposed a pecuniary penalty of not more than three thousand NT; the same rule shall apply to a witness who is required to sign an affidavit

under the proviso of section I of Article 183, but who makes a false statement in the affidavit.

The provisions of sections II and III of Article 178 shall apply mutatis mutandis to the measures specified in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 194 A witness may request legally fixed daily fees and traveling expenses unless he was arrested with a warrant or has refused without good reason to sign an affidavit to tell the truth or to testify.

The request specified in the preceding section shall be made to a court within ten days after completion of the examination, provided that a request for traveling expenses may be made in advance.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 195 A presiding judge or public prosecutor may request the judge or public prosecutor of a place where a witness is found to examine him; if the witness cannot be found at such place, the judge or public prosecutor of such place may in turn make such request of a judge or public prosecutor of a place where the accused may be found.

The provision of section III of Article 177 shall apply mutatis mutandis to the requisitioned examination of the witness.

A requisitioned judge or public prosecutor who examines a witness shall have the same rights as the presiding judge or public prosecutor of the court in which the case is pending.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 196 A witness shall not be called to testify again where has been

legally examined by a judge, and the parties has been offered the opportunity to cross examine witness, whose statement is clear and definite, and there is no necessity for further examination.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 196-1 A judicial police officer or judicial policeman may, for the purposes of investigating the circumstances of an offense and collecting evidence, may use written notification to summon the witness for interrogation if necessary.

The provisions of section II of Article 71-1, Article 73, Article 74, Items I through III of section II and section IV of Article 175, section I and section III of Article 177, Articles 179 through 182, Article 184, Article 185 and Article 192 shall apply mutatis mutandis to the summons and

interrogation of witness specified in preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Section 3 - EXPERT WITNESSES AND INTERPRETERS

Article 197 Except as otherwise provided in this Section an expert witness is subject mutatis mutandis to the provisions of the preceding Section relating to a witness.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 198 A presiding judge, commissioned judge, or public prosecutor may select one or more expert witnesses from the following:
(1) A person who has special knowledge and experience concerning the matter which requires expert opinion;
(2) A person who is commissioned by a public office to perform duties of an expert witness.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 199 An expert witness shall not be arrested with a warrant.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 200 A party may object to an expert witness for the same reasons as those which he may motion for the disqualification of a judge, provided that the fact that he has already been a witness or an expert witness in that particular case may not constitute a reason for objection.

A party may not object to an expert witness after he has testified or made a report regarding a matter which requires expert opinion, provided that this limitation does not apply if the reason therefor arose or became known thereafter.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 201 If an objection is made to an expert witness, the reason for such objection and the facts specified in the proviso of section II of the preceding article shall be clearly indicated.

Approval or disapproval of an objection to an expert witness shall be made by order of a public prosecutor during the stage of investigation or by a ruling of the presiding or commissioned judge during the stage of trial.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 202 An expert witness shall sign an affidavit to tell the truth before giving expert testimony; such affidavit shall state that such testimony is impartial and honest.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 203 If necessary, a presiding or commissioned judge or public prosecutor may permit an expert witness to make an expert examination outside the court.
The thing which requires an expert examination may be given to an expert witness under the circumstances specified in the preceding section.
If expert examination of the mental or physical condition of an accused is necessary, such accused may be sent to a hospital or other suitable establishment for a prescribed period not more than seven days.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 203-1 A writ of detention for expert examination shall be issued for the circumstances specified in section III of the preceding article, unless the person being examined has been arrested with

or without a warrant and the period is within twenty-four hours since the arrest.

A writ of detention for expert examination shall contain the following matters:

(1) Full name, sex, age, birth place, domicile or residence of the accused;

(2) Offense charged;

(3) The matter which requires exert examination;

(4) The establishment that the accused shall be detained and the prescribed period of detention;

(5) The relief that an accused can seek if he disagrees with the decision on detention for expert examination.

The provision of section III of Article 71 shall apply mutatis mutandis to the writ of detention for expert examination.

A writ of detention for expert examination shall be signed by a judge. A public prosecutor may apply the court to issue a writ of detention for expert examination if necessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 203-2 Detention of an accused for expert examination shall be executed by a judicial policeman who shall send the accused to the detaining establishment. The administrative staff in charge thereof shall, after examining the identity of the accused, make a remark regarding the date and time of receiving on the writ and sign thereon.

The provisions of Article 89 and 90 shall apply mutatis mutandis to the execution of writ of detention of expert examination.

In executing the detention for expert examination, the writ of detention for expert examination shall be sent to the public prosecutor, expert witness, defense attorney, accused and relative or friend appointed by the accused.

A court or public prosecutor may muto proprio or upon the

application of the administrative staff of the detaining establishment order that the accused be guarded by a policeman, if it is necessary for the execution of detention for expert examination.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 203-3 The court may during the stage of trial, muto proprio, or during the stage of investigations, upon the application of a public prosecutor, extend or reduce the prescribed period for detention for expert examination by a ruling, provided that the extension made thereof shall not exceed two months.

The court may, during the stage of trial, muto proprio, or during the stage of investigation, upon application of a public prosecutor, change the place of detention by a ruling, provided that the change is necessary for safety purposes or other good

reasons.

The public prosecutor, expert witness, defense attorney, accused and relative or friend appointed by the accused shall be notified of the rulings of the court specified in preceding two sections.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 203-4 If an accused is subject to the execution of the expert examination specified in section III of Article 203, the days spend in detention for expert examination shall be counted against the days for detention.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 204 If an expert examination is necessary, an expert witness may physically examine a person, conduct an autopsy, destroy a thing or enter into an occupied or guarded dwelling or other

premises with the permission of the presiding or commissioned judge or public prosecutor. The provisions of Article 127, Articles 146 through 149, Article 215, section I of Article 216 and Article 217 shall apply mutatis mutandis to the circumstances specified in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 204-1 A written permission is required for the permission of expert examination specified in section I of the preceding article, unless the expert examination is conducted in the presence of the presiding judge, commissioned judge or public prosecutor. A written permission shall contain the following matters:
(1) Offense charged;
(2) The person subject to physical examination or body subject to autopsy, the thing to be destroyed, or the occupied or

guarded dwelling or other premises to be entered into;
(3) Matter that needs expert opinion;
(4) Full name of the expert witness;
(5) The period within which the permitted action has to be executed.
A written permission shall be signed, during the stage of investigation, by a public prosecutor, and during the stage of trial, by a presiding judge or a commissioned judge.
Appropriate conditions may be added to the terms of a written permission specified in section I of this article for physical examination.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 204-2 An expert witness shall display the written permission specified in section I of the preceding article together with document for his identity at the time of

execution of the measures specified in section I of Article 204.

A written permission for expert examination may not be executed after expiration date, the same shall be returned to the issuing authority.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 204-3 A person other than the accused may be imposed a pecuniary penalty of not more than thirty thousand NT if he refuses to be physically examined as specified in section I of Article 204 without justified reasons; he is also subject mutatis mutandis to the provision of sections II and III of Article 178.

In case the measures specified in section I of Article 204 is refused, the presiding judge, commissioned judge, or public prosecutor may lead the expert witness to execute it; the provisions of the Section of

Inspections shall apply mutatis mutandis to this section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 205 If an expert examination is necessary, an expert witness may examine the record or exhibits with the permission of the presiding or commissioned judge or public prosecutor; such witness may request that the record or exhibits be collected or produced.

An expert witness may request the court or public prosecutor to examine an accused or private prosecutor or witness and the permission to be present and question them directly.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 205-1 If an expert examination is necessary, an expert witness may gather samples of body fluid, feces, blood, hair, or other

bodily growth or bodily appendages, and to take fingerprint, footprint, voice sampler, handwriting, photo or other actions of like kind with the permission of the presiding or commissioned judge or public prosecutor.

The measures specified in the preceding section shall be specified in written permission under section II of Article 204-1.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 205-2 A public prosecuting affairs official, judicial police officer, or judicial policeman may, for the purposes of investigating the circumstances of an offense and collecting evidence, if necessary, gather fingerprint, handprint, footprint, and take picture, height and the like of a suspect or an accused arrested with or without a warrant, against his

will; gathering samples of hair, saliva, urine, voice sampler, or exhalation may be made if there is probable cause to believe that the same can be used as the evidence of crime.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 206 An expert witness shall be ordered to make a report of his findings and results verbally or in writing.

If there are several expert witnesses, they may be ordered to make a joint report, but if their opinions differ, they shall be required to make separate reports.

If a report of an expert witness is submitted in writing, he may be required to explain it verbally if necessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 206-1 A court or public prosecutor may notify the party, agent, or defense attorney for his presence at the expert examination if necessary. The provision of section II of Article 168 shall apply mutatis mutandis to the circumstances specified in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 207 If an expert examination is incomplete, the number of expert witnesses may be increased or another expert witness may be ordered to continue it or begin it anew.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 208 A court or public prosecutor may request a hospital, school, or other suitable establishment or group to make an expert examination or to review the

examination of another expert witness; also, subject mutatis mutandis to the provisions of Articles 203 through Article 206-1; if a report or explanation should be made verbally, the person who actually made an expert examination or the person who reviewed the examination of another expert witness may be ordered to do it.

The provisions of section I of Article 163, Articles 166 through 167-7, and Article 202 shall apply mutatis mutandis to the circumstances of verbal report or explanation made by the person who actually made an expert examination or the person who reviewed the examination of another expert witness as specified in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 209 In addition to daily fees and traveling expenses fixed by law,

an expert witness may request from the court appropriate compensation and expenses for making an expert examination, the latter can be requested in advance.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 210 Provisions relating to witnesses shall apply mutatis mutandis to the examination of a person who because of special knowledge is acquainted with past facts.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 211 The provisions of this Section shall apply mutatis mutandis to an interpreter.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Section 4 - INSPECTIONS

Article 212 A court or public prosecutor may

make an inspection in order to investigate the evidence or circumstances of an offense.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 213 An inspection may include the following measures:
(1) Examining the place of the offense or other place connected therewith;
(2) Physically examining a person;
(3) Examining a corpse;
(4) Conducting an autopsy;
(5) Examining property connected with the case;
(6) Performing other necessary measures.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 214 A witness or expert witness may be ordered to be present at the time of an inspection.
A party, an agent, or a defense attorney may be notified to be

present at the time of an inspection to be conducted by public prosecutor, if necessary. The party, agent or defense attorney shall be notified in advance of the date, time, and place of conducting inspection, unless unwillingness to be present had been clearly stated or emergent circumstances exist.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 215 Examination of a person other than an accused may be made only if there is probable cause to believe that it is necessary in investigating the circumstances of the offense.

The person specified in the preceding section may be subpoenaed to be present or to go to other designated establishment for inspection, subject mutatis mutandis to the provisions of Articles 72, 73, 175 and 178.

In examining the person of a

female, a medical doctor or a woman shall be ordered to conduct it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 216 The identity of a corpse shall be clearly determined before it is examined or an autopsy is conducted.

In examining a corpse, a medical doctor or examining official shall be ordered to conduct it.

In conducting an autopsy, a medical doctor shall be ordered to do it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 217 In order to examine a corpse or to conduct an autopsy, a corpse or part of it may be retained temporarily or a coffin or grave opened.

A spouse or relative residing in the same house or nearest relative of a deceased shall be

notified that he may attend an examination of a corpse, autopsy, or opening of a coffin or grave.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 218 If a person dies or is suspected of dying from an unnatural cause, the public prosecutor having competent jurisdiction shall immediately examine him.

A public prosecutor may order a public prosecuting affairs official, together with a coroner, a doctor, or an examining official, to conduct the examination specified in the preceding section; if it is apparent that there is no suspicion of an offense committed, the public prosecutor may instruct a judicial police office, together with a coroner, a doctor, or an examining official to conduct the examination.

When completing the examination

as specified in the preceding section, the case file and evidence associated with the examination shall be immediately reported to the public prosecutor; if there is suspicion that a crime has been committed, the public prosecutor shall continue to conduct the necessary inspection and investigation.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 219 The provisions of Articles 127, 132, 146 through 151, and 153 of this code shall apply mutatis mutandis to an inspection.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Section 5 - PERPETUATION OF EVIDENCE

Article 219-1 If it is apprehended that the evidence may be destroyed, forged, altered, concealed, or hard to be used, the complainant,

suspect, accused, or defense attorney may, during the stage of investigation, apply to the public prosecutor to conduct a search, seizure, expert examination, inspection, examination of a witness, or other necessary perpetuating measures.

A public prosecutor shall make perpetuating measures within five days of receiving the application specified in the preceding section, unless the application is deemed illegal or unsupported by good reason and is overruled.

If the public prosecutor overrules the application specified in the preceding section, or fails to make any perpetuation measures within the period specified in the preceding section, the applicant may apply directly to the court with proper jurisdiction for perpetuation of evidence.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 219-2 The court shall, by a ruling, after consulting with the public prosecutor, overrule the application specified in section III of the preceding article, if the application does not comply with legal formality or it shall not be granted as a matter of law, or it is not supported by good reason, provided that where the deficiency in legal formality is amendable, the court shall order an amendment to be made within a prescribed period.

The court shall grant the application for perpetuation of evidence by a ruling, if the court determined that it is supported by good reason.

No interlocutory appeals may be taken from the rulings specified in the preceding two sections.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 219-3 The application for perpetuation of evidence under Article 219-1 shall be made to the public prosecutor in the stage of investigation, provided that if the case has not been transferred or reported to the public prosecutor, the same should be made to the public prosecutor of the public prosecutor's office of the district court where the office of the judicial police officer or judicial policeman, investigating the case located.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 219-4 During the trial at the first instance, the accused, or defense attorney may, before the first trial date, apply to the court or commissioned judge for perpetuation of evidence if necessary; in case of emergency, the said application may be made to the district court where the person, to be examined, resides or the evidence is located.

The same rule specified in the preceding section shall apply to the case when prior to the first trial date the public prosecutor or private prosecutor deems it is necessary to perpetuate the evidence.

The provision of section II of Article 279 shall apply mutatis mutandis to the circumstance when a commissioned judge deems it is necessary to perpetuate the evidence.

The court shall, by a ruling, immediately overrule the application for perpetuation of evidence if the application does not comply with legal formality, or it shall not be granted as a matter of law, or it is not supported by good reason, provided that where the deficiency in legal formality is amendable, the court shall order an amendment to be made within a prescribed period.

The court or the commissioned judge shall grant the application for perpetuation of

evidence by a ruling, if the court or the commissioned judge determines that it is supported by good reason.

No interlocutory appeals may be taken from the rulings specified in the preceding two sections.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 219-5 Application for perpetuation of evidence shall be made in writing.

The written application for perpetuation of evidence shall contain the following matters:

(1) Brief statement of the case;

(2) The evidence to be perpetuated and the method of perpetuation;

(3) The fact to be proven by the evidence;

(4) The reason for such perpetuation of evidence.

