CRIMINAL PROCEDURE ACT

Act No. 341, Sep. 23, 1954
Amended by Act No. 705, Sep. 1, 1961
Act No. 1500, Dec. 13, 1963
Act No. 2450, Jan. 25, 1973
Act No. 2653, Dec. 20, 1973
Act No. 3282, Dec. 18, 1980
Act No. 3955, Nov. 28, 1987
Act No. 4796, Dec. 22, 1994
Act No. 5054, Dec. 29, 1995
Act No. 5435, Dec. 13, 1997
Act No. 5454, Dec. 13, 1997
Act No. 6627, Jan. 26, 2002
Act No. 7078, Jan. 20, 2004
Act No. 7225, Oct. 16, 2004
Act No. 7427, Mar. 31, 2005
Act No. 7965, Jul. 19, 2006
Act No. 8435, May 17, 2007
Act No. 8496, Jun. 1, 2007
Act No. 8730, Dec. 21, 2007
Act No. 9765, Jun. 9, 2009

PART I GENERAL PROVISIONS

CHAPTER I JURISDICTION OF COURTS

Article 1 (Investigation of Jurisdiction Ex Officio)

The court shall *ex officio* investigate jurisdiction.

Article 2 (Improper Jurisdiction and Effect of Proceedings)

An action of litigation shall not lose effect by reason of improper jurisdiction.

Article 3 (Execution of Duties Outside Jurisdiction)

(1) In cases where it is necessary for the purpose of fact-finding or in case of urgency, the court may, outside its jurisdiction, carry out its duties or take such measures as may be necessary for the fact-finding.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to a commissioned judge.

Article 4 (Territorial Jurisdiction)

(1) The territorial jurisdiction of the court shall be determined by the place of offense, the place of domicile, residence of the defendant, or the place where the defendant is presently located.

(2) In respect to an offense committed on board a Korean vessel sailing outside Korea, in addition to the places mentioned in the preceding paragraph, the territorial jurisdiction of the court shall be determined by the place where the vessel is registered or the place where such vessel has lain at anchor subsequent to the commission of the offense.

(3) The provisions of the preceding paragraph shall apply *mutatis mutandis* to an offense committed in a Korean aircraft while outside Korean territory.

Article 5 (Consolidation of Territorial Jurisdiction)

When several cases falling under the territorial jurisdiction of different courts are co-related with each other, a court which has jurisdiction over one of them may exercise jurisdiction over the other cases.

Article 6 (Consolidated Proceedings for Territorial Jurisdiction)

When several co-related cases falling under the territorial jurisdiction of different courts are pending severally in different courts, the next immediately higher court being common to all such courts may, upon request of a public prosecutor or the defendant, make a ruling that the cases shall be consolidated in one court.

Article 7 (Separate Proceedings for Territorial Jurisdiction)

Where several co-related cases falling under the territorial jurisdiction of different courts are pending before one court, and there is any case unnecessary to be examined consolidatedly, the said court may, by means of a ruling, separate and transfer it to other court having jurisdiction.

Article 8 (Transfer of Case *Ex Officio*)

(1) If a defendant is not found in the district under the territorial jurisdiction of the court, and if there are any special circumstances, the court may, by means of a ruling, transfer the case to an equivalent ranking court which has jurisdiction over the place where the defendant is presently located.

(2) In cases where a case under the jurisdiction of a single judge is, due to changes in indictment, changed into that of the collegiate body of a court, the court shall transfer the case to the court having the jurisdiction over such cases by means of a ruling. *<Newly Inserted by Act No. 5054, Dec. 29, 1995>*

Article 9 (Consolidation of Jurisdiction of Subject Matter)

When two or more cases the jurisdiction of the subject matter of which is different, are co-related with each other, the collegiate body of the court shall exercise jurisdiction over all of them by consolidation: *Provided*, That the court may, by means of a ruling, transfer the case to a single judge of a court having jurisdiction over the cases.

Article 10 (Combined Proceedings for Jurisdiction of Subject Matter)

When several co-related cases the jurisdiction of the subject matter of which is different are severally pending before the collegiate body and a single judge of a court, the collegiate body of a court may, notwithstanding the jurisdiction of the subject matter, examine consolidatedly the case belonging to the jurisdiction of the single judge by means of a ruling.

Article 11 (Definition of Co-Related Cases)

Related cases shall be as follows:

1. In cases where two or more offenses have been committed by one person;

2. In cases where two or more persons have jointly committed the same offense;

3. In cases where two or more persons have committed individually offenses at the same time and at the same place; and

4. The offense of harboring an offender, suppression of evidence, perjury, false expert testimony or interpretation, or the offense relating to the stolen goods, and the offense of the principal offender thereof.

Article 12 (Lis Pendens of One and Same Case before Two or More Courts)

When one and the same case is pending before two or more courts the jurisdiction of the subject matter of which is different, it shall be examined by the collegiate body of the court.

Article 13 (Concurrence of Jurisdiction)

When one and the same case is pending before two or more courts the jurisdiction of the subject matter of which is identical, the court in which the public prosecution therefor has first been instituted shall examine the case: *Provided*, That the next immediate higher court being common to all such courts may, upon application of a public prosecutor or the defendant, have the court in which the prosecution therefor has been instituted later examine such case by means of a ruling.

Article 14 (Request for Designation of Proper Court)

In the following cases, a public prosecutor shall apply to the next immediate higher court being common to the first instance court concerned for the designation of proper court:

1. When the jurisdiction of the court is not clear; and

2. When there is no other proper court in respect to such case as the decision declaring the improper jurisdiction therefor has become final and conclusive.

Article 15 (Application for Transfer of Jurisdiction)

In the following cases, a public prosecutor shall apply to the next immediate higher court for the transfer of the case to other court. The defendant may also do so:

1. When for a legal reason, or owing to special circumstances the court having jurisdiction is unable to exercise its judicial power; and

2. When owing to the nature of the offense, the popular sentiment of the district, the circumstances of the proceedings or any other circumstances, there is any apprehension that an impartial trial cannot be maintained.

Article 16 (Forms of Designation of Proper Court and Application for Transfer)

(1) In case of an application for designation of proper court or transfer to other court, a written application stating the cause shall be submitted to the next immediate higher court.

(2) When an application for designation of proper court or transfer to other court is made after the institution of the prosecution, notice thereof shall be immediately given to the court in which the prosecution has been instituted.

Article 16-2 (Transfer to Military Court)

When a military court comes to have jurisdiction over a case in which public prosecution has been instituted or it is found that the military court has jurisdiction over such case, the court concerned shall, by means of a ruling, transfer such case to the military court having the jurisdiction of the same instance. In this case, the proceedings already done before the transfer shall not lose the effect thereof by reason of the transfer. *<Amended by Act No. 3955, Nov. 28, 1987>*

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

CHAPTER II EXCLUSION, CHALLENGE AND REFRAINING OF COURT OFFICIALS

Article 17 (Reason for Exclusion)

In the following cases, a judge is excluded from the exercise of his duties: *<Amended by Act No. 7427, Mar. 31, 2005>*

1. In cases where he himself is a victim;

2. In cases where he is a relative of a defendant or a victim or had a kinship with such person;

3. In cases where he is the legal representative, supervisor of guardianship of the defendant or the victim;

4. In cases where he has become a witness or an expert witness in regard to the case, or has become an agent of the victim;

5. In cases where he has acted as the representative, counsel or assistant of the defendant with respect to the case;

6. In cases where he has exercised the duties of a public prosecutor or a judicial police officer pertaining to the case; and

7. In cases where he has participated in the decision by the court below or investigation or trial which constituted the basis thereof in the case.

Article 18 (Reason for Challenge and Person entitled to Apply for Challenge)

(1) In the following cases, a public prosecutor or the defendant may challenge a judge:

1. If a judge falls under any of the reasons referred to in subparagraphs of the preceding Article; and

2. If there is any apprehension that a judge may render an unfair judgment.

(2) A counsel may file an application for challenge against a judge only when it does not go against the express will of the defendant.

Article 19 (Jurisdiction over Motion for Challenge)

(1) The challenge against a judge who is a member of a collegiate court shall be applied to the court to which the judge belongs, and the challenge against a commissioned judge, requisitioned judge or single judge shall be filed against the judge concerned.

(2) A cause of challenge shall be made by preparing presumptive proof in writing within three days from the date on which the application has been filed.

Article 20 (Dismissal and Management of Application for Challenge)

(1) An application for challenge which evidently aims at delay of the proceedings or contravenes the provisions of Article 19, shall be dismissed by means of a ruling by the court or judge which has received such application. *<Amended by Act No. 5054, Dec. 29, 1995>*

(2) The judge who has been challenged shall submit a written opinion on the application for challenge without delay, except in the case of the preceding paragraph.

(3) In case of the preceding paragraph, when the challenged judge considers that the challenge is reasonable, it shall be deemed that a ruling thereof is rendered.

Article 21 (Decision on Application for Challenge)

(1) The decision on an application for challenge shall be determined by a ruling of the collegiate body of the court to which the challenged judge belongs.

(2) The judge who has been challenged shall not participate in the decision mentioned in the preceding paragraph.

(3) In cases where the court to which the challenged judge belongs does not constitute a collegiate body, the next immediate higher court shall decide it.

Article 22 (Application for Challenge and Suspension of Proceedings)

Where an application for challenge has been filed, the proceedings therefor shall be suspended except in a case falling under Article 20 (1): *Provided*, That this shall not apply in case of urgency.

Article 23 (Dismissal of Application for Challenge and Immediate Appeal)

(1) A ruling by which an application for challenge is dismissed may be appealed against immediately.

(2) The immediate appeal to the dismissal ruling under Article 20 (1) may not suspend the execution of trial. *<Newly Inserted by Act No. 5054, Dec. 29, 1995>*

Article 24 (Cause of Refraining, etc.)

(1) In cases where a judge considers that there is any cause which falls under the provisions of Article 18, he shall refrain from passing on the matter.

(2) An application for refraining shall be made in writing with the court to which the judge belongs.

(3) The provisions of Article 21 shall apply *mutatis mutandis* to the application for refraining.

Article 25 (Exclusion, Challenge, and Refraining of Court Officials)

(1) With the exception of the provision of subparagraph 7 of Article 17, the provisions of this Chapter shall apply *mutatis mutandis* to court administrative officers and clerks in Grades IV through VII (hereinafter referred to as "court officials"), and interpreters. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) The ruling on challenges against court officials and interpreters under the preceding paragraph shall be rendered by the court to which they belong: *Provided*, That the ruling under Article 20 (1) shall be rendered by a judge of a court to which such challenged person belongs. *<Amended by Act No. 8496, Jun. 1, 2007>*

CHAPTER III REPRESENTATION AND ASSISTANCE FOR ACTS OF LITIGATION

Article 26 (Person without Mental Capacity and Representation for Acts of Litigations)

In a case involving a criminal offense to which the provisions of Articles 9 through 11 of the Criminal Act do not apply and the defendant or the suspect is devoid of mental capacity, he shall be represented by his legal representative in regard of acts of litigation. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 27 (Juristic Person and Representation for Acts of Litigation)

(1) When the defendant or the suspect is a juristic person, it shall be represented by its representative in regard of acts of litigation.

(2) Even when a corporation is represented by two or more persons jointly, it shall be represented by each of them severally in respect of acts of litigation.

Article 28 (Ad Hoc Representative for Acts of Litigation)

(1) When there is no person to act for, or to represent the defendant in accordance with the provisions of the preceding two Articles, an ad hoc representative shall be appointed by the court upon request of a public prosecutor or *ex officio*, and in cases where there is no person to act for, or to represent the suspect, an ad hoc representative shall be appointed by the court upon

request of a public prosecutor or any interested person.

(2) The ad hoc representative shall perform his functions until there is another person to pursue the acts of litigation as representative for or on behalf of the defendant or the suspect.

Article 29 (Assistant)

(1) The legal representative, the spouse, a lineal relative, or a sibling of a defendant or a suspect may act as his assistant. *<Amended by Act No. 7427, Mar. 31, 2005>*

(2) A person who intends to act as an assistant shall file a report on his intention with the competent court at each level. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) An assistant may independently perform acts of litigation which do not go against the express will of the defendant or the suspect: *Provided*, That the forging shall not applied to the case where there are other provisions in Acts.

CHAPTER IV DEFENSE

Article 30 (Persons Entitled to Appoint Defense Counsel)

(1) The defendant or the suspect may appoint a defense counsel.

(2) The legal representative, the spouse, a lineal relative, or a sibling of a defendant or a suspect may independently appoint a defense counsel. *<Amended by Act No. 7427, Mar. 31, 2005>*

Article 31 (Qualifications for Defense Counsel and Special Defense Counsel)

A counsel shall be appointed from among attorneys-at-law: *Provided*, That in special circumstances, any court, other than the Supreme Court, may permit the appointment as a counsel, who is not an attorney-at-law.

Article 32 (Effects of Appointment of Defense Counsel)

(1) An appointment of a defense counsel shall be submitted in each instance of court in writing under the name and seal of the defense counsel.

(2) An appointment of a defense counsel effected prior to the institution of public action shall remain in force in the first instance.

Article 32-2 (Representing Defense Counsel)

(1) In cases where there are two or more defense counsel, the presiding judge may designate representing defense counsel upon the application of the defendant, the suspect or the counsel, and revoke or change such designation.

(2) Where no application under paragraph (1) is filed, the presiding judge may designate representing defense counsel *ex officio* and revoke or change such designation.

(3) Representing defense counsel shall not exceed three persons.

(4) Notice or service of documents to a representing defense counsel shall be binding upon all the counsel.

(5) The provisions of paragraphs (1) through (4) shall apply *mutatis mutandis* to the case where there are two or more defense counsel for the suspect and a public prosecutor designates a representing defense counsel.

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 33 (Defense Counsel Assigned by Court)

(1) In any case falling under any of the following subparagraphs, if no defense counsel is available, the court shall appoint a defense counsel ex officio:

1. When the defendant is placed under arrest;

2. When the defendant is a minor;

3. When the defendant is seventy years of age or over;

4. When the defendant is deaf and dumb;

5. When the defendant is suspected of having a mental and physical disorder; and

6. When the defendant is indicted for a case corresponding to death penalty, life imprisonment, or imprisonment with or without labor for a short term of 3 three years or more.

(2) Where the defendant is unable to appoint a defense counsel because of poverty or any other reason, if the defendant requests, the court shall appoint a defense counsel.

(3) When the court deems it necessary to protect the rights considering the age, intelligence and level, etc. of education of the defendant, it shall appoint a defense counsel within the scope that does not go against the explicit intention of the defendant.

[This Article Wholly Amended by Act No. 7965, Jul. 19, 2006]

Article 34 (Interview, Communication and Medical Examination and Treatment with Defendant or Suspect)

The defense counsel or a person who desires to be a defense counsel may have an interview with the defendant or the suspect who is placed under physical restraint, deliver or receive any documents or things and have any doctor examine and treat the defendant or the suspect.

Article 35 (Inspection or Copying of Documents or Evidential Materials)

(1) Every defendant and his defence counsel shall have a right to inspect or make a copy of any related document or evidential material for his case pending in a court.

(2) The legal representative of a defendant, the ad hoc representative under Article 28, the

assistant under Article 29, or the spouse, a lineal relative, or a sibling of a defendant, who files a letter of attorney and a document certifying his status, shall also have the right under paragraph (1).

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 36 (Independent Act of Procedure by Defense Counsel)

Any defense counsel may undertake acts of litigation independently in his name: *Provided*, That the forging shall not applied to the case where there are other provisions in Acts.

CHAPTER V DECISION

Article 37 (Judgment, Ruling and Order)

(1) A judgment shall be rendered on the basis of oral proceedings except as otherwise provided in Acts.

(2) A ruling or an order shall not necessarily be based upon oral proceedings.

(3) In making a ruling or order, the court may, whenever necessary, make an examination of facts.

(4) The examination mentioned in the preceding paragraph may be assigned to a member of a collegiate court concerned, or a judge of another district court may be requisitioned.

Article 38 (Form of Written Decisions)

In regard to the decision, the document of decision shall be prepared by a judge: *Provided*, That in cases where any ruling or order is notified, it may be made by entering it in a protocol alone instead of preparing a written judgment.

Article 39 (Reasons for Decision)

A decision shall state the reasons on which it is based: *Provided*, That this shall not apply in cases where a ruling or order which is subject to no appeal.

Article 40 (Necessary Entry in Written Decision)

(1) The name, age, occupation and address of the person upon whom the decision is made shall be entered in the written decision except as otherwise provided in Acts.

(2) In cases where the person upon whom the decision is made is a corporation, the name and location of office shall be stated.

(3) The official position and name of the public prosecutor and the name of the defense counsel who have participated in the trial shall be stated in the written judgment. *<Amended by Act No. 705, Sep. 1, 1961>*

Article 41 (Signature, etc. in Written Decision)

(1) The written decision shall be signed and sealed by the judges who have participated in the decision.

(2) In cases where the presiding judge is unable to sign and seal the decision, another judge shall sign and seal the decision together with a statement as to the reason. The presiding judge shall sign and seal a decision on behalf of an associate judge who is unable to sign and seal, and shall state the reason for so signing.

(3) The written decision, excluding a written judgment or other written decisions determined by the Supreme Court Regulations, may be signed and sealed instead of the signature and seal as prescribed in paragraphs (1) and (2). *<Newly Inserted by Act No. 5054, Dec. 29, 1995>*

Article 42 (Method of Pronouncement or Notification of Decision)

The pronouncement or notification of a decision in a trial court shall be made by the document of decision, and in other cases it shall be made by means of delivery of a copy of the written of decision or by any other proper method, unless otherwise provided in Acts.

Article 43 (Idem)

The pronouncement or notification of a decision shall be made by the presiding judge. In pronouncing a judgment, he shall read the text and explain the gist of the reasons.

Article 44 (Case Requiring Direction of Public Prosecutor for its Execution)

In regard to a decision which requires the direction of the public prosecutor for its execution, the copy of or extracts from the written decision or the protocol in which the decision is entered shall be forwarded to the public prosecutor within ten days from the date of pronouncement or notification of a decision: *Provided*, That the same shall not apply to the case where there are other provisions in Acts. *<Amended by Act No. 705, Sep. 1, 1961>*

Article 45 (Request for Copy or Extracts of Document of Decision)

The defendant or any other person concerned in the case may, at his own cost, request the delivery of the transcript or the abridged copy of the written decision or of the protocol in which the decision is entered.

Article 46 (Formation of Copy or Extracts of Written of Decision)

The copy of or extracts from the written of decision or the protocol in which the decision is entered shall be made on the basis of the original: *Provided*, That in unavoidable circumstances, it may be made according to a copy thereof.

CHAPTER VI DOCUMENTS

Article 47 (Non-Disclosure of Documents Relating to Proceedings)

No documents relating to proceedings shall be made public prior to the opening of public trial except for public interest requirements or other proper reasons.

Article 48 (Method of Formation of Protocol)

(1) In cases where the defendant, suspect, witness, expert witness, interpreter or translator is examined, the court official who has participated therein shall prepare the protocol. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) The protocol shall contain the following subparagraphs:

1. The statement of the defendant, suspect, witness, expert witness, interpreter or translator; and

2. In cases where the witness, expert witness, interpreter or translator has not been sworn, the reason therefor.

(3) The protocol shall be read aloud to the person who has made a statement or inspected by him, and the veracity of the contents of the statement shall be confirmed by him.

(4) If a person who has made a statement requests any change, deletion, or alteration, such statement shall be entered in the protocol.

(5) In cases where the public prosecutor, the defendant, suspect or defense counsel who has participated in a trial, raises an objection to the accuracy of protocol, the gist of such statement shall be entered in the protocol.

(6) In case of the preceding paragraph, the presiding judge or the judge who has participated in the trial may have an opinion as to the statement to be entered.

(7) The party who has testified shall sign and seal the protocol after a seal stamped across a leaf and the contiguous leaf. When a party who has testified refuses to sign and seal the protocol, the reason shall be entered therein.

Article 49 (Protocol of Inspection of Evidence, etc.)

(1) In respect to inspection of evidence, seizure or search, a protocol shall be prepared.

(2) A protocol of inspection of evidence may be annexed to a drawing or photograph in order to clarify the existing state of the object inspected.

(3) The protocol concerning a seizure shall contain a statement as to the kinds, characteristics in appearance and quantity of goods seized.

Article 50 (Necessary Entries in Various Protocols)

The protocols under the preceding two Articles shall contain the date, time and place of investigation or disposition and shall bear the names printed and the seals affixed thereon or the signatures written by the person who has executed the investigation or disposition and the court official who has participated therein: *Provided*, That in cases where a court has made the investigation or disposition on any hearing other than a trial, the relevant protocol shall bear the names printed and the seals affixed thereon or the signatures thereon by the presiding judge or judge and the court official who has participated therein. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 51 (Contents of Protocol of Public Trial)

(1) A protocol of public trial shall be prepared by a court official who has participated in the legal proceedings on the date of public trial. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) The protocol of public trial shall contain all the procedure of the trial including the following matters: *<Amended by Act No. 8496, Jun. 1, 2007>*

1. Date and time of public trial and the name of the court;

2. Positions and names of judges, public prosecutor, court officials;

3. Names of the defendant, legal representative, representative, defense counsel, assistant and interpreter;

4. Appearance or non-appearance of the defendant;

5. Whether the trial was open to the public or not and the reason why it was held in closed session if it was not open to the public;

6. Reading of a statement of facts constituting the offense charged or the written indictment changed;

7. The fact that the defendant was given an opportunity of making a statement which is necessary to protect his rights, and the facts which he has stated;

8. Matters listed in Article 48 (2);

9. Documentary and real evidence examined, and the method of examination, when an investigation of evidence is made;

10. Inspection or seizure of evidence which was done in public trial court;

11. The gist of oral proceedings;

12. Matters ordered to be entered by the presiding judge or matters permitted to be entered by the presiding judge at the request of a person involved in the litigation;

13. The fact that the final opportunity of making a statement was given to the defendant or his defense counsel, and the facts which he has stated; and

14. The fact that judgment or decision was pronounced or declared.

Article 52 (Exception in Preparation of Protocol of Public Trial)

The provisions of Article 48 (3) through (7) shall not apply to the protocol of public trial and the record of the examination of a witness on a date other than the date of public trial: *Provided*, That a statement made by a person shall be read to him upon his request and if any change, deletion or alteration thereof is demanded, it shall be recorded therein. *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 53 (Signature on Protocol of Public Trial)

(1) The protocol of public trial shall bear the names printed and the seals affixed thereon or the signatures written by the presiding judge and the court official who has participated in it. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) In cases where the presiding judge is unable to print his name and affix his seal or write his signature on the protocol, another judge shall print his name and affix his seal or write his signature thereon with an additional note explaining the reason therefor, but if there is no judge who is able to print his name and affix his seal or write his signature on the protocol, then the court official who has participated in the trial shall print his name and affix his seal or write his signature thereon with an additional note explaining the reason therefor. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) In cases where the court official is unable to print his name and affix his seal or write his signature on the protocol, the presiding judge or another judge shall print his name and affix his seal or write his signature on the protocol with an additional note explaining the reason therefor. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 54 (Preparation of Protocol of Public Trial)

(1) The protocol of public trial shall be prepared promptly after the date of public trial. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) The outlines of major facts dealt with on a preceding trial, as recorded in the protocol, shall be informed on the succeeding trial: *Provided*, That such outlines may be informed without the protocol, if the protocol for the preceding trial has not been prepared until the date of public trial of next round. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) The public prosecutor, the defendant, or his defense counsel may make a motion to alter a description in the protocol of public trial or raise an objection. *<Amended by Act No. 8496, Jun. 1, 2007>*

(4) If there is any motion or objection under paragraph (3), a record describing the purport of such motion or objection and the presiding judge's opinion thereon shall be prepared and attached to the protocol of public trial for the case. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

Article 55 (Defendant's Right to Inspect Protocol of Public Trial)

(1) The defendant shall have a right to demand to allow him to inspect and make copies of the protocol of public trial. *<Amended by Act No. 5054, Dec. 29, 1995>*

(2) In cases where the defendant is unable to read the protocol of public trial, he may demand the protocol of public trial to be read to him. *<Amended by Act No. 5054, Dec. 29, 1995>*

(3) If there has been no acceptance as to the demand of the preceding two paragraphs, the protocol of public trial may not be used as an evidence of guilty.

Article 56 (Probative Value of Protocol of Public Trial)

Proceedings at hearings of a public trial which are written in the protocol can be proved only by such protocol.

Article 56-2 (Stenography and Audio or Video Recording in Trial Court)

(1) Unless there is any extraordinary reason otherwise, every court shall, upon a motion from a public prosecutor, a defendant or a defense counsel, assign a stenographer to take stenographic notes of a hearing in the court, in whole or in part, or make audio or video records (including those with sound recorded; hereinafter the same shall apply) of a hearing by using an audio or video recording system, and may also order *ex officio* to take such notes or make such recording, if deemed necessary.

(2) Each court shall keep stenographic notes or audio or video records separate from the protocol of the trial.

(3) Any public prosecutor, defendant, or his defense counsel may request the court to furnish him with copies of the stenographic notes, audio or video records under paragraph (2), by bearing the expense for such copying.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 57 (Documents of Public Officials)

(1) Each document prepared by a public official shall contain the date of preparation, the name of the office to which he belongs, and shall bear the name of the public official printed by him with his seal affixed thereon or a signature signed by him, except as provided otherwise by any other Act. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) A document shall bear a seal stamped across a leaf and the contiguous leaf, or measures equivalent thereto shall be taken. *<Amended by Act No. 5054, Dec. 29, 1995>*

(3) Deleted. *<by Act No. 8496, Jun. 1, 2007>*

Article 58 (Documents of Public Officials)

(1) When a public official prepares a document, he may not modify any letter of it.

(2) When any insertion, elimination or entry in the original is made, a seal shall be affixed thereto specifying the change. The deleted words shall be left clear enough to be readable.

Article 59 (Documents made by Person Other than Public Official)

When a person other than a public official prepares a document, he shall insert the date, and sign and affix his seal thereto. In cases where he has no seal, he shall use his finger prints.

Article 59-2 (Inspection and Copying of Finalized Litigation Records)

(1) Any person may file an application for inspection or copying of a litigation record for a case for which all the proceedings have been finalized with the competent public prosecutor's office for the purpose of remedies for his rights, academic researches, or public interest.

(2) A public prosecutor may place a restriction on inspection or copying of a litigation record, completely or partially, if the case involved falls under any of the following subparagraphs: *Provided*, That the foregoing shall not apply if it is deemed that there is a justifiable ground for a

party to the litigation or an interest third party to inspect or copy the record:

1. If the trial was not open to the public;

2. If the disclosure of the litigation record is likely to seriously undermine the national security, good public morals, maintenance of public order, or public welfare;

3. If the disclosure of the litigation record is likely to seriously defame a party involved in the case, harm such party's privacy or security of life or body of such party, or impair the peace in such party's life;

4. If the disclosure of the litigation record is likely to facilitate the destruction of evidence or escape of a person who is an accomplice or give a significant influence on the trial for a related case;

5. If the disclosure of the litigation record is likely to cause a serious obstacle to the improvement or rehabilitation of a defendant involved;

6. If the disclosure of the litigation record is likely to seriously infringe on the trade secret (referring to the trade secret as defined in subparagraph 2 of Article 2 of the Unfair Competition Prevention and Trade Secret Protection Act) of a party involved in the case; and

7. If a party to the case does not consent to the disclosure of the litigation record.

(3) A public prosecutor shall, when he places a restriction on inspection or copying of a litigation record pursuant paragraph (2), notify the applicant of the restriction, clearly stating the reasons therefor.

(4) A public prosecutor may, if deemed necessary for preservation of a litigation record, furnish a person with a certified copy of the litigation record for inspection or copying: Provided, the foregoing shall not apply in cases where it is required to inspect or copy the original record.

(5) A person who inspected or made a copy of a litigation record shall not commit any act of undermining public order or good public morals, interfering with the improvement or rehabilitation of the defendant involved, defaming a party involved in the case, or impairing the peace of such party's life by using the information acquired from such inspection or copying.

(6) A person who filed an application for inspection or copying of a litigation record under paragraph (1) may, if he is dissatisfied with a disposition made by the public prosecutor in connection with such inspection or copying, file an application for revocation of or alteration to the disposition with the competent court corresponding with the public prosecutor's office in which the relevant record is preserved.

(7) Articles 418 and 419 shall apply *mutatis mutandis* to the objection under paragraph (6).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

CHAPTER VII SERVICE

Article 60 (Filing of Reports Subject to Service)

(1) In cases where the defendant, legal representative, representative, defense counsel or assistant has no dwelling or office where documents can be served, situated in the jurisdiction of the court, he shall appoint a person who has a dwelling or office situated in the jurisdiction of the court as his receiver and submit a written report signed by him and the receiver.

(2) With regard to the service, the receiver shall be regarded as the principal and his dwelling or office shall be considered as the principal's dwelling or office.

(3) The appointment of the receiver shall have effect for courts of all instances located in the same jurisdiction.

(4) The provisions of the preceding three paragraphs shall not apply to those who are under physical detention.

Article 61 (Service by Mail)

(1) In cases where a person who is required to report the residence or business office or the appointment of a receiver fails to do so, documents may be served by mail by the court official or by any other suitable method. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) In cases where the document is served by mail, it shall be considered as served when the document is delivered.

Article 62 (Service to Public Prosecutor)

Service of documents to a public prosecutor shall be made to public prosecutor's office to which he belongs.

Article 63 (Cause of Service by Public Notice)

(1) When the dwelling, office or present residence of the defendant is unknown, the service may be made by public notice.

(2) The provisions of the preceding paragraph shall also apply when the service cannot be made by any other means in cases where the defendant is present in a place over which the court has no territorial jurisdiction.

Article 64 (Method of Service by Public Notice)

(1) Service by public notice may be made only when a court so orders in accordance with the Supreme Court Regulations.

(2) Service by public notice shall be made by the court official preserving the documents to be served and by his putting a reason thereof on the court bulletin board to show it to the public. *<Amended by Act No. 705, Sep. 1, 1961; Act No. 8496, Jun. 1, 2007>*

(3) The court may order publication of the reason mentioned in the preceding paragraph in the Official Gazette or newspapers. *<Amended by Act No. 705, Sep. 1, 1961>*

(4) The first service by public notice shall become effective two weeks after the date of the public notice mentioned in paragraph (2): *Provided*, That any second or subsequent service by public notice shall become effective five days after the date of public notice. *<Amended by Act*

No. 705, Sep. 1, 1961>*

Article 65 (Mutatis Mutandis Application of Civil Procedure Act)

The Civil Procedure Act shall apply *mutatis mutandis* in respect to service of documents except as otherwise provided in Acts. *<Amended by Act No. 8496, Jun. 1, 2007>*

CHAPTER VIII PERIOD OF TIME

Article 66 (Calculation of Period of Time)

(1) In calculation of periods of time, those that are calculated by the hour shall be to run immediately, while in the calculation of days, months or years, the first day shall not be included: *Provided*, That the first day of a period of prescription and detention shall be counted as one day irrespective of the number of hours involved.

(2) A fixed period of time by year or month shall be calculated in accordance with the calendar.

(3) If the last day of a period falls on a public holiday or a Saturday, it shall not be included in the calculation: *Provided*, That this shall not apply to the case of a period of prescription and detention. *<Amended by Act No. 8730, Dec. 21, 2007>*

Article 67 (Extension of Legal Period)

A legal period may be extended as prescribed by the Supreme Court Regulations in accordance with the distance between the place of dwelling or office of the person who is required to comply with procedural acts and the location of the court or the public prosecutor's office, and with the extent of inconvenience in transportation and communication.

