北傀 刑事訴訟法

姜 求 哲*

머릿말

군사의 유명한「兵法」에서 “知彼知己，百戰百勝”라고 하였다. 異軍士的統一은 民族의 結願이도, 解決해야 할 最大 最急의 歷史的 使命이 아닐 수 없다. 그림에도 불구하고 統一의 現實의 對象이 되고 있는 北韓共產國 正體的 把握을 위한 우리들의 努力은 어리하였던가? 南北이 分離된지도 아니 4分의 1世紀에 접어 들고 있으나, 北韓共產國에 대한 體系的 研究가 本軌道에서 오르지 못하고 있음이 이 나라의 實情임을 否認할 수 없는 것으로 있다. 儘管民族統一이라는 大前提은 目前的 最高 政治的 業権으로 나서온다 고 할지라도 統一的 具體의 內容과 그에 대한 合目的的的 實現의 樹立이 없는 統一方針이란 한남의 空想論으로 上空虛空의 信望愛를 빼지 못할 것이다. 統一的 具體의 內容과 그 準備對策을 確立하기 위하여는 細密한 『知彼知己』의 学問의 研究가 先行되지 않으면 일변 所以가 바로 여기에 있는 것이다. 正確 客觀的 事實을 정확히 파악함으로써, 그 事實을 基礎로 하여 비로소 現實性 있는 政策를 決定할 수 있는 것이니, 北韓共產國研究의 重要性도 이러한 観點에서 다루어지지 않으면 안 된다. 미우지 國際的으로는 今 領導에 所謂 “新 亞洲 政策”(New Asia Doctrine)이 發表됨으로써 아시아의 非美軍化가 即時開 実現될 것이 예견되고 國際的으로는 朴大統領도 한에 적정한 마와 같이, 70年代 半後期를 前後하여 統一에 대한 論識가 더욱 具體의으로 實施된 것은 考慮한다면, 北韓共產國의 研究야말로 最緊急で 當面課題라 아닐 수 없다.

이러한 의미에서, 近來에 一部 學者들에 의해 北韓의 政治・経済・社會 등의 부분에 대해 약간의 연구가 진행되어 오는 것은 만가운 일이나 할 것이며, 北韓法律的 分野에 대해서는 거의 야무도 논의되지 않고 있어, 이른바 處女林으로 남아 있다는 現實은 심히 유감된 事態가 아닐 수 없다. 다른 부분에 대한 연구도 곧론 중요한 것이지만, 北韓共産國의 正體把握을 위

하여는 그 法制의 연구여서로 가장 重要하고도 時急한 問題에 속한다는 上層은 法律家만의
獨断의인 墨건은 아닐 것이다.

우선 法이란, 梵심바나야 대학교수 다이로・보네와 블레이턴스・포리스가 적절히 지적한
바와도 같이, (1) 이러한 社會( 혹은 文明)를 진단하는데 있어서 하나의 重要한 試金石(touch-
stone)이 되기 때문에이며, 한 社會과 다른 社會에 있어서의 法의 影響을 서로 比較・考察한
d는 것은 실 귀 허 社會自體의 本質을 互相 比較한다 는 問題과 直接의 이 때문에이다.

둘째로, 北韓法生活的 연구는 單純한 學問의 目的을 뚜나 우리의 效果의인 統一方案의 樹
立을 위한 基礎의 資料를 提供하는 것 以上の 重大한 意味를 지니다 할 것이다. 民主의 基
礎이면, 大韓民國의 이로운 우리의 국土가 統一하는 날, 北에서 일어난 事實上の 法的混
亂은 實際 豫測을 不許할 程度의 것이 된다면, 이는 우리의 남한의 事態는 결코 못되다
고 본다. 우리의 議院이 民主・法治國家主義을 그 立国の 根據로 삼고 있는 限, 모든 社會
의인 病理는 正常한 法的次에 의해 解決되지 않으면 안 된 것이며, 이러한 論理는 統一以
後의 北韓地域에도 그대로 適用하여야 할 것이다. 그리하여 法を 見点으로 한 大韓民國
의 法秩序에 의해 正常한 法的次에 따라 適切한 判斷으로서 北韓地域에서의 모든 病理의 混
亂을 解決하기 위하여는, 먼저 北韓共産國에實施된 事實上の 規範關係가 이하하였던 것
인가를 하나의 判斷資料로서 即必要性이 있게 되는 것이다. 여기에 北韓法 研究가 將來의
統一韓國에 대하여 가지는 重要的 意義가 있다 할 것이다.

이러한 理由에서 笔者は 北韓法律問題研究所(假設)라도 만들여, 北韓共産國의 法의 理論
과 實際에 대한 體系의 研究를 探究적으로 해 보고 싶은 意圖를 가지고 있으나, 이는 個人
의 허가 생각만으로 成就될 수 있는 性質의 事業이 아닌 가담으로, 일단 后日의 일로 미루
는 바이다. 우선 여기에 하바드 法科大 筆者의 法學博士學位論文(英文) 末尾에 參考資料
로 供寄된 北韓 刑事訴訟法 全文(英文譯訳)을 江湖諸賢의 眼湄에 紹介함으로써, 我們 나라
에 있어서의 北韓法研究의 經過을 몇을 일으키고자 하는 바이다.

(1) Derk Boddo and Clarence Morris, Law in Imperial China (Cambridge, Mass., Harvard
University Press, 1967), 6
NORTH KOREAN CRIMINAL PROCEDURE CODE

TRANSLATION

KOO-CHIN KANG*

Preface

Although North Korea’s political, economic, and social development since 1945 is known to us to a certain extent, legal development therein has been a neglected field of study. Good reasons can of course be found to explain the neglect of the legal system of the so-called Democratic People’s Republic of Korea (DPRK), but no one will disagree that the situation should be changed.

In order to achieve our goal of the unification of the country under the guidance of the Republic of Korea, we must be in a position to evaluate the strength and weakness of the North Korean system. Here law occupies a position of crucial importance, for, as Professor Harold J. Berman points out, a legal system expresses in a most vivid and real way what a society stands for. To be sure, law is an important touchstone for measuring the structure of any society, and its differing role in North Korea as compared with its role in the South points to basic societal differences between the two parts of the country which deserve detailed analysis. Also from a purely political viewpoint, the study of North Korean law at least becomes a matter of urgent practical importance. Without some understanding of North Korean legal system, we certainly cannot make any workable plan of taking over the northern


part of the peninsula.

In this sense, the Code of Criminal Procedure of the so-called DPRK, as amended to June 15, 1954, which is translated here, should be of great interest not only to students of comparative criminal law, but also to those who are concerned with the future of this country. In making the translation of the Code, primary reliance has been placed on the Korean language publications available at the East Asian Library of Havard-Yenching Institute, Harvard University. The publications are mostly from North Korean publishing agencies. The Constitution of the DPRK, the Court Organization Law and the Codes of Criminal Law and Criminal Procedure were all readily available in official editions. The 1955 editions of these statutes\(^2\) were the latest available, from which the author translated the Code of Criminal Procedure into English.

This translation of the Criminal Procedure Code of the DPRK is an excerpt and updating from the basic research on North Korean law which was done during the 1967–68 academic year for the Law and Society in Comparative Perspective Seminar at Harvard Law School, and has been attached, together with the translations of the Penal Code and the Law on Court Organization, at the end of the writer’s unpublished S.J.D. thesis, “Law in Communist Korea: An Analysis of Soviet and Chinese Influences Thereupon.”

In preparing this translation, I have benefited from many scholars and friends, but I should first like to thank Professor Jerome A. Cohen at Harvard Law School, who has been my teacher and guide ever since I came to Harvard. Without his guidance and timely encouragement, my interest in North Korean law might not have materialized. My gratitude and indebtedness to him really cannot be measured. I should also like to thank Professors Harold J. Berman and Lloyd L. Weinreb at the same law school for their valuable comments on the translation.