Reason for Item IV of the preceding section shall be clearly indicated.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 219-6 A complainant, a suspect, an accused, a defense attorney, or an agent may be present at the time of the perpetuation of evidence executed upon his application, unless it is apprehended that his presence shall be harmful to the execution of perpetuation of evidence. The person who may be present at the time of execution of perpetuation of evidence in the preceding section shall be notified of the date, time and place of the same, unless the existence of emergent circumstances makes the timely notification impossible, or the suspect or accused is in detention.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 219-7 During the stage of investigation, the evidence

perpetuated shall be kept by the public prosecutor concerned, provided that if the case is currently investigated by a judicial police officer or judicial policeman, under a ruling of the court granting the perpetuation of evidence, the evidence so perpetuated shall be kept by the public prosecutor of the office of public prosecutor in the district court where the office of the judicial police officer or judicial policeman is located.

During the stage of trial, the evidence perpetrated shall be kept by the court ordered such perpetration, provided that if the case is pending in other court, the said evidence shall be delivered to that court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 219-8 The perpetuation of evidence shall subject mutatis mutandis to the provisions of this

chapter, the preceding chapter and Article 248, unless otherwise provided.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER XIII DECISIONS

Article 220 A decision shall be in the form of a ruling unless this Code provides that it shall be in the form of a judgment.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 221 A judgment shall be based on the oral arguments of the parties unless there is a special provision to the contrary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 222 A ruling on a motion made in open court shall be based on the oral statements of the parties.
If necessary, the court may

investigate the facts before making a ruling.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 223 A judgment shall set forth the reasons therefor; the same rule shall apply to rulings to which there may be an interlocutory appeal or to rulings dismissing a motion.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 224 A judgment shall be pronounced unless there has been no oral argument.
Only rulings in open court shall be pronounced.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 225 A judgment shall be pronounced by reading aloud the syllabus, explaining its meaning, and

stating the principal parts of the reasons.

A ruling shall be pronounced by explaining its meaning and, if there are explanatory reasons, by stating the reasons.

A judgment or ruling to be pronounced pursuant to the preceding two sections shall be published on the next day after its pronouncement, and the party shall also be notified of the same.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 226 If a written decision is required, the original thereof shall be given to the clerk on the same day it is pronounced, provided that if a judgment is pronounced on the date the verbal argument is ending, then it shall be given within five days thereafter.

The clerk shall make note regarding the date of receipt on the original of the decision and

sign thereon.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 227 If there is a written decision, a true copy of the written decision shall be served on the parties, agent, defense attorney, or other persons concerned unless otherwise specially provided.
The service specified in the preceding section shall be made not later than seven days after the original copy is received.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

PART II TRIAL OF THE FIRST INSTANCE

CHAPTER I PUBLIC PROSECUTION

Section 1 - INVESTIGATION

Article 228 If a public prosecutor, because of complaint, report, voluntary surrender, or other reason, knows there is a suspicion of an offense having been committed,

he shall immediately begin an investigation.

In conducting the investigation referred to in the preceding section a public prosecutor may set up a period of time and order the public prosecuting affairs official, judicial police officer specified in Article 230, or judicial policeman specified in Article 231 to investigate the circumstances of the offense, to collect evidence and to submit report thereof; the case file and evidence may be delivered thereto at the same time if necessary.

In the course of an investigation, an accused shall not be first summoned or interrogated unless necessary.

An accused who appears by complying with a summons, voluntary surrender, or on his free will may be released on bail, or to the custody of another, or with a limitation on his residence, if the public prosecutor, after examining the

accused, considers that one of the circumstances specified in the items of section I of Article 101 or the items of section I of Article 101-1 exists but application for detention is unnecessary, provided that if detention is considered necessary, the accused may be arrested without a warrant, and be informed of the fact thereof followed by an application for detention filed with the court. The provisions of sections II, III and V of Article 93 shall apply mutatis mutandis to this section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 229 Each of the following officials shall act as judicial police officer within his respective judicial district and has the duty and power of assisting a public prosecutor in investigating an offense:
(1) Director General of National

Police Agency, Commissioner of Police Department, General Commander of Peace Preservation Police Corps;

(2) A military police superior;

(3) A person authorized by law to exercise the duty and power of a judicial police officer, as specified in the preceding two items, in special matters.

The judicial police officer specified in the preceding section shall send the result of the investigation to the public prosecutor; if the said officer has taken the custody of the suspect arrested with or without a warrant, he shall send the suspect to the competent public prosecutor unless otherwise provided by the law, provided that if ordered by the public prosecutor, the suspect shall be sent immediately.

An accused, or suspect shall not be sent without first being arrested with or without a warrant.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 230 Each of the following officials is considered to be a judicial police officer and shall obey the instructions of a public prosecutor in investigating an offense:

(1) A commissioned police officer;

(2) A military police officer or petty officer;

(3) A person authorized by law to exercise the duty and power of a judicial police officer in special matters.

The judicial police officer specified in the preceding section who suspects that an offense has been committed shall initiate an investigation immediately and report the results thereof to the competent public prosecutor and the judicial police officer referred to in the preceding article.

The scene of the crime may be closed to public and inspection

taken immediately, if it is necessary for investigation specified in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 231 Each of the following officials is considered to be a judicial policeman and shall obey the orders of a public prosecutor or judicial police officer in investigating an offense:
(1) A policeman;
(2) A military policeman;
(3) A person authorized by law to exercise the duty and power of a judicial policeman in special matters.
A judicial policeman who suspects that an offense has been committed shall initiate an investigation immediately and report the results thereof to the competent public prosecutor and judicial police officer.
The scene of the crime may be closed to the public and

inspection taken immediately, if it is necessary for investigation specified in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 231-1 If a public prosecutor considers that the case sent or reported by the judicial police officer or judicial policeman has not been investigated completely; the case file and evidence may be returned for more information or be sent to other judicial police officer or judicial policeman for investigation. The judicial police officer or judicial policeman shall send or report the result after completing supplementary investigation.
A public prosecutor may set up a time period for supplementary investigation specified in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 232 The victim of a crime may file a complaint.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 233 A statutory agent or spouse of the victim may file an independent complaint.
If a victim is dead, a complaint may be filed by spouse, lineal blood relative, collateral blood relative within the third degree of kinship, relative by marriage within the second degree of relationship, family head, or family member, provided that the complaint may not be contrary to the clearly expressed opinion of the victim in a case chargeable only upon complaint.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 234 A complaint may not be filed for the offense against morals

specified in Article 230 of the Criminal Code except by one of the following persons:

(1) A lineal blood ascendant of the parties;

(2) A spouse or his lineal blood ascendant.

A complaint may not be filed for the offense against marriage and family specified in Article 239 of the Criminal Code except by a spouse.

A complaint may not be filed for the offense against marriage and family specified in section II of Article 240 of the Criminal Code except by a spouse.

A complaint may also be filed for the offense against personal liberty specified in Article 298 of the Criminal Code by an abducted person's lineal blood relative, collateral blood relative within the third degree of kinship, relative by marriage within the second degree of relationship, family head, or family member.

A complaint may be filed for the

offense of libel and against credit specified in Article 312 of the Criminal Code by a spouse, lineal blood relative, collateral blood relative within the third degree of kinship, relative by marriage within the second degree of relationship, family head, or family member of a deceased person.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 235 If a statutory agent of the victim or if the spouse, blood relative within the fourth degree of kinship, relative by marriage within the third degree of relationship, family head, or family member of such statutory agent is the accused, the victim's lineal blood relative, collateral blood relative within the third degree of kinship, relative by marriage within the second degree of relationship, family head, or family member may independently file a complaint.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 236 Where there is no person competent to file a complaint, or a person competent to file a complaint is incapacitated from exercising his right of complaint, in a case chargeable only upon complain, the competent public prosecutor may, at the request of an interested party or ex officio, designate a person for filing the complaint. The provision of the proviso of section II of Article 233 shall apply mutatis mutandis to this Article.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 236-1 A complaint may be filed by an authorized agent, provided that the public prosecutor or judicial police officer may order the complainant to be present, if necessary.

A power of attorney shall be presented to public prosecutor or judicial police officer for the authorization of agent to file complaint specified in the preceding section; it is also subject mutatis mutandis to the provisions of Article 28 and 32.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 236-2 The provisions of the preceding article and Article 271-1 shall not apply to the case of designation of a person for filing the complaint.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 237 In a case chargeable only upon complaint, the complaint must be filed within six months from the day a person entitled to complain was aware of the identity of the offender.

If one of several persons who may file a complaint delays beyond

the prescribed period, such delay shall not affect another.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 238 In a case chargeable only upon complaint, the complaint may be withdrawn at any time before the conclusion of the argument in the trial of the first instance. A complainant who withdraws a complaint shall not file it again.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 239 In a case chargeable only upon complaint, the filing or withdrawal of a complaint against one of several co-offenders has the same effect as a filing or withdrawal of the complaint against all such co-offenders, provided that if the offense is one specified in Article 239 of the Criminal Code, the withdrawal of a complaint

against a spouse shall not be considered to be a withdrawal of a complaint against the other adulterer.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 240 Any person who knows that there is suspicion that an offense has been committed may report it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 241 A public official who, in the execution of his official duties, learns that there is suspicion that an offense has been committed must report it.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 242 A complaint or report shall be made in writing or verbally to a public prosecutor or judicial police officer; if it is made

verbally, records shall be taken. To facilitate verbal complaint or report, bells for effecting the same may be installed.

If a public prosecutor of judicial police officer in the course of an investigation discovers all or a part of the facts of an offense which may be charged only upon complaint but the complaint has not yet been field, he shall, when the victim or other person entitled to file the complaint appears to testify, interrogate such person whether to file the complaint and shall record the answer.

The provisions of sections II through IV of Article 41 and Article 43 shall apply mutatis mutandis to the records specified in the preceding two sections.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 243 In a case chargeable only upon

request as specified in Articles 116 and 118 of the Criminal Code, the request made by a foreign government may be forwarded by the Minister of Foreign Affairs to the highest judicial administrative officer who shall inform the competent public prosecutor by an order.
The provisions of Articles 238 and 239 shall apply mutatis mutandis to a request by a foreign government.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 244 The provisions of Article 242 shall apply mutatis mutandis to voluntary surrender to a public prosecutor or judicial police officer.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 245 An investigation shall not be public.
The defense attorney of an

accused or suspect may be present and state his opinion when a public prosecutor, public prosecuting affairs official, judicial police officer, judicial policeman examines the accused or suspect, provided that if facts exist sufficient to justify an apprehension that such presence may jeopardize national security or destroy, fabricate, alter evidence or form a conspiracy with a co-offender or witness, or may be detrimental to the reputation of others, or that the behavior of the defense attorney is so inappropriate that it would interfere with the order of the investigation, such presence may be limited or prohibited.

The public prosecutor, public prosecuting affairs official, judicial police officer, judicial policeman, defense attorney, agent of the complainant, or any other person performing his duty under law during the investigation shall

not disclose whatsoever information acquired through the performance of the duty during the investigation, unless otherwise permitted by law, or it is necessary for the protection of public interest or legitimate interest.

The time, date, and place of the examination of an accused or suspect during the investigation shall be notified to the defense attorney unless urgent circumstances exist.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 246 An accused may be examined where he is found if he is unable to be present or if other necessity requires.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 247 A public prosecutor may request from a competent public office any report necessary to an

investigation.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 248 If an accused is present when a witness or expert witness is examined, he may personally ask questions; if the questions are improper, the public prosecutor may prohibit them.
If it is foreseen that a witness or expert witness cannot be examined at trial, the accused shall be ordered to be present unless such witness or expert witness cannot testify freely in his presence.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 248-1 When a victim is examined during the stage of investigation, his statutory agent, spouse, lineal blood relative, collateral blood relative within the third degree of kinship, family head, family member may be present and state

their opinion therein; the same rule shall apply to the examination conducted by a judicial police officer or judicial policeman.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 249 If an emergency arises in the course of investigation, the person present or nearby may be ordered to give appropriate assistance; if necessary, a public prosecutor may also request a nearby military officer to send troops to assist.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 250 If a public prosecutor knows that there is suspicion that an offense has been committed but the case is not within his jurisdiction, or if he finds that the case is not within his jurisdiction after having begun an investigation, he shall

immediately notify or send the case to the competent public prosecutor, provided that if there is an emergency, he shall take necessary measures.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 251 If the evidence obtained by a public prosecutor in the course of investigation is sufficient to show that an accused is suspected of having committed an offense, a public prosecution shall be initiated.
A public prosecution shall be initiated notwithstanding that the location of the accused is unknown.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 252 If one of the following circumstances exists, a ruling not to prosecute shall be made:
(1) A final judgment has been rendered;

(2) The period of statute of limitation has already expired;
(3) There has already been an amnesty;
(4) A law enacted after the commission of an offense abolishes the punishment;
(5) The complaint or request in offenses chargeable only upon complaint or request has been withdrawn or the time within which a complaint may be filed has expired;
(6) The accused is dead;
(7) The court has no judicial power over the accused;
(8) The act is not punishable;
(9) The punishment is remitted under law;
(10) The suspicion of an offense having been committed is insufficient.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 253 If a public prosecutor considers it appropriate not to prosecute a case specified in Article 376

after having taken into consideration the provisions of Article 57 of the Criminal Code, he may make a ruling not to prosecute.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 253-1 If an accused has committed an offense other than those punishable with death penalty, life imprisonment, or with a minimum punishment of imprisonment for not less than three years, the public prosecutor, after considering the matters specified in Article 57 of the Criminal Code and the maintenance and protection of public interest, deems that a deferred prosecution is appropriate, he may make a ruling to render a deferred prosecution by setting up a period not more than three years and not less than one year thereof, starting from the date the ruling of deferred prosecution is

finalized.

The period of statue of limitation shall be discontinued during the period of deferred prosecution.

The provisions of section IV of Article 83 of the Criminal Code shall not apply to the reason for discontinuance specified in the preceding section.

The proviso of section I of Article 323 shall not apply during the period of deferred prosecution.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 253-2 A public prosecutor in of making a ruling on deferred prosecution, may require the defendant to comply with or perform the following items within a limited period of time:

(1) Apologize to the victim;

(2) Make a written statement of repentance;

(3) Pay to the victim an appropriate sum as compensations

for property or non-property damages;
(4) Pay a certain sum to governmental account or a designated non-profit or local self-governing organization;
(5) Perform forty to two hundred and forty hour community services to a designated non-profit, local self-governing organization, or community;
(6) Complete drug addiction treatment, psychotherapy and counseling, or other appropriate treatments;
(7) Comply with the necessary order for the protection of the victim's safety;
(8) Comply with the necessary order for the prevention of recommitting the offense.
Before a public prosecutor can order the defendant to comply or perform the acts specified in the items three through six in the preceding section, the defendant's consent shall be obtained; items three and four

may also constitute a ground for civil compulsory enforcement.
The matters specified in section I shall be noted in the written deferred prosecution.
The period of time specified in section I shall not exceed the period of time allowed for the deferred prosecution.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 253-3 A public prosecutor may, ex officio or based on the application of the complainant, set aside the ruling of deferred prosecution and continue the investigation or initiate a prosecution, if the defendant commits the following during the period set forth for deferred prosecution:
(1) Has intentionally committed an offense punishable with a minimum punishment of imprisonment during the period of deferred prosecution and a prosecution is initiated by a

public prosecutor;
(2) Has committed other offense intentionally before deferred prosecution and was sentenced to a minimum of imprisonment punishment during the period of deferred prosecution;
(3) Has failed to comply with or perform the matters specified in the items of section I of Article 253-2.
In case a ruling of deferred prosecution is set aside by the public prosecutor, the accused may not request the refund of or compensation for the part that had already been performed.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 254 If an accused commits several offenses for one of which a final judgment of severer sentence has been received, the public prosecutor may give a ruling not to prosecute if he considers that prosecution for another offense will not substantially affect

the execution of sentence.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 255 If a public prosecutor gives a ruling of not to prosecute, deferred prosecution, or to set aside a ruling of deferred prosecution in accordance with the provisions of Article 252, 253, 253-1, 253-3 and 254, or gives a ruling of not to prosecute for other legal reasons, he shall prepare a written ruling setting forth the reasons thereof, provided that if consent of the complainant or informer has obtained prior to making of the ruling, only important part thereof has to be noted in the same.