[This Article Wholly Amended by Act No. 5054, Dec. 29, 1995]

CHAPTER IX SUMMONS AND DETENTION OF DEFENDANT

Article 68 (Summons)

A court may summon a defendant.

Article 69 (Definition of Detention)

For the purpose of this Act, detention shall include compulsory appearance and confinement.

Article 70 (Causes for Detention)

(1) The court may detain the defendant when there is reasonable ground to suspect that he has committed a crime and he falls under any of the following subparagraphs: *<Amended by Act No. 5054, Dec. 29, 1995>*

1. When he has no fixed dwelling;

2. When there is reasonable ground enough to suspect that he may destroy evidence; and

3. When he flees or there is reasonable ground enough to suspect that he may flee.

(2) Every court shall take into consideration the seriousness of a crime, risk of repetition of the crime, anticipated harm to the victim, important witnesses, or such, in examining grounds for detention pursuant paragraph (1). *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

(3) As regards a case that involves a fine not exceeding 500,000 won maximum, disciplinary lockup, or minor fine, the defendant shall not be subject to detention, except in the case of paragraph (1) 1. *<Amended by Act No. 2450, Jan. 25, 1973; Act No. 5054, Dec. 1995>*

Article 71 (Effect of Compulsory Appearance)

The defendant who has been made a compulsory appearance shall be released within twenty-four hours from the time he was taken into custody when it is determined to be unnecessary to detain him.

Article 71-2 (Confinement after Compulsory Appearance)

A court may, if deemed necessary to confine a defendant taken into custody, confine the defendant in a correctional facility, a detention house, or a police station's jail. In such instance, the confinement period may not exceed 24 hours from the time of being taken into custody.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 72 (Detention and Notice of Cause)

The defendant shall not be placed under detention before having been informed of the gist of facts constituting the offense, of the cause for detention and of the fact that he may select a defense counsel, and before the court has given him the opportunity to defend himself: *Provided*, That the foregoing shall not apply to a fugitive defendant. *<Amended by Act No. 3955, Nov. 28, 1987; Act No. 8496, Jun. 1, 2007>*

Article 73 (Issuance of Warrant)

The summons of a defendant shall be effected by issuing a writ of summons, and the confinement or compulsory appearance shall be effected by a warrant of detention.

Article 74 (Form of Writ of Summons)

A writ of summons shall contain the name and address of the defendant, the name of the crime, the date, time and place for appearance; a statement that a warrant of detention may be issued if there is apprehension to suspect he may flee in cases where he fails to appear without good reason, and the name and seal of the presiding judge or commissioned judge issuing the writ. *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 75 (Form of Warrant of Detention)

(1) A warrant of detention shall contain the name and address of the defendant, the name of

the crime, essential facts concerning the public action, the place to bring the defendant or prison where he is to be detained, the date of issue, effective period of the writ and a statement that the warrant shall not be executed after the lapse of such period whence it shall be returned to the court of issuance, and the signature and seal of the presiding judge or commissioned judge issuing the warrant.

(2) In cases where the name of the defendant is uncertain, he may be identified by the description of his countenance, build, or other features identifying him.

(3) In cases where the dwelling of the defendant is uncertain, an entry for the dwelling may be omitted.

Article 76 (Service of Writ of Summons)

(1) Writs of summons shall be served.

(2) If the defendant submits a document stating that he will appear on a date scheduled for hearing, or if the court orders the defendant orally, who appears on a date for hearing, to appear on the next date for hearing, it shall have the same effect as service of a writ of summons.

(3) In cases where his appearance has been orally ordered pursuant to the preceding paragraph, the gist thereof shall be entered in the protocol.

(4) The defendant who is detained in a prison or detention house may be summoned by serving the notice of summons to a correctional officer. *<Amended by Act No. 1500, Dec. 13, 1963; Act No. 8496, Jun. 1, 2007>*

(5) When the defendant has received a notice of summons from a correctional officer, the notice shall have the same effect as the service of the writ of summons. *<Amended by Act No. 1500, Dec. 13, 1963; Act No. 8496, Jun. 1, 2007>*

Article 77 (Requisition of Detention)

(1) A court may requisition a judge of a district court of the place where the defendant is presently located to detain the defendant.

(2) In cases where the defendant is not present in the territorial jurisdiction of the requisitioned judge, such judge may in turn requisition a judge of a district court of the place where the defendant is located.

(3) The requisitioned judge shall issue a warrant of detention.

(4) The provisions of Article 75 shall apply *mutatis mutandis* to the warrant of detention provided in the preceding paragraph.

Article 78 (Procedure for Detention by Requisition)

(1) The judge who has issued a warrant of detention by requisition in case of the preceding Article shall, within twenty-four hours from the time when the defendant is brought in, make an inquiry as to whether any mistake has been made as to his identity.

(2) If there has been no mistake as to the identity of the defendant, he shall be promptly

delivered to the designated court.

Article 79 (Order of Appearance or Accompany)

The court may, where necessary, order the defendant to appear or be accompanied to the designated place.

Article 80 (Urgent Measures)

In case of urgency, a presiding judge may take measures provided for in Articles 68 through 73, 76, 77 and the preceding Article, or have a member of the collegiate court take such measures.

Article 81 (Execution of Warrant of Detention)

(1) A warrant of detention shall be executed by a judicial police officer under the direction of a public prosecutor: *Provided*, That in case of urgency, the execution may be directed by a presiding judge, a commissioned judge, or a requisitioned judge.

(2) In the case of the proviso of paragraph (1), a warrant of detention may be executed by a court official. In such case, the court official may, if necessary, demand a judicial police officer, correctional officer, or court bailiff to assist him, or may execute it outside the jurisdiction. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) A warrant of detention issued against the defendant who is in a prison or detention house shall be executed by a correctional officer under the direction of a public prosecutor. *<Amended by Act No. 1500, Dec. 13, 1963; Act No. 8496, Jun. 1, 2007>*

Article 82 (Preparation of Several Warrants of Detention)

(1) The warrant of detention against the defendant may be issued in plurality to several judicial police officials.

(2) In case of the preceding paragraph, the fact shall be entered in each warrant of detention.

Article 83 (Execution and Requisition of Warrant of Detention outside Jurisdiction)

(1) A public prosecutor may, where necessary, conduct execution of a warrant of detention outside the jurisdiction, or request it to be conducted by a public prosecutor who is in the competent jurisdiction.

(2) A judicial police official may, where necessary, execute a warrant of detention outside the jurisdiction, or request it to be executed by a judicial police officer who is in the competent jurisdiction.

Article 84 (Request for Investigation to Chief of High Public Prosecutor's Office and Chief of District Public Prosecutor's Office)

When the present location of the defendant is uncertain, a presiding judge may commission the chief of the High Public Prosecutor's Office or district public prosecutor's office to conduct an investigation and execute a warrant of detention. *<Amended by Act No. 7078, Jan.*

20, 2004>

Article 85 (Procedure for Execution of Warrant of Detention)

(1) In executing a warrant of detention, it shall be shown to the defendant without fail, who shall be promptly taken to court designated or other place.

(2) In executing a warrant of detention as provided in Article 77 (3), the defendant shall be brought before the judge who has issued the warrant.

(3) In case of urgency, even if the warrant of detention is not in hand, the warrant may be executed after the defendant has been informed of the facts concerning the public action and of the fact that the warrant has been issued.

(4) Upon completion of the execution as provided in the preceding paragraph, the warrant of detention shall be shown as soon as possible.

Article 86 (Provisional Detention of Defendant under Guard)

In cases where the defendant against whom a warrant of detention has been executed is to be kept under guard, he may, if necessary, be detained provisionally in the nearest prison or detention house. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 87 (Notice of Detention)

(1) When the defendant is detained, his defense counsel shall be notified of the gist of facts concerning the name of offense, the time and place of detention, the gist of charge and the cause for detention. If the defendant does not have a defense counsel, the person designated by the defendant from among the persons mentioned in Article 30 (2) shall be informed of the facts of the case and that he may select a defense counsel. *<Amended by Act No. 3955, Nov. 28, 1987; Act No. 5054, Dec. 29, 1995>*

(2) The notice provided for in paragraph (1) shall be made in writing without delay. *<Amended by Act No. 3955, Nov. 28, 1987>*

Article 88 (Detention and Notice of Facts, etc. concerning Public Action)

When the defendant is detained, he shall immediately be informed of the facts concerning the public prosecution against him and of the facts that he may select his defense counsel.

Article 89 (Interview with Detained Defendant and Medical Examination)

The defendant who is under detention may, insofar as the laws permit, interview with any other persons, or deliver to or receive from them documents or other things and also take medical examination and treatment from a doctor.

Article 90 (Application for Defense Counsel)

(1) The defendant who has been detained may apply to the court or to the warden of a prison or detention house or his agent, for the selection of a defense counsel after designating an attorney-at-law.

(2) The court or the warden of a prison or detention house or his agent who has received such application as referred to in the preceding paragraph shall promptly give notice of such fact to the attorney-at-law designated by the defendant. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 91 (Interview with Person Other than Defense Counsel)

When there exist reasonable grounds to suspect that the defendant under detention may flee or destroy evidence, a court may, upon request of a public prosecutor or *ex officio*, forbid him, by a ruling, to interview with persons other than those mentioned in Article 34, or to examine documents or other things which he may receive from or deliver to such persons, and further forbid him to deliver, receive, or seize such things: *Provided*, That the receipt and delivery of clothing, food or medical supplies shall not be forbidden nor they shall be seized.

Article 92 (Detention Period and Its Renewal)

(1) The period of detention shall be two months. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) Notwithstanding paragraph (1), the period of detention may be renewed by a court ruling only twice by two months each time for each grade, if particularly necessary to continue detention: *Provided*, That it may be renewed three times or less if it is unavoidable and necessary for an appellate court to hold an additional hearing for the examination on the evidence requested by a defendant or a defense counsel, a written statement submitted to supplement the cause of appeal, or for any other reason. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) Any period during which the proceedings of a public trial is suspended and period for arrest, confinement or compulsory appearance before the institution of public trail in accordance with the provisions of Articles 22, 298 (4), 306 (1) and (2), shall not be added to the computation of the period mentioned in paragraphs (1) and (2). *<Newly Inserted by Act No. 705, Sep. 1, 1961; Act No. 5054, Dec. 29, 1994; Act No. 8496, Jun. 1, 2007>*

Article 93 (Rescission of Detention)

When the grounds for detention have ceased to exist, the court shall, upon request of a public prosecutor, the defendant or his defense counsel or persons specified in Article 30 (2), or *ex officio*, rescind the detention, by means of a ruling.

Article 94 (Motion for Release on Bail)

A defendant under detention, his defense counsel, legal representative, spouse, lineal relative, sibling, family member, cohabitant, or employer may file a motion for release of the defendant on bail with the competent court.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 95 (Compulsory Release on Bail)

When a motion for release on bail has been filed, it shall be allowed except in the following cases: *<Amended by Act No. 2653, Dec. 20, 1973; Act No. 5054, Dec. 29, 1994>*

1. When the defendant commits an offense punishable with death penalty, imprisonment for life or imprisonment or imprisonment without prison labor exceeding ten years for a maximum

period;

2. When the defendant is accumulative offender or commits habitual crimes;

3. When there is reasonable ground to suspect that the defendant has destroyed or may destroy evidences;

4. When there is reasonable ground to suspect that the defendant flees or is likely to flee;

5. When the dwelling of the defendant is uncertain; and

6. When there is reasonable ground to suspect that the defendant does or may do harm to life, body or property of a victim, a person who is deemed to know the facts necessary for the public trial of the case, or a relative thereof.

[This Article Wholly Amended by Act No. 2450, Jan. 25, 1973]

Article 96 (Voluntary Release on Bail)

A court may, by a ruling, if it is deemed proper, permit release on bail upon a motion of those who are specified in the provisions of Article 94 or *ex officio*, irrespective of the provisions of Article 95. *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 97 (Cancellation of Release on Bail and Detention and Opinions of Public Prosecutors)

(1) The presiding judge shall seek an opinion from the public prosecutor concerned before he makes a ruling whether to release on bail. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) The preceding paragraph shall also apply to a ruling on cancellation of detention, except for the cancellation upon a motion of public prosecutors and emergency situation. *<Amended by Act No. 5054, Dec. 29, 1995>*

(3) The public prosecutor concerned shall, upon receiving a request for his opinion under paragraphs (1) and (2), communicate his opinion without delay. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

(4) The public prosecutor concerned may file an immediate appeal against a ruling to cancel detention. *<Amended by Act No. 5054, Dec. 29, 1995>* <Paragraph (4) was amended by Act No. 5054, Dec. 29, 1995 in accordance with the decision on unconstitutionality by the Constitutional Court>

[This Article Wholly Amended by Act No. 2450, Jan. 25, 1973]

Article 98 (Conditions of Release on Bail)

A court shall, when it grants a permission for release on bail, put one or more conditions out of the following conditions to the extent as may be necessary and proper:

1. The defendant shall submit a letter of undertaking to promise that he shall not destroy evidences and make an appearance before the court at the time and place designated by the court;

2. The defendant shall submit a letter of undertaking to promise that he shall pay an amount equivalent to the bail determined by the court;

3. The defendant shall accept measures taken by the court to prevent him from escaping by circumscribing his dwelling to a place designated by the court or require him to obtain a permission from the court if it is necessary to alter such circumscription;

4. The defendant shall not commit any act of doing harm to the life, body, or property of a victim, a person who is believed to know a true fact necessary for the trial of the case or a relative of such person, nor approach the residence, workplace, or neighborhood of such person;

5. The defendant shall submit a letter of guarantee prepared by any person other than the defendant for assurance of the defendant's appearance;

6. The defendant shall take an oath that he would not go abroad without a permission of the court;

7. The defendant shall deposit an amount of money required for recovery of the victim's rights or offer an asset equivalent to such amount as collateral in the manner specified by the court;

8. The defendant or a person designated by the court shall pay the bail or offer an asset as collateral; and

9. The defendant shall fulfill other conditions placed by the court as appropriate for assuring of the defendant's appearance.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 99 (Factors to be Considered in Attaching Conditions to Release on Bail)

(1) A court shall take the following factors into consideration in attaching the conditions under Article 98:

1. The nature and circumstances of the crime;

2. The weight of evidence against the defendant;

3. Criminal record, character, background, and financial ability of the defendant; and

4. Matters relating to circumstances after the crime such as compensation for victims.

(2) A court may not put any condition that the defendant is unable to fulfill by his own efforts or with his own assets.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 100 (Procedure for Execution of Release on Bail)

(1) A ruling for permitting the release on bail may not be executed unless and until the conditions under subparagraphs 1, 2, 5, 7, and 8 of Article 98 are fulfilled, and a court may, if

deemed necessary, make a decision to execute the permission for release on bail only after other conditions, if any, are fulfilled as well. <*Amended by Act No. 8496, Jun. 1, 2007*>

(2) A court may permit a person other than the person demanding bail to pay the bail money.

(3) A court may permit substitution of bail money with negotiable securities or a guarantee letter submitted by any person other than the defendant. <*Amended by Act No. 8496, Jun. 1, 2007*>

(4) A statement that the bail money shall be paid on demand shall be entered in the guarantee of the preceding paragraph.

(5) A court may demand an administrative agency or any other organization, public or private, to take appropriate measures as may be necessary for a defendant who is released by a ruling for release on bail to fulfill the conditions of the release. <*Newly Inserted by Act No. 8496, Jun. 1, 2007*>

Article 100-2 (Fine for Negligence on Appearance Guarantor)

(1) If a defendant who was released by a ruling to release on bail under the condition set forth in subparagraph 5 of Article 98 does not make an appearance on a designated date without any justifiable reason, the court may impose a fine for negligence not exceeding five million won on the guarantor who assured the defendant's appearance by its ruling.

(2) An immediate appeal may be filed against a ruling under paragraph (1).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 101 (Suspension of Execution of Detention)

(1) A court may, by means of a ruling, if it deems it proper, suspend the execution of detention by placing the defendant under the supervision of relatives, protective institutions, and/or other proper persons, or restricting area of his dwelling.

(2) Before making the ruling referred to in paragraph (1), the court shall seek opinions from a public prosecutor: *Provided*, That exceptions shall be made in case of emergency.

(3) Public prosecutors may file immediate appeals to the ruling under paragraph (1).

(4) If a motion for release is made for a member of the National Assembly who is detained pursuant to Article 44 of the Constitution of the Republic of Korea, execution of warrant of detention shall *ipso facto* be suspended. <*Amended by Act No. 3282, Dec. 18, 1980; Act No. 3955, Nov. 28, 1987*>

(5) The Prosecutor General who receives the notification of the motion for release referred to in the preceding paragraph, shall immediately direct the release and notify the competent court of the reason therefor.

[This Article Wholly Amended by Act No. 2450, Jan. 25, 1973]

Article 102 (Change of Conditions on Release on Bail and Revocation)

(1) A court may, *ex officio* or upon a motion from a person specified in Article 94, amend the conditions of release of a defendant on bail or suspend the performance of the conditions for a certain period of time.

(2) If a defendant comes to fall under any of the following subparagraphs, the court may revoke the release on bail or the suspension of execution of detention, *ex officio* or upon a motion from the public prosecutor: *Provided*, That the suspension of execution of a detention warrant under Article 101 (4) may not be revoked during the session concerned:

1. If the defendant escaped;

2. If there is a ground enough to believe that the defendant is likely to escape or destroy evidence of the crime;

3. If the defendant did not make an appearance without a justifiable reason upon receiving a summons;

4. If the defendant did harm to the life, body, or property of a victim, a person who is believed to know a true fact necessary for the trial of the case, or a relative of such person, or if there is a ground enough to believe that the defendant is likely to do harm to such person; and

5. If the defendant breached a condition placed by the court.

(3) A court may, if a defendant breaches any condition attached to the lease on bail without a justifiable reason, impose a fine for negligence not exceeding ten million won on the defendant or may put the defendant under detention for a maximum period of twenty days by a ruling.

(4) An immediate appeal may be filed against a ruling under paragraph (3).

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 103 (Confiscation of Bail Money)

(1) A court may, when it revokes the release of a defendant on bail, confiscate all or part of the bail money or collateral by its ruling, *ex officio* or upon a motion of the public prosecutor.

(2) If a defendant who had been released under the condition to pay the bail money or offer an asset as collateral did not make an appearance or escaped upon receiving a summons after he had been sentenced to a punishment on account of an identical crime and the sentence was finally affirmed, the court shall, *ex officio* or upon a motion of the public prosecutor, confiscate all or part of the bail money or collateral by its ruling.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 104 (Refund of Bail Money, etc.)

When detention or release on bail is rescinded, or the term of the warrant of detention expires, the bail money or collateral which is not confiscated shall be returned within seven days on demand. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 104-2 (Invalidation of Conditions of Release on Bail)

(1) When a detention warrant becomes ineffective, the conditions of release on bail shall also become invalid simultaneously.

(2) When the release of a defendant on bail is revoked, the conditions attached thereto shall also become invalid as provided in paragraph (1): *Provided*, the condition under subparagraph 8 of Article 98 shall remain effective.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 105 (Appeal and Ruling of Detention)

In regard to a case for which the time for appeal has not expired or in which the appeal is pending, a ruling for renewal of the period of detention, rescission of detention, suspension of execution of detention or release on bail, or rescission of suspension thereof shall be rendered by the original court so far as the record of trial is filed with the original court.

CHAPTER X SEIZURE AND SEARCH

Article 106 (Seizure)

(1) When it is necessary, a court may seize any articles which, it believes, may be used as evidence, or liable to confiscation: *Provided*, That the same shall not apply to the cases where there exist other provisions in Acts.

(2) A court may designate articles to be seized and order the owner, possessor, or custodian thereof to produce such articles.

Article 107 (Seizure of Postal Matters)

(1) A court may seize or issue an order to produce postal matters or papers relating to telegrams dispatched by or to the defendant, which are in custody or possession of a postal office or any other person transacting communication business.

(2) Postal matters or papers relating to telegrams other than those mentioned in the preceding paragraph, which are in the custody or possession of a postal office or any other person transacting communication business, may be seized or caused to be produced, only when there are circumstances which warrant their being considered to be connected with the case in hand.

(3) When any disposition has been effected under the provisions of the preceding two paragraphs, notice of such facts shall be given to the sender or to the addressee: *Provided*, That this shall not apply if there is apprehension that such notification may obstruct judicial proceedings.

Article 108 (Seizure of Voluntarily Produced Articles, etc.)

Articles which have been dropped or left or voluntarily produced by their owner, possessor or custodian may be retained without a warrant of seizure.

Article 109 (Search)

(1) A court may, if necessary, search the person, effects or dwelling or any other place of the defendant.

(2) The person, effects, dwelling or any other place of a person other than the defendant may be searched only when there are circumstances which warrant the belief that there are articles liable to seize therein.

Article 110 (Military Secrets and Seizure)

(1) Seizure and search shall not be executed in a place where secret military matters might be endangered without permission of the person in charge.

(2) The person in charge referred to in the preceding paragraph may not refuse to grant such consent, except where compliance would be prejudicial to important interests of the State.

Article 111 (Public Secrets and Seizure)

(1) In respect to articles held in the custody or possession of a person who is or was a public official, such articles may be seized only with the consent of such public office concerned, or its supervisory office, if the person or the public office to which he belongs or belonged declares that they relate to an official secret.

(2) Such office or its supervisory office may not refuse to give such consent, except where compliance would be prejudicial to important interests of the State.

Article 112 (Professional Secrets and Seizure)

A person who is or was a licensed advocate, patent attorney, notary public, certified public accountant, licensed tax accountant, public scrivener, doctor, herb doctor, dentist, pharmacist, druggist, midwife, nurse, or a religious functionary may resist seizure of articles held in his custody or possession in consequence of mandate he has received in the course of his profession and which relates to secrets of other persons: *Provided*, That this shall not apply if the principal has consented to such seizure, or if it is necessary for important public interests. *<Amended by Act No. 3282, Dec. 18, 1980; Act No. 5454, Dec. 13, 1997>*

Article 113 (Warrant of Seizure or of Search)

A warrant of seizure or of search shall be issued in cases where a seizure or search is to be effected other than in open court.

Article 114 (Forms of Warrants)

(1) A warrant of seizure or of search shall contain the name of the defendant and the offense, the articles to be seized, or the place, person or articles to be searched, date of its issue, effective period, and a statement that the warrant shall not be executed after the lapse of such period, and shall be returned to the court of issuance, the signature and seal of the presiding judge or commissioned judge, and such other matters as prescribed by the Supreme Court Regulations.

(2) The provisions of Article 75 (2) shall apply *mutatis mutandis* to the warrant referred to in the preceding paragraph.

Article 115 (Method of Execution of Warrant)

(1) A warrant of seizure or of search shall be executed by a judicial police official under the direction of a public prosecutor: *Provided*, That in case of need, the presiding judge may cause a court official to execute the warrant. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) The provisions of Article 83 shall apply *mutatis mutandis* to the execution of a warrant of seizure or of search.

Article 116 (Notabilia)

In the execution of a warrant of seizure or of search, the person who executes it shall not disclose information to unauthorized persons and take necessary caution not to injure the reputation of persons upon whom the warrant is to be served.

Article 117 (Assistance for Execution)

In the execution of a warrant of seizure or of search, a court official may, if necessary, request assistance to a judicial police official. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 118 (Suggestion of Warrant)

A warrant of seizure or of search shall be shown to the person upon whom the warrant is to be served.

Article 119 (Prohibition of Entrance or Leave during Execution)

(1) During the execution of a warrant of seizure or of search, persons may be forbidden to enter or leave the place.

(2) Any person who does not comply with the prohibition of the preceding paragraph may be forced to withdraw or be placed under guard until the execution of the warrant is completed.

Article 120 (Execution of Warrant and Necessary Measures)

(1) In the execution of a warrant of seizure or of search, locks may be removed or seals opened, or any other necessary measures taken.

(2) The measures of the preceding paragraph may be taken for the seized articles.

Article 121 (Execution of Warrant and Presence of Parties)

A public prosecutor, the defendant or his defense counsel may be present when a warrant of seizure or of search is being executed.

Article 122 (Execution of Warrant and Notice of Presence)

In cases where a warrant of seizure or of search is to be executed, the persons listed in the preceding Article shall be notified of the date and place of execution in advance: *Provided*, That this shall not apply to the case where a person prescribed in the preceding Article, clearly expresses his will in advance to the court that he does not desire to be present or to the case of urgency.

Article 123 (Execution of Warrant and Presence of Responsible Party)

(1) In cases where a warrant of seizure or of search is to be executed in a public office, military airplane, vessel or vehicle, the responsible person shall be notified to be present.

(2) Where, apart from cases governed by the provisions of the preceding paragraph, a warrant of seizure or of search is to be executed in the dwelling of a person, or in premises, building, airplane, vessels or vehicles which are guarded, the owner, guard or person acting for them shall be present.

(3) In cases where the persons mentioned in the preceding paragraph are not available, a neighbor or an official of the local public entity shall be present.

Article 124 (Search of Female)

When the body of a woman is searched, another adult woman shall be present.

Article 125 (Restriction on Execution at Night)

Before sunrise and after sunset, the dwelling of a person, or premises, a building, airplane, or vessel or vehicle under guard shall not be entered for the purpose of the execution of a warrant unless the warrant includes a statement that it is to be executed at night.

Article 126 (Exception of Limitation of Execution at Night)

The restriction provided in the preceding Article shall not be observed in respect to the execution of a warrant of seizure or of search in the following places:

1. Places which are considered to be habitually used for gambling and acts prejudicial to good morals; and

2. Inns, restaurants, or other places to which the public has access at night-time, but only during the hours when they are open to the public.

Article 127 (Suspension of Execution and Necessary Measures)

When it is necessary in cases where the execution of a warrant of seizure or of search is suspended, the place concerned may be closed or a guard may be placed there until the execution is completed.

Article 128 (Delivery of Certificate)

When a search has been made without discovering any evidence or articles liable to confiscation, a certificate to that effect shall be delivered on demand to the person who has been object of such search.

Article 129 (Delivery of Inventory of Property)

In case of seizure, an inventory of the seized property shall be made and given to the owner, possessor or custodian of the property, or to the person corresponding thereto.

Article 130 (Custody and Abrogation of Seized Articles)

(1) In respect to articles seized which can not be conveniently transported or held in custody, either a guard may be placed over them or the owner or some other person may be asked to voluntarily assume custody thereof.

(2) Article seized may be destroyed or discarded if there is apprehension that they may cause danger.

(3) A seized article may be destroyed or scrapped with consent of the owner or a person who has an authority to consent, if it is banned to manufacture, produce, possess, own, or distribute such article under Acts and subordinate statutes and the article is perishable or it is difficult to keep it in custody. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

Article 131 (Notabilia)

Considerable care shall be exercised to prevent losses or damage, etc. to seized articles.

Article 132 (Keeping Proceeds from Seized Articles in Custody)

(1) If it is anticipated that a seized article subject to confiscation will probably be destroyed, damaged, or perished or if the value of such article is likely to be significantly decreased or if it is difficult to keep the article in custody, it may be sold out and the proceeds from such sale may be kept in custody instead.

(2) If it is impossible to determine who has a right to have a seized but returnable article returned or to find the whereabout of a person who has such right and it is anticipated that the seized article will probably be destroyed, damaged, or perished or if the value of such article is likely to be significantly decreased or if it is difficult to keep the article in custody, it may be sold out and the proceeds from such sale may be kept in custody instead.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 133 (Return or Temporary Return of Articles Seized)

(1) Seized articles may be returned to the owner without waiting the completion of the case, on order by the court that their continued possession is not necessary, and on demand of the owner, possessor, custodian, or a party who has produced them, articles under seizure to be produced as evidence may be temporarily returned.

(2) Where an article seized only for evidence, is required to be used continuously by the owner or possessor, an immediately and temporarily returned after photographing it, or taking other necessary measures to preserve its original status.

Article 134 (Return of Seized Goods to Rightful Owner)

If a reason for return is apparent, wrongfully obtained goods shall be returned to the rightful owner, before the completion of the case, by means of a ruling.

Article 135 (Disposition of Seized Articles and Notice to Party)

In a ruling under the preceding three Articles, the public prosecutor, the rightful owner,

the defendant or his defense counsel shall be notified in advance.

Article 136 (Commissioned Judge and Requisitioned Judge)

(1) A judge (commissioned judge) of a collegiate court may cause a seizure or search to be made, or a judge (requisitioned judge) of a district court at the place where such seizure or search is to be effected may be requested to do so by a court.

(2) In cases where the object of a seizure or search is not in the area under his control, a requisitioned judge may request a judge of another district court in the jurisdiction concerned to effect it.

(3) As regards seizure or search effected by a commissioned judge or a requisitioned judge, the provisions related to seizure or search effected by a court shall apply *mutatis mutandis*.

Article 137 (Execution of Warrant of Detention and Search)

When it is necessary for the purpose of executing a warrant of detention, a public prosecutor, judicial police official or court official under Article 81 (2) may enter the dwelling of a person, or the premises, building, airplane, vessel, or vehicle which are guarded, for search of the defendant. <*Amended by Act No. 8496, Jun. 1, 2007*>

Article 138 (Applicable Provisions)

The provisions of Articles 119, 120, 123 and 127 shall apply *mutatis mutandis* to the search by the public prosecutor, judicial police officer, the court official based on the provisions of the preceding Article. <*Amended by Act No. 8496, Jun. 1, 2007*>

CHAPTER XI EVIDENCE BY INSPECTION

Article 139 (Evidence by Inspection)

If it is necessary for the purpose of discovering facts, a court may effect an inspection of evidence.

Article 140 (Evidence by Inspection and Necessary Disposition)

Persons may be examined, corpses dissected, graves opened, things broken or other necessary steps may be taken to effect proper inspection of evidence.

Article 141 (Caution for Physical Examination)

(1) In examining persons, the sex, age, condition of health and other circumstances of the person to be inspected shall be taken into consideration and exercise enough care not to damage his or her health and reputation.

(2) The examination of a person who is not the defendant may be carried out only when there is a cogent reason indicating a source of evidence.

(3) In cases where the body of a woman is examined, a doctor or another woman of full age shall be present.

(4) In case of dissecting a corpse or of opening a grave, proper respect for the remains shall be observed, and the bereaved family shall be notified in advance.

Article 142 (Physical Examination and Summons)

A court may summon persons other than the defendant either to the court or to other place designated for the purpose of examining the person.

Article 143 (Restriction of Time)

(1) Before sunrise and after sunset, the dwelling of a person, or the premises, buildings, airplane, vessel or vehicles guarded by persons may be entered for the purpose of inspection only with the consent of the owners or guards or person acting for them: *Provided*, That this shall not apply when there is apprehension that the object of inspection might not be available after sunrise.

(2) Inspection commenced before sunset may be continued after sunset.

(3) In the places mentioned in Article 126, the restriction specified in paragraph (1) need not be observed.

Article 144 (Assistance for Inspection)

A judicial police official may, if necessary, be ordered to assist in an inspection.

Article 145 (Applicable Provisions)

The provisions of Articles 110, 119 through 123, 127 and 136 shall apply *mutatis mutandis* to inspection of evidence.

CHAPTER XII EXAMINATION OF WITNESS

Article 146 (Qualification of Witness)

Except as otherwise provided in Acts, a court may examine any person as a witness.