Code of Criminal Procedure of the so-called DPRK

CHAPTER

One: Fundamental Principles (Articles 1–20)................................................................. 96
Two: Jurisdiction (Articles 21–31)..................................................................................99

\(^2\) Choson Minjujuui Inmin Kongwhakuk Popyong mit Choego Inminwhoeui Sangim Witwonhoeui Chongyongjip (Collected Laws of the Korean Democratic People’s Republic and Political Decrees of the Presidium of Supreme People’s Assembly, 1955), 1
Three: Composition of Courts, Participants in the
   Trial, and Challenges (Articles 32–44) ........................................... 102
Four: Evidence (Articles 45–59) ......................................................... 103
Five: Records (Articles 60–64) ......................................................... 105
Six: Calculation of Time Periods and Court Costs (Articles 65–73) .............. 107
Seven: Initiation of a Criminal Case (Articles 74–78) ................................ 108
Eight: The Inquiry (Articles 79–85) .................................................... 109
Nine: The Pretrial Investigation (Articles 86–99) .................................... 111
Ten: Presentation of the Accusation and Interrogation of the
   Accused (Articles 100–113) ............................................................ 113
Eleven: Measures to Prevent Evasion of Justice (Articles 114–125) ............. 115
Twelve: Interrogation of a Witness and of an Expert (Articles 127–138) ....... 117
Thirteen: Search and Seizure (Articles 139–147) ...................................... 119
Fourteen: View and Examination (Articles 148–152) ................................ 120
Fifteen: Examination of the Mental State of the Accused (Articles 153–154) ... 121
Sixteen: Competion of the Pretrial Investigation (Articles 155–162) .......... 121
Seventeen: Actions of the Procurator (Articles 163–167) .......................... 123
Eighteen: Court Actions Prior to the Judicial Session (Articles 168–174) .... 124
Nineteen: The Judicial Session (Articles 175–217) .................................... 125
Twenty: Change of the Accusation and Initiating Criminal Case with
   Respect to New Person (Articles 218–221) ........................................... 131
Twenty-One: The Decree of Judgment (Articles 222–240) .......................... 132
Twenty-Two: Appealing from Court Judgment and Ruling (Articles 241–263) ... 136
Twenty-Three: Extraordinary Appeal (Articles 264–269) ......................... 140
Twenty-Four: Reopening of Cases (Articles 270–274) .............................. 141
Twenty-Five: Execution of the Judgment (Articles 275–281) ....................... 142
THE CODE OF CRIMINAL PROCEDURE
OF THE SO-CALLED DEMOCRATIC
PEOPLE'S REPUBLIC OF KOREA

March 3, 1950 as amended to June 15, 1954

Chapter One: Fundamental Principles.

Article 1. The procedure for conducting criminal cases (in the courts, procuracies, and agencies of pretrial investigation of the DPRK) shall be determined by the present Code.

Article 2. The present Code shall constitute basic fundamentals of democratic criminal proceedings for the courts, procuracies, and agencies of pretrial investigation of the DPRK to conduct criminal cases.

Article 3. Courts shall not refuse to decide a case merely because applicable laws and decrees do not exist, are incomplete, or are unclear.

Article 4. Persons against whom judgments of the court have taken legal effect shall not again be subjected to criminal prosecution for the same crime except in cases provided for in Articles 268 and 270 of the present Code.

Article 5. Criminal cases may not be initiated, and if initiated shall be subject to dismissal at any stage of proceedings:

(1) upon the death of the accused, with the exception of cases provided for in Article 273 of the present Code.

(2) in the absence of a complaint by the victim, if the case can be initiated only upon his complaint, except instances where the procurator deems initiation of the criminal case necessary from the viewpoint of the public interest even in the absence of the victim’s complaint;

(3) upon the revocation of a complaint resulting from the reconciliation of the victim with the accused in cases which can be initiated only upon complaints of victims, except in instances where the procurator considers that such revocation cannot be acknowledged from the viewpoint of public interest;

(4) upon the expiration of the periods of limitation;

(5) in the absence, in the act of the accused, of the constituent elements of a crime;

(6) with respect to a person who (at the moment of committing a socially dangerous act) has not attained the age of 14.
(7) when an act of amnesty has eliminated the application of punishment for the act committed, or when the individual accused has been pardoned;

(8) with respect to a person concerning whom under the same accusation there is a judgment of a court which has taken legal effect.

Article 6. No one shall be subjected to arrest or detention except in cases provided for by laws and decrees and in accordance with the procedure established by laws and decrees.

Article 7. If a procurator discovers that within his jurisdiction some one is illegally arrested or kept under detention either in violation of the legal procedure or for more than a term provided for by law, he shall be obliged to release (immediately) the person thus illegally arrested or detained.

Article 8. Procurators shall be obliged to institute criminal prosecution, irrespectively of what kind of crime has been committed. The victim and the representative of a trade union, farmer's association and any other social organization to which the victim belongs shall be granted the right to initiate a criminal case only in those instances when the right to do so is specifically provided for by laws and decrees.

Article 9. Cases of crimes provided for by Article 124, 127, 144, 145, and 146 of the Penal Code shall be initiated only upon the complaint of the victim.

The victim of the crimes specified in the preceding section shall have the right to initiate a criminal case by himself. Such a case shall be subjected to dismissal upon the revocation of the complaint resulting from the reconciliation of the victim with the accused. Revocation of the complaint shall be permitted only before the court retires to the conference room to deliberate judgment.

If a procurator deems it necessary to enter such a case from the viewpoint of the public interest, however, he shall have the right to initiate such a case even in the absence of victim's complaint, and the case shall not be subjected to dismissal even upon the revocation of the complaint resulting from the reconciliation of the victim with the accused.

The complaint indicated in section one of the present article shall be submitted not later than three months from the moment the victim becomes aware of the fact of injury.

Article 10. Cases of crimes provided for by Articles 138, 166, and 167 of the Penal Code shall be initiated only upon the complaint of a victim.

However, they shall not be subject to dismissal even upon the reconciliation of the victim with the accused.
Article 11. A court’s decision or ruling in a civil case, which has taken legal effect, shall be binding on a court conducting an inquiry in criminal proceedings as to the question whether or not an event or action has taken place, but not with respect to the question of the guilt of the accused.

Article 12. A person who has sustained damage or loss from a crime shall have the right in a criminal case to bring a civil suit against the accused or persons who are materially responsible for the actions of the actions of the accused.

Such a civil suit, irrespective of the amount involved, shall be considered jointly with the criminal case by the court which has jurisdiction over the latter.

Article 13. A civil suit may be brought from the moment the criminal case is initiated until the beginning of trial.

A victim who has not brought a civil suit in a criminal case shall have the right to bring it by way of the ordinary civil proceedings.

In the event that a civil suit has been brought in a criminal case by the victim but the criminal case is dismissed because of the reconciliation of the victim with the accused, the civil suit shall not be considered any more.

Article 14. A civil suit in a criminal case shall be relieved from fees and taxes.

Article 15. Dismissal of a civil suit shall be made only in the course of trial.

If a civil suit is decided against the complainant in the criminal proceeding, the victim shall not have the right to reinstitute the same suit.

Dismissal of a suit by way of civil proceedings shall deprive the plaintiff of the right to bring the same suit again in a criminal case.

Article 16. The examination of cases in all courts shall be open.

The courtroom may be cleared of the public for the entire session or for a part of it, upon a reasoned ruling of the court, only in cases either where it is necessary to protect state secrets, or where the publicity of judicial examination might be prejudicial to the public morals, or where it is necessary to safeguard the personal secrets of a citizen.

Article 17. Even in the event that publicity of a trial is prohibited, the judgment of courts shall in all cases be proclaimed publicly.

Article 18. A person who has not attained the age of fourteen years shall not be permitted in courtroom.

Article 19. Inquiry into and consideration of cases shall be conducted in the Korean
language.

Persons who do not have command of the Korean language shall be secured the right to make use of an interpreter.

Foreigners shall have the right to submit petitions or other writings in their own language.