A true copy of the written ruling specified in the preceding section shall be served on the complainant, the informer, the accused, and the defense attorney; a written ruling of deferred prosecution shall be

served on the victim, governmental agency, organization, or community authority related to acts to be complied with or performed as specified in the ruling.
The service specified in the preceding section shall be made not more than five days after the original copy of the ruling is received by the clerk.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 256 Within seven days after receipt of a written ruling not to prosecute or a written ruling of deferred prosecution, a complainant may make an application in writing for reconsideration of the ruling, setting forth his reasons for dissatisfaction, through the original public prosecutor to the chief public prosecutor for the immediate superior Court or public prosecutor general; provided that if consent of the

complainant has been obtained prior to the ruling was made under Articles 253 and 253-1, he may not make application for reconsideration.

Where a reconsideration of a ruling not to prosecute or a written ruling of deferred prosecution may be applied for, the period within which an application for such a reconsideration may be made and the chief public prosecutor of the immediate superior court or the public prosecutor general to whom the application is to be submitted shall be noted in the true copy of the written ruling served upon the complainant.

When a public prosecutor makes a ruling not to prosecute on a case where the offense charged is punishable with death penalty, life imprisonment, or with a minimum punishment of imprisonment for not less than three years due to the fact that the suspicion of an offense having been committed is

sufficient, or when a public prosecutor makes a ruling of deferred prosecution on a case specified in Article 253-1, he shall ex officio send the ruling to the chief public prosecutor of the immediate superior court or the prosecutor general for reconsideration and, if there is no person qualified for submitting application for reconsideration, notify the same to the informer.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 256-1 Within seven days after receipt of written ruling of setting aside a ruling of deferred prosecution an accused may make an application in writing for reconsideration of the ruling, setting forth his reasons for dissatisfaction, through the original public prosecutor to the chief public prosecutor for the immediate superior court or public prosecutor general.

The provision of section II of the preceding article shall apply mutatis mutandis to the service to the accused of the ruling of setting aside the ruling of deferred prosecution.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 257 If the original public prosecutor considers that the application for reconsideration is well-grounded, he shall set aside his ruling and continue the investigation or initiate a prosecution except for the circumstances specified in the preceding section.

If the original public prosecutor considers that the application for reconsideration is groundless, he shall immediately send the file and exhibits of the case to the chief public prosecutor of the higher court or the public prosecutor general.

An application which is not filed

within the time prescribed in the preceding two articles shall be dismissed.

If the chief public prosecutor of the original court considers it necessary, he may, before the case is forwarded in accordance with the provisions of section II, personally investigate or order another public prosecutor to investigate or review to determine whether the original ruling should be set aside or upheld; if the original ruling is upheld, the case shall immediately be forwarded.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 258 If the chief public prosecutor of the higher court or the public prosecutor general considered that an application for reconsideration is groundless, he shall dismiss it; if he considers that the application is well-grounded, he shall set aside the original ruling under

the circumstances specified in Article 256-1, or perform one of the following under the circumstance specified in Article 256:

If the investigation is incomplete, he may personally investigate or order another public prosecutor to investigate, or order the public prosecutor of the original court to continue it;

If the investigation has been completed, he shall order the public prosecutor of the original court to initiate a prosecution.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 258-1 If the complainant disagrees with the ruling of dismissal specified in the preceding article, he may, within ten days after receipt of written ruling of dismissal, retain an attorney to make an application in writing, to the concerned court

in first instance, for setting the case for trial.

An attorney being retained as referred to in the preceding section may examine the file of the investigation and the evidence, and to make hand writing copy or photos, provided that it may be restricted or prohibited if the subject matter being examined involves other case that shall not be disclosed or shall be kept secret.

The provision of section I of Article 30 shall apply mutatis mutandis to the circumstances specified in the two preceding sections.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 258-2 The application for setting the case for trial may be withdrawn prior to the court ruling is made; the same can be done after the ruling setting the case for trial has been made but prior to the conclusion of argument at the

trial of the first instance. The clerk shall immediately notify the accused of the withdrawal of application for setting the case for trial. The person who withdraws the application for setting case for trial may not re-apply the same.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 258-3 The ruling on the application for setting case for trial shall be determined by a panel of judges. The court shall dismiss the application for setting case for trial if the application is considered to be illegal or groundless; the court shall make a ruling setting the case for trial if the application is considered to be well-grounded; a true copy of the ruling shall be served on the applicant, the prosecutor, and the accused. The court may conduct necessary investigation before making a ruling specified in the

preceding section.

A public prosecution is deemed to be initiated at that time a ruling for setting the case for trial is made.

An interlocutory appeal may be taken, from the ruling of setting case for trial, by the accused; the ruling of dismissal is not appealable.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 258-4 The provisions of Section three, Chapter I, Part II shall apply to the procedure for setting case for trial, unless otherwise provided by law.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 259 If an accused who is detained receives a ruling not to prosecute or a ruling of deferred prosecution, the detention is considered to be cancelled, the public prosecutor shall release

the accused and notify the court immediately.

If a ruling not to prosecute or a ruling of deferred prosecution is given, seized property shall be returned immediately unless otherwise provided by law or it is within the period of reconsideration, it is in the process of applying for reconsideration or applying for setting case for trial and necessity exists, or it is the property which should be confiscated or which is used in the investigation of another offense or another accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 259-1 If a ruling not to prosecute or a ruling of deferred prosecution is given by a public prosecutor in accordance with the provisions of Article 253 or 253-1, he may make separate application to the court for declaration of confiscation of

the property used for committing the offense, for preparation of committing the offense, or acquired from the commission of the offense when the property was owned by the accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 260 If a ruling not to prosecute has become final or if a ruling of deferred prosecution has not been set aside during the period set forth in the ruling, no prosecution of the same case shall be initiated except under one of the following conditions:
(1) New facts or evidence is discovered;
(2) Circumstances for retrial exist as specified in one of the Items 1, 2, 4, or 5 of section I of Article 420.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 261 If the question whether an act constitutes a crime or whether the punishment for an offense should be remitted depends upon a civil legal issue, the public prosecutor shall suspend the investigation before conclusion of the civil action.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 262 If the accused is unknown, the investigation shall not be concluded before it is ascertained whether the circumstances specified in Article 252 exist.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 263 The provisions of sections II and III of Article 255 shall apply mutatis mutandis to an indictment filed by a public prosecutor.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Section 2 - PROSECUTION

Article 264 A public prosecution shall be initiated by a public prosecutor by filing an indictment with a competent court.

An indictment shall include the following matters:

Full name, sex, age, native place, occupation, domicile, or residence of the accused and special identifying characteristics;

Facts of and evidence for the offense and article of the law violated.

When a prosecution is initiated, the record and exhibits shall be sent therewith to the court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 265 Prosecution for a related offense or malicious accusation related to the instant case may be added before conclusion of

argument at the trial of the first instance.
An additional prosecution may be verbally initiated with the court on the trial date.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 266 A prosecution shall not affect a person other than the accused charged by the public prosecutor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 267 If part of the facts of a crime is prosecuted by a public prosecutor, all such facts are considered to be included.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 268 A court shall not try a crime for which prosecution has not been initiated.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 269 A public prosecutor may withdraw prosecution before conclusion of the argument at the trial of the first instance if circumstances indicate that prosecution should not have been initiated or that it is appropriate not to prosecute.
Withdrawal of a prosecution shall be in writing stating the reasons therefor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 270 Withdrawal of a prosecution shall have the same effect as a ruling not to prosecute; written withdrawal of prosecution shall be considered to be a ruling not to prosecute and the provisions of Articles 255 through 260 shall apply mutatis mutandis.

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Section 3 - TRIAL

Article 271 The court shall summon the accused or his agent and notify the public prosecutor, defense attorney, or assistant of the date of trial.
The court shall summon the victim or his family member and provide them with opportunities to state their opinions, unless these persons failed to be present after being legally summoned, without good reason, or has expressed their unwillingness to be present, or that the court considers it is not necessary or not appropriate to summon them.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 271-1 Complainant may retain an agent to make statements at trial without personally appearing in court, provided that the court may order the complainant to

appear in court if necessary. The retention of an agent as specified in the preceding section shall be effected by submitting a power of attorney to the court, the provisions of Articles 28, 32, and 33 shall apply mutatis mutandis, provided that if the agent is not a lawyer, he can not inspect, examine, make note of or take photo of the material in case file and the evidence in the stage of trial.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 272 A summons for the first trial date shall be served at least seven days prior thereto, and for the cases specified in Article 61 of the Criminal Code, such summons shall be served at least five days prior to the first trial date.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 273 The court may summon the accused or his agent and notify the public prosecutor, defense attorney, assistant to be present in preliminary proceeding before the first trial date to arrange the following matters:

(1) The effect of the prosecution and its scope and any circumstance that might change the article of law charged with as cited by the public prosecutor;

(2) Asking the accused, agent, or defense attorney whether to plead guilty to the crime charged by the public prosecutor, and determining whether to apply summary trial procedure or summary procedure;

(3) Main issues of the case and evidence;

(4) The opinion regarding the admissibility of the evidence;

(5) Informing the parties to motion for investigation of evidence;

(6) The scope, order and methods

of investigation of evidence;
(7) Ordering the presentation of exhibits or evidential documents;
(8) Other trial related matters.
If the court determines, in accordance with the provisions of this code, that the evidence referred to in Item IV of the preceding section shall not be admitted, then, the said evidence shall not be presented at the trial date.
The provision of the preceding article shall apply mutatis mutandis to preliminary proceeding.
Records shall be taken by clerk regarding the matters being arranged in the proceeding as specified in section I of this article, then the persons at the hearing shall sign his name, affix his seal, or affix his fingerprint on the space next to the last line of the contents of the records.
The court may still make arrangements with those

attending the preliminary procedure if the person, referred to in section I of this article, fails to appear in the hearing, after being summoned or notified, without good reasons. If lack of required legal formality exists in initiation of prosecution or other litigation related acts but such defect can be cured, the court shall by a ruling order that the same be cured within the period granted.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 273-1 If the accused admits guilty on the fact charged, in the proceeding specified in section I of the preceding article, the presiding judge may inform him of the meaning of summary trial procedure and may, after considering the opinions of the party's, agent, defense attorney, and assistant, order that the case be proceeded under

the provisions of summary trial procedure by a ruling, unless the accused has committed an offense punishable with death penalty, life imprisonment, or with a minimum punishment of imprisonment for not less than three years or that the court of appeal has jurisdiction of the first instance over the case. The court may set aside the ruling specified in the preceding section and set the case for trial on regular procedure if the court considers that the said ruling is not permitted or not appropriate. Trial procedure shall start anew under the circumstance specified in the preceding section, unless the parties do not object to the continuing of the current proceeding.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 273-2 The investigation of evidence in summary trial proceeding shall

not be subject to the restrictions as specified in section I of Article 159, Article 161-2, Article 161-3, Article 163-1, and Articles 164 through 170.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 274 Before the trial date, the court may subpoena and obtain or order the production of an exhibit.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 275 Before the trial date, a party or defense attorney may present evidence and motion the court to take the measures specified in the preceding article.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 276 If the court foresees that a witness is unable to be present

on the trial date, it may examine him before such date.
The court may order an expert examination or a translation before the trial date.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 277 The court may conduct a search, seizure, or inspection prior to the trial date.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 278 The court may request a competent public office to submit reports upon necessary matters prior to the trial date.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 279 An associate judge may be commissioned to conduct preliminary procedure, prior to the trial date, to prepare for

the trial of a case which should be tried by a panel of judges; he shall perform the duties specified in section I of Article 273, Article 274, and Articles 276 through 278.
In conducting preliminary proceeding the commission judge shall have the same authority as the court or presiding judge, except for the ruling specified in Article 121.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 280 On the trial date, the judge, public prosecutor, and clerk shall be present in court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 281 If an accused fails to appear in court on the trial date, the trial may not proceed unless otherwise specially provided.
If a case is one in which an agent may be authorized to appear for

the accused before a court, such agent may appear in place of the accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 282 Restraint may not be placed on the person of an accused when he is in court, but he may be ordered to be guarded.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 283 After an accused has appeared in court, he may not withdraw from the court except with permission of the presiding judge.
A presiding judge may take appropriate measures to order an accused to appear in court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 284 If no defense attorney appears in the cases specified in section I

of Article 31, the trial may not proceed, provided that this rule shall not apply to the pronouncement of judgment.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 284-1 Trial for the first instance shall be conducted by a panel of judges, unless the case is one of that applies summary trial procedure or summary procedure.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 285 On the trial date, a trial shall begin by announcing the offense charged.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 286 After the presiding judge has examined the accused in accordance with Article 94, the public prosecutor shall state

the essential points of the prosecution.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 287 After the essential points of the prosecution have been stated by the public prosecutor, the presiding judge shall inform the accused of the matters specified in Article 95.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 287-1 If the court considers appropriate, the court may ex officio or upon the motion of the party or defense attorney order, by a ruling, that the co-defendant's procedure of investigation of evidence or procedure of the argument be conducted separately from or consolidated together with that of the defendant.
Under the circumstance specified in the preceding section, the

co-defendant's procedure of investigation of evidence or procedure of the argument shall be conducted separately from that of the defendant if it is necessary for the protection of the right of the defendant in a case a conflict of interest exists between the defendant and the co-defendant.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 287-2 If the court examines a co-defendant on a case that the defendant is being charged, the co-defendant shall be subject mutatis mutandis to the provision governing the examination of a witness.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 288 Investigation of evidence shall begin after completion of proceeding specified in Article 287.

With regarding to the statement made by a person other than the accused which has been presented at the preliminary proceeding but not contested by the party, the court may choose to announce it or state the essential points, unless the court chooses otherwise if it considers necessary.

Except for the cases that apply the summary trial procedure, the presiding judge shall examine the accused regarding the facts being charged with at the end of the investigation of evidence proceeding.