Article 147 (Public Secrets and Qualification of Witness)

(1) If, in respect to facts of which a person who is or was a public official has obtained knowledge in the course of his duties, either such person himself, or the public office to which he belongs or belonged, declares that they relate to official secrets, he shall not be examined as a witness without the consent of the competent public office or supervisory office.

(2) Such office may not refuse to give such consent, except where compliance would be prejudicial to important interests of the State.

Article 148 (Criminal Responsibility of Near Relative and Refusal of Witness)

A person may refuse to testify when such testimony may be the cause of criminal

prosecution or public action, or conviction for him or any person in the following classes: *<Amended by Act No. 7427, Mar. 31, 2005>*

1. A relative or a person with whom he had a kinship; or

2. Legal representative or supervisor of guardianship.

Article 149 (Secrets in Professional Line and Refusal of Witness)

A person who is or was an attorney-at-law, patent attorney, notary public, certified public accountant, certified tax accountant, public scrivener, doctor, herb doctor, dentist, pharmacist, druggist, midwife, nurse, or religious functionary may refuse to testify in respect to facts of which he has obtained knowledge in consequence of a mandate he has received in the course of his profession and which relate to secrets of other persons: *Provided*, That this shall not apply if the principal has consented, or if the testimony is deemed necessary for the important public interest. *<Amended by Act No. 3282, Dec. 18, 1980; Act No. 5454, Dec. 13, 1997>*

Article 150 (Vindication of Reason for Refusal of Testimony)

A person who refuses to testify shall offer presumptive proof as to his reason for refusing to testify.

Article 150-2 (Summon for Witness)

(1) A court shall summon a person as a witness by serving a subpoena, communicating by telephone, electronic mail, or any other reasonable means.

(2) A person who filed a motion to call a witness owes a duty to make reasonable efforts to make the witness appear before the court.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 151 (Failure in Appearance of Witness and Fine for Negligence)

(1) If a witness to whom a subpoena was served does not appear without a justifiable reason, the court may order to the witness to pay the litigation expense incurred by his non-appearance by a ruling, and may also impose a fine for negligence not exceeding five million won upon him. The foregoing shall also apply in cases where there is an action made pursuant to Article 76 (2) and (5), which shall be applicable *mutatis mutandis* pursuant to Article 153, with the same effect as a subpoena.

(2) If a witness to whom a fine for negligence under paragraph (1) was imposed by court does not make an appearance again without a justifiable reason, the count shall put the witness under confinement for a maximum period of seven days, by a ruling.

(3) A court shall summon a witness on the date set for a trial for confinement and shall examine on whether there is any justifiable ground under paragraph (2).

(4) The confinement of a witness shall be executed by a judicial police officer, correctional officer, court bailiff, or a court official in compliance with an order of the presiding judge by putting him in a correctional facility, a detention house, or a police station jail.

(5) When a witness is confined in a detention facility under paragraph (4) after a trial to put him under confinement, the head of the detention facility shall notify the court of the fact immediately.

(6) The court shall, upon receiving the notice under paragraph (5), hold a hearing for examination of witness.

(7) When a witness gives testimony while he is under confinement pursuant to rulings to confine, the court shall cancel the ruling to confine immediately and shall issue an order to release the witness.

(8) An immediate appeal may be filed against a ruling made pursuant to paragraphs (1) and (2). In such instance, Article 410 shall not apply.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 152 (Disobedience to Summons and Compulsory Appearance)
A witness who does not obey a summons without justifiable reason may be brought by a compulsory appearance measure.

Article 153 (Applicable Mutatis Mutandis Provisions)
The provisions of Articles 73, 74 and 76 shall apply *mutatis mutandis* to the summons of a witness.

Article 154 (Summons of Witness within Precinct of Court)
A witness who is within the precinct of a court may be examined without summons.

Article 155 (Applicable Mutatis Mutandis Provisions)
The provisions of Articles 73, 75, 77, 81 through 83, and 85 (1) and (2) shall apply *mutatis mutandis* to the compulsory appearance of a witness.

Article 156 (Oath of Witness)
A witness shall be required to take an oath before being examined: *Provided*, That the same shall not apply to the cases, where there exist other provisions in Acts.

Article 157 (Forms of Oath)
(1) The oath shall be based on a written oath.

(2) The written oath shall state "I swear that I will speak the truth, the whole truth and nothing but the truth according to my own conscience and if there is any falsehood in my statement, I shall be punished for perjury."

(3) A presiding judge shall have a witness read the written oath and print his name and affix his seal thereon or write his signature: *Provided*, That if the witness is not able to read or sign the written oath, a court official who participates in the trial shall act for him. *<Amended by Act No. 8496, Jun. 1, 2007>*

(4) The oath shall be taken solemnly in the state of standing up.

Article 158 (Admonishment to Sworn Witness)

A presiding judge shall admonish the witness to be aware of the punishment for perjury before being sworn.

Article 159 (Disability of Oath)

Any witness falling under any of the following subparagraphs shall be examined without being sworn:

1. Person under 16 years of age; and

2. Person who can not understand the meaning of an oath.

Article 160 (Notice of Rights for Refusal of Witness)

A witness as described in Article 148 or 149 shall be instructed by a presiding judge before being examined that he may refuse to testify.

Article 161 (Refusal of Oath or of Witness and Fine for Negligence)

(1) When a witness refuse to swear or testify without justifiable reason, he may, by a ruling, be punished by a fine for negligence not exceeding 500,000 won. *<Amended by Act No. 2450, Jan. 25, 1973; Act No. 5054, Dec. 29, 1995>*

(2) An immediate appeal may be filed against the ruling mentioned in paragraph (1). *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 161-2 (How to Examine Witness)

(1) A witness shall be examined first by the party (public prosecutor, defense counsel or defendant) who requested his appearance, and then by the other party (public prosecutor, defense counsel or defendant).

(2) The presiding judge may examine the witness after the examination mentioned in the preceding paragraph is completed.

(3) The presiding judge may, if deemed necessary, irrespective of the provisions of the preceding two paragraphs, examine the witness at any time, and may change the order of the examination mentioned in paragraph (1).

(4) The method of examination of a witness who is to be examined by the court *ex officio* or on the application of a victim due to a crime, shall be determined by the presiding judge. *<Amended by Act No. 3955, Nov. 28, 1987>*

(5) A member of a collegiate court may examine a witness after notifying the presiding judge to do so.

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 162 (Separate Examination and Confrontation)

(1) Examination of witness shall be made of each of the witnesses. *<Amended by Act No. 705, Sep. 1, 1961>*

(2) In cases where a witness who has not been examined, is present in court, he shall be ordered to leave court.

(3) Where necessary, a witness may be cross-examined with other witnesses or the defendant.

(4) Deleted. *<by Act No. 705, Sep. 1, 1961>*

Article 163 (Right for Presence and for Examination of Relevant Party)

(1) A public prosecutor, the defendant or his defense counsel may be present at the examination of a witness.

(2) Notice of the date and place of the examination of a witness shall be given in advance to the persons who are entitled, by virtue of the preceding paragraph, to be present at the examination: *Provided*, That in cases where they announce clearly their desire not to be present, it shall not apply.

(3) Deleted. *<by Act No. 705, Sep. 1, 1961>*

Article 163-2 (Presence of Persons with Reliable Relationship)

(1) When a court has a victim of a crime sit in the witness box for examination, the court may, if deemed that the victim is likely to feel severe uneasiness or tension in light of the age of the witness, his physical or mental state, or any other circumstances, allow a person who has a reliable relationship with the victim to sit in company with the victim, *ex officio* or upon a motion of the victim, his legal representative, or the public prosecutor.

(2) If a victim of a crime is less than 13 years of age, or incompetent to discern right from wrong or make a decision due to his physical or mental disability, the court shall allow a person who has a reliable relation with the victim to sit in company with the victim, unless such company is likely to cause a trouble in the proceedings or there is any inevitable reason otherwise.

(3) A person who sits in company under paragraph (1) or (2) shall not interfere with the examination by the court, examination of a party to the case or testimony of a witness, nor commit any act that is likely to give an undue influence on the contents of testimony of the witness.

(4) The scope of persons who have a reliable relationship and thus are allowed to being present in company under paragraph (1) or (2), the procedure for and manner of being present in company, and other necessary matters shall be prescribed by the Supreme Court Regulations.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 164 (Demand of Inquiry)

(1) In cases where a public prosecutor, the defendant or his defense counsel does not take part in the examination of a witness, they may request the court to inquiry into necessary matters.

(2) In cases where the testimony of a witness without the presence of the defendant or his defense counsel contains an unexpected and serious statement which is disadvantageous to the defendant, the court shall give notice of the contents of such statement to the defendant or his defense counsel.

Article 165 (Examination of Witness outside Court)

A court may summon a witness to a place other than the courtroom for examination or examine him at the place where he is, after hearing the opinion of the public prosecutor, the defendant or his defense counsel, and taking into consideration the age, vocation, health condition, and other special circumstances.

Article 165-2 (Examination of Witness through Video or Other Transmission System)

A court may, if deemed proper when it examines any of the following persons as witness, examine the person through a video or any other transmission system or install a partitioning facility to place the person behind the facility for examination after hearing opinions of the public prosecutor and the defendant or his defense counsel: *<Amended by Act No. 9765, Jun. 9, 2009>*

1. A victim of a crime under any provision of subparagraphs 1 through 3 of Article 40 of the Child Welfare Act;

2. Children or juveniles, or a victim who shall be protected from a crime under any provision of Articles 7 through 12 of the Act on the Protection of Children and Juveniles from Sexual Abuse;

3. A person who is deemed likely to lose peace in mind seriously due to psychological burden when the person testifies in confrontation with a defendant or any other person, in light of the nature of the crime involved, the age of the witness, his physical or mental state, the relation with the defendant, or any other circumstances.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 166 (Order to Proceed and Detention)

(1) A court, by means of a ruling, when deemed necessary, may order a witness to proceed to a designated place in company.

(2) A witness may be arrested for compulsory appearance who refuses the foregoing order without any justifiable reason.

Article 167 (Commissioned Judge or Requisitioned Judge)

(1) In cases where a witness is to be examined outside the court, a member of a collegiate court may be ordered to conduct such examination, or a judge of a district court at the place where the witness actually present is may be requested to do so by a court.

(2) The requisitioned judge may, if the witness is not in his jurisdiction, request a judge of another district court which has the jurisdiction over the place where he is at present to make the

examination.

(3) The commissioned judge or requisitioned judge may adopt necessary measures to examine a witness in jurisdiction of another court or presiding judge.

Article 168 (Travelling Expenses, Daily Allowances and Lodging Expenses for Witnesses)

A witness may demand travelling expenses, daily allowance and lodging expenses in accordance with the provisions of Acts: *Provided*, That this shall not apply if, without good reason, he refuses to swear or to testify.

CHAPTER XIII EXPERT EVIDENCE

Article 169 (Expert Evidence)

A court may order a person of learning or experience to give an expert evidence.

Article 170 (Oath)

(1) An expert witness shall take an oath before expert evidence is given.

(2) The oath shall be based on a written oath.

(3) The written oath shall be as follows: "I swear to give an expert opinion faithfully according to my own conscience, and if there is any falsehood in my statement, I shall be punished for the false expert opinion".

(4) The provisions of Article 157 (3) and (4), and Article 158 shall apply *mutatis mutandis* to the oath of an expert witness.

Article 171 (Report on Expert Evidence)

(1) As regards a process or result of expert evidence, the expert witness shall submit it in writing.

(2) In case there are two or more expert witnesses, the report shall be submitted individually or jointly.

(3) The reason behind expert opinions shall be clearly stated.

(4) If necessary, the expert witness shall be required to explain his opinion.

Article 172 (Expert Evidence Outside Court)

(1) If necessary, a court shall allow the expert witness to give an opinion outside the court.

(2) In case of the preceding paragraph, articles needed for an inspection may be delivered to the expert witness.

(3) When expert evidence is required in respect to the mental or physical condition of the defendant, a court may, if necessary, confine the defendant in a hospital or other suitable place for a fixed period, and when it is completed, the confinement shall be terminated without delay.

(4) When the confinement as referred to in the preceding paragraph is required, a warrant of confinement for expert opinion shall be issued. <*Amended by Act No. 2450, Jan. 25, 1973*>

(5) If it is necessary for the confinement under paragraph (3), the court may, *ex officio* or upon request of administrators of hospitals or other places where the defendant is to be confined, order judicial police officials to be guards of the defendant. <*Newly Inserted by Act No. 2450, Jan. 25, 1973*>

(6) If necessary, the court may extend or shorten the period of confinement. <*Newly Inserted by Act No. 2450, Jan. 25, 1973*>

(7) The provisions on detention shall apply *mutatis mutandis* to the confinement under paragraph (3) unless otherwise specified in this Act: *Provided*, That exceptions shall be made to the provisions on release on bail. <*Newly Inserted by Act No. 2450, Jan. 25, 1973*>

(8) The confinement under paragraph (3) shall be regarded as detention in inclusion of the number of days of unconvicted detention. <*Newly Inserted by Act No. 2450, Jan. 25, 1973*>

Article 172-2 (Confinement for Expert Opinion and Detention)

(1) When a warrant of confinement for expert opinion is executed against the defendant under detention, it shall be regarded that during the period of the confinement of the defendant, execution of the detention is suspended.

(2) In case of paragraph (1), when the disposition of the confinement under paragraph (3) of the preceding Article is cancelled or confinement period expires, it shall be regarded that the suspension of execution of detention is cancelled.

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

Article 173 (Necessary Disposition by Expert Witness)

(1) When it is necessary for the purpose of furnishing expert evidence, an expert witness may, with the permission of a court, enter the dwelling of a person, the premises, buildings, airplanes, vessels or vehicles guarded by persons; examine the person; dissect a corpse; open a grave, or break and alter things.

(2) A court shall, on granting the permission mentioned in the preceding paragraph, issue a warrant of permission, in which the names of the defendant and, offense, place to be entered, the person to be examined, corpse to be dissected, grave to be opened, things to be destroyed, the name of the expert witness and effective period shall be entered.

(3) The expert witness shall show the warrant of permission to the person who is subject to the disposition mentioned in paragraph (1).

(4) The provisions of the preceding two paragraphs shall not apply to the dispositions mentioned in paragraph (1) which are effected by an expert witness in the courtroom.

(5) The provisions of Articles 141 and 143 shall apply *mutatis mutandis* to paragraph (1).

Article 174 (Presence or Question by Expert Witness)

(1) Where necessary, the expert witness may inspect or copy documents and evidence with permission of the presiding judge and may be present at the examination of the defendant or witness.

(2) An expert witness may demand examination of the defendant or witness, or may examine him directly by permission of the presiding judge.

Article 175 (Commissioned Judge)

A court may have member of a collegiate court take necessary measures in respect of expert evidence.

Article 176 (Presence of Parties)

(1) The public prosecutor, the defendant, or the defense counsel may be present at an examination or inquiry by an expert witness.

(2) The provisions of Article 122 shall apply *mutatis mutandis* to the preceding paragraph.

Article 177 (Applicable Provisions)

The provisions of the preceding Chapter, except the provisions as to compulsory appearance, shall apply *mutatis mutandis* to expert evidence.

Article 178 (Travelling Expenses and Fees for Expert Witness)

An expert witness may demand fees for his opinion and reimbursement of any subrogated amount, in addition to travelling expenses, daily allowances and lodging expenses under the conditions as prescribed by Acts.

Article 179 (Expert Witness)

In case a person is examined in regard to facts in the past which he knows by virtue of special knowledge, it shall be governed by the provisions of the preceding Chapter instead of those of this Chapter.

Article 179-2 (Request of Expert Evidence)

(1) The court may, if it is deemed necessary, request the expert evidence of public offices, schools, hospitals, or other associations or agencies equipped with equivalent facilities. The provisions concerning oath shall not apply to this case.

(2) In case of paragraph (1), the court may have a person designated by such public offices, schools, hospitals, or other associations or agencies explain the document of expert evidence. *<Amended by Act No. 5054, Dec. 29, 1995>*

CHAPTER XIV INTERPRETATION AND

Article 180 (Interpretation)

A statement by a person not versed in the Korean language shall be required to be interpreted by an interpreter.

Article 181 (Interpreter for Deaf or Mute)

A statement by deaf or mute person may be required to interpreted by an interpreter.

Article 182 (Translation)

Letters, signs or marks not in the Korean language shall be translated.

Article 183 (Applicable Provisions)

The provisions of the preceding Chapter shall apply *mutatis mutandis* to interpretation and translation.

CHAPTER XV PRESERVATION OF

Article 184 (Request and Procedure for Preservation of Evidence)

(1) The public prosecutor, the defendant, a suspect, or his defense counsel may, when there are reasons which may make it difficult to use evidence unless it is preserved in advance, even prior to the date for the first public trial, request a judge to effect such measures as attachment, investigation, verification, examination of witness, or expert opinion.

(2) The judge who has received the request prescribed in the preceding paragraph has the same authority as a court or presiding judge has,

(3) When making the request mentioned in paragraph (1), the person shall offer presumptive proof as to the reason in writing.

(4) An appeal against a ruling to deny a request under paragraph (1) may be filed within three days. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

Article 185 (Inspection, etc. of Documents)

A public prosecutor, the defendant, a suspect, or defense counsel may inspect and also copy documents and evidence relating to the disposition mentioned in the preceding Article with permission of a judge.

CHAPTER XVI COSTS OF TRIAL

Article 186 (Coasts of Trial by Defendant)

(1) In pronouncing a sentence, the court shall have the defendant bear the whole or part of

the trial costs: *Provided*, That this shall not apply in cases where the defendant fails to pay the trial costs due to his financial circumstances. <*Amended by Act No. 5054, Dec. 29, 1995*>

(2) Even where no sentence has been pronounced, any costs which have arisen from a cause imputable to the defendant may be charged to him.

Article 187 (Costs of Trial by Accomplices)

The costs of trial against accomplices may be borne jointly by them.

Article 188 (Bearing of Costs for Trial by Complaint, etc.)

If a decision of innocence or acquittal pronounced in respect of a case in which public prosecution has been brought upon complaint or accusation, the complainant or accuser may bear in whole or in part the costs of trial if he acted in bad faith or as a result of gross negligence.

Article 189 (Withdrawal of Appeal by Public Prosecutor and Costs of Trial)

In cases where only a public prosecutor has taken an appeal or requested a retrial, and the appeal taken or retrial requested has dismissed or withdrawn, the costs connected with the appeal or retrial shall not be borne by the defendant.

Article 190 (Costs of Trial by Third Party)

(1) If an appeal or retrial instituted by a person other than a public prosecutor is dismissed or withdrawn, the costs connected with the appeal or retrial may be borne by such person.

(2) The provisions of the preceding paragraph shall apply to an appeal or a retrial lodged by the defendant if it is withdrawn by a person other than the defendant.

Article 191 (Decision on Costs of Trials)

(1) When the costs of trial are to be borne by the defendant in cases where the proceedings are terminated by decision, the decision relating to such costs shall be rendered *ex officio*.

(2) Against such decision as referred to in the preceding paragraph, an objection may be raised only when an appeal is made against merits in the decision.

Article 192 (Decision on Costs of Trial by Third Party)

(1) When the costs of trial are to be borne by a person other than the defendant in cases where the proceedings are terminated by decision, a ruling for the purpose shall be rendered *ex officio*.

(2) Against such ruling as referred to in the preceding paragraph, an immediate appeal may be made.

Article 193 (Completion of Procedures Not by Trial)

(1) When the costs of trial are to be borne in cases where the proceedings are terminated otherwise than by decision, a ruling on costs shall be rendered *ex officio* by the court in which the case was last pending.

(2) Against such ruling as referred to in the preceding paragraph, an immediate appeal may be made.

Article 194 (Amounts of Trial)

If the decision ordering the cost of trial to be borne, does not fix the amount of such, the same shall be fixed by the public prosecutor responsible for the execution of the order.

Article 194-2 (Judgment of Acquittal and Compensation for Expenses)

(1) If a judgment of acquittal is finally affirmed, the State shall be liable for the expenses incurred to the person who was a defendant in the relevant case for defending his case on trial.

(2) In any of the following cases, the liability for the expenses under paragraph (1) may be discharged completely or partially:

1. In cases where it is found that the a person who was the defendant deemed as been prosecuted made a false confession or fabricated an evidence for guilt with an intention to mislead the investigation or trial;

2. In cases where a judgment of acquittal is finally affirmed for one part of crimes in the trial, but a judgment of guilt is finally affirmed for the other part of crimes at the same time;

3. In cases where a judgment of acquittal is finally affirmed on any of the grounds under Article 9 or 10 (1) of the Criminal Act; and

4. In cases where such expenses have been incurred due to a cause for which the person who was a defendant shall be culpable.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 194-3 (Procedure for Compensation for Expenses)

(1) The compensation for expenses under Article 194-2 (1) shall be, upon receiving a request from the person who was a defendant, decided by a collegiate division of the court that made the judgment of acquittal.

(2) The request under paragraph (1) shall be filed within six months from the date on which the judgment of acquittal is finally affirmed.

(3) An immediate appeal may be filed against a decision under paragraph (1).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 194-4 (Scope of Compensable Expenses)

(1) The expenses compensable under Article 194-2 shall be limited to the expenses incurred to the person who was a defendant or his defense counsel, such as travel expense, daily allowance and accommodations, in preparing for and attending trials, and the remuneration for the person who was a defense counsel. In this case, the Costs of Criminal Procedure Act shall apply *mutatis mutandis* to the compensable amount, but the provisions thereof concerning

witnesses shall apply *mutatis mutandis* to defendants, while the provisions thereof concerning the State-appointed defense counsel shall apply *mutatis mutandis* to defense counsel.

(2) If there are two or more defense counsels involved in preparing for or attending trials, the court may limit the travel expense, daily allowance and accommodations for defense counsel to the expenses incurred to the representative defense counsel or some of other defense counsels, considering the nature of the case, the status of proceedings, and other circumstances.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 194-5 (Provisions Applicable Mutatis Mutandis)

The claim of compensation for expenses, the procedure for compensation for expenses, the correlation between compensation for expenses hereunder and compensation for damages under other Acts, the assignment, and seizure of a right to compensation, or the compensation for expenses payable to the heir to the person who was a defendant shall be made in accordance with the practices of compensation under the Criminal Compensation Act, except as provided otherwise in this Act.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

PART II COURT OF FIRST INSTANCE

CHAPTER I INVESTIGATION

Article 195 (Investigation by Public Prosecutor)

A public prosecutor shall, where there is a suspicion that an offense has been committed, investigate the offender, the facts of the offense, and the evidence.

Article 196 (Judicial Police Officers)

(1) Investigators, police administrative officials, police superintendents, police captains or police lieutenants shall investigate crimes as judicial police officers under instructions of a public prosecutor.

(2) Police sergeants or patrolmen shall assist in the investigation of crimes as judicial police assistants under the instructions of a public prosecutor or judicial police officer.

(3) Judicial police officers other than the persons prescribed in the preceding two paragraphs may be appointed by Acts.

Article 197 (Special Judicial Police Official)

The qualification and scope of function of judicial police officials in regard to forestry, marine affairs, monopolies, taxes, military investigation institution and other special matters shall be provided in Acts.

Article 198 (Matters to be Observed)

(1) In principle, an investigation into a suspect shall be conducted without putting him under detention.

(2) Each public prosecutor, judicial police official, and other person whose duties are involved in investigation shall respect the human rights of each suspect or any other person, keep the secret known to him in the course of investigation, and shall refrain from hindering the investigation.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 198-2 (Inspection of Arrest or Detention Place by Public Prosecutors)

(1) The chief public prosecutor of the district public prosecutor's office or the chief of the branch office shall have a public prosecutor inspect the place where a suspect is arrested or detained in the investigation agencies under the control of such office once or more every month in order to investigate, whether illegal arrest or detention has been made or not. The inspecting public prosecutor shall examine and question the detained or the arrested, and shall examine the documents concerned. <*Amended by Act No. 5054, Dec. 29, 1995*>

(2) The public prosecutor shall, if there is a valid reason which makes him suspicious that the prisoner has been arrested or detained not through due process of law, release the arrested or the detained immediately or order transmission of such case immediately to the public prosecutor's office. <*Amended by Act No. 5054, Dec. 29, 1995*>

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 199 (Investigation and Necessary Examination)

(1) Necessary examinations may be made in order to achieve the purpose of an investigation: *Provided*, That compulsory measures shall be taken only where otherwise provided in this Act to the least extent necessary. <*Amended by Act No. 5054, Dec. 29, 1995*>

(2) A public office, or public or private organization may be required to make a report on necessary matters regarding an investigation.

Article 200 (Request for Appearance of Suspect)

Any public prosecutor or judicial police officer may, whenever necessary for investigation, demand a suspect to make an appearance to hear his statements.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 200-2 (Arrest with Warrant)

(1) In cases where there is a good reason to suspect that a suspect has committed crimes, and he refuses or is likely to refuse the request of appearance under Article 200 without due cause, a public prosecutor may arrest the suspect with a warrant of arrest issued by a judge of the competent district court upon request of the public prosecutor, and a judicial police officer may arrest the suspect with a warrant of arrest issued by a judge of the competent district court upon request of the public prosecutor who is requested for the warrant by the judicial police officers: *Provided*, That with regard to cases punishable with a fine not exceeding 500,000 won, disciplinary lockup, or minor fine, such arrest shall be effected only in cases where the suspect

has no fixed dwelling or refuses the request of appearance under Article 200 without due cause.

(2) In cases where a judge of a district court, who receives the request under paragraph (1), deems that the request has a good reason, he shall issue a warrant of arrest: *Provided*, That this shall not apply in cases where it deems not obviously necessary to arrest the suspect.

(3) When a judge of the district court who receives the request under paragraph (1) does not issue the warrant of arrest, he shall state the gist and reasons therefor in the request, sign and seal the request, and return the request to the public prosecutor who has made the request.

(4) In cases where a public prosecutor makes the request under paragraph (1), if he has before requested or received a warrant of arrest on the same criminal facts, he shall enter the gist and reasons for the second request for the warrant of arrest.

(5) In cases where an arrested suspect is to be detained, a warrant of detention as prescribed in Article 201 shall be requested, and if such request for the warrant of detention is not made within 48 hours from the time of arrest, the suspect shall be released.

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 200-3 (Emergency Arrest)

(1) In cases where there are good reasons to suspect that any suspect commits crimes punishable with death penalty, imprisonment for life or imprisonment or imprisonment without prison labor for a maximum period of three years or more, and he falls under any of the following subparagraphs, a public prosecutor or judicial police officer may, if it is not possible to obtain a warrant of arrest of a judge of the district court because of urgencies, arrest the suspect without the warrant, upon statement of reasons therefor. The urgencies means the cases where issue of warrant of arrest is pressed for time, such as the suspect is found by chance, etc.: *<Amended by Act No. 8496, Jun. 1, 2007>*

1. If the suspect is likely to destroy evidence; and

2. If the suspect escaped or is likely to escape.

(2) In cases where a judicial police officer has arrested suspects as referred to in paragraph (1), he shall obtain approval of a public prosecutor immediately.

(3) In case of an emergency arrest under paragraph (1), a public prosecutor or judicial police officer shall prepare an affidavit of emergency arrest immediately.

(4) The gist of charge and the grounds of emergency arrest, etc. shall be stated in the affidavit of emergency arrest under paragraph (3).

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 200-4 (Emergency Arrest and Term of Request for Warrant)

(1) When a public prosecutor or judicial police officer has arrested a suspect as prescribed in Article 200-3 and intends to detain him, the public prosecutor shall request a warrant of detention to a judge of the competent district court without delay, and the judicial police officer shall request a warrant of detention issued by a judge of the competent district court upon request by a public

prosecutor who is requested for the warrant by the judicial police officers. In this case, a request for the warrant of detention shall be made within 48 hours from the time when the suspect is arrested, and shall be accompanied by the affidavit of emergency arrest under Article 200-3 (3). *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) When a warrant of detention is not requested or issued as prescribed in paragraph (1), a suspect shall be released immediately.

(3) A person who is released as prescribed in paragraph (2) shall not be arrested on the same criminal facts without a warrant.

(4) A public prosecutor shall, when he released a suspect without requesting a warrant of detention under paragraph (1), notify the court of the following matters in writing within thirty days from the date of release. In such instance, a copy of the affidavit of emergency arrest shall be attached thereto: *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

1. Personal matters of the person who had been arrested in an emergency case and was released thereafter;

2. Time and place of the emergency arrest and specific reasons for such emergency arrest;

3. Time and place of release and reasons for release; and

4. Names of the public prosecutor or judicial police officer who had arrested the suspect in an emergency case and released him.

(5) A person who was released from emergency arrest, or his defense counsel, legal representative, spouse, lineal relative, or sibling may inspect or make copies of the notice and relevant documents. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

(6) A judicial police officer shall, when he released a suspect arrested in an emergency case without requesting a warrant of detention, report it to the public prosecutor immediately. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 200-5 (Notice of Arrest and Suspected Crime)

Every public prosecutor or judicial police officer shall, whenever he arrests a suspect, notify the suspect of the gist of the suspected crime, the reasons for arrest, and the right to appoint defense counsel, and shall also give an opportunity to vindicate himself.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 200-6 (Mutatis Mutandis Applicable Provisions)

The provisions of Articles 75, 81 (1) (main sentence) and (3), 82, 83, 85 (1), (3) and (4), 86, 87, 89 through 91, 93, 101 (4), and 102 (1) (proviso) shall apply to the cases where a public prosecutor or judicial police officer arrests the suspects. In this case, "detention" is regarded as "arrest", and "warrant of detention" as "warrant of arrest." *<Amended by Act No. 8496, Jun. 1, 2007>*

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 201 (Detention)

(1) In cases where there is a good reason to suspect that a suspect has committed crimes and if he falls under any of subparagraphs of Article 70 (1), a public prosecutor may detain the suspect for detention with a warrant of detention issued by a judge of the competent district court upon request of the public prosecutor, and the judicial police officers may arrest the suspect with a warrant of detention issued by a judge of the competent judge upon request by a public prosecutor who is requested for the warrant by the judicial police officers: *Provided*, That with regard to offenses punishable with a fine not exceeding 500,000 won, disciplinary lockup, or minor fine, such arrest shall be effected only in cases where the suspect has no fixed dwelling.

(2) When a warrant of detention is requested, data justifying the necessity of the detention shall be submitted. *<Amended by Act No. 3282, Dec. 18, 1980>*

(3) The judge of the district court who is requested as prescribed in paragraph (1) shall make a decision immediately as to whether a warrant of detention will be issued. *<Newly Inserted by Act No. 5054, Dec. 29, 1995>*

(4) In cases where a judge of the district court, who receives the request under paragraph (1), deems that the request has a good reason, he shall issue a warrant of detention. When the judge does not issue the warrant, he shall state the gist and reasons therefor in the request, sign and seal the request, and return the request to the public prosecutor who has made the request. *<Amended by Act No. 3282, Dec. 18, 1980>*

(5) In cases where a public prosecutor makes the request under paragraph (1), if he has before requested or received a warrant of detention on the same crime of the same suspect, he shall enter the gist and reasons for the second request for the warrant of detention. *<Amended by Act No. 3282, Dec. 18, 1980>*

[This Article Wholly Amended by Act No. 2450, Jan. 25, 1973]

Article 201-2 (Request for Warrant of Detention and Examination of Suspect)

(1) A judge shall, upon receiving a request for a warrant of detention of a suspect arrested under Article 200-2, 200-3, or 212, hold a hearing to examine the suspect without delay. In this case, such hearing shall be held by the day following the date on which the warrant of detention is requested, unless there is any extraordinary reason otherwise.