**Article 20.** The terms employed in the present Code shall, if there are no special indications, have the following meaning:

1. the word “Special Court” shall be construed to mean military tribunal or transport court;
2. the word “Judge” shall be construed to mean people’s judge, president, or deputy president of the court;
3. the word “Procurator” shall be construed to mean the Procurator General, his deputies, chief procurators, their deputies, or procurators of the procuracy;
4. the word “Pretrial Investigator” shall be construed to mean investigator of the procuracy, agencies of public order, or of agencies of state security;
5. the word “Participants in the Trial” shall be construed to mean the procurator or the victim who has initiated a criminal case, the plaintiff in a civil suit and his representatives, the accused, his legal representatives and his defense counsel;
6. the term “Legal Representatives” shall be construed to mean parents, and guardians of the accused or of the victim, or representatives of institutions and organizations which have charge of the accused or the victim;
7. the term “Close Relatives” shall be construed to mean spouse, parents, sons an daughters, or natural brothers and sisters;
8. the term “Judgment” shall be construed to mean a decision rendered by a court of first instance concerning the question of guilt or innocence of the accused;
9. the term “Ruling” shall be construed to mean any decision, other than a judgment, rendered by a court of first instance; and all decisions delivered by an appellate court;
10. the term “Decree” shall be construed to mean all decisions of a pretrial investigator or a procurator.

**Chapter Two: Jurisdiction**

**Article 21.** District people’s courts shall have jurisdiction over the following cases:

1. crimes against state order;
2. crimes against state, social, and cooperative property;
(3) crimes against the person;
(4) crimes against the property of citizens;
(5) crimes involving violation of labor legislation;
(6) official crimes;
(7) economic crimes;
(8) crimes against the system of administration;
(9) crimes against the social safety and the people’s health.

In addition to the above jurisdiction indicated in the preceding section, district people’s courts shall have original jurisdiction over all cases except those within the original jurisdiction of province courts, special courts, or the Supreme Court.

**Article 22.** Province courts shall have original jurisdiction, as a court of first instance, over the following cases involving:

(1) crimes against state sovereignty;
(2) crimes of special significance among the crimes against the person, the crimes against state, social, and cooperative property, or the official crimes;

Province courts shall have appellate jurisdiction, as a court of second instance, over the cases on appeals from, or protests of, the judgments of a district court of first instance.

Province courts may in their discretion accept for trial as a court of first instance any case within the jurisdiction of district court, or transfer such case to another district court situated within their province.

**Article 23.** Military courts shall have jurisdiction over cases involving all the crimes committed by the military personnel of the People’s Army and workers in the Ministry of Internal Affairs, or any other military crimes.

**Article 24.** Transport courts shall have jurisdiction over the following cases involving:

(1) violation of (official) discipline or, any other official crimes committed by railway and water transport workers;
(2) all the crimes violating normal transport operations.

**Article 25.** The Supreme Court shall have original jurisdiction, as a court of first instance, over the following cases involving:

(1) crimes of special significance among the crimes against state sovereignty;
(2) official crimes committed by representatives of the Supreme People’s Assembly, members of the Cabinet, representatives of province people’s committees, and judges of courts.
The Supreme Court shall have as a court of second instance jurisdiction over the cases on appeals from, or protests of, judgments of a province court of a special court of first instance.

The Supreme Court may in its discretion accept for trial as a court of first instance any case within the jurisdiction of a lower court, or transfer such case to another lower court of the same kind.

**Article 26.** A criminal case shall be tried in the court of the district where the crime is committed.

If it is impossible to determine the place of the commission of the crime, the case shall be within the jurisdiction of the court of the district where the criminal prosecution is initiated.

**Article 27.** A case which on various grounds falls within the jurisdiction simultaneously of several courts of the same kind shall be within the jurisdiction of the court which first commences to consider the case.

**Article 28.** If a case in which a person is accused of committing crimes at several places falls within the jurisdiction simultaneously of several courts of the same kind, a case embracing all the crimes shall be considered by the court of the district where the case is initiated.

**Article 29.** When one person or a group of persons is accused of committing several crimes, the cases concerning which are within the jurisdiction of courts of different kinds, a case embracing all the crimes shall be considered by the highest court of such courts. If a case in which one person or a group of persons is accused of committing several crimes falls within the jurisdiction of a special court with respect to at least one person or one crime, a case embracing all the persons and crimes shall be considered by the special court.

**Article 30.** A court, having established that a case it is conducting is within the jurisdiction of another similar court, shall have the right to continue to conduct the case only either in the event that it has already commenced to consider it in judicial session or in the event that the participants in the trial have consented to such continuance.

**Article 31.** Any case referred from one court to another in accordance with the provisions specified in the present chapter shall be subject to (unconditional) trial by the court to which it is referred.

If a court receives a case which in its opinion has been transferred to it incorrectly, the question of its correctness may be submitted by it to the Supreme Court in accordance with the procedure of extra ordinary appeal, but not before the judgment has been rendered in the case.
Chapter Three: Composition of Courts, Participants in the Trial, and Challenges

Article 32. Judges who are relatives each other shall not be members of any court that is considering a criminal case.

Article 33. A case shall be heard by the same judges. If any of the judges is for any reason unable to continue to sit on a case and hence replaced by another judge, the entire case shall be heard again from the beginning.

If an alternate people’s assessor who has been present in the courtroom replaces a people’s assessor who has for any reason retired from the case, the case shall not be heard again from the beginning but continue without a rehearing.

Article 34. A judge may not participate in the consideration of a case:
(1) if he is a party to the case or related to one of the parties;
(2) if he or one of his relatives has an interest in the outcome of the case;
(3) if he has participated in the given case as a witness, expert, person conducting the inquiry, pretrial investigator, procurator, defense counsel, representative of the victim, or civil plaintiff in the case.

Article 35. A judge who has taken part in the consideration of a criminal case in a court of first instance may not participate in the consideration of the case in a court of second instance, or participate in a new consideration of the case in a court of first instance in the event that a judgment or ruling, decreed with his participation, is reversed and remanded.

Article 36. Under the circumstances indicated in Articles 32, 34, and 35 of the present Code, a judge shall be obliged to disqualify himself from the case.

If he does not disqualify himself, a reasoned challenge of him may be submitted by participants in the trial.

Article 37. A challenge must be submitted before the beginning of judicial investigation of the case.

Later submission of a challenge shall be permitted only in instance when the grounds therefor have arisen to the person submitting the challenge after the beginning of judicial investigation.

Article 38. A challenge of a judge shall be ruled on by the remaining judges in the absence of the challenged judge. If there is a tie vote, the judge shall be considered excluded.

Article 39. The rules set forth in Articles 34 and 36 of the present Code shall apply mutatis mutandis to the secretary of the judicial session, to an expert witness, and to an interpreter.
North Korean Criminal Procedure Code

However, their previous participation in the case as secretary of the judicial session, expert witness or interpreter shall not be a ground for challenge.

Article 40. The rules set forth in Articles 34 and 36 of the present Code shall equally apply mutatis mutandis to a procurator.

However, participation of a procurator in a pretrial investigation or inquiry, or his support of the accusation in court shall not constitute grounds for challenge.

A challenge of a procurator shall be ruled on by the court which is considering the case.

Article 41. Advocates, close relatives of the social organizations to which the accused belongs shall be permitted to serve as defense counsel.

By the permission of court, other persons who are not specified in the preceding section shall be permitted to serve as defense counsel.

Article 42. The participation of defense counsel in a judicial examination shall be obligatory in the following cases:

(1) cases in which a procurator is participating

(2) cases of dumb, deaf, and other persons who by reason of their physical defects are not able to make themselves understood.

Article 43. When a group of persons is accused in a criminal case, the same person may serve as defense counsel for the several accused.

However, the same person may not serve as defense counsel for two accused persons if the interests of one of them conflict with the interests of the other.

Article 44. A person who has participated in a case as witness shall not be permitted to serve in the same case as defense counsel, or representative of the victim’s interest or of a civil plaintiff.

Chapter Four: Evidence

Article 45. A court shall not be limited by any formal rules of evidence and shall have the power, according to the circumstances of the case, to accept any kind of evidence, or to require it from the third party, for whom such a demand shall be obligatory.

Article 46. The term “Evidence” shall be construed to mean the testimony of the victim or witnesses, the expert opinions, real evidence, the result of view, records of investigative and judicial actions, and the testimony of the accused.

Article 47. The term “Real Evidence” shall be construed to mean articles which have served as instruments for the commission of a crime, or which retain on them traces of the
crime, or which have been the objects of the criminal acts of the accused, and all other articles which may facilitate the detection of a crime or discovery of the person who is guilty of it.