The presiding judge's investigation of information regarding the sentencing shall be conducted after the examination in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 288-1 Following the investigation of each evidence, the presiding

judge shall ask the party's opinion thereof.
The presiding judge shall inform the accused that he may present evidence favorable to him.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 288-2 Appropriate opportunities shall be given by the court to the parties, agent, defense attorney, or assistant to argue the probative value of the evidence.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 288-3 The parties, agent, defense attorney, or assistant may object to the court regarding the investigation of evidence or in-court instruction by the presiding judge or commissioned judge if he disagrees with it; unless otherwise particularly provided.
The court shall make a ruling on

the objection specified in the preceding section.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 289 After the investigation of evidence has been completed, arguments on the law and facts shall be made in the following sequence:
Public prosecutor;
Accused;
Defense attorney;
After an argument, additional argument may be made; the presiding judge may also order further argument.
After the conclusion of the argument pursuant to the preceding two sections, the presiding judge shall provide the parties with opportunities to state opinions regarding sentencing.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 290 The presiding judge shall, before announcing that the argument is concluded, ask the accused whether he has a final statement.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 291 The court may, if it is necessary after the argument is concluded, order further argument.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 292 The judges in attendance on the trial date shall participate throughout the trial; if the judge is changed, the proceedings shall begin anew. If the judge who conducted the preliminary proceedings prior to the trial date is changed, it is not necessary to begin the proceedings anew.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 293 If a trial cannot be concluded in one session, it shall, except under special circumstances, be continued by successive daily hearings; if for any reason fifteen days intervene between hearings, the proceedings shall being anew.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 294 If an accused is insane, the trial shall be suspended until he recovers.

If an accused is unable to attend court because of sickness, the trial shall be suspended until he is able to appear in court.

In the case of the accused specified in one of the preceding two sections, if circumstances appear to warrant the pronouncement of a judgment of "Not Guilty" or of "Remission of Punishment," such judgment may be given without waiting for the appearance of the accused in

court.

The provisions of the preceding three sections shall not apply to a case in which an agent may be authorized to appear for the accused before a court and such agent has been authorized.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 295 If the determination of one offense depends upon a determination of another offense and such other offense has already been charged, the trial may be suspended until judgment in the other offense becomes final.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 296 If an accused has committed another offense for which prosecution has already been initiated and for which a severe sentence shall be given, and if the court considers that

punishment for the current offense will not seriously influence such sentence, trial of the current offense may be suspended until judgment in the other offense becomes final.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 297 If the question of the commission of an offense, or remission of punishment depends on a determination under civil law, and if the civil action has already been initiated, the criminal trial may be suspended until the civil proceedings have been concluded.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 298 Upon extinction of the causes for suspension of a trial specified in sections I and II of Article 294 and Articles 295 to 297, the court shall continue the trial, and a party may also motion the

court to continue the trial.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 299 If an offense committed by an accused is proved, judgment imposing a sentence shall be pronounced, provided that if punishment is to be remitted, a judgment remitting the punishment shall be pronounced.

Prior to a judgment remitting punishment specified in the preceding section pursuant to Article 61 of the Criminal Code, the court may, in consideration of the circumstances and by consent of the complainant or private prosecutor, also order the accused to do the following:

To apologize to the victim;

To make a written statement of repentance;

To pay to the victim an appropriate sum as consolation.

The matters specified in the preceding section shall be noted in the written judgment.

The matter specified in Item III of section II may also constitute a ground for civil compulsory execution.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 300 In the judgment specified in the preceding Article, if the facts warrant, the charge brought by the public prosecutor may be changed to an appropriate article of the law.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 301 If it cannot be proved that an accused has committed an offense or if his act is not punishable, a judgment of "Not Guilty" shall be pronounced.

If a person is excused from punishment because he has not reached the fourteenth year of his age or because of insanity and if it is considered necessary to pronounce a measure for

rehabilitation, such measure and its duration shall also be pronounced.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 302 Judgment of "Exempt from Prosecution" shall be pronounced if one of the following circumstances exists:
A final judgment has already been given;
The period of statute of limitation is completed;
There is already been an amnesty;
A law enacted after the commission of an offense abolishes the punishment.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 303 Judgment of "Case Not Entertained" shall be pronounced if one of the following circumstances exists:
(1) Prosecution has been initiated contrary to the rules

of procedure;

(2) Prosecution has again been initiated for a case in which public or private prosecution has already been initiated in the same court;

(3) In a prosecution which may be initiated only upon complaint or request, a complaint or request to prosecute has not been made or has been withdrawn or the period within which such complaint or request may be made has expired;

(4) A prosecution has been initiated contrary to the provisions of Article 260 after a ruling not to prosecute has been given, the prosecution has been withdrawn, or deferred prosecution has not been set aside;

(5) The accused is dead; or the entity being accused does not exist anymore;

(6) The court has no judicial power over the accused;

(7) According to the provisions of Article 8, the court cannot try the case.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 304 If the court has no jurisdiction over the case, a judgment of "Mistake in Jurisdiction" shall be pronounced and an order issued to transfer the case to a court having jurisdiction.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 305 If an accused refuses to make a statement, judgment may be given without waiting for his statement; the same rule shall apply if an accused leaves the court without permission.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 306 If a court considers that it should impose detention or a fine or pronounce a judgment of "Remission of Punishment" or

"Not Guilty," and if an accused, without good reason, fails to appear in court after having been legally summoned, judgment may be given without waiting for his statement.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 307 The judgment specified in section IV of Article 161 and Articles 302 through 304 may be given without oral argument.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 308 A written judgment shall separately set forth a syllabus of the decision and reasons; a written judgment of "Guilty" shall set forth the facts.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 309 The syllabus of a written

judgment of "Guilty" shall contain the offense committed, and depending upon the circumstances, include the following:

(1) A pronouncement of the principal punishment, accessory punishment, or remission of punishment;

(2) If a sentence of not more than six months imprisonment or detention is pronounced, and if commutation to a fine may be ordered, the rate of such commutation;

(3) If a fine is pronounced and if commutation to labor may be ordered, the rate of such commutation;

(4) If a sentence is commuted to a warning, its pronouncement;

(5) If a suspension of sentence is pronounced, the period of suspension;

(6) If a measure for rehabilitation is pronounced, the measure and its duration;

Note: Articles 1 through 343 were

amended lastly on February 6, 2003.

Article 310 The reasons of a written judgment of "Guilty" shall, depending upon the circumstances, include the following:

(1) The evidence on which the facts of the offense are based and the reasons therefor;

(2) Where evidence favorable to the accused is not relied, the reasons therefor;

(3) The circumstances specified in Article 57 or 58 of the Criminal Code which justify the exercise of discretion in imposing a sentence;

(4) Reasons for increasing, reducing, or remitting a sentence;

(5) Reasons for commuting a sentence to a warning or for suspension of sentence;

(6) Reasons for pronouncing a measure for rehabilitation;

(7) The applicable law.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 310-1 In a case of a judgment of "Guilty" which is pronounced to be subject to a sentence of not more than six months imprisonment or detention commutable to a fine, a fine, or a remission of punishment, the written judgment may only contain the syllabus of the decision, the facts and evidence of the offense accompanied by reasons for such conclusion thereof, and articles of the law applicable.

For the judgment specified in the preceding section, the court may cite the facts of the offense set forth in the indictment if such facts are the same as those established by the court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 311 Judgment shall be pronounced within fourteen days after conclusion of an argument.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 312 Judgment shall be pronounced notwithstanding that an accused is not in court.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 313 Judgment is not required to be pronounced by the judge who tried the case.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 314 When a judgment from which an appeal is allowed is pronounced, such pronouncement shall include the duration of the period within which the appeal may be made and the court to which the appeal petition should be submitted; a true copy of the judgment sent to the accused shall contain the same information.

A true copy of the judgment

specified in the preceding section shall also be sent to the complainant and informer; such complainant may within the period for appeal state his opinion to the public prosecutor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 315 If an offense specified in one of the chapters of the Criminal Code entitled "Offenses of Perjury and Malicious Accusation" or "Offenses of Libel and against Credit" is committed, and if the victim or other person with a right to file the complaint makes application, an order may be issued to require the whole or a part of the written judgment to be published in a newspaper at the expense of the accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 316 If an accused is under detention, such detention is considered to be cancelled on the pronouncement of a judgment of "Not Guilty," "Exempt from Prosecution," "Punishment Remitted," "Suspension of Sentence," "Fine," "Sentence Commuted to Warning," or "Case Not Entertained" as specified in Items 3 or 4 of Article 303, provided that during the period allowed for appeal or while an appeal is pending the accused may be released on bail, to the custody of another, or with a limitation on his residence; if he is unable to provide bail or if it is impossible for him to be released to the custody of another or with a limitation on his residence, an order may be issued requiring him to remain under detention if necessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 317 The seized property which has not

been ordered to be confiscated shall be immediately returned, provided that during the period allowed for appeal or while an appeal is pending, the seizure may remain in force if necessary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 318 The seized stolen property which should be returned to the victim in accordance with section I of Article 142 shall be returned immediately without waiting for his application.
A ruling for the return of property temporarily returned in accordance with section II of Article 142 shall be considered as already having been made unless there is a pronouncement to the contrary.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

CHAPTER II PRIVATE PROSECUTION

Article 319 The victim of a crime may file a private prosecution, provided that where he is without, or of limited, legal capacity, or is dead, such private prosecution may be filed by his statutory agent, lineal relative, or spouse.

An attorney shall be retained to file a private prosecution under the preceding section.If a part of the facts of an offense has been prosecuted by a private prosecution, the remaining facts although may not be subject to a private prosecution is considered in the prosecution, but this may not be done if the remaining part, which may not be prosecuted by a private prosecutor, constitutes a more serious offense or its trial of the first instance is under the jurisdiction of the high court, or if the circumstances of Article 321 exist therein.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 320 A private prosecution shall be initiated by filing a petition with a court having jurisdiction.

A petition in a private prosecution shall contain the following matters:

(1) Full name, sex, age, domicile or residence of the accused, or special identifying characteristics;

(2) Facts and evidence of the offense and article of the law violated.

The facts of the offense specified in the preceding section shall set forth the specific facts that constitute the offense and the date, time, place and methods of committing the offense.

The copies of the petition in a private prosecution shall be filed according to the number of the accused.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 321 A private prosecution shall not be initiated against a lineal ascendant or spouse.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 322 In a case chargeable only upon complaint or request, a private prosecution may not be initiated if such complaint or request is no longer permitted.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 323 A private prosecution may no longer be initiated if a public prosecutor has already begun to investigate the same case in accordance with the provision of Article 228, provided that in a case chargeable only upon complaint, and if the immediate victim of the offense initiates the private prosecution, this rule shall not apply.

If a public prosecutor knows after the beginning of his investigation that a private prosecution has been initiated already or that the circumstance specified in the proviso of the preceding section exists, he shall immediately stop such investigation and refer the case to the court, provided that if urgent circumstances exist, the public prosecutor shall still take necessary measures.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 324 Another complaint shall not be filed nor a request made under Article 243 in the same case in which a private prosecution has already been initiated.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 325 In a case chargeable only upon complaint or request, a private prosecutor may withdraw the

private prosecution prior to the conclusion of the argument in the trial of the first instance.
A private prosecution shall be withdrawn in writing, but it may be withdrawn verbally on the trial date or during an examination.
The clerk shall immediately notify the accused of the fact that the private prosecution has been withdrawn.
A person who has withdrawn a private prosecution shall not file another private prosecution, complaint, or request.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 326 The court or commissioned judge may examine the private prosecutor and the accused before the first trial date and may collect or investigate the evidence; if the court or commissioned judge determines that this is a case for civil

action or that the private prosecution procedure is being used to threaten the accused, the private prosecutor may be advised to withdraw the private prosecution.

The examination specified in the preceding section shall be held in camera; unless necessary, the accused shall not be called for examination.

If, as a result of the examination and investigation specified in section I, it is determined that the case contains the circumstances of one of the Articles 252 through 254, the private prosecution may be dismissed by a ruling and the provisions of Items I through IV of section I, sections II and III of Article 253-2 shall be applied mutatis mutandis.

After a ruling to dismiss a private prosecution has been final, another private prosecution may not be initiated for the same case unless one of the Items of Article 260 exists.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 327 Ordering the agent of a private prosecutor to be present shall be in the form of a written notice; if it is necessary to order the private prosecutor to be present he shall be summoned by a summons.

The provisions of Articles 71, 72 and 73 shall apply mutatis mutandis to the summoning of a private prosecutor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 328 The court shall, upon receipt of a petition in a private prosecution, immediately send a copy thereof to the accused.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 329 Any procedural act which may be

performed by a public prosecutor on the trial date can be performed by the agent of a private prosecutor in the proceedings of a private prosecution.

If a private prosecutor has not retained an agent, the court shall order him, by a ruling, to retain an agent within a prescribed period; if no agent has been retained within the said period, a judgment of "Case Not Entertained" shall be pronounced.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 330 The court shall notify the public prosecutor of the trial date of a private prosecution.

A public prosecutor may appear in court and express his opinion on the trial date of a private prosecution.

Note: Articles 1 through 343 were amended lastly on February 6,

2003.

Article 331 In case the agent of a private prosecutor fails to appear in court without good reasons after having been legally notified, the court shall re-notify him and notify the private prosecutor of the same. If the agent of a private prosecutor fails to appear in court again, without good reason, then a judgment of "Case Not Entertained" shall be pronounced.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 332 Where a private prosecutor loses his legal capacity or dies prior to the conclusion of the argument, one of the persons capable of initiating the private prosecution as specified in section I of Article 319 may apply to the court within one month for undertaking the litigation. Where there is no such person to undertake the litigation or such person fails

to do so within the prescribed period, the court shall, depending on the circumstances, immediately give a judgment on the case or notify the public prosecutor to take over the litigation.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 333 Where establishment of a crime or remission of punishment therefor is to be determined by certain civil legal issues and no civil action has been brought, the court shall suspend trial of the case and order the private prosecutor to bring a civil action within a prescribed period and, failing to do so within the said period, shall dismiss the private prosecution by a ruling.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 334 A judgment of "Case Not Entertained" shall be pronounced for a private prosecution which should not have been initiated.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 335 If a judgment of "Mistake in Jurisdiction" is pronounced, it shall not be necessary to refer the case to a competent court unless application therefor is made by the private prosecutor.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 336 The written judgment in a private prosecution shall also be sent to the competent public prosecutor. If a public prosecutor considers, after receipt of a written judgment of "Case Not Entertained" or "Mistake in Jurisdiction," that a public prosecution should be initiated, he shall immediately begin or continue an investigation.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 337 The provisions of section I of Article 314 shall apply mutatis mutandis to a private prosecution.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 338 If a victim who has initiated a private prosecution commits an offense and the victim in such offense is the accused in the private prosecution, such accused may institute a counter-action before the conclusion of the argument in the trial of the first instance.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 339 The provisions relating to a private prosecution shall apply mutatis mutandis to a

counter-action.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 340 (Deleted)

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 341 Judgment in a counter-action shall be given at the time of giving the judgment in a private prosecution, provided that in case of necessity, it may be given after judgment in a private prosecution had been given.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 342 Withdrawal of a private prosecution shall not affect a counter-action.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Article 343 The provisions of Articles 246, 249, and Sections 2 and 3 of the preceding Chapter relating to a public prosecution shall apply mutatis mutandis to the procedures of a private prosecution except as otherwise specially provided in this Chapter.