(2) The judge shall, upon receiving a request for a warrant of detention of any suspect other than those under paragraph (1), issue a warrant of detention for compulsory appearance, if there is a probable cause to believe that the suspect committed the crime, and examine the suspect upon his compulsory appearance: *Provided*, That the foregoing shall not apply in cases where the suspect escaped or it is not possible to examine the suspect because of any other reason.

(3) The judge shall notify the public prosecutor, the suspect, and his defense counsel of the time and place of the hearing for examination, immediately in the case of paragraph (1) or immediately after taking the suspect into custody in the case of paragraph (2). In this case, the public prosecutor shall bring the suspect to make an appearance on the date of hearing for examination, if the suspect is under arrest.

(4) The public prosecutor and the defense counsel may appear before the court on the date

of hearing for examination under paragraph (3) to make a statement.

(5) The judge shall, when he conducts the examination under paragraph (1) or (2), take measures such as separate examination of accomplices and other measures necessary for protection of secret in investigation.

(6) The court official in charge shall, when a suspect is examined pursuant to paragraph (1) or (2), prepare the minutes of hearing to describe the outlines of examination.

(7) When a suspect is examined, the period of time beginning on the date on which a request for warrant of detention along with documents relating to investigation and evidential materials is filed with the court and ending on the date on which such documents and materials are returned after issuing the warrant of detention shall not be included in the detention period for the purpose of applying Articles 202 and 203.

(8) If a suspect subject to examination has no defense counsel, the judge of the district court shall *ex officio* appoint a defense counsel. In such instance, the appointment of the counsel shall remain effective until the trial in district court, unless the request for warrant of detention of the suspect is denied and becomes invalid.

(9) If there is no defense counsel because the appointment of a counsel is cancelled due to the appointed counsel's circumstances or any other reason, the court may *ex officio* appoint another defense counsel.

(10) Articles 71, 71-2, 75, 81 through 83, 85 (1), (3), and (4), 86, 87 (1), 89 through 91, and 200-5 shall apply *mutatis mutandis* to compulsory appearance under paragraph (2), while Articles 48, 51, 53, 562, and 276-2 shall apply *mutatis mutandis* to examination of a suspect.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 202 (Detention Period by Judicial Police Officer)

In cases where a judicial police officer detains a suspect, the suspect shall be released if he is not transferred to the public prosecutor within ten days.

Article 203 (Detention Period by Public Prosecutor)

If a public prosecutor detains a suspect or receives a suspect from a judicial police officer, the suspect shall be released if a public prosecution is not instituted within ten days.

Article 203-2 (Inclusion of Detention Period)

In cases where a suspect is arrested or detained as prescribed in Article 200-2, 200-3, 201-2 (2) or 212, the detention period under Article 202 or 203 shall be counted from the date of arrest or detention of the suspect. *<Amended by Act No. 5435, Dec. 13, 1997; Act No. 8496, Jun. 1, 2007>*

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 204 (Issue of Warrant of Arrest or Detention and Notification to Court)

When a suspect is not arrested or detained, or an arrested or detained suspect is

released after a warrant of arrest or of detention has been issued, a public prosecutor shall inform the issuing court in writing as to the reason therefor without delay. *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 205 (Extension of Detention Period)

(1) A judge of a district court may, where it is deemed that there is a good reason to continue the investigation, extend the period prescribed in Article 203, upon request of a public prosecutor, and only one such extension shall be granted to the extent not exceeding ten days.

(2) In the case of the request mentioned in the preceding paragraph, the grounds necessary for such extension shall be stated.

Articles 206 and 207 Deleted. *<by Act No. 5054, Dec. 29, 1995>*

Article 208 (Restrictions on Re-detention)

(1) Any person who is detained but later released by a public prosecutor or a judicial police officer shall not be again arrested in connection with the same crime unless other important evidence is found.

(2) In the case of the preceding paragraph, acts which are done simultaneously or in the relation of means and results for one purpose shall be regarded as one and same criminal act.

[This Article Wholly Amended by Act No. 2450, Jan. 25, 1973]

Article 209 (Provisions Applicable Mutatis Mutandis)

The provisions of Articles 70 (2), 71, 75, 81 (1) (main sentence), 81 (3), 82, 83, 85 through 87, 89 through 91, 93, 101 (1), 102 (2) (main sentence) (excluding the part concerning the revocation of release on bail), and 200-5 shall apply *mutatis mutandis* to detention of a suspect by a public prosecutor or a judicial police officer. *<Amended by Act No. 8730, Dec. 21, 2007>*

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 210 (Investigation by Judicial Police Officials outside Jurisdiction)

When a judicial police official investigates an offense outside his jurisdiction, or investigates upon request of a judicial police official of another jurisdiction, he shall report thereon to the chief public prosecutor of the district public prosecutor's office or branch office of his jurisdiction: *Provided*, That in cases where any investigation is being conducted pursuant to the provisions of Articles 200-3, 212, 214, 216 and 217 and it is urgent, post *factum* report may be made. *<Amended by Act No. 705, Sep. 1, 1961; Act No. 5054, Dec. 29, 1995>*

Article 211 (Flagrant Offender and Quasi-Flagrant Offender)

(1) A person who is in the act of committing a crime or has just committed it shall be called a flagrant offender.

(2) A person who falls under any of the following subparagraphs shall be regarded as a flagrant offender:

1. An offender who is pursued by hue and cry;

2. Where a person carries stolen goods, or a weapon or other things recognized as being used in connection with a crime;

3. Where there is apparent evidence on the body or clothes of a suspect; and

4. In cases where a person attempts to flee when challenged.

Article 212 (Arrest of Flagrant Offender)
Any person may arrest a flagrant offender without a warrant.

Article 212-2 Deleted. *<by Act No. 3955, Nov. 28, 1987>*

Article 213 (Delivery of Arrested Flagrant Offender)
(1) In cases where a person other than a public prosecutor or judicial police official arrests a flagrant offender, he shall immediately turn over the offender to a public prosecutor or judicial police official.

(2) In cases where a judicial police official has taken delivery of a flagrant offender, he shall ask the name, address of the arrester, and the reason for the arrest, and when necessary he may request the arrester to accompany him to the police station.

(3) Deleted. *<by Act No. 3955, Nov. 28, 1987>*

Article 213-2 (Provisions Applicable Mutatis Mutandis)
The provisions of Articles 87, 89, 90, 200-2 (5), and 200-5 shall apply *mutatis mutandis* to the cases where public prosecutors or judicial police officials arrest flagrant offenders or take delivery of flagrant offenders. *<Amended by Act No. 5054, Dec. 29, 1995; Act No. 8496, Jun. 1, 2007>*

[This Article Newly Inserted by Act No. 3955, Nov. 28, 1987]

Article 214 (Minor Cases and Arrest of Flagrant Offenders)
The provisions of Articles 212 through 213 shall apply to the flagrant offenders punishable with fine not exceeding 500,000 won for the maximum amount, disciplinary lockup, or minor fine only where their dwelling is uncertain. *<Amended by Act No. 2450, Jan. 25, 1973; Act No. 3282, Dec. 18, 1980; Act No. 5054, Dec. 29, 1995>*

Article 214-2 (Review of Legality of Arrest and Detention)
(1) A suspect who is arrested or detained, his defense counsel, legal representative, spouse, lineal relative, sibling, family member, cohabitant, or employer may submit a petition to the competent court to examine the legality of the arrest and detention. *<Amended by Act No. 3955, Nov. 28, 1987; Act No. 5054, Dec. 29, 1995; Act No. 7427, Mar. 31, 2005; Act No. 8496, Jun. 1, 2007>* >>This paragraph is supplemented and arranged by paragraphs (4) and (5) amended by Act No. 7225 on October 16, 2004, following the decision of incompatibility with the Constitution

which was made by the Constitutional Court on March 25, 2004>>

(2) A public prosecutor or a judicial police officer who has arrested or detained a suspect shall notify the arrested or detained suspect or a person designated by the suspect among the persons specified in paragraph (1) that the suspect has a right to file a petition for reviewing the legality of the arrest or detention under paragraph (1). *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

(3) If a petition filed under paragraph (1) falls under any of the following subparagraphs, the court may deny the petition by its ruling without necessarily holding a hearing for examination under paragraph (4): *<Amended by Act No. 3955, Nov. 28, 1987; Act No. 5054, Dec. 29, 1995; Act No. 8496, Jun. 1, 2007>*

1. Where the petition is filed by a person who has no right to petition or filed again for the same warrant of arrest or detention; and

2. Where it is obvious that accomplices or co-suspects file petitions in succession with an intention to interfere with investigation.

(4) The court shall, upon receiving a petition under paragraph (1), examine the suspect arrested or detained, relevant documents and evidence within 48 hours from the time on which the petition is filed, and either deny the petition by ruling if there is no valid ground for the petition or order the release of the arrested or detained suspect by ruling if there is a valid ground for the petition. The foregoing shall also apply in cases where a public prosecution is instituted against the suspect after the petition for review is filed. *<Amended by Act No. 5054, Dec. 29, 1995; Act No. 7225, Oct. 16, 2004; Act No. 8496, Jun. 1, 2007>*

(5) The court may order the release of the detained suspect (including any suspect against whom a public prosecution is instituted after the petition for review is filed) as referred to in paragraph (4) by ruling under the condition of payment of bail money to guarantee appearance of the suspect: *Provided*, That this provision shall not be applicable to cases falling under any of the following subparagraphs: *<Newly Inserted by Act No. 5054, Dec. 29, 1995; Act No. 7225, Oct. 16, 2004; Act No. 8496, Jun. 1, 2007>*

1. Where there is a good reason to believe that the defendant is likely to destroy evidence of a crime; and

2. Where there is a good reason to believe that the defendant does harm to or is likely to do harm to the life, body or property of a victim, a person who is deemed to know the facts necessary for the public trial of the case, or such person's relatives.

(6) In case of the ruling of release under paragraph (5), restriction to dwelling, duty to attend on the date and place designated by the court or public prosecutor, or other proper conditions may be added. *<Newly Inserted by Act No. 5054, Dec. 29, 1995; Act No. 8496, Jun. 1, 2007>*

(7) The provisions of Articles 99 and 100 shall apply *mutatis mutandis* to the case of release under the condition of payment of bail money as prescribed in paragraph (5). *<Newly Inserted by Act No. 5054, Dec. 29, 1995; Act No. 8496, Jun. 1, 2007>*

(8) The ruling of the court made pursuant to paragraphs (3) and (4) is not subject to appeal. *<Amended by Act No. 8496, Jun. 1, 2007>*

(9) A public prosecutor, a defense counsel and a requester may appear before the court and

present their views on the date of the examination under paragraph (4). *<Amended by Act No. 8496, Jun. 1, 2007>*

(10) When the arrested or detained suspect is not represented by a defense counsel, the provisions of Article 33 shall be apply *mutatis mutandis*. *<Amended by Act No. 5054, Dec. 29, 1995>*

(11) In holding a hearing under paragraph (4), the court shall examine accomplices separately or take other measures appropriate for protecting the secret in investigation. *<Amended by Act No. 8496, Jun. 1, 2007>*

(12) The judge who has issued a warrant of arrest or detention may not participate in the examination, investigation and ruling under paragraphs (4) through (6): *Provided*, That this shall not apply to the case where there is no other judge who examines, investigates, or makes a ruling, except the judge who has issued a warrant of arrest or detention. *<Amended by Act No. 5054, Dec. 29, 1995; Act No. 8496, Jun. 1, 2007>*

(13) The period of time from the date on which the court receives investigation-related documents and evidential materials to the date on which such documents and materials are returned to the public prosecutor's office after making a ruling shall not be included in the period of restriction for the purpose of applying Articles 200-2 (5) (including the case of *mutatis mutandis* application in Article 213-2) and 200-4 (1), while the afore-mentioned period of time shall not be included in the period of detention for the purpose of applying Articles 202, 203, and 205. *<Amended by Act No. 8496, Jun. 1, 2007>*

(14) Article 201-2 (6) shall apply *mutatis mutandis* to a hearing for examination of a suspect under paragraph (4). *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

[This Article Newly Inserted by Act No. 3282, Dec. 18, 1980]

Article 214-3 (Restriction on Re-arrest and Re-detention)

(1) The suspect who has been released through the review of legality of arrest or detention under the provisions of Article 214-2 (4) shall not be re-arrested or re-detained for the same crime unless he flees or destroys the evidence. *<Amended by Act No. 5054, Dec. 29, 1995; Act No. 8496, Jun. 1, 2007>*

(2) The suspect who has been released under the provisions of Article 214-2 (5) shall not be re-arrested or re-detained for the same crime unless he falls under any of the following subparagraphs: *<Newly Inserted by Act No. 5054, Dec. 29, 1995; Act No. 8496, Jun. 1, 2007>*

1. When he has fled;

2. When there is a good reason to believe that he is likely to flee or destroy evidence;

3. When he does not appear without due cause upon the request for appearance; and

4. When he violates the restriction to domicile or other conditions designated by the court.

[This Article Newly Inserted by Act No. 3282, Dec. 18, 1980]

Article 214-4 (Confiscation of Bail Money)

(1) In case of any of the following subparagraphs, the court may, *ex officio* or upon request by public prosecutors, by a ruling, confiscate whole or part of the bail money which has been paid under Article 214-2 (5): *<Amended by Act No. 8496, Jun. 1, 2007>*

1. Where a person, who has been released under Article 214-2 (5), shall be re-detained for the reasons enumerated in Article 214-3 (2); and

2. Where the court, after institution of public prosecution, re-detains the suspect who has been released under Article 214-2 (5) for the same crime.

(2) In cases where a person, who had been released under Article 2142 (5) and was summoned for enforcement after he was sentenced to a final judgment for the same crime, does not appear without due cause or flees, the court shall, *ex officio* or upon request of a public prosecutor, by a ruling, confiscate whole or part of the bail money. *<Amended by Act No. 8496, Jun. 1, 2007>*

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 215 (Seizure, Search and Inspection of Evidence)

(1) If necessary for investigation of crimes, public prosecutors may seize, search or inspect evidence according to the warrant issued by a judge of the competent district court upon request by the public prosecutors. *<Amended by Act No. 3282, Dec. 18, 1980>*

(2) If deemed necessary for the investigation of crimes, judicial police officers may seize, search or inspect evidence according to the warrant issued by a judge of the competent district court upon request by a public prosecutor who is requested by the judicial police officers. *<Amended by Act No. 3282, Dec. 18, 1980>*

[This Article Wholly Amended by Act No. 2450, Jan. 25, 1973]

Article 216 (Compulsory Disposition without Warrant)

(1) A public prosecutor or judicial police officer, where he arrests or detains a suspect pursuant to the provisions of Article 200-2, 200-3, 201 or 212, if necessary, may take the following measures without a warrant: *<Amended by Act No. 5054, Dec. 29, 1995>*

1. To investigate a suspect in the dwelling of another person or the house, building, airplane, vessel, or a vehicle guarded by other persons; and

2. To seize, search and inspect at the locus of the arrest.

(2) The provisions of subparagraph 2 of the preceding paragraph shall apply *mutatis mutandis* to cases in which a public prosecutor or judicial police officer executes a warrant of arrest against the defendant.

(3) If it is impossible to obtain a warrant issued by a judge of the court because of urgency at the scene of an offense, seizure, search or inspection of evidence may be conducted without a warrant. In this case, a warrant shall be obtained after the act without delay. *<Newly Inserted by Act No. 705, Sep. 1, 1961>*

Article 217 (Compulsory Disposition without Warrent)

(1) A public prosecutor or a judicial police officer may, if it is necessary to urgently seize an article owned, possessed, or kept by a person arrested pursuant to Article 200-3, seize, search, or inspect such article without a warrant within 24 hours from the time of arrest.

(2) A public prosecutor or a judicial police officer shall, if it is necessary to keep in custody continuously an article seized pursuant to paragraph (1) above or Article 216 (1) 2, make a request for a warrant of seizure and search without delay. In this case, such request for a warrant of seizure and search shall be filed within 48 hours from the time of arrest.

(3) A public prosecutor or a judicial police officer shall, if he fails to have a warrant of seizure and search issued as requested pursuant to paragraph (2), return the seized article immediately.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 218 (Seizure without Warrant)

A public prosecutor or judicial police officer may seize an article which has been discarded by a suspect or any other person, or those which have been voluntarily produced by their owner, possessor, or custodian without a warrant.

Article 219 (Mutatis Mutandis Applicable Provisions)

The provisions of Articles 106, 107, 109 through 112, 114, 115 (1) (main sentence) and (2), 118 through 135, 140, 141, 333 (2) and 486 shall apply *mutatis mutandis* to seizure, search or inspection of evidence by a public prosecutor or judicial police officer as prescribed in the provisions of this Chapter: *Provided*, That the judicial police officer shall obtain instructions from a public prosecutor prior to making dispositions under Articles 130 and 132 through 134.
<Amended by Act No. 3282, Dec. 18, 1980; Act No. 8496, Jun. 1, 2007>

Article 220 (Urgent Disposition)

Dispositions in accordance with the provisions of Article 216 shall not be subject to the provisions of Article 123 (2) or 125, in the event of urgency.

Article 221 (Request for Appearance of Third Party)

(1) A public prosecutor or a judicial police officer may, if necessary for investigation, request any person other than a suspect to make an appearance in order to hear a statement of facts from the person. In this instance, such statement may be recorded by a video recording system, subject to the consent of the person.

(2) A public prosecutor or a judicial police officer may, if necessary for investigation, commission a person to provide authentication, interpretation, or translation service.

(3) Article 163-2 (1) through (3) shall apply *mutatis mutandis* to investigation of victims of a crime by a prosecutor or a judicial police officer.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 221-2 (Request for Interrogation of Witness)

(1) In cases where persons who are deemed likely to know facts that are indispensable for the investigation of crimes refuse to appear or make statements under the preceding Article, public prosecutors may request judges to interrogate them as witnesses only before the date of the first public trial day.

(2) Deleted. <*by Act No. 8496, Jun. 1, 2007*> >>This paragraph is deleted by Act No. 8496 on June 1, 2007, following the decision of unconstitutionality which was made by the Constitutional Court on December 26, 1996>>

(3) A request under paragraph (1) shall be made in writing with justifiable reasons therefor clearly stated. <*Amended by Act No. 8496, Jun. 1, 2007*>

(4) The judges to whom the request under paragraph (1) is submitted shall have the same authority as that of the competent court or presiding judge concerning the interrogation of witnesses. <*Amended by Act No. 8496, Jun. 1, 2007*>

(5) The judge shall, when he set a date for examination of witness upon receiving a request under paragraph (1), notify the defendant, suspect, or defense counsel of the date to ensure that they can participate in the examination of witness. <*Amended by Act No. 8496, Jun. 1, 2007*>

(6) When judges have conducted the interrogation of witnesses based on the request under paragraph (1), they shall without delay send the related documents to the public prosecutor concerned. <*Amended by Act No. 8496, Jun. 1, 2007*>

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

Article 221-3 (Commission of Expert Opinion and Request for Confinement for Expert Opinion)

(1) In cases where an expert opinion is commissioned pursuant to Article 221, if confinement for expert opinion under Article 172 (3) is required, a public prosecutor shall file a request therefor to a judge. <*Amended by Act No. 3282, Dec. 18, 1980*>

(2) When a judge deems a request under paragraph (1) appropriate, they shall effect the confinement for expert opinion. The provisions of Articles 172 and 172-2 shall apply *mutatis mutandis* to the cases above.

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

Article 221-4 (Permit of Disposition Necessary for Expert Opinion)

(1) Persons who are commissioned to give an expert opinion pursuant to Article 221 may, with the permission of a judge, conduct the dispositions under Article 173 (1).

(2) The request for the permission under paragraph (1) shall be made by public prosecutors. <*Amended by Act No. 3282, Dec. 18, 1980*>

(3) If the request under paragraph (2) is deemed appropriate, a judge shall issue a permit. <*Amended by Act No. 3282, Dec. 18, 1980*>

(4) The provisions of Article 173 (2), (3) and (5) shall apply *mutatis mutandis* to the permits

referred to in paragraph (3).

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

Article 222 (Inquest of Unnaturally Deceased Persons)

(1) With regard to the body of a person who has died an unnatural death or is suspected of having died an unnatural death, a public prosecutor of a district public prosecutor's office which has jurisdiction over the place where it has been discovered shall conduct an inquest on the body.

(2) Where it is deemed that there is a suspicion of a crime due to an inquest referred to in the preceding paragraph, and it is urgent, such inspection may be conducted without a warrant. *<Newly Inserted by Act No. 705, Sep. 1, 1961>*

(3) The public prosecutor may order the judicial police officer to take dispositions mentioned in the preceding two paragraphs. *<Newly Inserted by Act No. 705, Sep. 1, 1961>*

Article 223 (Right of Complaint)

A victim of a crime may file a complaint.

Article 224 (Limitation of Complaint)

A complaint shall not be lodged against a lineal ascendant of the principal himself or of his spouse.

Article 225 (Complainants who are Not Victims)

(1) A legal representative of a victim may file a complaint independently.

(2) On the death of the victim, his spouse or any of his lineal relatives or brother or sister may file a complaint: *Provided*, That he shall not file a complaint against the express intention of the injured party.

Article 226 (Idem)

In cases where the legal representative of a victim or a relative of the said legal representative is the suspect, a relative of the victim may file a complaint independently.

Article 227 (Idem)

In respect to an offense defaming the deceased, his relative or descendant may file a complaint.

Article 228 (Designation of Complainant)

In cases where there is no person to file a complaint in respect to an offense subject to prosecution on complaint, if there is a request of any person interested, a public prosecutor shall designate a person who can file a complaint within ten days.

Article 229 (Complaint by Spouse)

(1) Complaint mentioned in Article 241 of the Criminal Act shall not be made unless the marriage is void or divorce action is instituted. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) In the case of the preceding paragraph, the complaint shall be considered withdrawn if the complainant and the defendant are married again or the divorce action is withdrawn.

Article 230 (Period of Complaint)

(1) As for the offenses subject to prosecution on complaint, no complaint shall be made after the lapse of six months from the date on which the identity of the offender becomes known: *Provided*, That when there are unavoidable reasons preventing the filing of a complaint, the period shall be computed from the date on which such reasons have ceased to exist.

(2) In cases where a person who was kidnapped or enticed in accordance with Article 291 of the Criminal Act has married the abductor, the period of complaint mentioned in the preceding paragraph shall begin to run from the day when a court decision of voidance or revocation of marriage is finally binding. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 231 (Several Complainants)

If there are two or more persons entitled to file a complaint, failure by one of them to observe the term for complaint shall not operate against other's complaint.

Article 232 (Revocation of Complaint)

(1) A complaint may be withdrawn before the pronouncement of judgment in the first instance.

(2) A person who has withdrawn a complaint shall not file a complaint again.

(3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to cases in which an expression of intent for punishment is withdrawn in a case which cannot be prosecuted against the clearly expressed intention of the victim.

Article 233 (Indivisibility of Complaint)

Complaints filed against one or more of the co-offenders in an offense subject to prosecution on complaint, or revocation thereof, shall also take effect in respect to the other accomplices.

Article 234 (Accusation)

(1) Any person who believes that an offense has been committed may lodge an accusation.

(2) When a public official in the course of his duty believes that an offense has been committed, he shall lodge an accusation.

Article 235 (Limitation of Accusation)

The provisions of Article 224 shall apply *mutatis mutandis* to the accusation.

Article 236 (Accusation by Proxy)

A complaint may be lodged or withdrawn by proxy.

Article 237 (Methods of Complaint or Accusation)

(1) A complaint and accusation shall be filed with a public prosecutor or judicial police officer in writing or orally.

(2) On receipt of an oral complaint or accusation, a public prosecutor or a judicial police officer shall draw up a protocol.

Article 238 (Complaint or Accusation and Measures taken by Judicial Police Officer)

When a judicial police officer receives a complaint or accusation, he shall investigate the relevant document and evidence matter pertaining thereto promptly and transfer them to a public prosecutor.

Article 239 (Applicable Mutatis Mutandis Provisions)

The provisions of the preceding two Articles shall apply *mutatis mutandis* to the withdrawal of a complaint or accusation.

Article 240 (Self-Denunciation and Applicable Mutatis Mutandis Provisions)

The provisions of Articles 237 and 238 shall apply *mutatis mutandis* to a self-denunciation.

Article 241 (Interrogation of Suspect)

A public prosecutor or judicial police officer shall, before he interrogates a suspect, confirm that the person is a true suspect by asking his name, age, reference domicile, domicile, and occupation. *<Amended by Act No. 8435, May 17, 2007>*

Article 242 (Matters concerning Interrogation of Suspect)

A public prosecutor or judicial police officer shall interrogate the subject as to the necessary matters concerning the facts and conditions of the offense, and shall give the suspect an opportunity to state facts beneficial to himself.

Article 243 (Interrogation of Suspect and Attendant)

When a public prosecutor interrogates a suspect, he shall have an administrative officer, a clerk, or an investigator of the public prosecutor's office present at the place, while a judicial police officer shall have another judicial police official present at the place when he interrogates a suspect. *<Amended by Act No. 8496, Jun. 1, 2007; Act No. 8730, Dec. 21, 2007>*

Article 243-2 (Defense Counsel's Participation)

(1) A public prosecutor or a judicial police officer shall, upon receiving an application from a

suspect, his defense counsel, legal representative,

(2) If there are two or more defense counsel who desire to participate in the interrogation, the suspect shall designate one counsel to participate in the interrogation. If there is no counsel so designated, the public prosecutor or judicial police officer may designate one.

(3) The defense counsel who participates in the interrogation may make a statement on his opinion after interrogation: Provided, That the counsel may raise an objection regarding any unfair interrogation manner even in the middle of the interrogation, and may also make a statement, subject to an approval of the public prosecutor or the judicial police officer.

(4) The defense counsel shall be allowed to inspect the protocol concerning interrogation of suspect that contains the counsel's opinion under paragraph (3), and then shall print his name and affix his seal or write his signature thereon.

(5) The public prosecutor or the judicial police officer shall describe the matters concerning the participation of the defense counsel in interrogation and the limitations thereon in the protocol of interrogation of suspect.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 244 (Formation of Protocol concerning Interrogation of Suspect)

(1) The statement of a suspect shall be entered in the protocol.

(2) The protocol under paragraph (1) shall be made available to the suspect for inspection or shall be read to him, the suspect shall be asked whether or not there is any ommission or any fact mistakenly described, and then any objection raised or any statement made by the suspect, including a motion for addition, subtraction, or modification, shall be recorded additionally in the protocol. In this case, the part against which the suspect raised an objection shall be kept readable. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) If the suspect states that he has no objection or any other opinion concerning the protocol, the suspect shall be required to write such statement in his own hand, affix his seal between pages of the protocol, and print his name and affix his seal or write his signature thereon. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 244-2 (Video Recording of Suspect's Statements)

(1) The statements made by a suspect may be recorded by a video recording system. In this case, the suspect shall be informed of video recording in advance, and the entire process from the beginning to the end of interrogation and the objective circumstances shall be recorded by the video recording system.

(2) Once the video recording under paragraph (1) is finished, the original recording medium shall be sealed without delay in the presence of the suspect or his defense counsel, and the suspect shall be required to print his name and affix his seal or write his signature thereon.

(3) Upon a demand by the suspect or his defense counsel in the case of paragraph (2), the video-recorded product shall be replayed for viewing. In such instance, if there is any objection raised to its contents thereof, the purport of such objection shall be put down in writing and shall be attached to the product.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 244-3 (Announcement of Right to Refuse to Make Statements and Other Rights)

(1) A public prosecutor or a judicial police officer shall inform a suspect of the following matters prior to interrogation;

1. The suspect has a right to remain silent or make no statement for each question;

2. Remaining silent cannot be used against the suspect;

3. A statement made by the suspect by waiving the right to refuse to make a statement can be used as evidence for being guilty in the court; and

4. The suspect has a right to have the assistance of defense counsel, including the counsel's participation in interrogation.

(2) The public prosecutor or judicial police officer who informed a suspect of the matters under paragraph (1) shall ask the suspect whether he will exercise the right to remain silent and the right to have the assistance of counsel, and shall write down the suspect's answer thereof on the protocol. In this case, the suspect shall be required to write down his answer in his own hand, or if the public prosecutor or judicial police officer writes down the suspect's answer, then he shall require him to print his name and affix his seal or write his signature on the part that describes his answer.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 244-4 (Recording of Investigation Process)

(1) The public prosecutor or judicial police officer shall record the time on which the suspect arrived at the interrogation place, the time on which the interrogation began and ended, and other matters necessary for confirming the developments of the interrogation process on the protocol of interrogation of suspect, or make a record of such matters as a separate document and shall incorporate the document into the protocol of interrogation.

(2) Article 244 (2) and (3) shall apply *mutatis mutandis* to the protocol or document under paragraph (1).

(3) Paragraphs (1) and (2) shall apply *mutatis mutandis* to the investigation on the person other than the suspect.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 244-5 (Special Rule for Disabled and Persons who Need Special Protection)

A public prosecutor or a judicial police officer may, if a suspect under interrogation falls under any of the following subparagraphs, allow a person who has a reliable relationship with the suspect to sit in company with the suspect, *ex officio* or upon receiving a petition from the suspect or his legal representative:

1. If the suspect lacks the ability to discern right from wrong or make and communicate a

decision due to a physical or mental disorder; and

2. If it is necessary to facilitate psychological stability and smooth communications, considering the age, gender, nationality, or any other aspect of the suspect.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 245 (Cross Examination)

A public prosecutor or judicial police officer may, if necessary to determine the facts, cross examine each suspect or persons other than the suspect.

Article 245-2 (Participation of Professional Investigative Adviser)

(1) The public prosecutor may, if necessary to clarify facts in relation to determination on whether to prosecute a suspect, designate a professional investigative adviser, *ex officio* or upon a request of the suspect or his defense counsel, to have the adviser participate in investigation and hear his advice.

(2) A professional investigative adviser may submit an explanation or his opinion based on his expertise in writing or make an oral statement on such explanation or opinion based on his expertise.

(3) As regards the written statement submitted by a professional investigative adviser or such adviser's oral statement on explanation or opinion under paragraph (2), the public prosecutor shall give the suspect or his defense counsel to make a statement, oral or in writing, on his opinion.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 245-3 (Designation of Professional Investigative Adviser)

(1) In cases where the public prosecutor intends to have a professional investigative adviser participate in investigation under Article 245-2 (1), he shall designate one or more professional investigative advisers for each case.

(2) The public prosecutor may, if deemed proper, revoke the designation of a professional investigative adviser.

(3) A suspect or his defense counsel may file an objection against the public prosecutor's designation of a professional investigative adviser with the Chief Public Prosecutor of the relevant High Public Prosecutor's Office.

(4) A professional investigative adviser shall be entitled to compensation, and other expenses including travel expense, daily allowance, and accommodations, if necessary, may be paid to him.

(5) The procedures and methods for designation of a professional investigative adviser, revocation thereof, and filing of an objection, and other necessary matters shall be prescribed by Ordinance of the Ministry of Justice.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 245-4 (Provisions Applicable Mutatis Mutandis)

Articles 279-7 and 279-8 shall apply *mutatis mutandis* to professional investigative advisers to a public prosecutor.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

CHAPTER II PUBLIC PROSECUTION

Article 246 (Principle of Public Prosecution by State)

A public prosecution shall be instituted and executed by a public prosecutor.

Article 247 (Principle of Discretionary Indictment)

A public prosecutor may decide not to institute a public prosecution, considering the matters under Article 51 of the Criminal Act.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 248 (Effect of Public Prosecution)

(1) A public prosecution shall not be effective to any person other than a person designated by a public prosecutor as the defendant.