Article 48. The procedure for collecting, preserving, and examining real evidence shall be determined by the present Code.

Article 49. A witness shall be obliged to appear when summoned by a court, and to testify to everything known to him about the case.

If a witness fails to appear, or refuses to testify without valid reason, he shall be punished in accordance with laws and decrees.

Article 50. A person who by reason of his physical or mental defects is incapable of correctly understanding circumstances of significance for the case or of giving correct testimony concerning them may not be interrogated as witness.

Article 51. If a witness fails to appear without a valid reason, a pretrial investigator, or court shall have the right to subject him to compulsory appearance.

Article 52. Expert examination may be assigned in instances when in the conduct of the inquiry, or pretrial investigation, or during the judicial examination, special (scientific, artistic, or professional) knowledge is necessary.

Expert examination shall be obligatory:

(1) to establish the cause of death and the nature and quality of bodily injury;

(2) to determine the mental condition of the accused or witnesses in those instances when doubt arises of whether or not they are mentally ill;

(3) to determine the maturity of the sexual organ of the victim of the crime specified in Article 126 of the Penal Code in those instances the victim's age is neither less than 14 nor more than 16.

Article 53. An expert or interpreter shall be obliged to appear, when summoned, and to give his opinion or to interpret conscientiously.

The rules set forth in section 2 of Article 45 and Article 51 of the present Code shall apply mutatis mutandis to an expert or interpreter.

Article 54. A witness, expert, interpreter, or the victim shall have the right to be reimbursed for travel or any other expenses incurred by them in order to appear.

In addition to the travel or any other expenses indicated in the preceding section, an expert or interpreter shall have the right to receive compensation for giving his opinion or in-
Article 55. Real evidence must be described in detail in the records of a view and attached to the file of the case by decree (of a pretrial investigator or procurator) or ruling (of a court). Real evidence must be preserved with the file of the case either by the pretrial investigator conducting an inquiry into the case or by the court that is considering the case. Real evidence may be returned to its owner even before the termination of a case if the owner so requests and if the request can be granted without impairing the conduct of inquiry into and consideration of the case.

Real evidence which cannot be preserved in the court or investigation chamber shall be placed under seal and kept by the interested person until the court or pretrial investigator issues instructions concerning it.

Article 56. When a case is transferred from one court or pretrial investigator to another, real evidence shall be forwarded with the file of the case.

Article 57. A judgment, or ruling, of a court or decree of a procurator or pretrial investigator to dismiss a case must contain express directions for the ownership or any other disposal of real evidence.

Article 58. If real evidence subject to rapid deterioration cannot be returned to the owner, it shall be sold and its monetary equivalent shall be retained.

Article 59. The presence of witnesses of investigative actions shall be obligatory during the conduct of a search or seizure.

The rules set forth in Section 2 of Article 49, Article 51, and Section 2 of Article 54 of the present Code shall apply mutatis mutandis to witnesses of investigative actions.

Chapter Five: Records

Article 60. In the conduct of pretrial investigations, as well as in administrative and judicial sessions of courts of first instance, it shall be required to keep records.

Article 61. A record of investigative actions shall be drawn up by the pretrial investigator. The record shall be certified by the signature and personal seal of the pretrial investigator. The record of procedures which require the participation of witnesses of investigative actions shall be equally certified by the signature and personal seal of the same witnesses.

All corrections, erasures and additions entered in the record shall be certified by the personal seals of persons interrogated before the record is signed by, verified by the personal seal of, its drawer.
The record specified in section one of the present article must contain following items:
(1) an indication of the place and date of the investigative actions;
(2) the names of the pretrial investigators and witnesses of investigative actions;
(3) the statements of the persons interrogated, and the results of view, search, and seizure;
(4) the requests of the participants in the trial, witnesses, experts, and of any other persons;
(5) the decisions of the pretrial investigators.

Article 62. A record of administrative sessions of a court of first instance shall be drawn up by the secretary of the court and must contain the following items:
(1) an indication of the place and date of the administrative sessions;
(2) the names of the members of the court;
(3) the names of the participants in the trial, if present;
(4) the name of the case under consideration;
(5) motions accepted, and rulings of rulings of the court. The record shall be certified by the signature and personal seal of the president and the secretary of the court.

Article 63. A record of judicial sessions of a court of first instance shall be drawn up by the secretary of the court, and must contain the following items:
(1) an indication of the place and date of the judicial sessions;
(2) the names of the members of the court;
(3) the names of participants in the trial, if present;
(4) the name of the case under consideration;
(5) all procedural actions of the court in the order in which they have taken place;
(6) motions and statements of participants in the trial, witnesses, experts, and of any other persons;
(7) warnings given by the court to the accused of their rights to present defense after each procedural actions of the court;
(8) rulings of the court;
(9) a brief summary of the last word of the accused;
(10) warnings given to the accused of the procedural time limits for appealing against the judgment.
(11) any other things that participants in the trial have requested to be entered in the record.
The content of the oral argument of the parties shall not be entered in the record; only the order in which it has taken place in the court shall be indicated.

The record shall be certified by the signatures and personal seals of the president and the secretary of the court. The record of a judicial session in which the judgment condemning the accused to death is rendered must contain such warning given to the accused of the right to petition a special pardon to the Presidium of the Supreme People's Assembly.

Article 64. Within three days after the record has been drawn up, and certified by the signatures and personal seals, the parties who have participated in a judicial session may request the court to correct the record, indicating that it is incorrect or incomplete. The president of the court shall have the right to correct it, if he deems that such request is valid. However, if he deems that such request is not valid, a ruling of the court to such effect must be attached to the file of the case.

Chapter Six: Calculation of Time Periods and Court Costs

Article 65. Time periods shall be calculated in hours, days, and months.

In calculating time periods the hours and the day at which time the periods begin shall not be taken into account.

Article 66. In calculating time periods in days the time period shall expire at midnight of the last day.

If a given action must be taken in a court, or before a procurator or pretrial investigator, the time period shall expire at the conclusion of business hours in the courtroom, or investigation chamber.

Article 67. In calculating time periods by months the time period shall expire on the corresponding day of the last month.

And if such month does not have a corresponding day, the time period shall end on the last day of such month.

Article 68. If the end of the period falls on a gala day or any other rest days, the first subsequent working day shall be considered the last day.

Article 69. The time period shall not be considered to have lapsed if appeals, protests, or any other documents are put in the mail before the expiration of the time period.

Article 70. A time period which has lapsed for a valid reason may be extended by the pretrial investigator, procurator, or court that is dealing with a given case.

Article 71. Court costs shall consist of:
(1) sums paid to witnesses, experts, witnesses of investigative actions, and interpreters;
(2) sums spent for preserving, transmitting real evidence or spent for investigating the case;
(3) any other expenses paid by the court in the conduct of a given case.

**Article 72.** In the event that the accused is found guilty, the court which decrees the judgment shall at the same time rule on the exaction of court costs from him.

If in a case several accused are found guilty, the court shall decree in what proportion court costs must be imposed on each of them according to the property status of such persons.

**Article 73.** In the event that a case is dismissed or the accused is found innocent, court costs shall be assumed by the state.

The preceding section shall apply also to such event that the person from whom court costs must be exacted is insolvent.

In the event that a case is dismissed by reason of reconciliation of the victim with the accused, the court may impose costs on one or both of them.

In the event that the accused is found guilty but nevertheless relieved from punishment, the court shall have the right to exact costs from the accused.

**Chapter Seven: Initiation of a Criminal Case**

**Article 74.** The following shall constitute reasons for initiating a criminal case:

(1) declarations of citizens and of various associations and organizations;
(2) communications of institutions and governmental officials;
(3) giving oneself up;
(4) the discretion of a procurator, pretrial investigator, or a court.

**Article 75.** Declarations of citizens may be made by either written or oral statements.

Oral statements shall be entered in records by a court, procurator, or pretrial investigator, and the record must be certified by the signatures and personal seals of the person making the statement.

When an oral statement is taken, responsibility for knowingly making a false accusation must be explained to the person from whom the statement comes.

A written statement must be certified by the signature and personal seal of the person from whom it comes.