Note: Articles 1 through 343 were amended lastly on February 6, 2003.

Part III Appeals

Chapter 1 General Provisions

Article 344 (Right to Appeal (I) - Party)
A party who disagrees with the judgment of a lower court may appeal to the appellate court.
Where a private prosecutor loses his legal capacity or dies prior to the conclusion of the argument, a person listed in Paragraph 1 of Article 319 may appeal for the said private prosecutor.
Where a complainant or victim disagrees with the judgment of a

lower court, he/she may request the prosecutor to appeal with reasons set forth.
A prosecutor may appeal for interests of the defendant.
The original trial court shall report cases sentenced capital punishment or life imprisonment to the appellate court muto proprio without an appeal and notify parties.
Under the circumstance specified in the preceding paragraph, it is deemed that a defendant has appealed.

Article 345 (Right to Appeal (II) – Independent Appeal)
Parents or spouse of a defendant may appeal independently for interests of the defendant.

Article 346 (Right to Appeal (III) – Representative Appeal)
An agent or defense attorney in the original trial may appeal for interests of the defendant; provided that it may not be contrary to defendant’s express will.

Article 347 (Right to Appeal (IV) – Prosecutor in Private Prosecutions)
A prosecutor may appeal independently for judgments in private prosecutions.

Article 348 (Scope of Appeal)
The appeal may be brought against part of the judgment; if fails to specify the part appealed, it is considered as an appeal in whole.
Relevant parts of the partial judgment appealed are considered as appealed.

Article 349 (Time Limit for Filing an Appeal)
The time limit for filing an appeal is 10 days start from the day the judgment is served; provided that appeals made after the judgment announcement and before the service are also effective.

Article 350 (Appeal Process)
Appeals shall be brought to the original trial court with a written petition.
Copies of the written appeal shall be made in accordance with

the number of opposing party.

Article 351 (Appeals by Defendants in a Prison or Detention Center)

Where a defendant in a prison or detention center submits a written appeal to the officer in charge of such prison or detention center during the period for appeal, it is deemed to have appealed within the period for appeal.

Where a defendant could not prepare a written appeal, officers in the prison or detention center shall prepare such written appeal for the defendant.

Once the officer in charge of the prison or detention center receives a written appeal, he/she shall specify the time, date, month, and year of such reception and deliver it to the original trial court.

Where a defendant's written appeal is not filed to the officer of a prison or detention center, the clerk of the original trial court shall notify such

officer after receiving the written appeal.

Article 352 (Service of Copies of the Written Petition)
A clerk of the original trial court shall serve copies of the written petition promptly to the opposing party.

Article 353 (Waiver of the Right to Appeal)
A party may waiver his/her right to appeal.

Article 354 (Appeal Withdrawal)
Appeals may be withdrawn before the judgment is made; the same rule shall apply to cases remanded to the original trial court by the court of third instance or cases remanded to other courts of the same level as the original trial court.

Article 355 (Restrictions to Appeal Withdrawal (I) - Defendant's Consent)
An appeal for interests of the defendant may not be withdrawn without consent of the defendant.

Article 356 (Restrictions to Appeal

Withdrawal (II) - Prosecutor's Consent)

An appeal made by a private prosecutor may not be withdrawn without consent of the prosecutor.

Article 357 (Jurisdiction for Appeal Waiver or Withdrawal)

A waiver of appeal rights shall be filed to the original trial court.

An appeal withdrawal shall be filed to the appellate court; provided that it could be filed to the original trial court before dossier of the case are handed over to the appellate court.

Article 358 (Process for Appeal Waiver or Withdrawal)

An appeal waiver or withdrawal shall be made in writing, provided that it may be verbally initiated in the presence of the court on the trial date.

Article 351 shall apply mutatis mutandis where a defendant waivers the right to appeal or

withdraws the appeal.

Article 359 (Effect of an Appeal Waiver or Withdrawal)

Those who waiver or withdraw an appeal lose the right to appeal.

Article 360 (Notice for Appeal Waiver or Withdrawal)

A clerk shall notify the opposing party promptly in case of an appeal waiver or withdrawal.

Chapter II The Second Instance

Article 361 (Jurisdiction for Appeal in the Second Instance)

A person who disagrees with a judgment of first instance made by a district court shall file an appeal to the court of appeal with jurisdiction of the second instance.

A written petition of appeal shall set forth specific ground of reasons.

A person who fails to set forth ground of reasons in a written petition of appeal shall submit ground of reasons in writing to the original trial court within 20 days since the appeal period

lapses. The original trail court shall set a period for those who fail to submit written ground of reasons in the specified period to correct the defect.

Article 362 (Original Trial Court's Disposition against Illegal Appeals - Overrule by a Ruling or Order Amendment)

The original trial court shall, by a ruling, immediately overrule an appeal if it does not comply with legal formality, or if it shall not be granted as a matter of law, or if the right to appeal has lapsed; provided that where the deficiency in legal formality is amendable, the court shall order an amendment to be made within a prescribed period.

Article 363 (Transfer of Files, Exhibits and Defendant in a Prison or Detention Center)

Except for situations listed in the preceding article, the original trial court shall promptly transfer of dossier and exhibits to the court of second

instance.

Where a defendant is in a detention center or prison other than the location of court of second instance, the original trial court shall send such defendant to a detention center or prison where the court of second instance is located and notify such court.

Article 364 (Apply Mutatis Mutandis Procedure of First Instance)

Unless otherwise provided in this Chapter, the trial of second instance shall apply mutatis mutandis the procedure of first instance.

Article 365 (Appellant States the Appeal Purport)

After a presiding judge questions a defendant pursuant to Article 94, the judge shall order the appellant to state the purport of appeal.

Article 366 (Scope of Investigation in the Second Instance)

The court of second instance shall investigate the parts of

original judgment which have been appealed.

Article 367 (Court of Second Instance's Disposition against Illegal Appeals - Overrule by a Ruling or Order Amendment)

The court of second instance shall overrule by a ruling if the written appeal fails to set forth ground of reasons or if an appeal has situations listed in the former part of Article 362; provided that where the deficiency is amendable but not ordered an amendment by the original trial court, the presiding judge shall order an amendment to be made within a prescribed period.

Article 368 (Judgment for a Meritless Appeal)

The court of second instance shall overrule an appeal by ruling if it finds such appeal meritless.

Article 369 (Revoke the Original Judgment - Adjudicate or Remand the Case)

The court of second instance

shall reverse the relevant portion of the original judgment and adjudicate the case upon finding the appeal meritorious or upon finding an appeal meritless but the original judgment is improper or illegal; provided that where the original judgment is set aside become of the trial court's improper ruling on jurisdiction, exempt from prosecution, or case dismissed.

Where the court of second instance reverses the original judgment for the latter wrongfully pronounced mistake in jurisdiction, if the court of second instance has jurisdiction over the first instance, it shall render a judgment of first instance.

Article 370 (Principle of the Prohibiting Alteration for Interests (I))

The court of second instance may not pronounce a sentence heavier than the one in the original judgment for an appeal filed by a defendant or for interests of

the defendant; provided that this rule does not apply if the judgment of the original court is set aside because of the law was wrongly applied.

Article 371 (Single Party Judgment (VI))
Where a defendant default without due reasons after having been legally summoned, a judgment may be made without his/her statement.

Article 372 (Exceptions to Oral Hearing (II))
For an appeal against a judgment under Article 367 or a judgment of mistake in jurisdiction, exempt from prosecution, or case dismissed rendered by the original trial court, the court of second instance may deny an appeal that is meritless or remand a meritorious case without oral argument.

Article 373 (Quote from the Judgment of First Instance)
A judgment of second instance may quote facts, evidence and reasons set forth in the judgment

of first instance, and the reasons shall be supplemented recorded for material items that have not been specified in the first instance, or for evidence or defense favorable to the defendant which has been proposed in the second instance but was not adopted.

Article 374 (Formality of a Judgment Appealable)

Where a defendant or private prosecutor may appeal against the judgment of second instance, the period for submitting the reasons for appeal in writing shall be set forth in the original judgment served.

Chapter III The Third Instance

Article 375 (Jurisdiction of the Appeal in the Third Instance)

A person who disagrees with a judgment of first instance or second instance made by a Court of appeal shall file an appeal to the Supreme Court.

The procedure of third instance shall apply where the trial of

Supreme Court disagrees with the first instance judgment of a Court of appeal.

Article 376 (Judgments not Appealable to the Third Instance)

Once judged by the court of second instance, cases involving the following offenses are not appealable to the court of third instance:

1. Offenses with a maximum punishment of no more than three years imprisonment, detention, or a fine only;
2. Offense of theft specified in Articles 320 and 321 of the Criminal Code;
3. Offense of embezzlement specified in Article 335 and Paragraph 2 of Article 336 of the Criminal Code;
4. Offense of False Pretense specified in Articles 339 and 341 of the Criminal Code;
5. Offense of breach trust specified in Article 342 of the Criminal Code;
6. Offense of extortion specified in Article 346 of the

Criminal Code;

7. Offense of swag specified in Paragraph 2 of Article 349 of the Criminal Code.

Article 377 (Reasons for Appeal in the Third Instance (I) – Judgment in Contravention of Laws and Regulations)

Appeals to the court of third instance may only be filed where the judgment is in contravention of the laws and regulations.

Article 378 (Meaning of in Contravention of Laws and Regulations)

A judgment which fails to apply rules or applies rules improperly is in contravention of the laws and regulations.

Article 379 (Judgment Automatically in Contravention of the Laws and Regulations)

A judgment shall be on its face under the following circumstances:

1. Where the court is not organized in conformity with the laws;

2. Where a judge who should have

disqualified himself/herself by operation of law or by decision has participated in making the decision;

3. Where the in camara trial is not pursuant to laws;

4. Where the court made an improper judgment on jurisdiction;

5. Where the court improperly hears or dismisses a case;

6. The trial took place on the date of hearing in the absence of the accused;

7. The trial took place in the absence of the advocate;

8. The trial took place without statement of the prosecutor or a private prosecutor in court;

9. Where the trial shall be suspended or start anew but is not suspended or started anew;

10. Where evidence to be investigated at the trial date is not investigated;

11. Where a defendant is not given opportunity to make his final statement;

12. Unless otherwise specified

in the Code, where requested items are not adjudicated or where items not requested are adjudicated;
13. Where a non-participated judge is not involved in the making of the judgment;
14. Where no reasons are specified in the judgment or where ground of reasons specified are contradicting.

Article 380 (Restrictions to Appeals to the Third Instance – Reasons for Appeal)
Besides situations specified in the preceding article, litigation process in contravention of the laws or regulations but obviously has no effects on the judgment may not be a reason for appeal.

Article 381 (Reasons for Appeals to the Third Instance (II) – Punishment Amended, Abolished, or Remitted)
The abolishment, amendment, or remittance of punishments after the original judgment may be a reason for appeal.

Article 382 (Appeal to the Third Instance)

Ground of reasons for appeal shall be set forth in a written pleading of appeal; those who fail to set forth the reasons may submit supplementary reasons in writing to the original court within 10 days since the appeal is filed; if fails to correct such defect, no submission shall be ordered.

Paragraph 2 of Article 350, Article 351 and Article 352 shall apply mutatis mutandis to the reason in writing specified in the preceding paragraph.

Article 383 (Written Defense)

The opposing party may submit a written defense to the original trial court within 10 days since receiving the written appeal or the service of amended supplementary reasons in writing.

Where a prosecutor is the opposing party, he/she shall submit a written defense regarding the supplementary reasons for appeal.

Copies of the written defense shall be submitted; the clerk of original trial court shall serve those to the appellant.

Article 384 (Original Trial Court's Disposition against Illegal Appeals – Overrule by Ruling or Order Amendment)

The court shall overrule an appeal by ruling if it does not comply with legal formality, or it shall not be granted as a matter of law, or the right to appeal has lapsed; provided that where the deficiency in legal formality is amendable, the court shall order an amendment to be made within a prescribed period.

Article 385 (Send the Case File and Exhibits to the Third Instance)

Except for situations listed in the preceding article, the original trial court shall promptly transmit the case dossier and exhibits to the prosecutor in court of third instance after receiving the written defense or the period for

submitting a written defense has lapsed.

Once receives the case dossier and exhibits, the prosecutor in the court of third instance shall transmit the case dossier and exhibits along with an opinion in writing to the court of third instance in 7 days; provided that an opinion in writing may be omitted where the prosecutor has no other opinion regarding the written appeal or defense in writing sent by the prosecutor in the original trial court.

The original trial court shall transmit the case dossier and exhibits to the court of third instance where no prosecutor is a party in the appeal.

Article 386 (Submitting Documents in Writing)

Before the court of third instance adjudicates the case, an appellant and opposing party may submit the reasons for appeal in writing, written defense, opinion, and amended supplementary reasons in writing

to the court of third instance.
Copies of the document mentioned in the preceding paragraph shall be served to the opposing party by the clerk of court of third instance.

Article 387 (Apply mutatis mutandis Trial Procedure in the First Instance)
Except otherwise stipulated in this Chapter, a trial in the third instance shall apply mutatis mutandis trial procedure in the first instance.

Article 388 (Exemption to the Mandatory Defense)
Article 31 does not apply to a trail of third instance.

Article 389 (Exceptions to Oral Hearing (III))
The court of third instance may be trial without oral argument; provided that the court may order arguments if necessary.
The argument prescribed in the preceding paragraph may only be conducted by an agent or defense attorney who is a lawyer.

Article 390 (Commissioned Judge and Reports)

The court of third instance may appoint one associate judge to be the commissioned judge, in order to summarize the appeal and defense into a report.

Article 391 (Report Recite and Appeal Statement)

On the trial date, the commissioned judge shall read aloud the report before the argument.

A prosecutor, agent, or defense attorney shall summarize the meaning of the appeal before the argument.

Article 392 (One-Party Argument and No Argument)

On the trial date, if no agent or defense attorney of the defendant or private prosecutor appears, the judgment shall be pronounced after the prosecutor of the agent or defense attorney of opposing party makes a statement. If both the defendant and private prosecutor have not present or defense attorney appeared in court, the judgment may be pronounced without

argument.

Article 393 (Scope of Investigation in the Third Instance (I) – Ground of Reasons for Appeal)

Investigations by the court of third instance shall be limited to items listed in the reason of appeal; provided that such court may ex officio investigate evidence for the following items:

1. Situations listed in subparagraphs of Article 379 exist;
2. Whether causes for the exemption from prosecution exist;
3. The adequacy of law applications on established facts;
4. The punishment was abolished, amended, or remitted after the original judgment;
5. The defendant is pardoned or died after the original judgment.