(2) A public prosecution instituted against a part of facts of a crime shall be effective to the crime as a whole.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 249 (Limitation Periods for Public Prosecution)

(1) The prescription for public prosecution shall expire after lapse of the following terms: *<Amended by Act No. 2450, Jan. 25, 1973; Act No. 8730, Dec. 21, 2007>*

1. Twenty-five years for crimes punishable with death penalty;

2. Fifteen years for crimes punishable with imprisonment without prison labor for life or imprisonment for life;

3. Ten years for crimes punishable with imprisonment or imprisonment without prison labor for a maximum term of ten years or more;

4. Seven years for crimes punishable with imprisonment or imprisonment without prison labor for a maximum term of less than ten years;

5. Five years for crimes punishable with imprisonment or imprisonment without prison labor for a maximum term of less than five years, or suspension of qualifications for a maximum term of not less than ten years, or a fine;

6. Three years for crimes punishable with suspension of qualifications for a maximum term of not less than five years; and

7. One year for crimes punishable with suspension of qualifications for a maximum term of less than five years or disciplinary lockup, a minor fine, or confiscation.

(2) The limitation periods for a crime for which a public prosecution has been instituted and in which no final judgment has been rendered shall be twenty-five years from the date of the institution of such public prosecution. *<Newly Inserted by Act No. 705, Sep. 1, 1961; Act No. 8730, Dec. 21, 2007>*

Article 250 (Two or More Penalties and Period for Indictment)

In regard to crimes punishable by the joint imposition of two or more principal penalties or by the imposition of one from among two or more principal penalties, the provisions of the preceding Article shall apply with reference to the heaviest penalty.

Article 251 (Increase or Decrease of Penalty and Limitation Periods)

When a penalty is to be increased or commuted in accordance with the Criminal Act, the provisions of Article 249 shall apply with reference to the penalty before increase or commutation. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 252 (Commencement of Limitation Periods)

(1) A limitation period shall commence to run after the criminal act is completed.

(2) In regard to complicity, the limitation period against accomplices shall commence to run at the time when the criminal action has ceased finally.

Article 253 (Suspension of Limitation Period and Its Effect)

(1) The limitation period shall cease to toll on the institution of the public prosecution, and begin to toll when a judgment dismissing a public prosecution or a judgment indicating a violation of jurisdiction becomes finally binding.

(2) When a public prosecution is instituted against one of several accomplices mentioned in the preceding paragraph, the tolling of the limitation period shall be suspended as to the other accomplices, and shall begin to toll again when a judgment on the case concerned becomes finally binding. *<Amended by Act No. 705, Sep. 1, 1961>*

(3) The limitation period shall be suspended during the period, for which an offender stays abroad for the purpose of escaping criminal punishment. *<Newly Inserted by Act No. 5054, Dec. 29, 1995>*

Article 254 (Method of Instituting Public Prosecution and Written Indictment)

(1) The institution of public prosecution shall be made by filing a written indictment with a competent court.

(2) Copies, equal to the number of defendants shall be annexed to the written indictment.

(3) The written indictment shall contain the following matters:

1. The names of the defendants and other matters by which the defendants can be identified;

2. The name of the crime;

3. The facts constituting the crime charged; and

4. The applicable provisions of Acts.

(4) The facts constituting the crime charged shall be stated clearly by specifying the time and date, place and method of a crime.

(5) Several separate charges or several applicable provisions of Acts may be stated in preliminarily or alternatively.

Article 255 (Withdrawal of Public Prosecution)

(1) A public prosecution may be withdrawn before a judgment in the first instance is rendered.

(2) A withdrawal of a public prosecution shall be made on a document stating the reason: *Provided*, That as to withdrawal by the court, it may be stated orally.

Article 256 (Commitment to Other Jurisdiction)

If a public prosecutor considers that the case does not come within the jurisdiction of the court corresponding to the public prosecutor's office to which he belongs, he shall transfer the case, together with the documents and articles of evidence, to a public prosecutor of the public prosecutor's office corresponding to the competent court.

Article 256-2 (Transfer of Cases to Prosecutors of Military Court)

In cases where the case falls under the jurisdiction of the military court, public prosecutors shall transfer the case to the public prosecutors of the prosecution division of the competent military court with related documents and evidence attached. In this case, the acts of litigation done before the transfer shall not be affected after the transfer. *<Amended by Act No. 3955, Nov. 28, 1987>*

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1975]

Article 257 (Case upon Complaint)

In cases where a public prosecutor investigates a crime based on complaint or accusation, he shall determine whether public prosecution shall be instituted or not within three months after the complaint or accusation has been made.

Article 258 (Disposition to Complainant)

(1) If, in a case in which a complaint or accusation has been lodged, the public prosecutor

has decided to or not to institute a public prosecution, withdrawn public prosecution or sent the case to a public prosecutor of another public prosecutor's office mentioned in Article 256, the public prosecutor shall inform the complainant or accuser in writing, of the gist therefor, within seven days after such disposition has been made.

(2) In cases where a public prosecutor has decided not to institute a public prosecution or in case of a situation arising under Article 256, he shall promptly inform the suspect of such decision.

Article 259 (Notice not to Institute Public Prosecution to Complainant)

If, with respect to a case in which complaint, accusation or demand has been lodged, a disposition not to institute a public prosecution has been made, the public prosecutor shall, upon request of the complainant or accuser, promptly inform them of the reasons therefor in writing within seven days.

Article 259-2 (Notice to Victims)

A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his legal representative (including a victim's spouse, lineal relative, and sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of trial, and the facts about detention such as whether the suspect or the defendant is detained or released.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 260 (Petition for Adjudication)

(1) A person who lodged a complaint with a right to such complaint (including those who filed an accusation against crimes under Articles 123 through 125 of the Criminal Act; hereafter the same shall apply in this Article) may, if he receives a notice of non-prosecution from the public prosecutor, file a petition for adjudication to find whether such disposition is properly made with the High Court having jurisdiction over the venue where the district public prosecutor's office to which the public prosecutor belong is situated (hereinafter referred to as the "competent High Court").

(2) The petition for adjudication under paragraph (1) shall be filed subsequent to an appeal under Article 10 of the Prosecutors' Office Act: *Provided*, That the foregoing shall not apply in cases where any of the following events occurs:

1. In cases where the case was investigated again after filing an appeal to the prosecution but it has been notified again that the case would not be prosecuted;

2. In cases where no disposition on an appeal to the prosecution has been made for three months since the appeal was filed; and

3. In cases where the public prosecutor has not prosecuted the case until thirty days before the end of prescriptive period of public prosecution.

(3) A person who intends to file an petition for adjudication under paragraph (1) shall file the application with the chief public prosecutor of the district public prosecutor's office or of its branch office within ten days from the date on which a decision to dismiss an appeal to the publication was notified or on which an event under any subparagraph of paragraph (2) occurred: *Provided*,

That a person may file a petition for adjudication by the day immediately before the end of prescriptive period of public prosecution in the case of paragraph (2) 3.

(4) A petition for adjudication shall describe the grounds which the petition for adjudication can be justified, including the facts and evidence relevant to the crime alleged in the case for which the petition for adjudication is filed.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 261 (Disposition by Chief Public Prosecutor of District Public Prosecutor's Office or of Its Branch Office)

The chief public prosecutor of the district public prosecutor's office or of its branch office shall, upon receiving a petition for adjudication under Article 260 (3), shall forward the petition for adjudication along with his opinion letter, documents relating to investigation, and evidential materials to the competent High Court through the competent High Public Prosecutor's Office within seven days from the date of filing the petition: *Provided*, That if the petition falls under any subparagraph of Acticle 260 (2), the chief public prosecutor of the district public prosecutor's office or of its branch office shall process the petition in one of the following manners as the case may be:

1. If it is deemed that the petition has a reasonable ground, the public prosecution for the case shall be initiated immediately and notify the competent High Court and the petitioner for adjudication thereof; and

2. If it is deemed that the application has no reasonable ground, the case shall be forwarded to the competent High Court within thirty days.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 262 (Examination and Ruling)

(1) The court shall, upon receiving a petition for adjudication, notify the suspect of the petition within ten days from the date on which the petition was forwarded.

(2) The court shall render one of the following rulings for a petition for adjudication, depending upon the case, in accordance with the procedure for appeal within three months from the date on which the petition was forwarded. In this case, the court may examine relevant evidences, if necessary:

1. The court shall deny the petition, if it is held that it does not conform to the legal form or has no ground; and

2. The court shall render a ruling to institute public prosecution, if it is held that the petition has a ground.

(3) The examination on a case of petition for adjudication shall be conducted behind closed doors, unless there is an extraordinary reason otherwise.

(4) No objection may be raised against the ruling under paragraph (2). A case for which a ruling under paragraph (2) 1 becomes final and conclusive may not be subject to public prosecution, except where any other important evidence is discovered later.

(5) The court shall, upon rendering the ruling under paragraph (2), forward each authentic copy of the ruling to the petitioner for adjudication, the suspect, and the chief public prosecutor of the relevant district prosecutor's office or its branch office without delay. In such instance, an authentic copy of the ruling under paragraph (2) 2 shall be forwarded together with the case record to the chief public prosecutor of the relevant district public prosecutor's office or of its branch office.

(6) The chief public prosecutor of the relevant district public prosecutor's office or of its branch office shall, upon receiving a written decision on adjudication under paragraph (2) 2, assign a public prosecutor to take charge of the case and the assigned public prosecutor shall institute the public prosecution accordingly.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 262-2 (Restriction on Inspection and Copying of Case Record of Petition for Adjudication)

No one may be allowed to inspect or copy the documents and evidential materials relating to a case of petition for adjudication while the case is examined: *Provided*, That the court may permit a party to inspect or copy all or part of documents prepared in the proceedings of examination of evidence under the latter sentence of Article 262 (2).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 262-3 (Liability for Expenses)

(1) The court may, when it renders a ruling under Article 262 (2) 1 or the withdrawal under Article 264 (2) occurs, require the petitioner for adjudication to bear all or part of the expenses incurred in the proceedings for the petition by its decision.

(2) The court may, *ex officio* or upon a motion of the suspect, order the petitioner for adjudication to pay all or part of the expenses that the suspect has paid or shall pay, including attorney fees for the application procedures for the adjudication.

(3) An immediate appeal may be filed against the ruling under paragraphs (1) and (2).

(4) The scope of expenses payable under paragraphs (1) and (2) and the procedure for payment of such expenses shall be prescribed by the Supreme Court Regulations.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 262-4 (Interruption of Prescriptive Period for Public Prosecution)

(1) Once a petition for adjudication under Article 260 is filed, the running of prescriptive period for public prosecution shall be interrupted until the ruling on adjudication under Article 262 is rendered. *<Amended by Act No. 8730, Dec. 21, 2007>*

(2) Once the ruling under Article 262 (2) 2 is rendered, it shall be deemed that the public prosecution is instituted on the date of such ruling in connection with the prescription of public prosecution.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 263 Deleted. *<by Act No. 8496, Jun. 1, 2007>*

Article 264 (Application by Proxy, Effect and Rescission of Application Requested by One Person)

(1) Further application for the issuance of a complaint may be made by proxy and the application by one of joint applicants shall take effect for all the applicants.

(2) Further application for the issuance of a complaint may be withdrawn by the applicant prior to the rendering of the ruling provided for in Article 262 (2): *Provided*, That a person who has withdrawn such application shall not apply again. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) The withdrawal mentioned in the preceding paragraph shall not take effect for other joint applicants.

Article 264-2 (Restriction on Revocation of Public Prosecution)

A public prosecutor may not revoke the public prosecution instituted pursuant to a ruling under Article 262 (2) 2.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 265 Deleted. *<by Act No. 8496, Jun. 1, 2007>*

CHAPTER III PUBLIC TRIAL

SECTION 1 Preparation of Public Trial and Procedure of Public Trial

Article 266 (Service of Copy of Indictment)

When a public trial has been instituted, the court shall serve the defendant or his defense counsel with a copy of the indictment without delay: *Provided*, That the service shall be made at least five days prior to the date of the first public trial.

Article 266-2 (Submission of Opinion Letter)

(1) A defendant or his defense counsel shall submit an opinion letter that states whether he admits indicted facts and his opinion on the procedure for preparatory proceedings for trial to the court within seven days from the date on which a copy of indictment is served: *Provided*, if the defendant refuses to make any statement, an opinion letter that describes such situation may be submitted.

(2) The court shall, upon receiving an opinion letter under paragraph (1), forward it to the public prosecutor.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-3 (Inspection and Copying of Documents and Articles in Custody of Public Prosecutor Subsequent to Indictment)

(1) A defendant or his defense counsel may file an application with the public prosecutor to ask the prosecutor to allow him to inspect or copy, or deliver in writing, a list of the documents or articles relating to the case indicted (hereinafter referred to as "documents") and the following documents that are likely to have influence over admission of indicted facts or sentencing: *Provided*, That if the defendant employs his defense counsel, only the inspection shall be applied to the defendant:

1. Documents that the public prosecutor would produce as admissible evidence;

2. A paper that describes the names of persons whom the public prosecutor plans to produce as witnesses and their involvement in the case or documents that contain statements made prior to trial;

3. Documents relating to the weight of evidence of the paper or documents under subparagraph 1 or 2; and

4. Documents relating to arguments made by the defendant or his defense counsel on matters of law and fact (including the records of related criminal trial for which adjudication is finally closed and the records of cases for which non-prosecution has been disposed of).

(2) If it is deemed that there is a reasonable ground to disallow inspection, copying, or delivery in writing of documents, such as the national security, needs to protect witnesses, likelihood of destruction of evidence, and specific grounds under which it is anticipated that it is likely to hinder the investigation into related cases, the public prosecutor may refuse to allow the inspection or copy, or deliver in writing, such documents or place a limitation thereon.

(3) The public prosecutor shall, whenever he refuses to allow the inspection or copy, or deliver in writing, or place a limitation thereon, notify of the reason in writing immediately.

(4) A defendant or his defense counsel may, when there is no notice given under paragraph (3) within 48 hours from the time on which the public prosecutor received an application under paragraph (1), file a motion under Article 266-4 (1).

(5) Notwithstanding paragraph (2), no public prosecutor shall refuse to allow to inspect or copy a list of documents.

(6) The term "documents" in paragraph (1) includes extraordinary media other than written documents, including drawings, photographs, audio tapes, video tapes, computer discs, and other goods made for the purpose of storing information. In this case, copying of such extraordinary media shall be limited to the minimum necessary information.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-4 (Court Ruling on Inspection or Copying)

(1) When a public prosecutor refuses to allow a defendant or his defense counsel to inspect or copy, or deliver in writing, documents or places a limitation thereon, the defendant or defense counsel may make a motion to the court to allow him to inspect or copy such documents, or have them delivered in writing.

(2) The court may, upon a motion under paragraph (1), order the public prosecutor to allow a

defendant or his defense counsel to inspect or copy documents, or have them delivered in writing, considering the type and degree of harm that may be caused by such allowance, the defendant's needs for defending the case, the necessity for speedy trial, and the importance of such documents. In such instance, the court may designate the time and method of inspection or copying or put a condition or an obligation thereon.

(3) The court shall, when it renders a ruling under paragraph (2), give the public prosecutor an opportunity to present his opinion.

(4) The court may, if deemed necessary, demand the public prosecutor to produce the relevant documents, and may also examine the defendant or any other interested party.

(5) If the public prosecutor does not comply with the court's ruling concerning the inspection, copying, or delivery in writing under paragraph (2) without delay, he shall not make a motion for admission of relevant witnesses and documents as evidence.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-5 (Preparatory Proceedings Prior to Trial)

(1) The presiding judge may put a case to preparatory proceedings for efficient and concentrative examination.

(2) The court may require the parties to prepare their arguments, a plan for proving, and other matters in writing or hold a preparatory hearing for trial preparation.

(3) The public prosecutor and the defendant or his defense counsel shall collect and organize evidences in good order in advance and shall cooperate each other so that the preparatory proceedings prior to trial can be progressed smoothly.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-6 (Submission of Written Statements for Trial Preparation)

(1) The public prosecutor and the defendant or his defense counsel may submit to the court written statements that describe the outlines of their arguments on matters of law and fact, the purport of evidence, and other matters.

(2) The presiding judge may order the public prosecutor and the defendant or his defense counsel to submit a written statement under paragraph (1).

(3) The court shall, when written statements are submitted under paragraph (1) or (2), serve the copies thereof upon the other party.

(4) The presiding judge may demand the public prosecutor and the defendant or his defense counsel to explain a written statement submitted to the court, including a written indictment or may issue any other order as may be necessary for trial preparation.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-7 (Preparatory Hearing Date)

(1) The court may set a preparatory hearing date, considering the opinions of the public prosecutor and the defendant or his defense counsel.

(2) The public prosecutor, the defendant, or his defense counsel may move the court to set a preparatory hearing date. In such instance, no party may raise an objection against the court's ruling on such motion.

(3) The court may assign a judge of a collegiate division to preside over a preparatory hearing. In this case, the assigned judge shall have the same authority as the one of the court or the presiding judge as far as a preparatory hearing concerned.

(4) A preparatory hearing shall be open to the public: *Provided*, That it may be held behind closed doors if it is likely that the proceedings of the hearing might be hindered if open to the public.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-8 (Attendance of Public Prosecutor and Defense Counsel)

(1) The public prosecutor and the defense counsel shall attend the preparatory hearing.

(2) Court officials shall participate in the preparatory hearing.

(3) The court shall serve a notice of the preparatory hearing date to the public prosecutor, the defendant, and his defense counsel.

(4) The court shall, if no defense counsel is appointed for the case whose preparatory hearing date is designated, appoint a defense counsel *ex officio*.

(5) The court may, if deemed necessary, summon the defendant, and the defendant may appear in the preparatory hearing even when there is no summons from the court.

(6) The presiding judge shall inform the appearing defendant that he may refuse to make a statement.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-9 (Matters Relating to Preparatory Hearing)

(1) The court may conduct the following acts in a preparatory hearing:

1. An act of clarifying indicted facts or applicable provisions of laws;

2. An act of permitting addition, withdrawal, or modification of indicted facts or applicable provisions of laws;

3. An act of clarifying arguments relating to indicted facts to put the issues of the case in order;

4. An act of demanding explanation on the contents that include a difficult calculation or any other complicated description;

5. An act of requiring to file a motion to admit evidence;

6. An act of clarifying the purport and substance of evidence in relation to an evidence for which a motion to admit is made;

7. An act of confirming opinions on a motion to admit evidence;

8. An act of rendering a ruling on whether to admit evidence;

9. An act of setting order and method of examination of evidence;

10. An act of rendering a ruling on a motion made in connection with inspection or copying of documents;

11. An act of setting or changing a trial date; and

12. An act of determining other matters necessary for proceedings of trial.

(2) Articles 296 and 304 shall apply *mutatis mutandis* to the preparatory proceedings.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-10 (Confirmation of Results from Preparatory Hearing)

(1) The court shall, upon closing the preparatory hearing, notify the public prosecutor, the defendant, or his defense counsel of the arranged result in connection with issues and evidence of the case, and shall make sure whether there is any objection to the result.

(2) The court shall record the result put in order in connection with issues and evidence of the case in the protocol of the preparatory hearing.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-11 (Inspection and Copying of Documents in Custody of Defendant or Defense Counsel)

(1) When a defendant or his defense counsel makes an assertion concerning a matter of law or fact in a trial or a preparatory hearing, such as non-existence at the scene, insanity, or mental or physical retardation, the public prosecutor may demand the defendant or his defense counsel to allow him to inspect or copy, or issue in writing, the following documents:

1. Documents which the defendant or his defense counsel intends to make a motion to admit as evidence;

2. A statement that describes the names of persons whom the defendant or his defense counsel intends to make a motion to admit as witnesses and their relations with the case;

3. Documents relating the weight of evidence of the documents under subparagraph 1 or the statement under subparagraph 2; and

4. Documents relating to the defendant's or his defense counsel's assertion made in connection with a matter of law or fact.

(2) If the public prosecutor refused to allow a defendant or his defense counsel to inspect or copy, or deliver in writing, documents under Article 266-3 (1), the defendant or his defense counsel may also refuse to allow him to inspect or copy, or deliver in writing, documents under paragraph (1): *Provided*, That the foregoing shall not apply in cases where the court rendered a ruling to dismiss the motion under Article 266-4 (1).

(3) If a defendant or his defense counsel rejected the demand under paragraph (1), the public prosecutor may move the court to allow him to inspect or copy such documents or have them issued in writing.

(4) The provisions of Article 266-4 (2) through (5) shall apply *mutatis mutandis* to the motion under paragraph (3).

(5) Article 266-3 (6) shall apply *mutatis mutandis* to the documents under paragraph (1).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-12 (Grounds for Closing Preparatory Proceedings)

The court shall, when there is any of the following grounds, close preparatory proceedings: *Provided*, That the foregoing shall not apply in cases where a case falls under subparagraph 2 or 3 and there is a reason enough to continue preparatory proceedings:

1. If the issues and evidence have been completely put in order;

2. If it has passed three months since the case was put to preparatory proceedings; and

3. If the public prosecutor, the defense counsel, or the summoned defendant did not make an appearance.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-13 (Effect of Closing of Preparatory Proceedings)

(1) If there is any evidence for which a motion to admit has not been made during preparatory proceedings, a motion to admit such evidence may be made only when there is any of the following grounds:

1. If such motion does not delay the litigation significantly; and

2. If the movant shows an unavoidable cause or event that made it impossible to submit the evidence during preparatory proceedings without gross negligence on his part.

(2) Notwithstanding paragraph (1), the court may conduct examination of evidence *ex officio*.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-14 (Provisions Applicable Mutatis Mutandis)

Article 305 shall apply *mutatis mutandis* to resumption of preparatory proceedings.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-15 (Preparatory Proceedings During Trial)

The court may, if necessary for putting issues and evidence in order, put a case to preparatory proceedings even after the first trial. In such case, the provisions governing preparatory proceedings prior to trial shall apply *mutatis mutandis*.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 266-16 (Prohibition on Abuse of Inspected or Copied Documents)

(1) A defendant or his defense counsel (including a person who was a defendant or a defense counsel; hereafter the same shall apply in this Article) may not deliver or present (including the provision through an electric telecommunications facility) a copy of a statement or documents, which the public prosecutor allowed him to inspect or copy pursuant to Article 266-3 (1), to any other person for any purpose other than the purpose of using it for preparation of the relevant case or related litigation.

(2) A defendant or a defense counsel who violated paragraph (1) shall be punished by imprisonment for one year or less or a fine not exceeding five million won.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 267 (Designation of Date of Public Trial)

(1) The presiding judge shall fix the date for public trial.

(2) The defendant, his representative or proxy shall be summoned on the date for public trial.

(3) Notice of the date set for public trial shall be given to the public prosecutor, defense counsel and assistant.

Article 267-2 (Concentrative Examination)

(1) Examination on public trial days shall be concentrative.

(2) If two or more days are required for examination, the court shall remain open everyday, unless there is any unavoidable situation otherwise.

(3) The presiding judge may set several dates for public trial at a time.

(4) Even when it is impossible to keep the court open everyday due to any unavoidable situation, the presiding judge shall set next dates for public trial within the limit of 14 days from the preceding dates for public trial, unless there is any extraordinary circumstances otherwise.

(5) The persons involved in a litigation shall adhere to dates for public trial and make efforts to avoid causing any trouble to examination, and the presiding judge may take measures necessary for such purpose.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 268 (Assumption of Service of Writ of Summons)

Where the defendant is within the precincts of a court and is notified by the court of the date for a public trial, he shall be deemed to have been served with a writ of summons.

Article 269 (Postponement Period before First Trial)

(1) The date of the first trial shall be fixed in consideration of not less than five days as a postponement period after the service of writ of summons.

(2) When the defendant raises no objection thereto, the period referred to in the preceding paragraph may not be considered.

Article 270 (Change of Date of Public Trial)

(1) The presiding judge may change the date fixed for public trial *ex officio* or upon request of a public prosecutor, the defendant or his defense counsel.

(2) An order rejecting an application for a change of the date of trial shall not be served.

Article 271 (Submission of Materials Giving Causes for Absence)

When the person who has been summoned or notified for date of public trial is not able to appear on the fixed date of trial on account of sickness or other reasons, he shall submit a medical certificate or other materials.

Article 272 (Reference to Public Offices, etc.)

(1) The court may ask any public office, or public or private organizations, either *ex officio* or upon request of a public prosecutor, the defendant, or his defense counsel, for reports on necessary particulars or for preserved documents.

(2) The application as referred to in the preceding paragraph may be denied by means of a ruling.

Article 273 (Investigation of Evidence before Date of Public Trial)

(1) The court may, if it deemed necessary for preparatory proceedings, upon application, permit the public prosecutor, the defendant, or his defense counsel to examine the defendant or other witnesses and to inspect evidence, to appraise or to translate before the date fixed for public trial.

(2) The presiding judge may have any of his associate judges carry out the action mentioned in the preceding paragraph.

(3) The application mentioned in paragraph (1) may be denied by means of a ruling.

Article 274 (Submission of Evidence by Party before Date of Public Trial)

A public prosecutor, the defendant or his defense counsel may submit document or articles as evidence to the court before the date fixed for public trial. *<Amended by Act No. 705,*

Sep. 1, 1961>

Article 275 (Hearing in Court Room)

(1) A hearing in a public trial shall be conducted in a courtroom.

(2) The courtroom shall be open with the judge, the public prosecutor, and court officials present. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) The public prosecutor's seat shall be on the same level as the defendant and the defense counsel's in right and left sides of judges' bench respectively and the seat for a witness shall be in front of judges' bench: *Provided*, That the defendant shall sit in the witness box when he is examined as defendant. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 275-2 (Presumption of Innocence)

The defendant shall be presumed to be innocent until he is finally adjudged to be guilty.

[This Article Newly Inserted by Act No. 3282, Dec. 18, 1980]

Article 275-3 (Principle of Oral Pleading)

Pleadings in the courtroom should be made orally.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 276 (Right for Attendance of Defendant)

When the defendant does not appear on the day fixed for public trial, the court shall not sit without special provisions: *Provided*, That if the defendant is a juristic person, it may have a proxy appear.

Article 276-2 (Special Rules for Disabled and Those who Need Special Protection)

(1) The presiding judge or a judge may, when he examines a defendant, allow a person who has a reliable relationship with the defendant to sit in company with the defendant, *ex officio* or upon receiving a request of the defendant or his legal representative or the public prosecutor, if the defendant falls under any of the following subparagraphs:

1. If the defendant lacks the ability to discern right from wrong or make and communicate a decision due to a physical or mental disorder; and

2. If it is necessary for facilitating the defendant's psychological stability and smooth communications in light of his age, gender, nationality, or any other factor.

(2) The scope of persons eligible for sitting in company with a defendant with a reliable relationship under paragraph (1) and the procedure and method of sitting in company shall be prescribed by the Supreme Court Regulations.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 277 (Misdemeanor Cases and Non-appearance of Defendant)

A defendant shall not be required to make an appearance, if a case falls under any of the following subparagraphs. In such case, a person designated by the defendant may appear before the court on behalf of the defendant:

1. If the case is for a fine or minor fine not exceeding five million won maximum;

2. If it is obvious that indictment for the case will be dismissed or absolved by a ruling;

3. If the case is for punishment by imprisonment, with or without prison labor, for three years maximum or less, a fine exceeding five million won maximum, or disciplinary lockup, and the court granted, upon receiving a petition for permission of non-appearance of the defendant, the permission for non-appearance of the defendant because it found that non-appearance of the defendant would not cause any problem to protection of his rights: *Provided*, That the defendant shall make an appearance on a trial day for the proceedings under Article 284 or sentencing; and

4. If the case is brought to the trial for sentencing upon a motion filed only by the defendant for formal trial under Article 453 (1).

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 277-2 (Refusal of Appearance of Defendant and Trial Proceedings)

(1) If the detained defendant refuses to appear without due cause in cases where there is no trial opening without his appearance, or if it is deemed that any correctional officer cannot bring him to the court or there is significant obstacle in bringing him to the court, the trial may proceed without appearance of the defendant. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) In proceedings of trial under paragraph (1), opinions of the public prosecutor and defense counsel shall be heard.

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 278 (Absence of Public Prosecutor)

If a public prosecutor is notified of the date fixed for public trial for two times or more and fails to appear, or in cases where only judgment is pronounced, the court may proceed without appearance of the public prosecutor. *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 279 (Procedure Lead of Presiding Judge)

Procedure lead on a date fixed for public trial shall be conducted by the presiding judge.

Article 279-2 (Participation of Professional Examiners)

(1) A court may, if necessary to clarify an issue at bar or preside a litigation smoothly, designate a professional examiner by ruling, *ex officio* or upon a motion of the public prosecutor, defendant, or his defense counsel to have him participate in the proceedings including preparatory hearings and trials.

(2) A professional examiner may submit a written statement that contains an explanation or

an opinion based on his expertise or make an oral statement on such an explanation or opinion based on his expertise: *Provided*, That the examiner shall not participate in a conference on judgment.

(3) Subject to the presiding judge's permission, a professional examiner may ask a defendant or his defense counsel or any person involved in the case at bar, including a witness and an expert witness, questions directly concerning matters necessary for clarifying an issue an at bar.

(4) As regards a written statement submitted by a professional examiner or an oral statement made by such examiner on an explanation or opinion, the court shall give the public prosecutor, the defendant, or his defense counsel an opportunity to make a statement, oral or in writing, on his opinion.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 279-3 (Revocation of Decision on Professional Examiner's Participation)

(1) A court may, if deemed proper, revoke a decision under Article 279-2 (1), upon a motion of the public prosecutor, the defendant, or his defense counsel or ex officio.

(2) A court shall, upon a motion of the defendant or his defense counsel, and the public prosecutor in concert to revoke a decision under Article 279-2 (1), revoke the decision.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 279-4 (Designation of Professional Examiners)

(1) When a court intends to have a professional examiner participate in a litigation pursuant to Article 279-2 (1), it shall hear the opinions of the public prosecutor and the defendant or his defense counsel to designate one or more professional examiners for each case.

(2) A professional examiner shall be entitled to compensation as prescribed by the Supreme Court Regulations, and other expenses including travel expense, daily allowance, and accommodations, if necessary, may be paid to him.

(3) Other necessary matters concerning designation of a professional examiner shall be prescribed by the Supreme Court Regulations.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 279-5 (Exclusion of and Challenge against Professional Examiner)

(1) Articles 17 through 20 and 23 shall apply *mutatis mutandis* to professional examiners.

(2) If there is a motion to exclude or challenge a professional examiner, the professional examiner concerned may not participate in the litigation of the case at bar until a decision on such motion becomes final and conclusive. In such instance, the professional examiner concerned may make a statement on the motion for exclusion or challenge.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 279-6 (Power of Assigned Judge)

In cases where an assigned or delegated judge presides a litigation, the duties of the court or the presiding judge under the provisions of Article 279-2 (2) through (4) shall be carried out by the assigned or delegated judge.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 279-7 (Offense of Divulgence of Secret)

A professional examiner or a person who served as a professional examiner shall be punished by imprisonment, with or without prison labor, for two years or less or a fine not exceeding ten million won, if he divulges other person's secret known to him in the course of performance of his duties as a professional examiner.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 279-8 (Legal Fiction of Public Official for Application of Penal Provisions)

A professional examiner shall be regarded as a public official in applying penal provisions of Articles 129 through 132 of the Criminal Act.