**Article 76.** A court, procurator or pretrial investigator shall be obliged to accept declarations and communications concerning any crime that has been committed or is in preparation, even though they have no jurisdiction over such crime, in which event, however, the case shall
be transferred by them to another proper investigative or judicial jurisdiction.

Article 77. If a declaration or communication itself does not indicate on its face the constituent element of a crime, a court, procurator, or pretrial investigator shall refuse to initiate the investigation of the criminal case, and inform of such refusal the person who has made the declaration or communication.

Such refusal to initiate a criminal case may be protested on by the person who has made the person who has made the declaration or communications to the proper higher institutions, as appropriate, within a period of 10 days.

Article 78. When there exist reasons specified in Article 74 of the present Code and the content of a declaration or communication indicates the constituent elements of a crime, one of the following decisions must be taken:

1. a pretrial investigator shall initiate a criminal case, begin a police inquiry, and must send to a procurator within 24 hours a copy of the decree to initiate a criminal case rendered by him;

   The procurator shall have by his own reasoned decree the right to vacate the decree of the pretrial investigator, there by refusing to initiate the criminal case;

   The pretrial investigator shall be obliged to execute the decree of a procurator to vacate his own decree to initiate a criminal case, even though he thinks that such decree of the procurator is not justifiable and proper;

   However, after the execution of such decree, he may present his own opinion concerning the case to a proper higher procurator;

2. A procurator shall either refer the case to pretrial investigators, or begin a pretrial investigation by himself, or refer the case for consideration by a court;

3. A court shall either refer the case to a procurator or pretrial investigator, or take the case for consideration by itself.

Chapter Eight: The Inquiry

Article 79. Commissioned officers of the army, pretrial investigators, workers in the Ministry of Internal Affairs, inspectors of agencies of labor, tax, commerce, fire prevention, etc. who are authorized to conduct inquiry shall constitute agencies of inquiry.

Article 80. Agencies of inquiry shall collect factual data indicating the constituent elements of a crime as a foundation of a case.

Agencies of inquiry must collect such data either by requesting presentation of documents,
or by hearing explanations from interested persons, provided that it does not constitute any pretrial investigate actions.

Article 81. If, judging from the collected factual data, there exist sufficient indicia of a crime for which a pretrial investigation is obligatory, an agency of inquiry shall be obliged to transfer such a case to a procurator or pretrial investigator together with such factual data and its own opinion concerning them. In cases in which a pretrial investigation is not obligatory, an agency of inquiry shall be obliged to transfer such a case directly to a court in the same manner mentioned above.

Article 82. Commissioned officers of the army and workers in the Ministry of Internal Affairs who are authorized to conduct an inquiry shall have the right to arrest a person suspected of committing a crime as a means of preventing the suspect from evading pretrial investigation and trial, only if one of the following grounds exists:

(1) when such person is caught either attempting to commit the crime, or committing it, or immediately after committing it, or immediately after committing it;

(2) when victims or eyewitnesses directly indicate the given person as the one who has committed the crime;

(3) when traces of the crime are discovered on the person of the suspect or on his clothing, where he is, or in his clothing, where he is, or in his dwelling;

(4) when the suspect has attempted to escape or has been chased as a criminal while in the act of escaping;

(5) when the suspect does not have a permanent place of residence or occupation;

(6) when the identity of the suspect has not been established.

Any agency of inquiry other than those specified in the preceding section may not have the right to arrest a person suspected of committing a crime in any case.

Article 83. An agency of inquiry making the detention of a suspect in accordance with the previous Article shall be obliged to, without exception, report the detention within 24 hours to the procurator under whose jurisdiction the agency of inquiry is located, stating the reason for the detention.

The procurator shall be obliged to approve or vacate the detention within 48 hours after receipt of such report as specified in the previous Section.

The agency of inquiry shall be obliged to either transfer the suspect, together with collected data, to a procurator or pretrial investigator under whose jurisdiction it is located, or release
him, respectively in accordance with the procurator's approval or vacating of the detention.

Note: The procedure for approval of the arrest of those persons suspected of having committed crimes against state sovereignty shall be regulated by a special statute.

**Article 84.** The period of inquiry conducted by an agency of inquiry may not exceed one month.

**Article 85.** A procurator shall exercise general supervision over the inquiry activities of an inquiry agency which is located under his jurisdiction.

**Chapter Nine: The Pretrial Investigation**

**Article 86.** Pretrial investigation shall be conducted by pretrial investigators of the procuracy in cases involving crimes provided for by Articles 82-95, 97-101, 104-107, 110, 112-121, 123, 125, 130, 131, 136-140, 142, 147 Section two, 149, 150, 164 Section three, 178-196, 198, 200-202, 214, 220, 221, 223-227, 236, 242, 246, and 295-301 of the Penal Code. Pretrial investigation may be conducted in cases involving other crimes (not specified in the above), with the exception of crimes provided for by Articles 65-81 of the Penal Code, when such cases are deemed either especially complex or of especial social significance.

Procurators shall have the right themselves to conduct pretrial investigation of all cases with the exception of crimes provided for by Articles 65-81 of the Penal Code, and either to direct the pretrial investigation or to transfer any case already under consideration of one investigator to another.

Inspectors of the agency of state security shall conduct pretrial investigations of cases involving crimes provided for by Articles 65-81 of the Penal Code.

**Article 87.** When a pretrial investigator receives information or material that a crime has been committed in his investigative jurisdiction for which pretrial investigation is obligatory, he shall immediately initiate such an investigation, and draw up a decree to that effect.

**Article 88.** In the event that a pretrial investigator finds it necessary to conduct investigative actions not within his investigative jurisdiction, he may entrust their conduct to the appropriate pretrial investigator.

**Article 89.** Any pretrial investigator who receives information or material concerning commission of a crime for which a pretrial investigation is obligatory not within his investigative jurisdiction, shall be obliged to conduct only those investigative actions that cannot be postponed, after which he shall be obliged to transfer the case to the appropriate investigative jurisdiction.
Article 90. In the course of pretrial investigation, the pretrial investigator must clarify all
the facts involved in the case that might affect the guilt of the suspect or the degree of his
criminal liability.

Article 91. A pretrial investigator shall not have the right to deny the suspect or the victim
the opportunity to interrogate witnesses or conduct an expert examination or other investiga-
tive actions in the collection of evidence if they petition to establish such circumstances as may be
of significance for the case.

Article 92. If the pretrial investigator denies the petition of the suspect or the victim con-
cerning the decree whether or not to initiate a pretrial investigation, or concerning the
establishment of the circumstances set forth in the preceding article, he shall be obliged to
render a decree indicating the reasons for denial.

Article 93. Data of a pretrial investigation may be given publicity only to the extent that
the pretrial investigator deems it necessary.

Article 94. A pretrial investigation must be completed within a period of not more than
two months from the beginning of the investigation.

This period may be prolonged for not more than one month by the permission of the chief
procurator of a province procuracy.

Further prolongation of the period for pretrial investigation may be carried out only by the
permission of the Procurator General.

Article 95. In the event that a crime has been committed by several persons in complicity
or that several crimes committed by one person are related each other, such cases may be
embraced in a single investigative procedure.

Article 96. Procurators shall supervise over the conduct of pretrial investigations.
Procurators shall have the right to inspect the record of a pretrial investigation and to issue
to pretrial investigators such instructions as may be necessary to the conduct of the investi-
gation.

Pretrial investigators must of necessity obey the written instruction of a procurator.

Article 97. When a pretrial investigator learns in the course of his investigation of a case
that the crime committed has caused damage or loss to the victim, he shall explain to him
the right to bring a civil suit, and shall enter that fact in the record.

Article 98. A pretrial investigator shall have the right to take, either on the motion of the
civil plaintiff or in his discretion, measures to secure execution of judgement on the civil
-complaint, only in the event that failure to take such measures may deprive the civil plaintiff of the possibility of receiving compensation for damage or loss sustained.

A pretrial investigator shall be obliged to take measures to secure possible confiscation of property in the event that the crime he is investigating is subject to punishment of confiscation of property under the Penal Code.