Article 394 (Scope of Investigation in the Third Instance (I) – Discovery)

Facts established in the judgment of second instance shall be the basis for judgment of the court of third instance; provided that a court may investigate facts on items related to the litigation procedure or muto proprio.

The investigation mentioned in the preceding paragraph may be conducted by a commissioned judge, and judges from other courts may be ordered to investigate.

If pursuant to results in the preceding two paragraphs, the prosecution violates regulations, the court of third instance may order it to be cured; where the court has no jurisdiction but later acquires jurisdiction pursuant to laws or regulations after the original judgment, it shall not be deemed to have no jurisdiction.

Article 395 (Judgment for Illegal Appeals - Overrule by Ruling)

The court of third instance shall overrule an appeal by ruling if

circumstances of Article 384 exist therein; the same rule applies where the reason for appeal in writing is not submitted within the period specified in Paragraph 1 of Article 382 and before the court of third instance adjudicates the case.

Article 396 (Judgment for Meritless Appeals – Overrule by Ruling)

The court of third instance shall overrule an appeal by ruling if it finds such an appeal meritless.

The court may also pronounce a suspension of sentence under circumstance in the preceding paragraph.

Article 397 (Judgments for Meritorious Appeals – Reverse the Original Judgment)

The court of third instance shall reverse the relevant portion of the original judgment upon finding the appeal meritorious.

Article 398 (Reverse the Original Judgment (I) - Adjudication)

Where an original judgment is reversed pursuant to the following circumstances, the court of third instance shall adjudicate the case; provided that this rule does not apply to judgments to be made pursuant to the latter two articles:

1. Where in contravention of laws or regulations does not affect the finding of facts and can be the basis of judgment;

2. Where an exempt from prosecution or case dismissed shall be pronounced;

3. Where a circumstance under Subparagraph 4 or 5 of Article 393 exists.

Article 399 (Reverse the Original Judgment (II) - Remand)

The court of third instance shall reverse and remand a case to the original trial court because such judgment were improperly decided based on "mistake in jurisdiction", "exempt from prosecution" or "case dismissed"; provided that such a case can be remand to the court

of first instance if necessary.

Article 400 (Reverse the Original Judgment (III) – Trial Delivery)
The court of third instance shall remand the case to the competent court of second instance or court of first instance if the court of third instance reverse a judgment of original court because such judgment were improperly did not pronounce "exempt from prosecution"; provided that for cases listed in Article 4, once the original trial court with jurisdiction makes a judgment of second instance, it shall not be considered a mistake in jurisdiction.

Article 401 (Reverse the Original Judgment (IV) – Remand or Trial Delivery)
Where the court of third instance reverses the original judgment for reasons other than situations listed in the preceding three articles, it shall remand the case to the original court or other court of

the same level by ruling.

Article 402 (Reverse the Original Judgment for Interests of the Defendant)
Where an original judgment is reversed for interests of the defendant, if the reasons for reversal also apply to co-defendants, the benefits shall apply to other co-defendants.

Part IV Interlocutory Appeal

Article 403 (Right to Interlocutory Appeal and Competent Court)
A party may file an interlocutory appeal to the direct appellate court if he/she disagrees with the court ruling, unless otherwise provided.
A witness, expert witness, interpreter, or other non-party under the ruling may also file an interlocutory appeal.

Article 404 (Restriction and Exception to Interlocutory Appeal)
One may not file an interlocutory appeal against rulings regarding jurisdiction or litigation procedure, except for the

following rulings:

1. Where interlocutory appeals are allowed by laws;

2. Rulings regarding detention, release on bail, custody of another, a limitation on residence, search, seizure, return of seized property, committing the defendant to a hospital or other places for expert examination, and rulings regarding prohibition or seizure pursuant to Paragraphs 3 and 4 of Article 105.

Article 405 (Restriction to Interlocutory Appeals (II))

No interlocutory appeals shall be filed against a decision made by the court of second instance regarding a case which is not appealable to the court of third instance.

Article 406 (Period for Interlocutory Appeals)

Unless otherwise provided, the period for interlocutory appeals is 5 days start from the service of ruling; provided that once the ruling is pronounced, an

interlocutory appeal after the pronouncement and before the service is also effective.

Article 407 (Process of Interlocutory Appeal)

To file an interlocutory appeal, an interlocutory appeal in writing shall be submitted to the original trial court with ground of reasons for the interlocutory appeal specified.

Article 408 (Original Trial Court's Disposition against Interlocutory Appeals)

The court shall overrule an interlocutory appeal by a ruling if it does not comply with legal formality, or it shall not be granted as a matter of law, or the right to interlocutory appeal has lapsed; provided that where the deficiency in legal formality is amendable, the court shall order an amendment to be made within a prescribed period.

The original trial court shall reverse the ruling upon finding the interlocutory appeal

meritorious; the original trial court shall transmit the interlocutory appeal in writing along with its opinions to the court of interlocutory appeal within 3 days since receiving the interlocutory appeal upon finding the interlocutory appeal meritless in whole or in part.

Article 409 (Effects of an Interlocutory Appeal)

An interlocutory appeal does not suspend the execution of judgment; provided that the original court may suspend the execution by ruling before the court of interlocutory appeal rules.

The court of interlocutory appeal may suspend the execution of judgment by ruling.

Article 410 (Case File & Exhibits Transfer and the Ruling Period)

The original trial court shall hand over case dossier and exhibits to the court of interlocutory appeal if necessary.

The court of interlocutory

appeal may request the original trial court to send case file and exhibits if necessary.

The court of interlocutory appeal shall make a ruling within 10 days since receiving case file and exhibits.

Article 411 (Measures against Illegal Interlocutory Appeals by Court of Interlocutory Appeal)

The court of interlocutory appeal shall overrule an interlocutory appeal by ruling if it satisfies the former part of Paragraph 1 of Article 408; provided that where the deficiency is amendable but not ordered an amendment by the original trial court, the presiding judge shall order an amendment to be made within a prescribed period.

Article 412 (Ruling for Meritless Interlocutory Appeals)

The court of interlocutory appeal shall overrule by ruling upon finding an interlocutory appeal meritless.

Article 413 (Ruling for Meritorious Interlocutory Appeals)
The court of interlocutory appeal shall reverse the original ruling by ruling upon finding it meritorious; such court may make its own ruling.

Article 414 (Ruling Notification)
The original trial court shall be notified the ruling by the court of interlocutory appeal promptly.

Article 415 (Re-appeals against Rulings)
No interlocutory appeals shall be filed against rulings by the court of interlocutory appeal; provided that a second interlocutory appeal may be filed against the following rulings on interlocutory appeals:
1. An interlocutory appeal against the ruling to dismiss the appeal;
2. An interlocutory appeal against a ruling on the motion for restoration of original condition due to overdue appeals;

3. An interlocutory appeal against a ruling on the motion for retrial;
4. An interlocutory appeal against motion for the change of sentence pursuant to Article 477;
5. An interlocutory appeal against ruling on the motion for discrepancy or objection pursuant to Article 486;
6. Interlocutory appeals filed by witness, expert witness, interpreter, and other non-parties.
The proviso of preceding paragraph does not apply to rulings which do not subject to interlocutory appeals pursuant to Article 405.

Article 416 (Scope, Period, and Ruling for Quasi Interlocutory Appeal)
A subject of a ruling may file a motion to withdraw or change the following rulings to the court in charge if disagrees with the ruling made by the presiding judge, commissioned judge, requisitioned judge, or

prosecutor.

1. Rulings regarding detention, release on bail, committing to the custody of another, a limitation on residence, search, seizure, return of seized property, committing the defendant to a hospital or other places for expert examination, and rulings regarding prohibition or seizure pursuant to Paragraphs 3 and 4 of Article 105;

2. Pecuniary penalty imposed on a witness, expert witness, or interpreter.

The court may exclude seized items from evidence if the search or seizure in preceding paragraph is withdrew.

The period for motion mentioned in Paragraph 1 is 5 days from the date of ruling or the day of service if it is served.

Articles 409 to 414 shall apply mutatis mutandis to this Article.

Paragraph 1 of Article 21 shall apply mutatis mutandis to

motions to reverse or amend a ruling by a requisitioned judge.

Article 417 (Motion for Constructive Interlocutory Appeals)
The motion in the preceding article shall be filed to the said court with ground of reasons for disagreement in writing.

Article 418 (Remedies to Constructive Interlocutory Appeal, Mistaken Interlocutory Appeal, or Motion for Constructive Interlocutory Appeal)
One may not file an interlocutory appeal against court rulings for motions pursuant to Article 416; provided that an interlocutory appeal may be filed against motion to revoke fines.
Where an interlocutory appeal may be filed pursuant to this Part but a motion to set aside or change is mistakenly filed instead, it is deemed to have filed an interlocutory appeal; where a motion to set aside or change may be filed but an interlocutory appeal is mistakenly filed instead, it is

deemed to have filed a motion.

Article 419 (Interlocutory Appeals apply mutatis mutandis Rules regarding Appeals)

Except otherwise stipulated in this Chapter, interlocutory appeals shall apply mutatis mutandis Chapter I of Part III regarding Appeals.

Part V Retrial

Article 420 (Motion for Retrial for Interests of the Convicted (I))

After a guilty judgment has become final, a motion for retrial may be filed for interests of the convicted under the following circumstances:

1. Where exhibits on which the original judgment is based have been proven fabricated, or altered;
2. Where material testimony, expert opinion, or interpretation on which the original judgment is based has been proven false;
3. Where the convicted has been proven maliciously accused.

4. Where judgment by a common court or special court on which the original judgment is based on has been changed in a final judgment;

5. If a judge participating in the original judgment, judgment before the trial or investigations before the judgment, or prosecutor participating in the investigation or the prosecution commits offenses in his/her post out of the case and the offenses have been proved; or he/she neglect the duties out of the case and has been "administrative punished" but the behaviors are sufficient to affect the original judgment.

6. Where the discovery of new evidence is sufficient to show that the convicted shall be acquitted, exempt from prosecution, remitted the punishment, or sentenced an offense less serious than the one in the original judgment.

Under the manifestation of

situations of Paragraphs 1 to 3 and Paragraph 5, after the judgment is final, a motion for retrial can be filed if insufficient evidence is not the reason for not able to begin the criminal procedure or continue the trial.

Article 421 (Motion for Retrial for Interests of the Convicted (II))

Expect stipulated in the previous article, once a guilty judgment in the second instance is final, if the failed to consider of material evidence may affect the judgment, a motion for retrial may be filed against cases which may not appeal the court of third instance.

Article 422 (Motion for Retrial against Interests of the Convicted)

Once judgment of guilty, not guilty, exempt from prosecution, or case dismissed is final, a motion for retrial can be filed contrary to the interest of the convicted under the following circumstances:

1. Where there are situations as

specified in subparagraph 1, 2, 4 or 5 of Article 420;

2. For a person receiving a judgment of not guilty, or punishment lighter than the offense he/she commits, if through the person's confession during or outside the litigation procedure or through the discovery of new evidence, it is sufficient to render a judgment of guilty and heavier punishments;

3. Where a person is exempt from prosecution or dismissed from the suit, if through such person’s statement during or outside the litigation procedure or through the discovery of new evidence, it is sufficient to hold that there is no ground to exempt his/her original judgment.

Article 423 (Period of Motion for Retrial (I))

The motion of retrial may be filed after the punishment has been completed; it may also be filed if the punishment or during

the time punishment is not being executed.

Article 424 (Period of Motion for Retrial (II))

Motion for retrial due to the failed to consider of material evidence pursuant to Article 421 may be filed within 20 days since the judgment is served.

Article 425 (Period of Motion for Retrial (III))

Once the judgment if final, if more than one-half of the period specified in Paragraph 1 of Article 80 of the Criminal Code has lapsed, a motion for retrial against interests of the convicted may not be filed.

Article 426 (Competent Court for Retrial)

The original trial court has the jurisdiction on a motion for retrial.

Where some parts of the judgment have been appealed and others have not, the court of second instance has jurisdiction over a motion for retrial on any parts of the judgment, if the court of

second instance pronounces a ruling that a retrial shall be rendered for the parts that have been final in the appellate trial. The court of second instance also has jurisdiction over the motion for retrial of that part of the judgment which has become final in the court of first instance.

Once a judgment is final in the third instance, the court of second instance has the jurisdiction over a motion for retrial on such a judgment, unless the judges in the court of third instance have situations specified in Subparagraph 5 of Article 420.

Article 427 (Right to File a Motion for Retrial (I) – for Interests of the Convicted)

Motion for retrial for interests of the convicted may be filed by the following persons:

1. A prosecutor in the competent court;
2. The convicted;
3. The statutory agent or spouse

of the convicted;

4. The spouse, lineal blood relatives, collateral blood relatives, relatives by marriage within the second degree of relationship, family head or family members of the convicted, where the convicted is deceased.

Article 428 (Right to File a Motion for Retrial (II) – against Interests of the Convicted)

A prosecutor of the competent court or a private prosecutor may file a motion for retrial against interests of the convicted; provided that a private prosecutor may only file such a motion in circumstances under Subparagraph 1 of Article 422.

Where a private prosecutor loses the legal capacity or dies, a person has the right to file a private prosecution pursuant to Paragraph 1 of Article 319 may file a motion in the preceding paragraph.

Article 429 (Motion for Retrial)

A motion for retrial shall be submitted to the competent court

along with the reasons set forth on the writing, copies of the original judgment and evidence.

Article 430 (Effect of the Motion for Retrial)

A motion of retrial does not suspend the execution of punishment; provided that a prosecutor of the competent court may order a suspension before the ruling on the motion.

Article 431 (Withdraw a Motion for Retrial and its Effect)

A motion for retrial may be withdrawn before the retrial judgment.

A person who withdraws a motion for retrial may not use the same reason to file a motion for retrial.

Article 432 (Apply mutatis mutandis Articles regarding Appeal Withdrawal)

Articles 358 and 360 shall apply mutatis mutandis to a motion for retrial or withdrawal.

Article 433 (Ruling for an Illegal Motion – Overrule by Ruling)

A court shall overrule by ruling

upon finding a motion for retrial "in contravention of procedure."

Article 434 (Ruling for a Meritless Motion – Overrule by Ruling)
A court shall overrule by ruling a meritless motion for retrial.
After a ruling in the preceding paragraph, one may not use the same reason to file a motion for retrial.

Article 435 (Ruling for a Meritorious Motion – Ruling for Retrial)
The court shall pronounce a ruling for retrial if the motion is meritorious.
The court may rule to suspend the punishment after the ruling in the preceding paragraph.
An interlocutory appeal may be filed against the ruling in Paragraph 1 within 3 days.

Article 436 (Retrial)
The court shall set a case for trial on regular procedure if the ruling for retrial is final.