[This Article Newly Inserted by Act No. 8730, Dec. 21, 2007]

Article 280 (Prohibition of Body Restriction in Court)

The defendant in public trial court shall be subject to no physical restraint: *Provided*, That the presiding judge may, if the defendant employs violence or it is deemed that he may flee, order restriction of body of the defendant or take other necessary measures. *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 281 (Duty of Defendant to Remain in Court and Court Police)

(1) The defendant shall not leave the court without permission of the presiding judge.

(2) The presiding judge may take necessary measures to prevent the defendant from leaving court and to maintain order in court.

Article 282 (Required Defense)

With regard to any case falling under any subparagraph of Article 33 (1) or to any case for which a defense counsel is appointed under the provisions of paragraphs (2) and (3) of the same Article, the court may not sit without the defense counsel: *Provided*, That this shall not apply to any case where only a judgment is pronounced. *<Amended by Act No. 7965, Jul. 19, 2006>*

Article 283 (Defense Counsel Assigned by Court)

In the case of the main sentence of Article 282, when the defense counsel fails to attend, the court shall appoint a defense counsel *ex officio*. *<Amended by Act No. 7965, Jul. 19, 2006>*

Article 283-2 (Defendant's Right to Remain Silent)

(1) A defendant has a right to remain silent or refuse to make a statement for an individual question.

(2) The presiding judge shall inform the defendant that he has a right to refuse to make a statement under paragraph (1).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 284 (Identification Question)

The presiding judge shall confirm that the defendant is the proper person by asking his name, age, reference domicile, domicile, and occupation. *<Amended by Act No. 8435, May 17, 2007>*

Article 285 (Opening Statement of Public Prosecutor)

The public prosecutor shall recite indicted facts, charged crimes, and applicable provisons of laws as described in the written prosecution: *Provided*, That the presiding judge may, if deemed necessary, have the public prosecutor state outlines of the prosecution.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 286 (Opening Statement of Defendant)

(1) The defendant shall make a statement on whether he admits indicted facts after the public prosecutor finishes his opening statement: *Provided*, That the foregoing shall not apply in cases where the defendant exercises his right to remain silent.

(2) The defendant and his defense counsel may plead facts favorable to the defendant.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 286-2 (Ruling on Summary Trial Procedures)

When the defendant makes a confession on charges at a public trial court, the court may make a ruling that the court will try only the charges according to the summary trial procedures. *<Amended by Act No. 5054, Dec. 29, 1995>*

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

Article 286-3 (Cancellation of Ruling)

When it is deemed that confessions made by the defendant concerning the cases on which the ruling under the preceding Article is made, are not reliable, or it is not proper markedly for the court to try such cases according to the summary trial procedures, the ruling shall be cancelled after seeking opinions of the public prosecutor concerned.

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

Article 287 (Presiding Judge's Organization of Issues and Statements of Public

Prosecutor and Defense Counsel concerning Evidence)

(1) After the defendant finishes his opening statement, the presiding judge may ask the defendant or his defense counsel questions necessary for organizing issues in order.

(2) Before beginning examination of evidence, the presiding judge may allow the public prosecutor and defense counsel to make statements concerning the arguments relating to indicted facts, plans for proving, and other matters: Provided, That a statement shall not be allowed if such statement involves any matter that is likely to bring about prejudice or bias of the court in the case and is based on any material that is inadmissible as evidence or that the party has no intention to produce as evidence.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 288 Deleted. *<by Act No. 705, Sep. 1, 1961>*

Article 289 Deleted. *<by Act No. 8496, Jun. 1, 2007>*

Article 290 (Examination of Evidence)

Examination of evidence shall be conducted after the proceedings under Article 287 are completed.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 291 (Examination of Evidence)

(1) Documents or articles produced by the litigant as evidence or the documents prepared or transmitted pursuant to the provisions of Articles 272 and 273 shall be shown, explained and examined separately in open court by the public prosecutor and the defense counsel or the defendant.

(2) The presiding judge may examine *ex officio* the documents or articles mentioned in the preceding paragraph in open court.

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 291-2 (Order of Examination of Evidence)

(1) The court shall examine the evidence that the defendant or his defense counsel moved to admit after the evidence that the public prosecutor moved to admit is examined.

(2) The court shall examine the evidence that it determined *ex officio* to examine after the examination under paragraph (1) is completed.

(3) The court may, *ex officio* or upon a motion of the public prosecutor, the defendant, or his defense counsel, change the order under paragraphs (1) and (2).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 292 (Examination Method of Documentary Evidence)

(1) When a documentary evidence is examined upon a motion of the public prosecutor, the

defendant, or his defense counsel, the movant shall recite the evidence.

(2) When the court examines a documentary evidence *ex officio*, the possessor or the presiding judge shall recite the evidence.

(3) Notwithstanding paragraphs (1) and (2), the presiding judge may, if deemed necessary, conduct the examination by manners of informing.

(4) The presiding judge may order a court official to give the recitation or announcement under the provisions of paragraphs (1) through (3).

(5) The presiding judge may, if it is deemed that inspection is more appropriate than any other method, conduct the examination by making a documental evidence available for inspection.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 292-2 (Examination Method of Evidential Materials)

(1) When an evidential material is examined upon a motion of the public prosecutor, the defendant, or his defense counsel, the movant shall produce the material.

(2) When the court examines an evidential material *ex officio*, the possessor or the presiding judge shall produce the material.

(3) The presiding judge may order a court official to show a material under paragraphs (1) and (2).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 292-3 (Examination Method of Miscellaneous Evidence)

Necessary matters concerning examination of any evidence other than documents, including drawings, photographs, audio tapes, video tapes, computer discs, and other goods made for storage of information, shall be prescribed by the Supreme Court Regulations.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 293 (Opinion of Defendant after Examination)

The presiding judge shall ask the defendant for his opinion about the examination of articles of evidence and shall inform him that he is able to apply for necessary examination of evidence for the protection of his rights.

Article 294 (Parties' Motion for Evidence)

(1) The public prosecutor, the defendant, or his defense counsel may produce a document or an article as evidence and may also move the court to examine a witness, an expert witness, an interpreter, or a translator.

(2) The court may, if it finds that the conclusion of a public trial is being delayed because the public prosecutor, the defendant, or his defense counsel intentionally makes a motion for

evidence late, deny the motion by ruling, ex officio or upon the opponent's motion.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 294-2 (Right of Victim to Make Statements)

(1) The court shall, upon receiving a petition from a victim of a crime or his legal representative (including his spouse, lineal relative, sibling, if the victim is dead; hereafter referred to as "victim" in this Article), admit such victim as witness for examination: *Provided*, That the foregoing shall not apply to any of the following cases: *<Amended by Act No. 8496, Jun. 1, 2007>*

1. Deleted; *<by Act No. 8496, Jun. 1, 2007>*

2. In cases where it is recognized that the victim has already made sufficient statements relating to a case concerned in trial proceedings and therefore, there is no necessity of restatement; and

3. In cases where there is apprehension that the procedure of public trial may be delayed markedly on account of the statement of the victim.

(2) The court shall, whenever it examine a victim pursuant to paragraph (1), give the victim an opportunity to make a statement on the degree and result of damage, his opinion concerning punishment of the defendant and other matters relating to the case at bar. *<Amended by Act No. 8496, Jun. 1, 2007>*

(3) In cases where there are a number of applicants under paragraph (1) concerning identical facts constituting the crime, the court may limit the number of persons to make a statement. *<Amended by Act No. 8496, Jun. 1, 2007>*

(4) In cases where the applicant pursuant to paragraph (1) has not appeared before the court after receiving a subpoena without a reasonable cause, the application is deemed to be withdrawn. *<Amended by Act No. 8496, Jun. 1, 2007>*

[This Article Newly Inserted by Act No. 3955, Nov. 28, 1987]

Article 294-3 (Non-disclosure of Victim's Statements)

(1) The court may, when it examines a victim of a crime as a witness, decide by a ruling to proceed the examination behind closed doors, if it is deemed necessary for the victim's privacy and personal safety, upon a request from the victim or his legal representative or the public prosecutor.

(2) The decision under paragraph (1) shall be informed with the reasons therefor.

(3) The court may permit a person to be present in the court even when it makes the decision under paragraph (1), if such person's presence is deemed proper.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 294-4 (Victim's Inspection and Copying of Litigation Record)

(1) A victim of a case pending in a court (including his spouse, lineal relative, and sibling, if

the victim is dead or suffers from severe mental or physical disorder), the legal representative of the victim, or the spouse, lineal relative, sibling, or attorney-at-law with power of attorney granted by the victim or his legal representative may file an application for inspection or copying of the litigation record with the presiding judge.

(2) The presiding judge shall, upon receiving the application under paragraph (1), notify the public prosecutor, the defendant, or his defense counsel of such application.

(3) The presiding judge may, if it is deemed necessary for the victim's remedies or if there is any other justifiable ground, and if it is proper in light of the nature of the crime involved, the status of the trial, and other circumstances, permit the victim to inspect or copy the litigation record.

(4) The presiding judge may, when he permits copying of the litigation record pursuant to paragraph (3), put a restriction on the purpose of use of the copied litigation record or put a condition as he deems proper.

(5) A person who inspected or copied the litigation record under paragraph (1) shall not disparage the reputation of the persons involved in the case unfairly or harm the peace of their lives or create any trouble to the investigation or trial in using the information acquired by such inspection or copying.

(6) No objection shall be allowed to the rulings under paragraphs (3) and (4).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 295 (Ruling on Application for Evidence)
The court shall decide on the application for evidence provided for in Articles 294 and 294-2, and may examine the evidence *ex officio*. *<Amended by Act No. 3955, Nov. 28, 1987>*

Article 296 (Objection on Examination of Evidence)
(1) A public prosecutor, the defendant or his defense counsel may raise objections regarding the examination of evidence.

(2) The court shall render a ruling on the objections raised under the preceding paragraph.

Article 296-2 (Examination of Defendant)
(1) The public prosecutor or the defense counsel may successively examine the defendant with necessary questions concerning indicted facts and circumstances after the examination of evidence is completed: *Provided*, That the presiding judge may, if deemed necessary, permit such examination even before the examination of evidence is completed.

(2) The presiding judge may, if deemed necessary, examine the defendant.

(3) Article 161-2 (1) through (3) and (5) shall apply *mutatis mutandis* to the examination under paragraph (1).

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 297 (Withdrawal from Court)

(1) When the presiding judge deems that a witness or an expert witness is unable to make a sufficient statement in the presence of the defendant or any of the persons in the court audience, he may order the latter to withdraw from court and make the former state his opinion. The same shall apply in cases where the presiding judge deems that the defendant is unable to make his statement in the presence of another defendant.

(2) In the case of withdrawal of the defendant in accordance with the preceding paragraph, when the co-defendant, witness or expert witness has finished his oral statement, the gist of the statement shall be announced to the defendant by the court official after making the withdrawn defendant appear in court. *<Amended by Act No. 705, Sep. 1, 1961; Act No. 8496, Jun. 1, 2007>*

Article 297-2 (Examination of Evidences in Summary Trial Procedures)

The provisions of Articles 161-2, 290 through 293, and 297 shall not apply to the cases on which the ruling under Article 286-2 is made, but the court may conduct examination of evidences according to the methods which are deemed appropriate by the court.

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

Article 298 (Changes in Indictment)

(1) The public prosecutor may, with permission of the competent court, add, delete or change charges or applicable provisions of Acts stated in the indictment. In this case, the identity of the charges shall not be disturbed.

(2) In cases where the court deems it reasonable in view of trial process, they shall request for the addition or change of charges or applicable provisions of Acts.

(3) When there are additions, withdrawal or changes of charges or applicable provisions of Acts, the court shall promptly notify the causes thereof to the defendant or his defense counsel.

(4) In cases where the court is afraid that the addition, withdrawal or change of charges or applicable provisions of Acts in the indictment under the preceding three paragraphs may increase disadvantages of the defendant, the court may, by a ruling, *ex officio* or upon request of the defendant or defense counsel, may suspend the public trial for a period necessary for the defendant to prepare his defense.

[This Article Wholly Amended by Act No. 2750, Jan. 25, 1973]

Article 299 (Restriction of Oral Proceedings)

The presiding judge shall, when a statement or inquiry of the parties connected with a lawsuit is repetitious or is a matter irrelevant to the trial, restrict it to the extent that it does not harm the substantial rights of the parties connected with the lawsuit.

Article 300 (Separate or Joint Oral Proceedings)

The court may, when it deems necessary, upon request of a public prosecutor, the defendant or his defense counsel or *ex officio*, by means of a ruling, order separate or joint oral proceedings.

Article 301 (Renewal of Proceedings)

Where a judge is changed subsequent to the commencement of public trial, the proceedings shall be renewed: *Provided*, That this shall not apply in cases where only a judgment is pronounced.

Article 301-2 (Cancellation on Summary Trial Procedure and Renewal of Proceedings)

When the ruling under Article 286-2 is cancelled, the proceedings shall be renewed: *Provided*, That this shall not apply to the case where a public prosecutor, the defendant or his defense counsel has no objection.

[This Article Newly Inserted by Act No. 2750, Jan. 25, 1973]

Article 302 (Opinion of Public Prosecutor after Examination of Evidence)

When the testimony and examination of evidence is finished, the public prosecutor shall state his opinion concerning the facts and the application of law: *Provided*, That in the case of Article 278, the public prosecutor shall be deemed to have stated his opinion in accordance with the indictment.

Article 303 (Last Statement of Defendant)

The presiding judge shall afford an opportunity to the defendant and his defense counsel to make a final plea after hearing the opinion of the public prosecutor.

Article 304 (Objection on Disposition by Presiding Judge)

(1) A public prosecutor, the defendant or his defense counsel may raise an objection to any disposition by a presiding judge.

(2) The court shall render a ruling on the objection raised under the preceding paragraph.

Article 305 (Re-Opening of Oral Proceedings)

A court may, if necessary, reopen oral proceedings which had been concluded, by means of a ruling, upon request of the public prosecutor, the defendant, or his defense counsel, or *ex officio*.

Article 306 (Suspension of Procedures of Public Trial)

(1) If the defendant is in unsound mind, the public trial shall be suspended, during the continuance of such state, by the court on request of a public prosecutor, or his defense counsel, or by means of a ruling.

(2) When the defendant is unable to appear in court because of sickness, the trial shall be suspended until it is possible for him to appear, by the court on request of a public prosecutor, the defendant or his defense counsel, or by means of a ruling.

(3) In suspending the trial in accordance with the preceding two paragraphs, a court shall

hear the opinion of a doctor.

(4) Where it is obvious that the defendant will be pronounced innocent, acquitted, exempted from punishment, or dismissed from the public prosecution, the decision shall be made without the defendant appearance in the court notwithstanding the provisions of paragraphs (1) and (2).

(5) The provisions of paragraphs (1) and (2) shall not apply in cases where a proxy may appear in the court in accordance with the provisions of Article 277.

SECTION 2 Evidence

Article 307 (No Evidence No Trial Principle)

(1) Fact finding shall be based on evidence.

(2) Criminal facts shall be proved to the extent that there is no reasonable doubt.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 308 (Principle of Free Evaluation of Evidence)

The probative value of evidence shall be left to the discretion of judges.

Article 308-2 (Exclusion of Evidence Illegally Obtained)

Any evidence obtained in violation of the due process shall not be admissible.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 309 (Probative Value of Confession Caused by Duress, etc.)

Confession of a defendant extracted by torture, violence, threat or after prolonged arrest or detention, or which is suspected to have been made involuntarily by means of fraud or other methods, shall not be admitted as evidence of guilt. <*Amended by Act No. 1500, Dec. 13, 1963*>

Article 310 (Evidence against Defendant)

When the confession of a defendant is the only evidence against him, the confession shall not be taken as evidence of guilt.

Article 310-2 (Hearsay Evidence and Limitation of Probative Value of Evidence)

Except as provided for in Articles 311 through 316, any document which contains a statement in place of the statement made at a preparatory hearing or during public trial, or any statement the import of which is another person's statement made outside preparatory hearing or at the time other than the public trial date, shall not be admitted as evidence.

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 311 (Protocols of Court or Judge)

Any protocol which contains statements made by the defendant or persons other than the defendant at a preparatory hearings or during public trial, and results of inspection of evidence by courts or judges may be used as evidences. The same shall apply to a protocol prepared pursuant to Articles 184 and 221-2. *<Amended by Act No. 2450, Jan. 25, 1973; Act No. 5054, Dec. 29, 1995>*

[This Article Wholly Amended by Act No. 705, Sep. 1, 1961]

Article 312 (Protocol Prepared by Public Prosecutor or Judicial Police Officer)

(1) A protocol in which the public prosecutor recorded a statement of a defendant when the defendant was at the stage of suspect is admissible as evidence, only if it was prepared in compliance with the due process and proper method, the defendant admits in his pleading in a preparatory hearing or a trial that its contents are the same as he stated, and it is proved that the statement recorded in the protocol was made in a particularly reliable state.

(2) Notwithstanding paragraph (1), if the defendant denies the authenticity in formation of the protocol, it is admissible as evidence, only when it is proved by a video-recorded product or any other objective means that the statement recorded in the protocol is the same as the defendant stated and was made in a particularly reliable state.

(3) A protocol prepared by any investigative institution other than a public prosecutor for examination of a suspect is admissible as evidence, only if it was prepared in compliance with the due process and proper method and the defendant, who was the suspect at the time, or his defense counsel admits its contents in a preparatory hearing or a trial.

(4) A protocol in which a public prosecutor or a judicial police officer recorded a statement of any person other than the defendant is admissible as evidence, only if it was prepared in compliance with the due process and proper method, it is proved by a statement made by the original stater on a preparatory hearing or a trial, a video-recorded product or any other objective means that the contents of the protocol are the same as what he stated before the public prosecutor or judicial police officer, and the defendant or his defense counsel has an opportunity to examine the original stater in relation to its contents in a preparatory hearing or a trial: *Provided*, That it is admissible only when it is proved that the statement recorded in the protocol was made in a particularly reliable state.

(5) The provisions of paragraphs (1) through (4) shall apply *mutatis mutandis* to the statements prepared by a defendant or any person other than a defendant in the course of investigation.

(6) A protocol in which a public prosecutor or judicial police officer recorded the result of verification is admissible as evidence, if it was prepared in compliance with the due process and proper method, and the authenticity of its formation is proved by a statement made by the author in a preparatory hearing or a trial.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 313 (Statement, etc.)

(1) A statement prepared by a defendant or any other person, except the protocols mentioned in the preceding two Articles, or a written statement, if there being the handwriting, a signature or a seal of maker or stater, may be introduced into evidence, if it is proven to be

genuine by the maker or stater thereof by his testimony or stater at a preparatory hearing or during a public trial: *Provided*, That the document containing the statement of the defendant may be introduced into evidence only when proven genuine by the testimony of the maker or stater thereof at a preparatory hearing or during a public trial and when the statement is made under circumstances which would lend it special credibility, regardless of the statement made by the defendant at a preparatory hearing or during public trial.

(2) The provision of paragraph (1) shall also apply to documents containing the development and results of expert opinion.

[This Article Wholly Amended by Act No. 705, Sep. 1, 1961]

Article 314 (Exception to Admissibility of Evidence)

In case of Article 312 or 313, if a person who is required to make a statement in a preparatory hearing or a trial is unable to make such statement because he is dead, ill, or resides abroad, his whereabout is not known, or there is any other similar cause, the relevant protocol and other documents are admissible as evidence: *Provided*, That it is admissible only when it is proved that the statement or preparation was made in a particularly reliable state.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 315 (Documents Admitted Ipso Facto Evidence)

The following documents may be admitted as evidence: *<Amended by Act No. 8435, May 17, 2007>*

1. A certificate of the family relationship record, a copy of notarial deed or such other public documents certifying the facts which a public office of Korea or an official of a foreign government has the duty or authority to certify;

2. An account book, logbook, or other documents prepared in the regular course of business; and

3. Documents prepared under circumstances which lend special credibility to the assertions of facts contained therein.

Article 316 (Statement of Hearsay)

(1) If a statement made by a person other than a defendant (including a person who interrogated the defendant as a suspect before the institution of public prosecution or who was involved in such interrogation; hereafter the same shall apply in this Article) in a preparatory hearing or a trial conveys a statement of the defendant, such statement is admissible as evidence only if it is proved that the statement was made in a particularly reliable state. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) Oral testimony given by a person other than the defendant at a preparatory hearing or during a public trial, the import of which is the statement of a person other than the defendant, shall be admitted into evidence only when the maker of the original statement is unable to testify because he is dead, ill, or resides abroad, his whereabout is not known, or there is any other similar reason, and only when there exist circumstances which lend special credibility to such testimony. *<Amended by Act No. 5054, Dec. 29, 1995; Act No. 8496, Jun. 1, 2007>*

[This Article Wholly Amended by Act No. 705, Sep. 1, 1961]

Article 317 (Voluntary Statements)

(1) Oral statements given by a defendant or a person other than the defendant shall not be admitted as evidence unless the statements are made voluntarily.

(2) A document which contains an oral statement referred to in the preceding paragraph shall not be admitted as evidence unless it is proved that they have been made voluntarily.

(3) In cases where a part of protocol refers to evidence by inspection is part to oral statement given by the defendant or a person other than the defendant, only the part thereof shall be governed by the preceding two paragraphs.

Article 318 (Agreement of Parties and Probative Value of Evidence)

(1) Documents or articles on which the public prosecutor and the defendant agree shall be admitted as evidence when deemed to be genuine.

(2) In cases where trial may be held without the presence of the defendant and the defendant does not appear, he shall be deemed to have given the consent mentioned in the preceding paragraph: *Provided*, That the same shall not apply where a proxy or defense counsel appears for the defendant.

Article 318-2 (Evidence for Challenging Admissibility of Evidence)

(1) A document or statement otherwise inadmissible as evidence under the provisions of Articles 312 through 316 is admissible, if it is produced to challenge the admissibility of a statement of a defendant or a person other than the defendant (including a person who interrogated the defendant as a suspect before the institution of public prosecution or who was involved in such interrogation; hereafter the same shall apply in this Article) in a preparatory hearing or a trial.

(2) Notwithstanding paragraph (1), a video-recorded product that contains a statement of a defendant or a person other than the defendant may be replayed to the defendant or such person for viewing in a preparatory hearing or a trial, only when it is deemed necessary to refresh his recollection concerning a matter of which the defendant or the person has now insufficient recollection in testifying.

[This Article Wholly Amended by Act No. 8496, Jun. 1, 2007]

Article 318-3 (Exceptions to Probative Value of Evidence in Summary Trial Procedures)

With regard to evidence of the cases on which the ruling under Article 286-2 is made, it shall be regarded that the consent under Article 318 (1) is made concerning the evidence of Articles 310-2, 312 through 314, and 316: *Provided*, That exceptions shall be made in cases where public prosecutors, the defendant or his defense counsel raise their objections against the use of evidences.

[This Article Newly Inserted by Act No. 2450, Jan. 25, 1973]

SECTION 3 Judgment of Trial

Article 318-4 (Sentencing)

(1) A sentence shall be pronounced on the day on which pleadings and arguments are closed: *Provided*, That a sentencing date may be set separately if there is an extraordinary reason.

(2) When a sentence is pronounced on the day on which pleadings and arguments are closed, the written judgment may be prepared after pronouncing the sentence.

(3) The sentencing date under the proviso of paragraph (1) shall be set within the limit of fourteen days after closing pleadings and arguments.

[This Article Newly Inserted by Act No. 8496, Jun. 1, 2007]

Article 319 (Judgment of Incompetence)

When a case pending against a defendant does not come within the jurisdiction of a court, a pronouncement to that effect shall be made by judgment. *<Amended by Act No. 8730, Dec. 21, 2007>*

Article 320 (Incompetency of Territorial Jurisdiction)

(1) A court shall not make a pronouncement of incompetency for lack of territorial jurisdiction, except upon request by the defendant.

(2) A request by the defendant for lack of territorial jurisdiction shall be made prior to a hearing of the case.

Article 321 (Pronouncement of Punishment and Matters to be Pronounced)

(1) When there is proof of guilt in regard to the case pending against a defendant, a penalty shall be pronounced by judgment except in case of remission of penalty or suspension of pronouncement of punishment.

(2) Suspension of execution of punishment, the calculation of the number of days in arrest before trial, and the period of confinement in workhouse shall be pronounced in the judgment simultaneously with the pronouncement of the penalty.

Article 322 (Remission of Penalty and Judgment of Suspension of Pronouncement of Punishment)

Where a remission of penalty or suspension of pronouncement of punishment is to be rendered in a case pending against the defendant, such pronouncement shall be made by judgment.

Article 323 (Reason to be Indicated in Judgment)

(1) In pronouncing the defendant guilty, the facts constituting the offense, the gist of the evidence, and the applicable Acts and subordinate statutes shall be clearly indicated in the

judgment.

(2) When an oral statement has been made as to legal grounds barring the formation of the offense, or as to facts by reason of which the penalty should be increased or diminished, the decision thereon shall be also indicated in the judgment.

Article 324 (Notice of Appeal)

In case of pronouncing punishment, the presiding judge shall announce to the defendant the time for appeal and the court to which appeal can be made.

Article 325 (Judgment of Not Guilty)

A finding "not guilty" shall be pronounced by judgment if the facts against the defendant do not constitute an offense or if the evidence of the criminal act is insufficient.

Article 326 (Judgment of Acquittal)

Acquittal shall be pronounced by judgment in the following cases:

1. Where a finally binding judgment has already been rendered;

2. Where amnesty has been proclaimed;

3. Where the limitations period has expired; and

4. Where the punishment has been repealed or the applicable Acts and subordinate statutes has been abolished subsequent to the commission of the offense.

Article 327 (Judgment Dismissing Public Prosecution)

Public prosecution shall be dismissed by judgment in the following cases:

1. Where the court has no jurisdiction over the defendant;

2. Where the procedure for instituting public prosecution is void by reason of its having been contrary to the provisions of Acts;

3. Where a new public prosecution is instituted for the case for which public prosecution has been already instituted;

4. Where public prosecution is instituted contrary to the provisions of Article 329;

5. Where there is withdrawal of a complaint in the case which shall be prosecuted only upon complaint; and

6. Where the injured party declares his intention not to prosecute a case which cannot be prosecuted against the clearly expressed intention of such person, or where the declaration of intention in such case is withdrawn.

Article 328 (Ruling Dismissing Public Prosecution)

(1) Public prosecution shall be dismissed by ruling in the following cases:

1. Where public prosecution has been withdrawn;

2. Where a defendant dies or a juristic person who is a defendant ceases to exist;

3. Where it cannot be tried in accordance with the provisions of Article 12 or 13; and

4. Where the counts in an indictment do not constitute an offense even if true.

(2) Against a ruling as referred to in the preceding paragraph immediate appeal to the High Court may be filed.

Article 329 (Withdrawal of Public Prosecution and Reinstitution of Public Prosecution)

When a ruling dismissing public prosecution as a result of its being withdrawn becomes final, a new public prosecution can be instituted for the same offense only if it is based upon newly discovered material evidence.

Article 330 (Judgment without Oral Statement of Defendant)

In cases where a defendant refuses to make a statement, retires from court without permission of the presiding judge or is ordered by the presiding judge to retire from court for the maintenance of order, a judgment may be rendered without hearing his statement.

Article 331 (Pronouncement of Judgment of "Not Guilty" and Effect of Warrant of Detention)

A warrant of detention shall lose its effect on rendition of a judgment of "not guilty", acquittal, remission of penalty, suspension of pronouncement of punishment, suspension of execution of punishment, dismissal of public prosecution or on the imposition of a fine or minor fine. *<Amended by Act No. 5054, Dec. 29, 1995>*

>>The proviso of this Article is deleted by Act No. 5054 on December 29, 1995 following the decision of unconstitutionality made by the Constitutional Court on December 24, 1992>>

Article 332 (Pronouncement of Confiscation and Article Seized)

When no pronouncement of confiscation is made in regard to the documents or articles seized, such documents or articles shall be deemed to have been released from seizure.

Article 333 (Returning of Property, Obtained though Crimes against Property, under Seizure)

(1) If, in regard to property, obtained though crimes against property and under seizure, there is a clear reason for restoration of such goods to the injured party, pronouncement of returning shall be made only by judgment.

(2) In the case of the preceding paragraph, a pronouncement directing the delivery of any article acquired as consideration for the property obtained though crimes against property to the

injured party shall be made by a judgment when such property have been disposed of.

(3) When no special pronouncement is made to the contrary in regard to goods provisionally restored, pronouncement of restoration shall be deemed to have been made.

(4) Notwithstanding the provisions of the preceding three paragraphs, any person interested may assert his right to such goods in accordance with civil procedure.

Article 334 (Judgment of Provisional Payment)

(1) When a court pronounces a fine, minor fine or additional collection on a defendant, the court may, upon request of a public prosecutor or *ex officio*, order the provisional payment of such money, if it is considered there is apprehension that it will be impossible or difficult to execute the judgment after the judgment becomes finally binding.

(2) The decision mentioned in the preceding paragraph may be pronounced by a judgment simultaneously with the pronouncement of penalty.

(3) The decision mentioned in the preceding paragraph may be executed immediately.

Article 335 (Procedure for Rescission of Suspension of Execution)

(1) In cases where a pronouncement suspending execution of a punishment is to be rescinded, the public prosecutor shall demand such rescission in a court which has the jurisdiction in the area where the defendant is or last resided.

(2) When the demand mentioned in the preceding paragraph has been made, a court shall render a ruling after hearing the opinion of the defendant or his proxy.

(3) Against the ruling under the preceding paragraph, an immediate appeal to the High Court may be filed.

(4) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to cases involving suspended punishment.

Article 336 (Procedure to be Determined in Concurrent Crime)

(1) In cases where a penalty is to be determined in accordance with Article 36, 39 (4) or 61 of the Criminal Act, a public prosecutor shall demand the court which rendered the final judgment upon the case to determine the penalty: *Provided*, That when a suspended pronouncement of punishment is to be revoked in accordance with Article 61 of the Criminal Act, it shall be in accordance with Article 323 and the reason for revocation of suspension of pronouncement shall be clearly stated. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) The provisions of paragraph (2) of the preceding Article shall apply *mutatis mutandis* to the preceding paragraph.

Article 337 (Judgment of Extinction of Punishment)

(1) As to the pronouncement referred to in Article 81 or 82 of the Criminal Act, the application shall be made to the court corresponding to the public prosecutor's office in which the criminal records are filed. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) The pronouncement referred to in the preceding paragraph, shall be made by means of a ruling.

(3) Against the ruling of dismissing the request mentioned in paragraph (1), immediate appeal to the High Court may be filed.

PART III APPEALS

CHAPTER I COMMON PROVISIONS

Article 338 (Person Entitled to Lodge Appeal)

(1) An appeal may be lodged by a public prosecutor or the defendant.

(2) Deleted. *<by Act No. 8730, Dec. 21, 2007>*

Article 339 (Persons Entitled to Lodge Appeal against Ruling)

Appeal on a ruling to the High Court may be filed by a person other than a public prosecutor or the defendant against whom a ruling has been rendered.

Article 340 (Appeal Lodged by Person Other than Parties)

The legal representative of a defendant may lodge an appeal on behalf of the defendant.

Article 341 (Idem)

(1) The spouse, a lineal relative, a sibling, or the attorney in fact or the defense counsel of a defendant in the original court may lodge an appeal on behalf of the defendant. *<Amended by Act No. 7427, Mar. 31, 2005>*

(2) Appeal mentioned in the preceding paragraph shall not be taken against the clearly expressed intention of the defendant.

Article 342 (Appeal against Part of Decision)

(1) An appeal may be filed against a part of decision.