**Article 99.** Articles 34 and 36 of the present Code shall apply *mutatis mutandis* to pretrial investigators.

Upon receiving a declaration of challenge, a pretrial investigator shall send it within 24 hours to the procurator, during which time the investigative actions, however, shall not be suspended.

Within 72 hours from the moment of receiving the declaration set forth in the preceding section, the procurator shall be obliged to take a decision with respect to it.

**Chapter Ten: Presentation of Accusation and Interrogation of the Accused**

**Article 100.** If a pretrial investigator deems that there exists sufficient evidence to provide a basis for presenting an accusation of the commission of a crime, he shall draw up a decree to prosecute the suspected person as the accused in this connection, the investigator shall be obliged to notify the accused of such decree within 48 hours from the moment of drawing up the decree.

**Article 101.** A decree to prosecute as the accused must indicate: the name of the person by whom the decree is drawn up; the time and place it is drawn up; the time, place, and other circumstances of the commission of the crime, insofar as they are known the pretrial investigator; the grounds for presenting the accusation.

**Article 102.** An accused, if at liberty, shall be summoned before a pretrial investigator by means of a certified mail which is to be sent or handed to the accused, and a receipt of which shall be obtained from him.

An accused who has been already taken into custody shall be summoned through the responsible person for administration of the place of the confinement, or shall be interrogated at the place of the confinement.

**Article 103.** In the event an accused fails to appear without valid reason, he shall be compelled to appear.

The accused may be subject to compulsory appearance without having been previously summoned, if he hides from pretrial investigation.
Compulsion of the accused to appear shall be carried out by the worker in the Ministry of Internal Affairs in accordance with the decree of compulsory appearance.

Article 104. In the event that the accused has escaped or the place of his residence is not established, the pretrial investigator shall draw up a decree to conduct a search.

If the place of residence of the accused has not been established since the decree to conduct a search was drawn up, the pretrial investigator shall render decree to suspend the pretrial investigation.

The decree to suspend the pretrial investigation set forth in the preceding section shall be rendered only in the case when there exist sufficient data to provide a basis for presenting an accusation of the commission of a crime, and if such data do not exist, the pretrial investigator shall render a decree to dismiss the case.

The decree to conduct a search must indicate: the place of residence; career; name; and personal appearance of the accused, and must be attached by a decree to prevent evasion of justice, and shall be sent to agencies of protection of public order.

Article 105. In the event the accused is taken seriously ill, the pretrial investigator shall render a decree to suspend the pretrial investigation.

Article 106. A pretrial investigator shall be obliged to interrogate an accused not later than 24 hours after he appears or is compelled to appear.

Article 107. Before interrogating the accused the pretrial investigator shall make sure of his identity and explain to him the nature of accusation.

Article 108. In the course of interrogation of the accused, the pretrial investigator must not use any force, threats, or other similar measures in order to obtain his testimony or confession.

Article 109. Accused persons summoned in the same case shall be interrogated separately, and pretrial investigator shall be interrogated separately, and the pretrial investigator shall take measures to prevent them from communicating with one another. When necessary, however, the pretrial investigators shall have the right to arrange personal confrontations of accused persons, or of accused persons and witnesses.

Article 110. When interrogating the accused, the pretrial investigator must ask him to tell everything he knows about the case, after which the investigator shall put questions to the accused.

The testimony of the accused shall be entered in the record of the interrogation in the
first person and the order in which it has taken place.

Article 111. Upon completion of the Interrogation, the record shall be read to the accused by the pretrial investigator.

The accused shall have the right to demand additions to the record and the insertion of corrections in it in conformity with the actual testimony given by him.

The record shall be certified by the signatures and personal seal of the accused and the pretrial investigator.

Article 112. When mutes, deaf persons, or persons who speak a language incomprehensible to the pretrial investigator are to be interrogated, such interrogation shall be conducted with the participation of an interpreter or a person who understands the deaf or mute sign language.

The participation of these persons in the interrogation shall be noted in the record thereof, and it shall be certified by the signatures and personal seals of them.

Article 113. When summoning an official as the accused, the pretrial investigator shall take a decision whether or not the accused shall be removed from his office for the duration of the pretrial investigation, which shall be subject to approval by the procurator. The decision shall be notified to the place of work of the accused.

Chapter Eleven: Measures to Prevent Evasion of Justice

Article 114. Pretrial investigators shall have the right to take measures to prevent the accused from avoiding trial or pretrial investigation.

Article 115. Measures to prevent evasion of justice shall consist of the following:

1. a signed oath not to leave;
2. personal or financial guaranty;
3. house arrest.

Article 116. In deciding whether or not it is necessary to take measures to prevent evasion of justice, or in choosing the measure to be taken, the pretrial investigator shall take the following into consideration:

1. the gravity of the crime committed by the accused;
2. the possibility that the accused will attempt to evade pretrial investigation or trial, or hamper finding of the truth of the case;
3. the state of health of the accused, his occupation, his family situation, and other circumstances.
Article 117. Measures to prevent evasion of justice shall be taken only after a decree to prosecute a suspect as the accused has been rendered. Measures to prevent evasion of justice may be subject to alteration during the time of the pretrial investigation.

In the event that, according to especial necessity, measures to prevent evasion of justice are taken even before a decree to prosecute a suspect as the accused has been rendered, the decree to prosecute as the accused shall be rendered not later than 14 days after such measures have been taken. If the decree to prosecute as the accused is not rendered within this stipulated period, the measures to prevent evasion of justice shall be revoked.

Article 118. In taking a measure to prevent evasion of justice, the pretrial investigator shall draw up a reasoned decree with regard to it, indicating the event of the crime which causes the presentation of the accusation, and the grounds for taking the measure to prevent evasion of justice.

The accused shall be notified immediately of the measure taken to prevent evasion of justice.

Article 119. A procurator shall have the right to direct the pretrial investigator either to revoke or alter a measure taken by the latter to prevent evasion of justice, or to take a measure to prevent evasion of justice, if it has not been taken by the pretrial investigator.

Even if the pretrial investigator disagrees with the directions of the procurator set forth in the preceding section, he shall be obliged to execute such directions. However, the pretrial investigator shall have the right to make a protest to a higher procurator.

Article 120. A signed oath not to leave shall be construed to mean a written promise made by the accused not to remove himself from the place of residence designated or approved by the pretrial investigator without the permission of the latter.

In the event that the accused violate this promise, more severe measure to prevent evasion of justice may be substituted.

The accused shall be informed of the possibility of the substitution set forth in section three of the present article, when he submit the written promise set forth in section one of the present article.

Article 121. A personal guaranty shall be construed to mean a written promise obtained from nor less than two trustworthy persons that they guarantee the appearance of the accused and further obligated themselves to produce him at the requests of and before the agency of pretrial investigations and the court at any time.
In obtaining the written promise from the guarantors, they shall be informed of the responsibility they shall bear in the event that the accused should evade pretrial investigation or trial.

Article 122. A financial guaranty shall be construed to mean a written promise obtained from a sufficiently qualified person or organization to pay a stipulated sum of money to the agency of pretrial investigation or the court in the event that the accused should not appear.

Article 123. House arrest shall be construed to mean depriving the accused of freedom by confining him to his home either with or without posting a guard.

Article 124. Taking into custody as a measure to prevent evasion of justice shall be permitted only in cases involving crimes which may be punishable by penal servitude and when there exist specific grounds to fear that the accused, (if at liberty), would destruct evidence, obstruct the discovery of the truth of the case, or attempt to avoid pretrial investigation or trial.

In deciding to take an accused into custody as a measure to prevent evasion of justice, the pretrial investigator shall be obliged to obtain the approval of a procurator.

The measure taken to prevent evasion of justice shall be immediately revoked or altered if there is no longer a need to continue to take the accused into custody.

When a pretrial investigator renders a decree to take an accused into custody as a measure to prevent evasion of justice, he shall send the copy of the decree to the agency of confinement.

Article 125. The period for which an accused may be held in custody as a measure to prevent evasion of justice shall not exceed two months.

In complex cases, this period may be prolonged by the permission of the chief procurator of the province procuracy, but not for more than one month.

Further prolongation of this period may be carried out by the permission of the Procurator General.