Article 437 (Exceptions to Oral Hearing (IV))

Where a convicted dies, a motion for retrial for interests of the convicted may be judged without oral argument, after the prosecutor or private prosecutor express his/her opinion in writing. Where a private prosecutor loses legal capacity or dies, a person who may undertake the litigation pursuant to Article 332 may file a motion to the court to undertake the litigation in 1 month; if no one undertakes the litigation or such period lapses, the court may immediately give a judgment on the case or notify the prosecutor to express the opinion.

Where a convicted dies before the retrial, a motion for retrial for interests of the convicted shall apply mutatis mutandis the preceding paragraph.

Judgments in the preceding two paragraphs may not be appealed.

Article 438 (End of Retrial)

A motion for retrial against interests of the convicted and

such motion and ruling will lose the effect be invalid if the convicted dies before the judgment of retrial.

Article 439 (Principle of the Prohibiting Alteration for Interests (II))
Where a motion for retrial filed for interests of the convicted and a judgment of guilty is pronounced, the court may not pronounce a sentence heavier than the one in the original judgment.

Article 440 (Publication of a Not Guilty Judgment in the Retrial)
Where a motion for retrial for interests of the convicted is pronounced a judgment of not guilty, the court shall publish the judgment in public journals or other newspapers.

Part VI Extraordinary Appeal

Article 441 (Reasons and Right for Extraordinary Appeal)
After a judgment is final, if the trial of a case is found to in contravention of laws, the chief-procurator of the Supreme

Prosecutors Office may file an extraordinary appeal to the Supreme Court.

Article 442 (Motion for Extraordinary Appeal)
Where a prosecutor discovers situation listed in the preceding article, he/she shall submit an opinion in writing along with the case dossier and exhibits to the chief-procurator of the Supreme Prosecutors Office and file a motion for extraordinary appeal.

Article 443 (Extraordinary Appeal)
To file an extraordinary appeal, reasons for the extraordinary appeal in writing shall be submitted to the Supreme Court.

Article 444 (Exceptions to Oral Hearing (V))
A judgment for an extraordinary appeal may be pronounced without oral argument.

Article 445 (Scope of Investigation)
Investigation by the Supreme Court is limited to items listed in the reason for the extraordinary appeal.

Article 394 shall apply mutatis mutandis to extraordinary appeals.

Article 446 (Meritless Extraordinary Appeals - Overruled)
Meritless extraordinary appeals shall be overruled by ruling.

Article 447 (Meritorious Extraordinary Appeals)
Where an extraordinary appeal is meritorious, the following judgments shall be pronounced respectively:
1. Where the judgment is in contravention of the laws and regulations, the part in contravention shall be set aside; provided that if the original judgment is against interests of the defendant, such case shall be separately adjudicated;
2. Where the litigation procedure is in contravention of the laws and regulations, such procedure shall be set aside.
Under circumstances specified in Subparagraph 1, if a case is dismissed for it is mistakenly

thought to have no jurisdiction, or if it is necessary to protect a defendant's other benefit accruing to the accused from one of the stages of trial, the original judgment may be set aside, and the original trial court shall retrial the case following procedure prior to the judgment.

However, a sentence heavier than the one in the original final judgment may not be pronounced.

Article 448 (Effect of a Judgment for Extraordinary Appeal)

The effect of a judgment for extraordinary appeal does not apply to the defendant unless provided in the proviso of Subparagraph 1 of Paragraph 1 and Paragraph 2 of the preceding Article.

Part VII Summary Procedure

Article 449 (Motion for a Summary Judgment)

If a defendant's confession in the investigation process or other existing evidence is sufficient for the court of first

instance to determine a defendant's offense, a sentence may be pronounced through summary judgment without common trial procedure upon request by the prosecutor; provided that the defendant shall be questioned before sentencing if necessary.

Where a prosecutor prosecutes a case specified in the preceding paragraph with common procedure and a defendant has confessed to the offense, the court may pronounce a sentence through summary judgment without common trial procedure if appropriate.

The sentence specified in the preceding 2 paragraphs is limited to the suspension of sentence, sentence of limited imprisonment and detention which commutation to a fine may be ordered, or a fine.

Article 449-1 (Summary Proceeding)

Cases under summary proceeding may be tried in the summary division of courts.

Article 450 (Summary Judgment (I) – Sentence, Remission of Punishment)

A sentence by summary judgment may also impose a confiscation or other necessary measures.

The proviso of Paragraph 1 of Article 299 shall apply mutatis mutandis to the judgment in the preceding paragraph.

Article 451 (Motion for Summary Judgment)

Where a prosecutor finds it appropriate to sentence the case through summary judgment, he/she may file a motion for summary judgment in writing.

Article 264 shall apply mutatis mutandis to requests specified in the preceding paragraph.

The motion mentioned in Paragraph 1 has the same effect as a prosecution.

A defendant who confesses in the investigation process may petition the prosecutor to file a motion prescribed in Paragraph 1.

Article 451-1 (Specific Sentence Requested by a Prosecutor)

Where a defendant confesses in the investigation process on cases mentioned in Paragraph 1 of the preceding article, he may express his willingnes to the prosecutor the scope of sentence he would undertake, and if the prosecutor consents, records shall be made, and the defendant's statement shall be the basis for requesting the court to pronounce a sentence or suspension of sentence.

Before a prosecutor requests a sentence or motion in the preceding paragraph, he may consult with the victim, consider relevant circumstance, and order the defendant the following items, after obtaining the victim's consent:

1. To apologize to the victim;
2. To pay a certain amount of compensation to the victim.

Where a defendant's confession does not contain contents specified in Paragraph 1, he may make statements to the court during the trial; the prosecutor

may also request the court to pronounce a sentence or suspension of sentence based on defendant's statements.
Under circumstances mentioned in Paragraph 1 and the preceding paragraph, the court shall pronounce a judgment within the scope of sentence or suspension of sentence requested by the prosecutor; unless one of the following circumstances applies:
1. Where a defendant's offense is not one that may be sentenced by summary judgment pursuant to Article 449;
2. Where facts of an offense established by the court is different from which the prosecutor uses to request a sentence, or where other facts of the same offense in trial are discovered during the trial and the sentence requested by the prosecutor is obviously improper;
3. Where after trial, the court deems it proper to pronounce a

judgment of not guilty, exemption from prosecution, case dismissed, or mistake in jurisdiction;
4. Where a request by the prosecutor is obviously improper or unfair.

Article 452 (Trial Procedure)
Where a prosecutor requests to sentence the case through summary proceeding, if the court deems that the proviso of Paragraph 4 of Article 451-1 shall apply, the case shall be tried by common procedure.

Article 453 (Summary Judgment by Court (II) - Immediate Measure)
The court shall impose immediate measures on cases sentenced by summary judgment.

Article 454 (Items to be listed in a Summary Judgment)
A summary judgment shall include the following items:
1. Contents specified in Paragraph 1 of Article 51;
2. Facts of an offence and the evidence;

3. Applicable articles of laws;
4. Items listed in paragraphs of Article 309;
5. The announcement that an appeal may be filed within 10 days after the service of summary judgment; provided that this does not apply to those who may not appeal.

The written judgment mentioned in the preceding paragraph may be condensed; it may quote the prosecutor's request for summary judgment on a sentence or the written prosecution if facts of an offense or evidence established and applicable laws are the same.

Article 455 (Service of the Official Summary Judgment)

Once a clerk receives the original summary judgment, he shall promptly produce the official summary judgment for service and apply mutatis mutandis Paragraph 2 of Article 314.

Article 455-1 (Appeal against a Summary Judgment)

Those who disagree with a summary judgment may appeal to the collegiate bench of the competent district court of second instance.

A sentence judgment by a request pursuant to Article 451-1 may not be appealed.

An appeal pursuant to Paragraph 1 shall apply mutatis mutandis Articles in Chapters 1 and 2 of Part III, except Article 361.

Those who disagree with a ruling under summary proceeding may file an interlocutory appeal to the collegiate bench of the competent district court of second instance.

An interlocutory appeal mentioned in the preceding paragraph shall apply mutatis mutandis articles under Part IV.

Part VII-I The Bargaining Process

Article 455-2 (Application for the Bargaining Process)

Except for those who have committed a offense which is punishable for sentence of capital punishment, life

imprisonment, sentence more than three years, or is adjudicated by the court of appeal as the court of first instance, once a case has been prosecuted by a prosecutor or applied for a summary judgment, after consulting with the victim's opinion the prosecutor may, before the close of oral arguments in the court of first instance or before the summary judgment, act on his/her own discretion or upon requests by the defendant, his/her agent or attorney, which has been approved by the court, to negotiate the following items outside the trial procedure; once both parties involved reach an agreement and the defendant pleads guilty, the prosecutor may request the court to make judgment pursuant to the bargaining process.

1. The defendant accepts the scope of sentence or accepts the sentence to be placed under probation.

2. The defendant shall apologize to the victim.

3. The defendant shall pay a certain amount of compensation.

4. The defendant shall pay a certain amount to the government treasury, designated public interest organizations, or local autonomous organizations.

The prosecutor shall obtain the victim's consent before negotiating with the defendant on items listed in Subparagraph 2 or 3 of the preceding paragraph.

The bargaining period mentioned in Paragraph 1 shall not exceed 30 days.

Article 455-3 (Cancel the Bargaining)

The court shall question a defendant and inform him/her the offence he/she admitted, its statutory penalty, and all rights he waived within 10 days after receiving a request in the preceding article.

A defendant may withdraw the bargaining agreement at any time before the preceding procedure

terminates. Where a defendant violates his/her agreement with the prosecutor, the latter may revoke the request for plea bargain.

Article 455-4 (No Bargaining Judgment)

The court may not pronounce a bargaining judgment under the following circumstances:

1. Where the agreement is withdrawn or where requests for bargaining is revoked pursuant Paragraph 2 of the preceding article;
2. Where the bargain was not made out of defendant's free will;
3. Where the bargaining agreement is obviously inappropriate or unfair;
4. Where defendant's offence may not subject to a bargaining judgment pursuant to Paragraph 1 of Article 455-2;
5. Where facts established by the court are different from facts agreed in the bargaining process;
6. Where a defendant commits other counts of offense which

were arose by the same act in trial with heavier punishments;
7. Where the court deems proper to pronounce punishment remitted, exemption from prosecution, or case dismissed.
The court shall adjudicate the case within the scope of bargaining agreement without oral argument, except for circumstances specified in the preceding paragraph. The sentence pronounced by court under a bargaining judgment is limited to a suspension of sentence, limited imprisonment under 2 years, detention, or a fine.
The court shall put down in records or the written judgment if the parties reach an agreement specified in Subparagraphs 2 to 4 of Paragraph 1 of Article 455-2.
Where the court pronounces a judgment pursuant to the bargaining, Subparagraphs 3 and 4 of Paragraph 1 of Article 455-2 can be the cause for civil

compulsory execution.

Article 455-5 (Appointing a Public Defender)
If a defendant is willing to undertake an imprisonment longer than 6 months not subject to a suspension of sentence and has no defense attorney, the court shall appoint a public defender or lawyer to be his/her defense attorney, in order to assist the bargaining.
A defense attorney may express opinions of law and facts during the bargaining process; however, such opinions may not contradict the defendant's expressed opinion.

Article 455-6 (Overrule by Ruling)
The court shall overrule by ruling a request for bargaining pursuant to Paragraph 1 of Article 455-2 if the court believes that circumstances under Paragraph 1 of Article 455-4 applies; then the common procedure, summary trial proceeding, or summary judgment shall apply.
One may not file an interlocutory

appeal against ruling in the preceding paragraph.

Article 455-7 (Statements in the Bargaining Process may not be Evidence against Interests of the Defendant or Co-defendants) If a court fail to reach a bargaining judgment, statements by a defendant, his agent, or defense attorney during the bargaining process may not be used as evidence against interests of the defendant or co-defendants in this or other cases.

Article 455-8 (Production and Service of Written Bargaining Judgment) The production and service of written bargaining judgment shall apply mutatis mutandis Articles 454 and 455.

Article 455-9 (Law Application and Effect of Judgment Record and Service) For a bargaining judgment, the clerk may record the syllabus of the decision, summarized facts of an offense, and articles of the punishment on the judgment

record to substitute a written judgment; provided that where a party requests the court to serve a written judgment within 10 days after the pronouncement of judgment, the court shall still produce the written judgment.

The service of the official record or its abbreviated copy shall apply mutatis mutandis Article 455 and has the same effect as the service of the written judgment.

Article 455-10 (Exception to No Appeals)

A sentence made pursuant this Part is not appealable; provided that this rule does not apply to circumstances specified in Subparagraphs 1, 2, 4, 6, 7 of Paragraph 1 of Article 455-4, or where a bargaining judgment violates Paragraph 2 of the said article.

Investigation by the court of second instance is limited to items listed in the reasons for appeal, where an appeal is made pursuant to the proviso of the preceding paragraph.

The court of second instance, upon finding an appeal meritorious, shall set aside the original judgment and remand the case to the court of first instance to retrial the case following the procedure prior to the judgment.

Article 455-11 (Bargaining Judgment apply mutatis mutandis rules for Appeal)

An appeal for a bargaining judgment, except otherwise stipulated in this Part, shall apply mutatis mutandis Chapters I and II of Part III.

Paragraph 1 of Article 159 and Article 284-1 do not apply to the bargaining process.

Part VIII Execution

Article 456 (Period of Execution)

A decision other than a security preservation measures shall be executed once the judgment is final, unless otherwise specified.

Article 457 (Execution Authority)

The prosecutor of the ruling

court may shall be executed under the supervision of the prosecutor of the ruling court an execution of judgment, unless the nature shall be determined by the court, presiding judge, commissioned judge, requisitioned judge, or if other special rules apply.

Where a lower court shall execute the ruling upon a dismissed interlocutory appeal, withdrawal of appeal or interlocutory appeal, the lower court shall be supervised by the prosecutor of the appellate court.

Under circumstances specified in the preceding 2 paragraphs, where the files are in the lower court, the prosecutor of the said court shall supervise the execution.

Article 458 (Execution Instruction)

To supervise execution, an execution instruction shall be made along with the copy or abbreviated copy of written judgment or record; provided

that this does not apply to instructions other than punishments or measure for rehabilitation, where an execution instruction is not necessary.

Article 459 (Execution Order - Principal Punishment)
Upon executing more than 2 principal punishments, except for fines, the heavier ones shall be executed first; provided that a prosecutor may instruct to execute other punishment first.

Article 460 (Execution of Capital Punishment (I) - Review)
After a pronouncement of capital punishment is final, the prosecutor shall promptly send the case file to the highest judicial authority.

Article 461 (Execution of Capital Punishment (II) - Time and Double Review)
Capital punishment shall be approved by the Minister of justice and be executed within 3 days after receiving such approval; provided that the

executive prosecutor may contact the highest judicial authority for a review in 3 days if causes for a retrial or extraordinary appeal exist.

Article 462 (Execution of Capital Punishment (III) - place)
Capital punishment shall be executed in prisons.

Article 463 (Execution of Capital Punishment (IV) – Presence)
The prosecutor observes and shall order a clerk to attend for the execution of capital punishment.
Except for persons approved by the prosecutor or prison officials, no one may enter the execution place for capital punishment.