(2) An appeal which is taken against one part shall be deemed to have effect over the other part which is indispensably connected with that part.

Article 343 (Period of Appeal)

(1) An appeal shall be made in writing within the prescribed period.

(2) The period for making an appeal shall begin to run from the day on which the decision

was pronounced or known.

Article 344 (Special Regulation for Person in Prison or Detention House)

(1) A written application for an appeal submitted by the defendant who is in a prison or detention house, to the warden of the prison or detention house or his deputy is regarded as appealed within the prescribed period. *<Amended by Act No. 1500, Dec. 13, 1963>*

(2) If the defendant is unable to prepare a written application himself in cases of the preceding paragraph, the warden of a prison or detention house shall cause a public official under his jurisdiction to do so. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 345 (Persons Entitled to Application for Appeal)

When a person entitled to make an appeal under Articles 338 through 341 has been prevented, by a cause not imputable to himself or his representative, from lodging an appeal within the period for making an appeal, he may apply for recovery of his right to appeal.

Article 346 (Form of Application for Recovery of Right of Appeal)

(1) Demand for recovery of the right of appeal shall be submitted to the original court in writing, within a period equivalent to the period for making an appeal from the day the cause which prevented the appeal ceased to exist.

(2) The reason for demanding recovery of the right of appeal shall be accompanied by an offer of presumptive proof.

(3) A person who demands recovery of the right of appeal shall make an application for appeal simultaneously with such demand.

Article 347 (Immediate Appeal for Recovery of Right of Appeal)

(1) The court which has received an application for recovery of right of appeal shall render a ruling over whether application is accepted or not.

(2) An immediate appeal may be filed against the ruling under the preceding paragraph.

Article 348 (Application for Recovery of Appeal and Suspension of Execution)

(1) When application is made for recovery of the right of appeal, the court may render a ruling suspending the execution of the decision until the ruling provided for in the preceding Article is rendered. *<Amended by Act No. 8496, Jun. 1, 2007>*

(2) In cases where a ruling suspending the execution mentioned in the preceding paragraph is rendered, a warrant of detention shall be issued against the defendant if it is necessary to detain him: *Provided*, That it shall be limited to particulars provided for in Article 70.

Article 349 (Waiver and Withdrawal of Appeal)

A public prosecutor, the defendant or a person mentioned in Article 339 may waive or withdraw an appeal: *Provided*, That the defendant or a person mentioned in Article 341 cannot waive an appeal in cases where he is pronounced with death penalty, imprisonment for life or

imprisonment without prison labor for life.

Article 350 (Waiver of Appeal and Consent of Legal Representative)

A defendant who has a legal representative shall obtain the consent of his legal representative before waiving or withdrawing an appeal: *Provided*, That this shall not apply when such consent cannot be obtained on account of death of his legal representative or for some other reason.

Article 351 (Withdrawal of Appeal and Consent of Defendant)

The legal representative of the defendant or those mentioned in Article 341 may withdraw an appeal in accordance with the consent of the defendant.

Article 352 (Method of Waiver of Appeal)

(1) Waiver or withdrawal of an appeal shall be made in writing, but in court it may be done orally.

(2) In the case of waiver or withdrawal of an appeal made orally, it shall be entered on the protocol.

Article 353 (Jurisdiction on Waiver of Appeal)

The waiver or withdrawal of an appeal shall be filed in the original court. But when the record of legal proceedings is not sent to the appeal court, the withdrawal of appeal may be submitted to the original court.

Article 354 (Prohibition to Re-appeal after Waiver)

A person who has withdrawn or waived an appeal or has consented to the waiver or withdrawal of an appeal shall not take another appeal in respect to the same case.

Article 355 (Special Regulation for Defendant in Prison)

The provisions of Article 344 shall apply *mutatis mutandis* in cases where the defendant in prison or detention house demands recovery of his right of appeal, waiver or withdrawal of the appeal. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 356 (Waiver, Relinquishment of Appeal and Notice to Party)

If there is a request for an appeal, waiver or withdrawal of an appeal, or a recovery of right of appeal, the court shall inform the other party without delay of the impending action.

CHAPTER II APPEAL FROM JUDGMENT BY TRIAL COURT

Article 357 (Judgment Subject to Appeal)

An appeal may be lodged, in cases where the judgment of the court of first instance is not satisfactory, from the judgment of a sole judge of the district court to a collegiate court of the

district court and from the judge of a collegiate division of the district court to the High Court. *<Amended by Act No. 1500, Dec. 13, 1963>*

[This Article Wholly Amended by Act No. 705, Sep. 1, 1961]

Article 358 (Time-Limit for Appeal)

The period allowed for appeal shall be seven days. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 359 (Method of Appeal)

An appeal shall be lodged by a petition brought before the original court. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 360 (Ruling on Dismissal of Appeal by Original Court)

(1) When it is obvious that appeal has been lodged contrary to the legal form or after the termination of the right of appeal, the original court shall dismiss it by means of a ruling. *<Amended by Act No. 1500, Dec. 13, 1963>*

(2) An immediate appeal to the High Court may be filed against such ruling under the preceding paragraph.

Article 361 (Delivery of Records of Trial and Real Evidence)

With the exception of Article 360, the original court shall send the records of trial and real evidence to the appeal court within fourteen days after receipt of a petition of appeal.

[This Article Wholly Amended by Act No. 5054, Dec. 29, 1995]

Article 361-2 (Acceptance of Records of Trial and Notification thereof)

(1) Where the appeal court has accepted the delivery of the records of the proceedings, both the appellant and the other party shall be immediately notified of the court's action. *<Amended by Act No. 1500, Dec. 13, 1963>*

(2) If a defense counsel has been selected before notification, mentioned in the preceding paragraph, is made, such notification shall also be given to the defense counsel.

(3) In cases where the defendant is in prison or detention house, the public prosecutor in the public prosecutor's office corresponding to the original court shall transfer the defendant, within fourteen days from receipt of notification as referred to in paragraph (1), to a prison or detention house located in the vicinity of the appeal court. *<Newly Inserted by Act No. 5054, Dec. 29, 1995>*

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 361-3 (Statement of Reasons for Appeal and Answer)

(1) The appellant or his defense counsel shall submit a statement of reasons for the appeal to the appeal court within twenty days from the date of acceptance of the notification mentioned in

the preceding Article. In this case, Article 344 shall apply *mutatis mutandis*. *<Amended by Act No. 1500, Dec. 13, 1963; Act No. 8730, Dec. 21, 2007>*

(2) The appeal court upon acceptance to the statement of reasons for appeal shall without delay send a duplicate or copy thereof to the other party. *<Amended by Act No. 1500, Dec. 13, 1963>*

(3) The other party shall submit an answer to the appeal court within ten days from the date of delivery of the reasons for appeal mentioned in the preceding paragraph. *<Amended by Act No. 1500, Dec. 13, 1963>*

(4) The appeal court upon acceptance of the answer shall without delay send a duplicate or copy thereof to the appellant or his defense counsel. *<Amended by Act No. 1500, Dec. 13, 1963>*

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 361-4 (Ruling Dismissing Appeal)

(1) If either the appellant or his defense counsel has failed to submit a statement of reasons for appeal within the period as set forth in paragraph (1) of the preceding Article, the appeal court shall dismiss the appeal by means of a ruling: *Provided*, That this provision shall not apply where there exists a fact to be examined *ex officio*, or when a reason for appeal is stated on the petition of appeal.

(2) Immediate appeal may be filed against a ruling under the preceding paragraph. *<Newly Inserted by Act No. 1500, Dec. 13, 1963>*

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 361-5 (Reasons for Appeal)

The following shall be reasons for an appeal against a judgment in the original instance: *<Amended by Act No. 1500, Dec. 13, 1963>*

1. When there is a violation of the Constitution of the Republic of Korea, Acts, Ordinances or regulations which have affected the decision of the court;

2. When the penalty has been abolished or changed or general amnesty has been proclaimed after the judgment;

3. When the basis for assuming or denying jurisdiction is against the Acts;

4. When the court which rendered an adjudication was not constituted as prescribed by Acts;

5. and 6. Deleted; *<by Act No. 1500, Dec. 13, 1963>*

7. When a judge who is not supposed to participate in the trial of a case has participated in the trial;

8. When a judge who did not participate in the trial of case, has participated in rendering the judgment;

9. When there has been a violation of the provisions concerning opening of public trial to the public;

10. Deleted; *<by Act No. 1500, Dec. 13, 1963>*

11. When the reason are not included in the judgment or when the reason stated is not compatible with judgment;

12. Deleted; *<by Act No. 1500, Dec. 13, 1963>*

13. When there exist reasons for applying for renewal of procedure;

14. When the judgment is affected by mistake of fact; and

15. When there exists reason to find the amount of punishment sentenced unreasonable.

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 362 (Ruling on Dismissal of Appeal)

(1) If the original court does not determine the dismissal of an appeal falling within the provisions of Article 360, the appeal court shall dismiss the appeal by means of a ruling. *<Amended by Act No. 1500, Dec. 13, 1963>*

(2) Immediate appeal to the Supreme Court may be filed against such ruling as referred to in the preceding paragraph.

Article 363 (Ruling on Dismissal of Public Prosecution)

(1) If a case falls under any of subparagraph of Article 328 (1), the appeal court shall dismiss the public prosecution by means of a ruling. *<Amended by Act No. 1500, Dec. 13, 1963; Act No. 5054, Dec. 29, 1995>*

(2) Immediate appeal to the Supreme Court may be filed against such ruling as referred to in the preceding paragraph.

Article 364 (Judgment by Appeal Court)

(1) The appeal court shall render a decision *ex officio* on the grounds included in the reason for appeal. *<Amended by Act No. 1500, Dec. 13, 1963>*

(2) The appeal court may render a decision *ex officio* on the grounds which affected a judgment, even if the ground is not included in the reason for appeal. *<Amended by Act No. 1500, Dec. 13, 1963>*

(3) An evidence which could be an evidence at the court of first instance may be evidence at the court of appeal. *<Newly Inserted by Act No. 1500, Dec. 13, 1963>*

(4) An appeal shall be dismissed by means of a judgment when the court decides that no ground for appeal exists. *<Newly Inserted by Act No. 1500, Dec. 13, 1963>*

(5) When it is evident that there exists no ground for appeal, the court may dismiss an appeal by a judgment, without oral proceedings, by examining the petition of appeal, the statement of reason for appeal or any other records of proceedings. *<Newly Inserted by Act No. 1500, Dec. 13, 1963>*

(6) The original judgment shall be quashed and a new judgment announced when the court decides that any of the grounds for appeal are valid. *<Newly Inserted by Act No. 1500, Dec. 13, 1963>*

[This Article Wholly Amended by Act No. 705, Sep. 1, 1961]

Article 364-2 (Quashing Judgment for Co-defendant)

If, in a case where the original judgment is quashed for one defendant, the same reason for quashing exists also with respect to co-defendant who appealed, the original judgment against the co-defendant shall also be quashed. *<Amended by Act No. 1500, Dec. 13, 1963>*

[This Article Newly Inserted by Act No. 705, Sep. 1, 1961]

Article 365 (Presence of Defendant)

(1) If a defendant does not appear on the date set for public trial, another date shall be set. *<Amended by Act No. 705, Sep. 1, 1961>*

(2) A judgment may be pronounced without oral statement of the defendant when the defendant does not appear in the court on the subsequent date without proper reason.

Article 366 (Return of Case to Original Court)

When the original judgment is to be quashed on the ground that the judgment on dismissal of public prosecution or jurisdictional incompetency is contrary to the Acts, the case shall be sent back to the original court by means of a judgment.

Article 367 (Transfer of Case to Competent Court)

When the original judgment is to be quashed on the ground that the basis for jurisdiction is contrary to the Acts, the case shall, by means of a judgment, be transferred to a competent court of first instance: *Provided*, That if the appeal court has itself jurisdiction of first instance over the case, it shall try the case as court of first instance. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 368 (Prohibition of Judgment Disadvantageous to Defendant)

In cases where appeal has been lodged by, or for the benefit of the defendant, no penalty more severe than that imposed by the original judgment shall be pronounced. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 369 (What must be Stated in Text of Appeal Judgment)

The reasons for the decision of the court shall be stated in the text of judgment rendered by the appeal court, and the facts and evidences stated on the original judgment may be quoted

in the judgment of the appeal court. *<Amended by Act No. 1500, Dec. 13, 1963>*

[This Article Wholly Amended by Act No. 705, Sep. 1, 1961]

Article 370 (Applicable Mutatis Mutandis Provisions)

The provisions relating to public trial in Part II shall apply *mutatis mutandis* to trial on appeal, except as otherwise provided in this Chapter. *<Amended by Act No. 1500, Dec. 13, 1963>*

CHAPTER III APPEAL TO SUPREME COURT

Article 371 (Judgment Subject to Appeal)

Re-appeal may be lodged, in cases where the finding of the court of second instance is not satisfactory, to the Supreme Court. *<Amended by Act No. 1500, Dec. 13, 1963>*

[This Article Wholly Amended by Act No. 705, Sep. 1, 1961]

Article 372 (Direct Appeal to Supreme Court from District Court)

In the following cases, appeal may be made directly to the Supreme Court without filing appeal to the High Court against judgment in the first instance: *<Amended by Act No. 705, Sep. 1, 1961; Act No. 1500, Dec. 13, 1963>*

1. When the court fails to apply Acts and subordinate statutes to facts which are recognized in the original judgment, or where there is an error in the application of Acts and subordinate statutes; and

2. When the penalty has been abolished or changed or general amnesty has been proclaimed subsequent to the rendition of the original judgment.

Article 373 (Appeal to High Court and Direct Appeal to Supreme Court from District Court)

An appeal to the Supreme Court against the judgment in first instance shall lose its effect if an appeal to the High Court is filed: *Provided*, That this shall not apply when appeal has been withdrawn or dismissed by means of a ruling. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 374 (Period Allowed for Appeal)

The period allowed for appeal shall be seven days.

Article 375 (Method of Request Appeal)

An appeal shall be lodged by presenting a petition of appeal to the original court.

Article 376 (Ruling on Dismissal of Appeal by Original Court)

(1) Where it is obvious that the appeal is made contrary to the legal form or has been filed

after the termination of the right to appeal, the original court shall dismiss it by means of a ruling.

(2) Immediate appeal may be filed against the ruling as referred to in the preceding paragraph.

Article 377 (Delivery of Records of Trial and Real Evidence)

With the exception of Article 376, the original court shall send the records of trial and real evidence to the Re-appeal Court within fourteen days after receipt of a petition of re-appeal.

[This Article Wholly Amended by Act No. 5054, Dec. 29, 1995]

Article 378 (Receiving Records of Trial and Notification)

(1) When the Re-appeal Court receives the record of proceedings, it shall immediately inform the appellant and appellee of the reason. *<Amended by Act No. 705, Sep. 1, 1961>*

(2) When a defense counsel is appointed before the notification mentioned in the preceding paragraph, the court shall inform the defense counsel.

Article 379 (Statement of Reasons of Appeal and Written Answer)

(1) An appellant or defense counsel shall submit a statement of the reason for appeal to the Re-appeal Court within twenty days from the day when he received the notification provided for in the preceding Article.

In In this case, Article 344 shall apply *mutatis mutandis*. *<Amended by Act No. 705, Sep. 1, 1961; Act No. 8730, Dec. 21, 2007>*

(2) The reason shall be expressed distinctly in the statement for appeal quoting the facts on the basis of the records of trial and evidence already made and examined by the original court.

(3) The Re-appeal Court which has accepted the statement for re-appeal shall serve a copy or transcript of the statement to the other party without delay. *<Amended by Act No. 705, Sep. 1, 1961>*

(4) The appellee may submit a written answer to the Re-appeal Court within ten days from the date on which he has been served in accordance with the preceding paragraph. *<Amended by Act No. 705, Sep. 1, 1961>*

(5) The Re-appeal Court which has accepted a written answer shall serve a copy or transcript of the statement on the appellant or defense counsel without delay. *<Amended by Act No. 705, Sep. 1, 1961>*

Article 380 (Ruling of Dismissal of Appeal)

When appellant or defense counsel does not submit a statement of reason for the appeal within the period referred to in paragraph (1) of the preceding Article, the court shall dismiss the appeal by means of a ruling: *Provided*, That this shall not apply when there are reasons entered in the petition of appeal. *<Amended by Act No. 705, Sep. 1, 1961>*

Article 381 (Ruling of Dismissal of Appeal)

The Re-appeal Court shall dismiss an appeal by means of a ruling when the original court fails to render a ruling dismissing appeal subject to the provisions of Article 376. *<Amended by Act No. 705, Sep. 1, 1961>*

Article 382 (Ruling of Dismissal of Appeal)

An appeal shall be dismissed by means of a ruling, if the provisions of subparagraphs of Article 328 (1) are applicable.

[This Article Wholly Amended by Act No. 5054, Dec. 29, 1995]

Article 383 (Reasons of Appeal)

An appeal may be lodged against a judgment in the original instance rendered by the High Court for the following grounds: *<Amended by Act No. 705, Sep. 1, 1961; Act No. 1500, Dec. 13, 1963>*

1. In cases where there has been a violation of the Constitution of the Republic of Korea, Acts, Ordinances or regulations which have affected a decision of the court;

2. In cases where punishment is abolished or changed or general amnesty has been proclaimed after a decision of the court has been rendered;

3. In cases where there is a reason to request for a review; and

4. Regarding those cases for which punishment of death, a life term or an imprisonment or imprisonment without labor for more than ten years has been imposed, when the judgment attached was affected by grave mistake of the fact or when the amount of the punishment is extremely improper.

Article 384 (Scope of Investigation)

The Re-appeal Court shall investigate all the matters contained in the statement accompanying the appeal: *Provided*, That in cases of subparagraphs 1 through 3 of the preceding Article, the court may render a decision *ex officio* thereon, even if it is not included in the reasons for re-appeal.

[This Article Wholly Amended by Act No. 1500, Dec. 13, 1963]

Article 385 Deleted. *<by Act No. 705, Sep. 1, 1961>*

Article 386 (Qualification of Defense Counsel)

For trial on appeal, no person other than an attorney shall be appointed as defense counsel.

Article 387 (Ability of Argument)

In a trial on an appeal, only the defense counsel shall argue on behalf of the defendant.

Article 388 (Form of Argument)

The public prosecutor and the defense counsel shall argue on the basis of the statement of reasons accompanying the appeal.

Article 389 (Absence, etc. of Defense Counsel)

(1) If a defense counsel does not appear, or no defense counsel has been appointed, a judgment may be given after having the oral statement of a public prosecutor: *Provided*, That the same shall not apply to the case of Article 283.

(2) In the case of the preceding paragraph, when a legitimate statement of reason is presented, it shall be considered as an oral statement.

Article 389-2 (Summon of Defendant)

It is not necessary for the defendant to be summoned on the date for a trial of re-appeal.

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 390 (Judgment by Examination of Documents)

(1) The Re-appeal Court may render an adjudication, without oral pleadings, after examining the petition of appeal, the statement of reasons for reappeal, or any other records of the proceedings.

(2) The Re-appeal Court may, if necessary, hold a hearing for a specific issue to hear a testimony of a third party involved in the case at bar. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

[This Article Wholly Amended by Act No. 705, Sep. 1, 1961]

Article 391 (Quashing of Original Judgment)

When there exist reasons for an appeal, the original judgment shall be quashed by means of judgment.

Article 392 (Quashing for Co-Defendant)

In cases where the original judgment for the benefit of a defendant is quashed, such judgment shall also affect a co-defendant by whom an appeal was lodged if the ground for quashing is common to the co-defendant.

Article 393 (Dismissal of Public Prosecution and Judgment of Returning)

In cases where the original judgment or judgment of the court of first instance is to be quashed on the ground that an appeal properly filed was dismissed, it shall be sent back to the original court or the court of first instance by means of a judgment.

Article 394 (Recognition of Jurisdiction and Judgment of Transfer)

In cases where the original judgment or the judgment of the court of first instance is to be quashed on the ground that the basis for jurisdiction is contrary to Acts, it shall be transferred to

the court of proper jurisdiction by means of a judgment.

Article 395 (Jurisdiction Erroneously Refused)

In cases where the original judgment or the judgment of the court of first instance is to be quashed on the ground that the basis for refusing jurisdiction is against the Acts, it shall be sent back to the original court or the court of first instance by means of a judgment.

Article 396 (Judgment of Quashing)

(1) In cases where the original judgment is to be quashed, then the Reappeal Court may render a judgment on the basis of the record and evidence already made and examined by the original court or the court of first instance and may render a direct judgment on the case. *<Amended by Act No. 705, Sep. 1, 1961>*

(2) The provisions of Article 368 shall apply *mutatis mutandis* to the judgment provided for in the preceding paragraph.

Article 397 (Return or Transfer to Original Court)

When the original judgment is quashed on grounds other than the preceding four Articles, the case either shall be sent back to the original court, or transferred to another court of similar jurisdiction, by means of a judgment.

Article 398 (Form of Entry of Decision of Document)

The reason for judgment concerning appeal shall be written in the statement of decision. *<Amended by Act No. 705, Sep. 1, 1961>*

Article 399 (Applicable Provisions)

The provisions of the preceding Chapter shall apply *mutatis mutandis* to the trial of appeal, except as otherwise provided in this Chapter.

Article 400 (Request for Amendment of Judgment)

(1) The Re-appeal Court, where it notes any error in the content of its judgment, may *ex officio* amend it by a judgment upon request of the public prosecutor, the appellant or the defense counsel. *<Amended by Act No. 705, Sep. 1, 1961>*

(2) The request mentioned in the preceding paragraph shall be made within ten days after the day when the judgment has been pronounced.

(3) The request mentioned in paragraph (1) shall be made in writing together with the reason therefor.

Article 401 (Judgment for Amendment)

(1) A judgment for amendment may be rendered without opening oral proceedings.

(2) The court of an appeal shall reject a request, by means of a ruling, without delay when the request for amendment is not favorably considered.

CHAPTER IV APPEAL FROM RULING

Article 402 (Judgment Subject to Appeal)

Against a ruling of a court, an appeal may, if there is any objection, be made: *Provided*, That this shall not apply in cases where it is specially provided in this Act.

Article 403 (Appeal from Ruling Prior to Judgment)

(1) Against a ruling rendered, prior to the judgment, concerning the jurisdiction of a court or the proceedings, no appeal shall be made except in cases where it is specially provided in this Act.

(2) The provisions of the preceding paragraph shall not apply to a ruling relating to detention, release on bail, seizure or restoration of articles seized or a ruling relating to confinement of the defendant in connection with examination by expert witnesses.

Article 404 (Time to File Ordinary Appeal)

With the exception of immediate appeal, appeal may be made at any time: *Provided*, That this shall not apply when it is no longer of advantage to have the original ruling cancelled. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 405 (Period Allowed for Immediate Appeal)

The period allowed for immediate appeal shall be three days.

Article 406 (Procedure of Appeal)

An appeal shall be filed by presenting a written application to the original court.

Article 407 (Ruling of Dismissal of Appeal by Original Court)

(1) In cases where it is obvious that the application for appeal is contrary to the form prescribed by Acts or it is filed after the termination of the right of appeal, the original court shall dismiss it by means of a ruling.

(2) An immediate appeal may be filed against the ruling of the preceding paragraph.

Article 408 (Ruling of Renewal by Original Court)

(1) In cases where the original court finds appeal to be well-founded, it shall correct the error in the ruling.

(2) Where the whole or a part of an appeal is groundless, the court shall send the written application with its written opinions attached thereto to the court of appeal within three days from the day when it received the application.

Article 409 (Suspension of Execution and Ordinary Appeal)

With the exception of immediate appeal, appeal shall not have the effect of suspending the execution of the decision: *Provided*, That the original court or the court of appeal may, by means of a ruling, suspend the execution until the appeal shall have been adjudicated.

Article 410 (Immediate Appeal and Effect of Suspension of Execution)

During the period allowed for immediate appeal or after it is made, the execution of the decision shall be suspended.

Article 411 (Delivery of Records of Proceedings)

(1) The original court shall, if deemed necessary, send the records of proceedings and articles of evidence to the court of appeal.

(2) The court of appeal may demand the records of proceedings and articles of evidence.

(3) In the cases of the preceding two paragraphs, the court of appeal shall inform the parties within five days from the day the records of proceedings and articles of evidence are received.

Article 412 (Statement by Public Prosecutor)

The public prosecutor may state his opinion regarding an appeal.

Article 413 (Ruling of Dismissal of Appeal)

In cases where the original court does not dismiss an appeal which falls under the provisions of Article 407, the court of appeal shall dismiss it by means of a ruling.

Article 414 (Dismissal of Appeal and Recognition of Reasons for Appeal)

(1) In cases where the appeal is found to be groundless, it shall be dismissed by means of a ruling.

(2) If the appeal is well-founded, the original ruling shall be cancelled by ruling and, if necessary, a decision against the case of appeal shall be rendered anew.

Article 415 (Re-Appeal)

Against a ruling rendered by the court of appeal or the High Court, an immediate appeal may be lodged to the Supreme Court only on the ground that there has been a violation of the Constitution of the Republic of Korea, Acts, Ordinances or regulations which have affected the decision of the court.

[This Article Wholly Amended by Act No. 1500, Dec. 13, 1963]

Article 416 (Quasi-Appeal)

(1) A person who has an objection against a ruling rendered by the presiding judge or a commissioned judge which falls under any of the following subparagraphs may demand cancellation or alteration of it to the court to which the judge belongs:

1. A ruling dismissing a motion for challenge;

2. A ruling relating to confinement, release on bail, seizure or restoration of articles seized;

3. A ruling ordering confinement for the purpose of examination by expert witnesses; and

4. A ruling ordering fine for negligence or compensation for expenses to a witness, expert witness, interpreter, or translator.

(2) A ruling requested in relation to the above paragraphs shall be rendered by the collegiate court.

(3) The demand mentioned in paragraph (1) shall be made within three days after the date on which the notification for ruling is made.

(4) The execution of a ruling provided in paragraph (1) 4 shall be suspended during the period specified in the preceding paragraph and during which a demand is made.

Article 417 (Idem)

A person who is dissatisfied with a disposition made by a public prosecutor or a judicial police officer concerning confinement, seizure or return of a seized article and a disposition concerning participation of the defense counsel under Article 243-2, may file a petition for cancellation or alteration of such disposition with the court having jurisdiction over the place of execution of such disposition or the court corresponding to the public prosecutor's office to which the public prosecutor belongs. *<Amended by Act No. 8496, Jun. 1, 2007; Act No. 8730, Dec. 21, 2007>*

Article 418 (Form of Quasi-Appeal)

The demand provided in the preceding two Articles shall be made by presenting a written application to the competent court.

Article 419 (Applicable Provisions)

The provisions of Articles 409, 413, 414 and 415 shall apply *mutatis mutandis* to cases arising under Article 416 or 417. *<Amended by Act No. 5054, Dec. 29, 1995>*

PART IV SPECIAL PROCEEDINGS OF TRIAL

CHAPTER I REOPENING OF PROCEDURE

Article 420 (Reopening of Procedure)

A request for reopening of procedure may be made for the benefit of a person against whom a judgment of "guilty" has become finally binding, in the following cases:

1. When documentary evidence or articles of evidence, on which the original judgment was based, have been proved by another finally binding judgment to have been forged or altered;

2. When testimony, expert opinion, interpretation or translation on which the original judgment was based, has been proved by another finally binding judgment to be false;

3. When the offense of false accusation committed against a person pronounced guilty has been proved by another final judgment;

4. When the decision on which the original judgment was based has been altered by another final decision;

5. When clear evidence has been newly discovered that in regard to a person pronounced guilty, a judgment of "not guilty" or acquittal should be pronounced, or in the case of a person condemned, a judgment of remission of a penalty should be pronounced, or a lighter offense than that found by the original judgment should be given;

6. When, in a case in which a judgment of "guilty" has been rendered for the offense of infringing a copyright, a patent right, a utility model right, a design right or a trademark right, a final decision of the Korea Industrial Property Office holding such right to be void has been made or a judgment of a court has been rendered to the same effect; and

7. When it is proved by a final judgment that an offense had been committed in connection with official functions by a judge who participated in the decision by the original court or the court below, or in the inquiry which formed the basis of the original judgment, or by a public prosecutor or judicial police officer who participated in the institution of a public prosecution or in the investigation which formed the basis of the public prosecution: *Provided*, That in case that public prosecution was instituted against such judge, public prosecutor or judicial police officer prior to the rendition of the original judgment, this shall apply only when the court which rendered the original judgement was unaware such facts.

Article 421 (Reopening of Procedure)

(1) A request for reopening of procedure may be made against a final judgment by which appeal or appeal was rendered for a cause specified in subparagraph 1, 2 or 7 of the preceding Article. *<Amended by Act No. 1500, Dec. 13, 1963>*

(2) After a judgment to reopen procedure has been rendered in a case in which reopening of procedure against a final judgment in first instance was requested, reopening of procedure shall not be requested against a judgment dismissing an appeal. *<Amended by Act No. 1500, Dec. 13, 1963>*

(3) After a judgment for reopening of procedure has been rendered in a case in which reopening of procedure against a final judgment in the first or second instance was requested, reopening of procedure shall not be requested against a judgment dismissing the appeal.

Article 422 (Evidence in Finally Binding Judgment)

When it is impossible to get a final judgment as proof of an offense in accordance with the preceding two Articles, then if it appears that such a final judgment should be made, the court may grant a request for reopening of procedure on proof of such facts: *Provided*, That this shall not apply to a case in which final judgment is prevented by lack of evidence.

Article 423 (Jurisdiction over Reopening of Procedure)

A request for reopening of procedure shall be made in the jurisdiction of the court which has rendered the original judgment.

Article 424 (Persons Entitled to Request Reopening Procedure)
Following person may request reopening of procedure:

1. A public prosecutor;

2. A person who has been pronounced guilty;

3. The legal representative of a person who has been pronounced guilty; and

4. The spouse or lineal relative or brother or sister of person pronounced guilty if the latter dies or is in a state of unsound mind.

Article 425 (Reopening of Procedure to be Requested only by Public Prosecutor)
A request for reopening of procedure for the causes specified in subparagraph 7 of Article 420, may be made only by a public prosecutor if the offense was instigated by the person who has been pronounced "guilty".

Article 426 (Selection of Defense Counsel)
(1) When a person other than a public prosecutor requests reopening of procedure, he may select a defense counsel.

(2) The selection of defense counsel under the provisions of the preceding paragraph shall remain valid until a judgment is rendered on the reopening of procedure.

Article 427 (Time to Request Reopening of Procedure)
Reopening of procedure may be requested even after execution of the penalty has been completed or where the penalty is not to be executed.

Article 428 (Reopening of Procedure and Effect of Suspension of Execution)
Request for reopening of procedure shall not have the effect of staying the execution of the penalty: *Provided*, That a public prosecutor of a public prosecutor's office corresponding to the competent court may stay the execution of the penalty until a decision is rendered in regard to the request for reopening of procedure.

Article 429 (Withdrawal of Request for Reopening of Procedure)
(1) Request for reopening of procedure may be withdrawn.

(2) A person who has withdrawn a request for reopening of procedure shall not again request reopening of procedure for the same cause.

Article 430 (Special Regulation)

The provisions of Article 344 shall apply *mutatis mutandis* to a request for reopening of procedure and the withdrawal thereof.

Article 431 (Investigation of Fact)

(1) On receipt of a request for reopening of procedure, a court may, if necessary, order a member of the collegiate court to conduct an investigation of facts relating to the request or may requisition a judge of another court, to undertake it.