Article 126. The revocation or alteration of a measure to prevent evasion of justice taken by a pretrial investigator shall be made by a reasoned decree, and measures to prevent evasion of justice taken upon the direction of a procurator may be revoked and altered only with the approval of the procurator.

Chapter Twelve: Interrogation of a Witness and of an Expert

Article 127. The rules set forth in Section one of Article 102 of the present Code shall apply mutatis mutandis to the procedure for summoning a witness or an expert for the purpose
of interrogation.

Article 128. Witnesses summoned in the same case shall be interrogated separately and in the absence of other witnesses.

In this connection, the pretrial investigator shall take measures to prevent witnesses from communicating with one another until the interrogation is terminated. If necessary, however, the pretrial investigator shall have the right to carry out a personal confrontation between witnesses.

Article 129. Before the interrogation of a witness, the pretrial investigator shall ascertain the identity of the witness, establish the relationship of the witness to the accused, the victim, and other participants in the trial, warn him of responsibility for refusing to give testimony or for knowingly giving false testimony, and obtain a written oath to such effect from the witness.

The testimony of a witness shall be correctly entered in the record in the first person.

Article 130. The rules set forth in Article 110 of the present Code shall apply mutatis mutandis to the procedure for interrogating a witness.

Article 131. In the interrogation of a child or youth, the representatives of the educational institution of the child or youth shall be present at the interrogation.

Article 132. The rules set forth in Article 112 of the present Code shall apply mutatis mutandis to the procedure for interrogating a witness.

Article 133. The rules set forth in Article 111 of the present Code shall apply mutatis mutandis to the procedure for drawing up the record of interrogation.

Article 134. Before the interrogation of an expert, the pretrial investigator shall ascertain the identity of the expert, and shall explain to him that he must render an opinion strictly in accordance with the circumstances of the case and factual data given in the case in light of his special knowledge; the pretrial investigator shall also warn him of responsibility for refusing to give his opinion, or for knowingly giving a false opinion.

Article 135. The pretrial investigator shall explain to an expert the points on which his opinions are required.

The accused shall have the right to submit and point out in writing those points on which expert opinions are required.

An expert shall have the right, with the permission of the pretrial investigator, to inspect by himself those circumstances of the case of which he must have knowledge in order to draw his own opinion.
**Article 136.** When several experts are assigned to carry out an expert examination, and if they so request, they shall be given the opportunity to confer among themselves before giving an opinion.

**Article 137.** If the experts arrive at a common opinion, their opinion shall be announced by one of them. In the event of disagreement among the experts, each expert shall give his opinion separately. After the expert opinion has been given, each of the experts may be questioned.

Upon completion of an expert examination, a record thereof shall be drawn up in conformity with the requirements of Article 111 of the present Code.

**Article 138.** In the event of insufficient clarity or completeness of an expert opinion, a repeated expert examination may be assigned, and entrusted to the same or another expert or other experts in accordance with a reasoned decree.

**Chapter Thirteen: Search and Seizure**

**Article 139.** A pretrial investigator shall have the right to demand a citizen or organization to produce certain article or document of significance for a case which are in the possession of them.

In the event that they do not comply with such demand, the pretrial investigator shall have the right to conduct a search or seizure as a compulsory measure, after drawing up a reasoned decree concerning it.

**Article 140.** Governmental institutions, officials, private citizens, and organizations shall not have the right to refuse demands of the pretrial investigator to produce documents or articles.

**Article 141.** It shall not be permitted to conduct search or seizure at night, except in instances not permitting delay.

A search or seizure shall be conducted in the presence of the person who occupies the given premises or his neighbors.

Seizures on premises occupied by institutions or organizations shall be conducted in the presence of a representative of the given institution or organization.

**Article 142.** Searches or seizures on premises occupied by diplomatic missions of foreign countries, or on premises where diplomatic representatives and members of diplomatic missions and their families, shall be conducted only with the consent of the diplomatic representative.

If the office of the procuracy or foreign affairs is situated in the given locality, the representative thereof must be present during the conduct of such searches or seizures.
Article 143. In undertaking a search or seizure, the pretrial investigator shall be obliged to present a decree to such effect.

When necessary, the premises or place where search is being conducted may be guarded by workers in the Ministry of Internal Affairs or other guards.

Article 144. When conducting a search, the pretrial investigator must avoid unnecessary damage to locked doors, and other articles, if the owner of them or the person who occupies them does not refuse to open them voluntarily.

Article 145. When conducting a search and seizure, the pretrial investigator must be strictly limited to removing documents and other articles which may have a direct relation to the case.

Articles prohibited from circulation shall be subject to removal regardless of their relation to the case.

Article 146. When conducting a search, the pretrial investigator shall draw up a record to such effect.

The result of the conduct of the search shall be entered in the record in the order in which it has taken place.

All the documents and other articles removed shall be enumerated in a special inventory appended to the record, which shall be certified by the signatures and personal seals of the pretrial investigator and the witnesses of investigative actions.

The petitions and protests made with regard to the conduct of a search and seizure shall be entered in the record.

A copy of the record and of the special inventory shall be handed to the person at whose dwelling place the search has been conducted, or to his family.

Article 147. Seizure of postal and telegraphic correspondence may be carried out only with the sanction of a procurator, and shall be conducted in the presence of witnesses of investigative actions from among the representatives of the postal and telegraphic office.

Chapter Fourteen: View and Examination

Article 148. A view of the documents and other articles discovered during seizure shall be carried out by the pretrial investigator at the place of conducting the particular investigative action. If a view of the documents or articles will require a long time, or on other grounds, the pretrial investigator shall have the right to conduct the view in the investigation chamber after the documents or articles are delivered to him under seal.
Article 149. An examination of a person shall be conducted in the presence of witnesses—of investigative actions of the same sex as the person being examined in those instances when it is necessary that such investigative action be accompanied by the disrobing of the person being examined.

Article 150. A record shall be drawn up by the pretrial investigator concerning the results of the conduct of a view.

The record shall describe the condition and the the result of the conduct of a view in the sequence in which the view has been conducted.

Article 151. A medical doctor shall be called in as an expert when it is necessary to conduct a view or autopsy of a corpse, personal examination of the victim or the accused, and other examinations which require expert medical opinions.

Article 152. A record of an autopsy of a corpse and medical examination of a person shall be drawn up by the medical doctor and certified by the signatures and personal seals of the doctor and the pretrial investigator.

Chapter Fifteen: Examination of the Mental State of the Accused

Article 153. The mental state of the accused or the suspect who, at the time of committing the criminal act, is incapable of knowing the nature and quality of the act because of mental illness or temporary mental defect, or who has contracted a mental illness after committing a crime, shall be proved by the testimony of his relatives or other witnesses, and by an expert opinion.

Article 154. When the mental state of the accused or the suspect is clearly proved in conformity with the requirements of the preceding Article, the pretrial investigator shall refer the case through a procurator to a court for consideration, together with his own opinion for applying compulsory measures of a medical character. However, in the event that the accused or the suspect has contracted a temporary mental defect after the beginning of a pretrial investigation, the pretrial investigation shall be suspended until he restores himself to a normal mental state.

Chapter Sixteen: Completion of the Pretrial Investigation

Article 155. A criminal case shall be dismissed with the approval of a procurator:

(1) if there exist grounds indicated in Article 5 and Section three of Article 104 of the present Code;

(2) if there exist insufficient evidence to refer the accused to a court for consideration.
With respect to dismissal of a case, the pretrial investigator shall draw up a reasoned decree to such effect, and shall give notification of the dismissal of the case to the suspect or person under investigation and the person or organization upon whose declaration the case has been initiated.

**Article 156.** If a pretrial investigator deems a pretrial investigation to be completed and the evidence gathered to be sufficient for the referral of the person under investigation to a court for consideration, he shall be obliged to notify the person under investigation thereof, explain to him that he has the right to acquaint themselves with the materials of the case, give him the opportunity to make such acquaintance, and inquire whether he desires to supplement the materials of the case.

If the person under investigation files a petition with regard to circumstances of significance for the case but previously not investigated, the pretrial investigator shall be obliged to supplement the investigation to such effect.