Article 464 (Execution of Capital Punishment (V) – Records)
The clerk on spot of the capital punishment execution shall make a record.
Such record shall be signed by the prosecutor and prison official.

Article 465 (Suspension and Resume of Capital Punishment)

The highest judicial authority may order to suspend the execution if it is found the one whom death penalty is pronounced is insane.

The highest judicial authority may order to suspend the execution of a sentence of capital punishment on a pregnant woman before she delivers.

Unless ordered by the highest judicial authority, suspension on capital punishment pursuant to the preceding 2 paragraphs may not be resumed after the subject recovers or delivers.

Article 466 (Execution of Punishment against Freedom)

Unless otherwise stipulates in laws, persons sentenced imprisonment or detention shall be detained in prisons separately for labor service; provided that labor service may be exempted if special circumstance apply.

Article 467 (Suspension of Punishment against Freedom)

Upon the prosecutor's command, one pronounced imprisonment or detention may be suspended from execution before he/she recovers or the cause ceased if one of the following circumstances apply:

1. Insanity;
2. More than 5 months of pregnancy;
3. Just delivered in less than 2 months;
4. Currently suffering a disease and the execution may threaten his life.

Article 468 (Medical Care for Sentenced Person Suspended from Execution)

A prosecutor may send a sentenced person to the hospital or other proper location if the execution is suspended pursuant to Subparagraphs 1 and 4 of the preceding article.

Article 469 (Compulsive Measures before Execution)

A prosecutor may summon a person pronounced a sentence of capital punishment, imprisonment or

detention but not yet detained upon execution; if such person fails to appear without good reason, he/she shall be arrested with a warrant.

The sentenced in the preceding paragraph may be arrested with a warrant pursuant to Subparagraph 2 of Paragraph 1 of Article 76 and issued a circular order for the arrest pursuant to Article 84.

Article 470 (Execution of Punishment against Property)

A ruling for fines, pecuniary penalty, confiscation, forfeit, payment pursue, and compensation shall be executed upon instruction by the prosecutor; provided that after pronouncing the ruling for fines or pecuniary penalty, if consented by the sentenced and the prosecutor is absent, the court may instruct the execution at the trial.

The instruction in the preceding paragraph has the same effect as the title for civil execution.

The legacy of the sentenced may be subject to the execution of

fines, confiscation, forfeit, payment pursue, and compensation.

Article 471 (Apply mutatis mutandis the Civil Execution and Requested Execution)

Execution in the preceding article shall apply mutatis mutandis regulations for civil executions.

A prosecutor may request the civil compulsory execution division of the district court to carry out execution in the preceding paragraph if necessary.

Execution requested by a prosecutor may be exempted from the execution fee.

Article 472 (Authority for Confiscation)

The prosecutor shall dispose confiscations.

Article 473 (Motion to Return Confiscation)

Where a right holder requests for return of confiscated object within3 months since the execution, the prosecutor shall return such items unless it is

damaged or discarded; if such item is auctioned, the price of auction shall be returned to such person.

Article 474 (Return of Fabricated or Altered Items)

Upon returning fabricated or altered items, a prosecutor shall excise or label the fabricated or altered part.

Article 475 (Announcement and Effect of Seized Property Impossible to Return)

Where the location of the right holder of the seized property is unknown or where a return is not possible for other causes, a prosecutor shall make a public announcement; if no one requests for a return after 6 months since the announcement lapses, the seized property shall belong to the national treasury.

During the preceding period, valueless property may be discarded; if inconvenient to preserve, such items may be sold at an auction and the proceeds

retained.

Article 476 (Request to Cancel the Suspension of Sentence)
Where a pronouncement of suspension of sentence shall be set aside, a prosecutor of the district court where the sentenced locates or resides at last shall request a ruling of the said court.

Article 477 (Motion to Adjust the Sentence)
A motion to adjust a sentence pursuant to Article 48 of the Criminal Code or a motion to ascertain the sentence execution pursuant to Articles 53 and 54 where Subparagraphs 5 to 7 of Article 51 of the Criminal code applies shall be filed by a prosecutor to the court, which makes the final judgment on facts of the offense in the said case, for a ruling.
In order to adjust the sentence in the preceding paragraph, the sentenced, his statutory agent, or agent may request prosecutor in the preceding paragraph to

file the motion.

Article 478 (Exemption from Labor Service)
The exemption of labor service pursuant to proviso of Article 466 shall be instructed by the prosecutor in charge of the execution.

Article 479 (Commutation to Labor)
A fine commutated to labor pursuant to Paragraph 1 of Article 42 shall be instructed by the prosecutor in charge of the execution.

Article 480 (Execution and Law Application for Commutation to Labor Service)
A person sentenced a fine commutated to labor service shall be separately executed from prisoners sentenced imprisonment or detention.
Article2 467 and 469 shall apply mutatis mutandis to commutation to labor service.

Article 481 (Execution of Security Preservation Measures)
The prosecutor shall request the court which made the final

judgment regarding facts of an offence to rule the exemption from execution pursuant to Paragraph 3 of Article 86, Paragraph 3 of Article 87, Paragraph 2 of Article 88, Paragraph 2 of Article 89, Paragraph 2 of Article 90, or Paragraph 1 of Article 98, an decision of approved extension pursuant to Paragraph 3 of Article 90, security preservation measures pursuant to Paragraph 2 of Article 93, or the exemption from execution pursuant to the latter of Paragraph 1 and Paragraph 2 of Article 98, and the execution of approval pursuant to Article 99 of the Criminal Code. The same rule also applies to the compulsory treatment pursuant Paragraph 1 of Article 91-1 and the suspension of compulsory treatment pursuant Paragraph 2 of the same article.

A prosecutor may request the court to pronounce a ruling if security preservation measure is

necessary for a decision of exempted prosecution pursuant to Paragraph 1 of Article 18 and Paragraph 1 of Article 19 of the Criminal Code.

Where a court does not include security preservation measures in the decision, a prosecutor may request the court to rule on such measure within 3 months since the decision if the prosecutor deems it necessary.

Article 482 (Commutation to Warning)

A prosecutor shall execute commutation to warning pursuant to article 43 of the Criminal Code.

Article 483 (Motion for Interpretation - Meanings of a Guilty Judgment)

Where a party doubts the meaning of a guilty judgment, he/she may request the court which pronounces such judgment for interpretation.

Article 484 (Objection - Instruction by Prosecutor)

The sentenced and his statutory agent or spouse shall file an

objection to the court which pronounces the judgment upon finding instructions by the prosecutor impropriate.

Article 485 (Motion and Cancellation for Interpretation or Objection)

A motion for interpretation or objection shall be filed in writing.

A motion for interpretation or objection may be withdrawn in writing before the judgment.

Article 351 shall apply mutatis mutandis to a motion and cancellation for interpretation or objection.

Article 486 (Ruling on Motion for Discrepancy or Objection)

The court shall rule on discrepancies or objections.

Part IX Ancillary Civil Action

Article 487 (Parties and Plea under Ancillary Civil Action)

Those who injured by an offence may bring an ancillary civil action along with the criminal procedure, to request compensation from the defendant

and those who may be liable under the Civil Code.

The scope of plea in the preceding paragraph shall comply with the Civil Code.

Article 488 (Filing Period)

An ancillary civil action shall be filed after criminal prosecution and after the close of oral arguments in the court of second instance; provided that it may not be filed after the close of oral arguments in the court of first instance and before the appeal.

Article 489 (Competent Court)

Where a court pronounced a ruling pursuant to Paragraph 2 of Article 6, and Articles 8 to 10 of the Code of Criminal Procedure, it is deemed to pronounce the same ruling for a supplement civil action.

A pronouncement of mistake in jurisdiction and case transfer under the criminal procedure shall also be made in the supplement civil action.

Article 490 (Applicable Law (I) – the Code of Criminal Procedure)

Ancillary Civil Actions, unless otherwise stipulated in this Part, shall apply mutatis mutandis rules regarding criminal procedure; provided that once a case is transferred, remanded, or sent to a civil court, the Code of Civil Procedure shall apply.

Article 491 (Applicable Law (II) – the Code of Civil Procedure)

The following rules in the Code of Civil Procedure shall apply mutatis mutandis to ancillary civil action.

1. Capacity to be parties and capacity to litigate;
2. Joinder of parties;
3. Intervention;
4. Advocates and assistants
5. Termination of the litigation;
6. Presence of the parties;
7. Settlement;
8. Judgment pursuant to abandonment of cause of action;
9. Withdrawal a suit, appeal or

interlocutory appeal;

10. Provisional attachment, provisional injunction, and provisional Execution.

Article 492 (Initiation (I) - Complaint)

To file a Ancillary Civil Action, the complaint shall be filed to the court.

The complaint in the preceding paragraph shall apply mutatis mutandis the Code of Civil Procedure.

Article 493 (Service of the Complaint and Preparatory Pleading)

A party shall submit the complaint and preparatory pleading and copies of such documents pursuant to the number of the opposing party; the court shall serve such documents to the opposing party.

Article 494 (Summon the Party and Related Person)

On the trial date of criminal action, parties and related person in the Ancillary Civil Action may be summoned.

Article 495 (Initiation (II) - Verbal)

The plaintiff may file an ancillary civil action verbally when present at the trial date. One who prosecutes verbally shall state and record items to be set forth in a complaint in the records.

Paragraphs 2 to 4 of Article 41 shall apply mutatis mutandis to the records in the preceding paragraph.

Where a plaintiff prosecutes verbally and the opposing party is absent or present but requests the service of records, such records shall be served to the opposing party.

Article 496 (Trial Period)

Trial of a supplement civil action shall be conducted subsequent to the trial of criminal action; provided that the presiding judge may order simultaneous investigation upon finding it necessary.

Article 497 (Prosecutor Participation)

A prosecutor there is no need to participate in the trial of

supplement civil action.

Article 498 (Judgment without Statement)
A judgment may be pronounced without waiting for his testimony of a party if he/she is legally summoned but fails to appear without due reasons or does not argue while present at court; the same rule applies where a party leaves the court without being approved.

Article 499 (Discovery)
If the evidence is investigated during a criminal action, the evidence in an ancillary civil action may be considered as having been investigated.
A party or agent in the supplement civil action may state opinions regarding investigation in the preceding paragraph.

Article 500 (Fact Establishment)
A judgment for the supplement civil action shall be based on facts established in the criminal action; provided that this does not apply to a judgment

pursuant to abandonment of cause of action.

Article 501 (Time of Judgment)
A judgment for supplement civil action shall be pronounced at the same time as the criminal action.

Article 502 (Ruling (I) – Overruled or Judgment against Defendant)
The court shall dismiss plaintiff's suit by ruling upon finding it illegal or meritless.
The court shall enter a judgment against the defendant pursuant to plaintiff's complaint upon finding the latter meritorious.

Article 503 (Ruling (II) – Overruled or Transferred to Civil Division)
The court shall dismiss plaintiff's suit where the criminal action was pronounced not guilty, exempt from prosecution, or case dismissed; provided that the supplement civil action shall be transferred to the competent civil court where the plaintiff files a motion.
Unless an appeal is filed for

criminal judgment, a ruling in the preceding paragraph cannot be appealed.

Litigation fees shall apply to cases transferred to the civil court specified in the proviso of Paragraph 1.

Where a private prosecution case is overruled by ruling, the court shall overrule by ruling plaintiff's complaint and apply mutatis mutandis the preceding 3 paragraphs.

Article 504 (Ruling (III) – Transfer to the Civil Division)

The court may pronounce to transfer a supplement civil action to the civil division of the said court by a ruling of the collegiate bench upon finding such action complicated and cannot be resolved in a short time; provided that where the quorum for a collegiate bench cannot be reached, the president of the court may pronounce such ruling.

An action transferred pursuant to the preceding paragraph is

exempt from the court costs.
One may not file an interlocutory appeal against ruling in the preceding paragraph.

Article 505 (Ruling (IV) – Transfer to the Civil Division)
Supplement civil action which applies the summary proceeding shall apply mutatis mutandis Articles 501 and 504.
An action transferred pursuant to the preceding paragraph is exempt from the court costs.
One may not file an interlocutory appeal against a ruling in the preceding paragraph.

Article 506 (Restriction to Appeal to the Third Instance)
Where a judgment in the second instance regarding a criminal action cannot be appealed to the court of third instance, the judgment of the second instance regarding the supplement civil action may be appeal to the court of third instance; provided that it is restricted by Article 466 of the Code of Civil Procedure.
An appeal in the preceding

paragraph shall be tried in a civil division.

Article 507 (Omission of Reasons in Appeal to the Third Instance for a Supplement Civil Action)
Where a criminal judgment in the second instance has been appealed to the court of third instance, the reason for appeal may be omitted in the supplement civil action if it may be quoted from the written criminal appeal.

Article 508 (Judgment for Appeal to the Third Instance (I) - Overruled)
Where a court of third instance overrules an appeal for criminal action upon finding it meritless, it shall pronounce the following decisions for appeals regarding supplement civil action respectively:
1. Dismiss the appeal if there is no violation of laws which may be a reason for appeal in the original judgment of the supplement civil action;
2. Where there is no violation of laws which may be a reason for

appeal in the original judgment of the supplement civil action, the court shall set aside the original judgment and adjudicate the case; provided that where the hearing on facts is necessary, the court may transfer the case to the civil division of the original trial court or deliver it to or the civil division of other court of the same level as the original trial court.

Article 509 (Judgment for Appeal to the Third Instance (II) - Adjudication) Where the court of third instance set aside the original judgment and adjudicates the case upon finding the appeal in criminal procedure meritorious, it shall pronounce the judgment in the appeal for supplement civil action as follows, respectively:

1. Where changes in the criminal judgment may affect the supplement civil action, and where there is no violation of laws which may be a reason for appeal in the original judgment of the supplement civil action,

the court shall set aside the original judgment and adjudicate the case; provided that where hearing on facts is necessary, the court may transfer the case to the civil division of the original trial court or deliver it to or the civil division of other court of the same level as the original trial court.

2. Where changes in the criminal judgment do not affect the supplement civil action, and where there is no violation of laws which may be a reason for appeal in the original judgment of the supplement civil action, the appeal shall be overruled.

Article 510 (Judgment for Appeal in the Third Instance (III) - Remand or Delivery)

Where the court of third instance set aside the original judgment and remands or delivers such case to the original trial court or other courts upon fining an appeal meritorious, it shall make the same judgment for the appeal for supplement civil

action.

Article 511 (Ruling (V) – Transferred to a Civil Court)

Where a court shall only try a supplement civil action, it shall transfer the case to the civil division of the said court by ruling; unless the appeal for supplement civil action is illegal.

One may not file an interlocutory appeal against ruling in the preceding paragraph.

Article 512 (Retrial for Ancillary Civil Action)

Motion for retrial shall be filed to the division of the original judgment court pursuant to the Code of Civil Procedure for those who file a motion for retrial on the judgment of an ancillary civil action.