(2) In the case of the preceding paragraph, a commissioned judge of a requisitioned judge shall have the same power as a court or a presiding judge.

Article 432 (Ruling for Reopening of Procedure and Opening of Party)

Before the court renders a ruling on a request for reopening of procedure, it shall hear the opinion of the applicant and the other party: *Provided*, That in case a request is made by the legal representative of a person who has been pronounced "guilty", the court shall hear the opinion of such person.

Article 433 (Ruling of Dismissal of Request)

When it is obvious that a request for reopening of procedure has been made contrary to the form prescribed by Acts or subsequent to the termination of the right to make such request, it shall be dismissed by means of a ruling.

Article 434 (Ruling of Dismissal of Request)

(1) When a request for reopening of procedure is considered to be without grounds, it shall be dismissed by means of a ruling.

(2) After the ruling mentioned in the preceding paragraph has been rendered, reopening of procedure may not again be requested for the same cause by any person. *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 435 (Ruling for Commencing Reopening of Procedure)

(1) When a request for reopening of procedure is considered to be wellfounded, a ruling for commencing reopening of procedure shall be rendered.

(2) When a ruling for commencing reopening of procedure has been rendered, the execution of the penalty shall be stayed by means of a ruling.

Article 436 (Concurrence of Request and Ruling of Dismissal of Request)

(1) If a motion for reopening of procedure has been requested in respect to final judgment dismissing appeal and also to a judgment of first instance which has become final by the above judgment, then if the court of first instance renders a judgment for reopening of procedure, the court of appeal shall, by means of a ruling, dismiss the request for reopening of procedure.

(2) When, in case reopening of procedure has been requested in respect to a final judgment dismissing appeal against the judgment in first or second instance and to a judgment of first or second instance which has become finally binding by the above judgment, the court of first or

second instance has rendered a judgment to the reopening procedure, the court of appeal shall, by means of a ruling, dismiss the request for reopening of procedure.

[This Article Wholly Amended by Act No. 1500, Dec. 13, 1963]

Article 437 (Immediate Appeal)

Immediate appeal may be made against the rulings mentioned in Articles 433, 434 (1), 435 (1) and 436 (1).

Article 438 (Judgment for Reopening of Procedure)

(1) In a case in which a ruling for commencing reopening of procedure has become final, a court shall, except in the case of Article 436, conduct a trial *de novo* according to its grade.

(2) The provisions of Article 306 (1) and Article 328 (1) 2, however, shall not apply to the trial mentioned in the preceding paragraph in the following cases:

1. When a request for reopening of procedure has been made on behalf of a deceased person or a person who is in a state of unsound mind with no hope of recovery; and

2. When a person who has been pronounced "guilty" has, prior to a judgment being rendered in the reopening of procedure, died or fallen into a state of unsound mind from which there is no hope of recovery.

(3) In the case of the preceding paragraph, trial may be held without the appearance of the defendant: *Provided*, That it shall not be held if his defense counsel does not appear.

(4) If, in the case of the preceding two paragraphs, the person who has requested reopening of procedure does not select a defense counsel, a presiding judge shall, *ex officio*, assign a defense counsel.

Article 439 (No Imposition of Heavier Punishment)

In reopening of procedure, no penalty heavier than that pronounced in the original judgment shall be imposed.

Article 440 (Notification of Judgment "Not Guilty")

When a pronouncement of "not guilty" has been made after reopening of procedure, such judgment shall be published in the Gazette and newspaper at the seat of the court.

CHAPTER II EXTRAORDINARY APPEAL

Article 441 (Reasons for Extraordinary Appeal)

When it has been discovered after a judgment has become binding that the trial or judgment of the case was in violation of Acts and subordinate statutes, the Prosecutor General may lodge an extraordinary appeal in the Supreme Court.

Article 442 (Form of Extraordinary Appeal)

In making an extraordinary appeal, a written application stating reasons thereof shall be presented to the Supreme Court.

Article 443 (Date for Public Trial)

A public prosecutor shall argue on the basis of the written application on the date for public trial.

Article 444 (Sphere of Investigation and Investigation of Facts)

(1) The Supreme court shall investigate only those matters which are stated in the written application for the extraordinary appeal.

(2) The Supreme Court may examine facts as to the jurisdiction of the original court, the acceptance of the public prosecution and the procedure of the case.

(3) In the case of the preceding paragraph, the provisions of Article 431 shall be applicable.

Article 445 (Judgment of Dismissal)

When an extraordinary appeal is groundless, it shall be dismissed by a judgment.

Article 446 (Judgment of Quashing)

When an extraordinary appeal is considered to be well-grounded, a judgment shall be rendered according to the following categories:

1. When the original judgment is in violation of Acts and subordinate statutes, the part in violation shall be quashed; *Provided*, That if the original judgment was disadvantageous to the defendant, it shall be quashed and a judgment rendered anew in the case; and

2. When any procedure of the original judgment is in violation of Acts and subordinate statutes, the procedure in violation shall be quashed.

Article 447 (Effect of Judgment)

With the exception of a judgment rendered under the proviso of subparagraph 1 of the preceding Article, the effect of a judgment in extraordinary appeal shall not extend to the defendant.

CHAPTER III SUMMARY PROCEDURE

Article 448 (Issuance of Summary Order)

(1) In a matter coming within its jurisdiction, a district court may, on a public prosecutor's demand, impose a fine, minor fine or confiscation upon the defendant by a summary order without ordinary proceedings of trial.

(2) In the case of the preceding paragraph, additional collections and other accessory dispositions may be effected.

Article 449 (Demand for Summary Order)

Demand for summary order shall be made in writing simultaneously with the institution of public prosecution.

Article 450 (Ordinary Adjudication)

If it is considered that a case does not admit of a summary order being issued or that it is not proper to do so, trial shall be conducted in accordance with the ordinary proceedings.

Article 451 (Form of Summary Order)

The facts constituting an offense, the Acts and subordinate statutes applicable, the principal penalty and other accessory matter together with a statement that an application for formal trial may be made within seven days from the day of notification of the order shall be clearly stated in the order for summary trial.

Article 452 (Notification of Summary Order)

Notification for summary order shall be made by serving a written order on a public prosecutor and the defendant.

Article 453 (Demand for Formal Trial)

(1) A public prosecutor or the defendant may apply for formal trial within seven days from the day on which he has received notification of a summary order. A defendant may not waive his right to demand formal trial.

(2) An application for formal trial shall be made in writing to the court which has issued the summary order.

(3) When an application for formal trial has been made, the court shall promptly notify the fact to the public prosecutor or the defendant.

Article 454 (Withdrawal of Demand for Formal Trial)

An application for formal trial may be withdrawn prior to the rendering of a judgment in first instance.

Article 455 (Ruling of Dismissal)

(1) In the event an application for formal trial is made contrary to Acts and subordinate statutes or subsequent to the termination of the claim, it shall be dismissed by means of a ruling.

(2) Against such a ruling immediate appeal may be made.

(3) Where an application for formal trial is considered legal, a trial shall be conducted in accordance with the ordinary proceedings of trial.

Article 456 (Nullification of Summary Trial)

When a judgment is given on an application for formal trial, the summary order shall lose its effect.

Article 457 (Effect of Summary Trial)

A summary order shall acquire the same effect as an irrevocable judgment upon the lapse of period for application for formal trial or upon the withdrawal of such application or upon the ruling dismissing the application.

Article 457-2 (Prohibition of Judgment Disadvantageous to Defendant)

In a case where a formal trial is demanded, no penalty more severe than that imposed by the summary order shall be pronounced.

[This Article Newly Inserted by Act No. 5054, Dec. 29, 1995]

Article 458 (Applicable Mutatis Mutandis Provisions)

(1) The provisions of Articles 340 through 342, 345 through 352, and 354 shall apply *mutatis mutandis* to applications for formal trial or withdrawal thereof.

(2) The provisions of Article 365 shall apply *mutatis mutandis* to the cases, where the defendant who has applied a formal trial does not appear on the date for the formal trial. *<Newly Inserted by Act No. 5054, Dec. 29, 1995>*

PART V EXECUTION OF DECISION

Article 459 (Final Binding and Execution of Trial)

Except as otherwise provided in this Act, a decision shall be executed after it has become final.

Article 460 (Conduct of Execution)

(1) The execution of decision shall be directed by a public prosecutor of the public prosecutor's office corresponding to the court which rendered such decision: *Provided*, That this shall not apply to a trial of such nature that it should be directed by a court or a judge.

(2) In cases where a decision of an inferior court is to be executed as the result of a decision on appeal or of the withdrawal of an appeal, a public prosecutor of the public prosecutor's office corresponding to the court of appeal shall direct its execution: *Provided*, That if the records of the case are in the inferior court or a public prosecutor's office corresponding to the court, the public prosecutor of such public prosecutor's office shall direct the execution of the decision.

Article 461 (Method of Conduct of Execution)

The execution of decision shall be directed in writing accompanied by a copy of, or an

extract from the document of decision or the protocol containing the decision: *Provided*, That the direction, unless it is for the execution of a penalty, may also be given by affixing a seal and initials to original or a copy of or an extract from the document of decision, or a copy of or an extract from the protocol.

Article 462 (Order of Execution of Penalty)

In cases where there are two or more principal penalties other than deprivation of qualification, suspension of qualification, fine, minor fine, and confiscation, the heaviest penalty shall be executed first: *Provided*, That a public prosecutor may stay execution of the heavier penalty and cause the lesser penalty to be executed, with the permission of the Minister of Justice.

Article 463 (Execution of Death Penalty)

Death penalty shall be executed by an order of the Minister of Justice.

Article 464 (Final Judgment of Death and Submission of Records of Proceedings)

When the judgment which has pronounced death penalty is final, the public prosecutor shall submit the records of proceedings to the Minister of Justice without delay.

Article 465 (Time to Order Execution of Death Penalty)

(1) The order to execute death penalty shall be given within six months from the day when a judgment becomes final.

(2) In cases where a request for the recovery of right of appeal or for reopening of procedure or application for an extraordinary appeal has been made, the time for completion of such procedure shall not be calculated in the period of six months.

Article 466 (Period of Execution of Death Penalty)

In the event of the Minister of Justice having ordered the execution of death penalty, such execution shall be carried out within five days.

Article 467 (Presence in Execution of Death Penalty)

(1) Death penalty shall be executed in the presence of the public prosecutor, a secretary of a public prosecutor's office and the warden of a prison or the warden of a detention house or his representative.

(2) No person shall enter the place of execution except with the permission of a public prosecutor or the warden of a prison or the warden of a detention house.

[This Article Wholly Amended by Act No. 1500, Dec. 13, 1963]

Article 468 (Protocol of Execution of Death Penalty)

A secretary of a public prosecutor's office who attends the execution of death penalty shall make an account of the execution, on which he shall print his name and affix his seal or write his signature jointly with the public prosecutor and the warden of prison or warden of

detention house or his representative. *<Amended by Act No. 1500, Dec. 13, 1963; Act No. 8496, Jun. 1, 2007>*

Article 469 (Suspension of Death Penalty)

(1) If a person condemned to death is in a state of unsound mind or a woman condemned to death is pregnant, the execution shall be stayed by order of the Minister of Justice.

(2) In cases where the execution of death penalty has been stayed under the provisions of the preceding paragraph, the penalty shall be executed by order of the Minister of Justice subsequent to recovery from state of unsound mind or after childbirth.

Article 470 (Suspension of Execution of Punishment Other than Death Penalty)

(1) If a person condemned to imprisonment, imprisonment without prison labor or disciplinary lockup is in a state of unsound mind, the execution shall be stayed until his recovery, subject to the direction of a public prosecutor of the public prosecutor's office corresponding to the court which pronounced the penalty or of a public prosecutor of the public prosecutor's office having jurisdiction over the place where the condemned is situated.

(2) In cases where the execution of penalty has been stayed in accordance with the preceding paragraph, a public prosecutor shall deliver the condemned to the person who is bound to guard and protect him or to the head of the local public authorities and cause him to be placed in a hospital or other suitable place.

(3) A person for whom the execution of a penalty has been stayed shall be detained in prison or detention house until the disposition provided for in the preceding paragraph has been effected, and the period of such detention shall be included in the term of the penalty. *<Amended by Act No. 1500, Dec. 13, 1963>*

Article 471 (Idem)

(1) The execution of imprisonment, imprisonment without prison labor or disciplinary lockup may be stayed in the following cases, subject to the direction of a public prosecutor of the public prosecutor's office corresponding to the court which has pronounced the penalty or of a public prosecutor of the public prosecutor's office having jurisdiction over the place where the condemned is situated: *<Amended by Act No. 8730, Dec. 21, 2007>*

1. If the health of the condemned will be seriously impaired as a result of the execution of penalty or there is apprehension that the condemned will not survive it;

2. If the condemned is seventy years of age or over;

3. If the condemned is in the sixth month of pregnancy or more;

4. If sixty days have not elapsed after the condemned was delivered of a child;

5. If the lineal ascendants of the condemned are seventy years of age or over, or disabled or seriously ill, and there is no relative to look after them;

6. If the lineal descendants of the condemned are in their infancy and there is no relative to look after them; and

7. If there is any other valid reason.

(2) The public prosecutor shall obtain permission of the Chief Public Prosecutor of the High Public Prosecutor's Office or the chief public prosecutor of the district public prosecutor's office to which he belongs in matters pertaining to the preceding paragraph. *<Amended by Act No. 7078, Jan. 20, 2004; Act No. 8496, Jun. 1, 2007>*

Article 472 (Suspension of Execution of Costs of Trial)

The execution of the decision ordering the costs of trial to be borne shall be stayed within the period allowed for making the request provided by Article 487, or, in cases where such request has been made, until a decision thereon becomes finally binding.

Article 473 (Summon for Execution)

(1) If a person condemned to death, imprisonment, imprisonment without prison labor or disciplinary lockup is not under confinement, a public prosecutor shall summon him for the purpose of the execution of penalty.

(2) If he fails to appear in response to the summons, a public prosecutor shall arrest him by issuing a warrant of execution of penalty. *<Amended by Act No. 2450, Jan. 25, 1973>*

(3) In the case of paragraph (1), if any person who has been sentenced to a penalty flees or it is afraid that they may flee or his whereabouts is unknown, he may be detained by issuing warrants of execution of penalty, without summoning him. *<Amended by Act No. 2450, Jan. 25, 1973>*

Article 474 (Method and Effect of Warrant of Execution of Penalty)

(1) The warrant of execution of penalty under the preceding Article shall contain the convicted persons' names, addresses, ages, names of penalties, period of penalties and other necessary matters.

(2) The warrant of execution of penalty has the same effect as the warrant of detention.

[This Article Wholly Amended by Act No. 2450, Jan. 25, 1973]

Article 475 (Execution of Warrant of Execution of Penalty)

The provisions on detention of the defendant in Chapter IX of PartI shall apply *mutatis mutandis* to execution of warrant of execution of penalty under the preceding two Articles.

[This Article Wholly Amended by Act No. 2450, Jan. 25, 1973]

Article 476 (Execution of Penalty concerning Qualification)

The name of the person who has been sentenced to deprivation of qualifications or suspension of qualification shall be entered in original list of sentenced persons and a copy shall be served without delay on the head of the *Si* (referring to the *Si* where no *Gu* is established; hereinafter the same shall apply)/*Gu*/*Eup*/*Myeon* (in the *Si* which is of the urban and rural complex type, it shall be the head of the *Si*/*Gu* in case of the *Dong* area, and the head of the

Eup/*Myeon* in case of the *Eup*/*Myeon* area) in the reference domicile and domicile of the sentenced person. *<Amended by Act No. 4796, Dec. 22, 1994; Act No. 8435, May 17, 2007>*

Article 477 (Execution of Penalty concerning Property)

(1) A decision imposing a fine, minor fine, confiscation, additional collection, fine for negligence, the costs of trial, compensation for costs or provisional payment shall be executed by an order of a public prosecutor.

(2) An order referred to in the preceding paragraph shall have the same effect as an executed deed of obligation.

(3) The provisions of execution provided for in the Civil Execution Act shall apply *mutatis mutandis* in regard to the execution of decisions referred to in paragraph (1): *Provided*, That the service of the decision is not necessary prior to the execution. *<Amended by Act No. 6627, Jan. 26, 2002; Act No. 8496, Jun. 1, 2007>*

(4) Notwithstanding paragraph (3), the decision under paragraph (1) may be executed in accordance with the practices of the disposition of default on national tax under the National Tax Collection Act. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

(5) A public prosecutor may conduct such investigation as may be necessary for executing the decision under paragraph (1). In such instance, Article 199 (2) shall apply *mutatis mutandis*. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

Article 478 (Execution for Estate of Inheritance)

Confiscation, or a fine or additional collection imposed under the provisions of Acts and subordinate statutes relating to taxes or government monopolies, or other imposts may be executed upon the property of succession in the event the condemned dies after the judgment has become final.

Article 479 (Execution for Juristic Person after Merger)

If a juristic person has been sentenced to fine, minor fine, confiscation, additional collection, costs of trial or compensation for costs, then if such juristic person has been extinguished by merger after the judgment becomes final, the penalty may be executed on the juristic person which continues in existence after the merger or which has been formed by the merger.

Article 480 (Arrangement of Execution of Provisional Payment of Detention)

If a decision for provisional payment was made in the second instance subsequent to the execution for decision of provisional payment in the first instance, such execution shall be applied to the decision in the second instance to the extent of the amount of money ordered to be paid by the decision in the second instance.

Article 481 (Execution of Provisional Payment and Execution of Principal Punishment)

If a decision of a fine, minor fine or additional collection has become final after the execution of decision of provisional payment, the penalty shall be deemed to have been executed to the extent of the amount paid.

Article 482 (Calculation in Number of Detention Days, etc. Pending Judgment after Appeal)

(1) The whole number of days of detention pending judgment subsequent to the application for appeal shall be included in the calculation of the regular penalty, in the following cases: *<Amended by Act No. 8496, Jun. 1, 2007>*

1. In cases where application for appeal has been made by a public prosecutor; and

2. In cases where application for appeal has been made by a person other than a public prosecutor, and the original judgment is quashed. <<Paragraph (2) of this Article is complemented and arranged by Act No. 7225 on October 16, 2004 following the decision of unconstitutionality made by the Constitutional Court on July 20, 2000>>

(2) The whole number of days of detention before final and conclusive judgment during the period for which the application for appeal is filed (excluding the number of days of detention subsequent to the application for appeal) shall be included in the calculation of the regular penalty. *<Newly Inserted by Act No. 7225, Oct. 16, 2004>*

(3) Upon dismissing the appeal, the number of days of detention pending the application for appeal during the period for service or immediate appeal shall be entirely included in the sentenced penal term. *<Newly Inserted by Act No. 8496, Jun. 1, 2007>*

(4) In cases of paragraphs (1) through (3), one day in the number of detention days shall be counted as one day of penal term or one day of detention term of fine or minor fine. *<Amended by Act No. 2750, Jan. 25, 1973; Act No. 5054, Dec. 29, 1995; Act No. 7225, Oct. 16, 2004; Act No. 8496, Jun. 1, 2007>*

(5) Detention effected after the court of appeal has quashed the original judgment before final and conclusive judgment shall be included in the calculation following the example of the number of days of detention during the pendency of the appeal.

Article 483 (Disposition of Goods Confiscated)

Goods which have been confiscated shall be disposed of by a public prosecutor. *<Amended by Act No. 5054, Dec. 29, 1995>*

Article 484 (Delivery of Goods Confiscated)

(1) If, within three months after the execution of confiscation, delivery of the goods confiscated is demanded by the person lawfully entitled, a public prosecutor shall deliver them, with the exception of those which are to be destroyed or thrown away.

(2) If the demand mentioned in the preceding paragraph is made after the confiscated goods have been disposed of, a public prosecutor shall deliver the proceeds realized at the public sale.

Article 485 (Indication of Forgery)

(1) In cases where an article forged or altered is restored, the whole or forged part of such article shall be indicated.

(2) In cases where the article forged or altered has not been seized, it shall be caused to be produced and the measures specified in the preceding paragraph shall be taken: *Provided*, That if the article belongs to a public office, the latter shall be notified of the forgery or alteration and advised to take suitable measures.

Article 486 (Incapable Payment and Notification)

(1) In cases where goods under seizure cannot be restored because the whereabouts of the person entitled to such restoration is unknown or for any other reason, a public prosecutor shall give public notice to such effect in the Official Gazette.

(2) If restoration is not requested in three months from the time of announcement, the articles shall belong to the National Treasury. *<Amended by Act No. 2450, Jan. 25, 1973>*

(3) Even before the end of the period prescribed in the preceding paragraph, if an article has no value it may be destroyed or if it is difficult to keep it in custody it may be put to a public sale and the price therefrom may be kept in custody instead. *<Amended by Act No. 8496, Jun. 1, 2007>*

Article 487 (Application for Exemption of Costs of Trial)

If a person who has been ordered to bear the costs of trial cannot make full payment because of poverty, he may request the court which rendered the decision ordering such costs to be borne by him to exempt him from the execution of the decision in respect to the whole or a part of such costs within ten days from the day when the decision has become final.

Article 488 (Request for Doubt)

If a person condemned to a penalty has any doubt in regard to the interpretation of the decision, he may request the court which pronounced the decision for an interpretation.

Article 489 (Request for Objection)

If a person against whom a decision is to be executed, or his legal representative or spouse, considers any disposition effected by a public prosecutor in regard to the execution to be improper, he may raise an objection to the court which pronounced such decision.

Article 490 (Withdrawal of Requests)

(1) The requests contemplated in the preceding three Articles may be withdrawn at any time before a ruling is rendered thereon.

(2) The provisions of Article 344 shall apply *mutatis mutandis* to the requests mentioned in the preceding three Articles and to the withdrawal thereof.

Article 491 (Immediate Appeal)

(1) In cases where the demand mentioned in the Articles 487 through 489 has been made, the court shall render a ruling on it.

(2) Against the ruling provided for in the preceding paragraph an immediate appeal may be made.

Article 492 (Execution of Detention in Labor House)

As regards the execution of a sentence of detention in the workhouse because of inability to make full payment of a fine or minor fine, the provisions relating to the execution of penalties shall apply *mutatis mutandis*.

Article 493 (Costs of Execution to be Charged)

The costs of execution of any of the decision referred to in Article 477 (1) shall be charged to the person, on whom such execution is levied, and shall be collected simultaneously with the execution in accordance with the Civil Execution Act. *<Amended by Act No. 6627, Jan. 26, 2002; Act No. 8496, Jun. 1, 2007>*

ADDENDA

Article 1

Those cases in which a public prosecution has been instituted before the enforcement of this Act shall be governed by the previous Act.

Article 2

Those cases in which a public prosecution has been instituted after the enforcement of this Act shall be governed by this Act: *Provided*, That this shall not affect acts of procedure already taken in accordance with the provisions of the old Act prior to the enforcement of this Act.

Article 3

The proceedings taken under the old Act before the enforcement of this Act shall be deemed to have been taken under this Act, if there are corresponding provisions in this Act.

Article 4

The legal period which has begun to run before the enforcement of this Act and the period to be added thereto according to the distance between the residence of a person who is to participate in a trial or the place where his office is located and the place where a court is located shall be governed by the old Act.

Article 5

In cases where a person concerned with a case demands, in accordance with the provisions of Article 45 of this Act, delivery of a copy of or extracts of the document of decision or the protocol in which the decision is entered, he shall accompany postal stamp amounting to 50 *Hwan* per sheet of such copy or extracts.

Article 6

Necessary matter concerning the disposal of those cases which are pending in court at the time of enforcement of this Act, shall be provided by the Supreme Court Regulations, if otherwise provided for in this Act.

Article 7

The fine for negligence provided for in this Act and the amount mentioned in Article 5 of the Addenda in this Act may be increased or decreased by the Supreme Court Regulations according to change of the economic situation.

Article 8

The following decree and ordinances which have been effective before the enforcement of this Act, shall hereby be repealed:

1. The provisions of *Chosun* Criminal Decree which conflict with this Act; and

2. The provisions of the United States of America Military Government in Korea Ordinances which conflict with this Act.

Article 9 (Enforcement Date)

This Act shall enter into force on May 30, 1954.

ADDENDA <Act No. 705, Sep. 1, 1961>

(1) (Transitional Provisions) 1. This Act shall apply to the cases pending in the court at the time of enforcement of this Act: *Provided*, That this shall not modify the effect of any procedural acts taken prior to the enforcement of this Act.

(2) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 1500, Dec. 13, 1963>

(1) This Act shall enter into force on December 17, 1963.

(2) This Act shall apply to the cases pending in the courts at the time of enforcement of this Act: *Provided*, That this shall not modify the effect of any procedural acts taken in accordance with the old Act, prior to the enforcement of this Act.

(3) As to the cases of appeal pending at the time when this Act enters into force, a statement of reason for appeal may be filed again up to twenty days from the date of enforcement of this Act, if the period of filing an appeal has elapsed or a notice of the acceptance of the record of an appeal case has been given.

ADDENDA <Act No. 2450, Jan. 25, 1973>

(1) (Enforcement Date) This Act shall enter into force on February 1,1973.

(2) (Transitional Measures) This Act shall apply to cases pending in the courts at the time when this Act enters into force: *Provided*, That effects of the acts of procedure done pursuant to the old Act shall not be affected by the application of this Act.

(3) (Transitional Measures) As for punishments of person whose crimes were committed before the enforcement of this Act and are punishable with fine for negligence pursuant to the old Act, the old Act shall apply even after the enforcement of this Act.

(4) (Transitional Measures) With regard to the legal period which began to run before the enforcement of this Act, the old Act shall apply even after the enforcement of this Act.

(5) (Transitional Measures) The provisions of Article 286-2 shall not apply to those cases against which public prosecutions were instituted before the enforcement of this Act.

ADDENDUM <Act No. 2653, Dec. 20, 1973>

This Act shall enter into force on the date of its promulgation.

ADDENDUM <Act No. 3282, Dec. 18, 1980>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 3955, Nov. 28, 1987>

(1) (Enforcement Date) This Act shall be effective on February 25, 1988.

(2) (Transitional Measures) This Act shall apply to the cases pending in the court at the time when this Act enters into force: *Provided*, That the effects of any procedural acts taken pursuant to the old Act shall not be affected by the application of this Act.

ADDENDA <Act No. 4796, Dec. 22, 1994>

Article 1 (Enforcement Date)

This Act shall enter into force on January 1, 1995.

Articles 2 through 4 Omitted.

ADDENDA <Act No. 5054, Dec. 29, 1995>

(1) (Enforcement Date) This Act shall enter into force on January 1, 1997: *Provided*, That the revised provisions of Articles 56-2, 361, 361-2, 377 shall be effective as from the date of promulgation.

(2) (Transitional Measures) This Act shall apply to the cases pending in the courts or public prosecutor's office at the time when this Act enters into force: *Provided*, That it shall not modify the effect of any procedural acts taken under the provisions prior to the enforcement of this Act.

ADDENDA <Act No. 5435, Dec. 13, 1997>

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) (Transitional Measures) This Act shall apply to those who have been arrested or compulsorily summoned to appear when this Act enters into force.

ADDENDUM <Act No. 5454, Dec. 13, 1997>

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

ADDENDA <Act No. 6627, Jan. 26, 2002>

Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 2002.

Articles 2 through 7 Omitted.

ADDENDA <Act No. 7078, Jan. 20, 2004>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Articles 2 and 3 Omitted.

ADDENDUM <Act No. 7225, Oct. 16, 2004>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 7427, Mar. 31, 2005>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation: *Provided*, That ... <*Omitted.*> ... the provisions of Article 7 of Addenda (excluding paragraphs (2) and (29)) shall enter into force on January 1, 2008.

Articles 2 through 7 Omitted.

ADDENDA <Act No. 7965, Jul. 19, 2006>

(1) (Enforcement Date) This Act shall enter into force one month after the date of its promulgation.

(2) (General Transitional Measures) This Act shall apply to any case which has been investigated, or pending at a court at the time when this Act enters into force: *Provided*, That it shall not have effect on any act performed under the previous provisions before the enforcement of this Act.

ADDENDA <Act No. 8435, May 17, 2007>

Article 1 (Enforcement Date)

This Act shall enter into force on January 1, 2008. (Proviso Omitted.)

Articles 2 through 9 Omitted.

ADDENDA <Act No. 8496, Jun. 1, 2007>

Article 1 (Enforcement Date)

This Act shall enter into force on January 1, 2008.

Article 2 (General Transitional Measures)

This Act shall apply the cases under investigation or those pending in a court at the time when this Act enters into force: *Provided*, That the effects of an act done under the former provisions enforceable prior to the enforcement of this Act shall remain intact.

Article 3 (Transitional Measures concerning Detention Period)

(1) The amended provision of Article 92 (2) shall be enforceable to the appeals filed on or after the enforcement date of this Act.

(2) The amended provision of Article 92 (3) shall be enforceable to the cases of arrest, compulsory appearance, and detention prior to public prosecution executed on or after the enforcement date of this Act.

Article 4 (Transitional Measures concerning Fine for Negligence)

The amended provisions of Article 151 shall be enforceable to the witnesses who do not make an appearance in compliance with a subpoena served on or after the enforcement date of this Act.

Article 5 (Transitional Measures concerning Petitions for Adjudication)

(1) The amended provisions concerning petitions for adjudication under this Act shall be enforceable to the cases for which non-prosecution is disposed of on or after the enforcement date of this Act, the cases for which appeal or re-appeal under the Prosecutor's Office Act is allowed before the enforcement date of this Act, or the cases for which appeal or re-appeal is pending with the High Public Prosecutor's Office or the Supreme Public Prosecutor's Office at the time when this Act enters into force: *Provided*, That the foregoing shall not be applicable to a case in which non-prosecution has been already disposed of regarding an identical criminal fact before the enforcement date of this Act.

(2) The cases for which a petition for adjudication has been filed with the chief public prosecutor of the district public prosecutor's office or of its branch office before the enforcement date of this Act shall be governed by the former provisions.

(3) Notwithstanding the amended provision of Article 260 (3), the period of time for filing

a petition for adjudication of a case for which reappeal with the Supreme Public Prosecutor's Office was allowed before the enforcement date of this Act shall be no more than ten days from the enforcement date of this Act, while the period of time for filing a petition for adjudication of a case for which re-appeal is pending with the Supreme Public Prosecutor's Office shall be no more than ten days from the date on which dismissal of the re-appeal is notified.

Article 6 (Transitional Measures concerning Appeal to Supreme Court)

The cases for which appeal or re-appeal has been filed before the enforcement of this Act shall be governed by the former provisions.

Article 7 Omitted.

ADDENDA <Act No. 8730, Dec. 21, 2007>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation: *Provided*, That the amended provisions of Articles 245-2 through 245-4 and 279-2 through 279-8 shall enter into force one month after the date of its promulgation, while the amended provisions of Articles 209, 243, and 262-4 (1), 319 (proviso), 338 (2) and 417, and Article 4 of Addenda shall enter into force on January 1, 2008.

Article 2 (Applicable Examples to Professional Investigative Advisers and Professional Examiners)

The amended provisions of Articles 245-2 through 245-4 and 279-2 through 279-8 shall apply to the cases under investigation or pending in a court at the time when this Act enters into force.

Article 3 (Transitional Measures concerning Prescriptive Period of Public Prosecution)

The crimes committed before the enforcement of this Act shall be governed by the former provisions.

Article 4 Omitted.

ADDENDA <Act No. 9765, Jun. 9, 2009>

Article 1 (Enforcement Date)

This Act shall enter into force on January 1, 2010. (Proviso Omitted.)

Articles 2 through 7 Omitted.