If the pretrial investigator finds that the petition of the person under investigation set forth in the preceding section has no valid reason, he shall refuses to grant the petition with a reasoned decree to such effect. When he grants the petition and thus supplement the record of the pretrial investigation, he shall be obliged to acquaint the petitioner with such record.

**Article 157.** When a pretrial investigation is completed, a conclusion to indict including the following items shall be drawn up:

1. a brief summary of the material circumstances of the case, whether favorable or unfavorable to the event of the crime and the responsibility of the accused, and of the evidence confirming the presence of such circumstances;
2. the place and time of commission of the crime, its methods, and motive;
3. the social status of the criminal;
4. information about the person under investigation;
5. an indication of the articles of the criminal law which provide for the given crime.

To a conclusion to indict, there shall be appended a list of the persons who, in the opinion of the pretrial investigator, should be summoned to the judicial session, as well as information concerning the time periods of confinement under guard of the person under investigation, real evidence, the civil suit, and measures taken to secure the civil suit.

The list of persons to be summoned to the judicial session shall be confined to the list of those persons whom it is actually necessary to summon.
The list of persons to be summoned to the judicial session shall indicate the domicile of those persons and the pages of the file of the case on which their testimony or opinions are set forth.

The text of the conclusion to indict shall contain the references to the pages of the file of the case on which confirmation of the fact set forth in the conclusion to indict may be found.

**Article 158.** The pretrial investigator shall send to a procurator the conclusion to indict together with the file of the case.

**Article 159.** Participants in the trial, witnesses, experts, interpreters, witnesses to investigative actions, and guarantors of the person under investigation shall have the right to appeal to a procurator actions of the pretrial investigator which violate or restrain their rights within 7 days from the moment of such action.

**Article 160.** The bringing of an appeal set forth in the preceding Article shall not suspend the execution of the pretrial investigator’s action under appeal until the procurator takes a decision with regard to it.

**Article 161.** In the event that the person under investigation brings an appeal from actions of a pretrial investigator, the pretrial investigator shall be obliged to refer the appeal that has been received to the procurator within twenty-four hours together with his explanation.

**Article 162.** When a procurator receives an appeal set forth in the preceding Article and Article 159 of the present Code, he shall be obliged to consider such appeal within seventy-two hours of receiving it and to inform the petitioner of the results of his consideration.

**Chapter Seventeen: Actions of the Procurator**

**Article 163.** In not more than five days, a procurator shall be obliged to consider a case that has been received in conformity with the requirements of Article 158 of the present Code and to take one of the following decisions concerning it:

1. to suspend or dismiss the case if he deems that grounds exist for doing so;
2. to return the case to the pretrial investigator, with his written instructions, for the consideration of a supplementary pretrial investigation;
3. if he deems that sufficient evidence exist for referring the case to court for consideration, to confirm the conclusion to indict with his own brief resolution.

The procurator shall be obliged to inform the pretrial investigator of the result of his decision specified in the preceding Article.

**Article 164.** In the event that a procurator dismisses a case, he shall resolve the question
of the ownership of real evidence; and the questions whether the instrument used in the
commission of the given crime shall be confiscated; whether the articles prohibited from
circulation shall be transferred to the proper institutions or destroyed; and whether the other
articles shall be returned to their owners.

Article 165. If a procurator deems inappropriate the conclusion to indict that has been
received, he shall be obliged to draw up a new conclusion to indict, to remove from the file
of the case the one previously drawn up by the pretrial investigator, and to return it to him
with an indication of the inappropriateness discovered.

The procurator shall have the right to alter the list of persons to be summoned to the
judicial session which has been drawn up by a pretrial investigator.

Article 166. If a procurator confirms a conclusion to indict, he shall refer the case to a
court together with the file of the case.

Article 167. After referral of the case to a court, all petitions and complaints in the case
shall be referred directly to the court.

Chapter Eighteen: Court Actions Prior to the Judicial Session

Article 168. Upon receiving a case with the conclusion to indict from a procurator, the
court shall elucidate the following questions prior to its judicial session:

(1) whether the pretrial investigation has been conducted sufficiently enough to consider the
case at the judicial session;

(2) whether the accusation is founded on evidence present in the case;

(3) whether the laws and decrees are correctly applied to the acts imputed to the accused;

(4) whether the requirements of the present Code have been observed in the initiation of
the case and in the conduct of the pretrial investigation.

(5) whether or not the petitions of the person under investigation shall be granted;

(6) whether the measure to prevent evasion of justice shall be selected, continued, altered,
or revoked with respect to the accused;

(7) whether participants in the trial are properly composed;

(8) whether the list of persons to be summoned to the judicial session is properly drawn
up.

Article 169. Criminal cases shall be considered in a (preparatory) administrative session of
all courts by a bench composed of a presiding judge and two people's assessors. However,
when necessary because of the situation of people's assessor or on any other grounds, a
judge may be made to participate in the administrative session instead of the people’s assessor.

Insofar as no especial circumstances exist, the report of a case in an administrative session of a court shall be made by the judge who will participate in its judicial session.

A procurator shall be informed of the date of the administrative session not later than 3 days before the session.

**Article 170.** If a court in administrative session deems that grounds exist for dismissal of the case, it shall dismiss the case with a reasoned ruling.

If the court deems that the pretrial investigation has been insufficiently conducted, it shall return the case to the agency of pretrial investigation, with a reasoned ruling, for the conduct of a supplementary investigation.

If the court deems that the pretrial investigation has been sufficiently conducted enough to refer the case to a judicial session, it shall bring the accused to trial with a reasoned ruling. In this connection, if the court deems inappropriate the conclusion to indict that has been received, the court shall draw up a new conclusion to bring the accused to trial by way of correcting or amending the conclusion to indict, and bring the accused to trial.

**Article 171.** A ruling of an administrative session of a court shall not be excepted. However, a procurator shall have the right to make a protest to a higher court.

**Article 172.** A copy of the conclusion to indict must be handed to the accused by the court earlier than seventy-two hours from the moment of opening of the judicial session.

When the conclusion to indict has been corrected or amended in the administrative session, a copy of the new conclusion to bring the accused to trial must be handed to the accused.

**Article 173.** Consideration of a case in judicial session must be commenced not later than onemonth from the day the case is submitted.

**Article 174.** A defense counsel shall be permitted to participate in a case at any time after the file of a case is referred to a court from the procurator. The court shall be obliged to secure to the defense counsel an opportunity to confer with the file of the case, and to copy necessary information from it.

*Chapter Nineteen: The Judicial Session*

**Article 175.** The presiding judge shall direct all the course of the judicial session.
The presiding judge shall guide the judicial investigation of the case and the oral arguments of the persons participating in the trial in the direction which is most likely to discover the truth.

In the event that any person participating in the judicial examination objects to actions of the presiding judge as suppressing or infringing upon his rights, such objection shall be entered in the record of the judicial session.

Article 176. The judicial session for each case shall proceed continuously except for time designated for rest. Consideration of other cases even during such rest time designated by the same judges before completion of the hearing of a case already commenced shall not be permitted.

Article 177. In the event that an accused violates order during a judicial session, or if he does not obey orders of the presiding judge, the presiding judge shall warn the accused that if he repeats the aforesaid actions he will be removed from the courtroom. If the accused ignores such warning, he may, upon a ruling of the court, be removed from the courtroom, and examination of the case shall continue in his absence. In this connection, the judgment shall be announced to him immediately after its proclamation.

Article 178. In the event that a procurator or defense counsel does not obey the orders of the presiding judge, the presiding judge shall inform the appropriately authorized institutions about this in order that a disciplinary action may be taken. If the said person continues to disobey the orders of the presiding judge in spite of a warning, the hearing of the case may be postponed upon a reasoned ruling of the court. However, the hearing of the case may be continued, if it appears possible without prejudice to the case to replace the given person with another.

Article 179. In the event that other persons present in the courtroom who are not specified in the preceding Article do not obey the orders of the presiding judge, they may be removed from the courtroom. In addition, a money fine of up to 500 won may be imposed upon them:

Article 180. The presiding judge shall open the judicial session at the time assigned for consideration of the criminal case, after having ascertained that people's assessors and the secretary of the judicial session are present, announce which case is subject to examination, and order the accused related to the case be brought in.

Article 181. The presiding judge shall establish the identity of the accused, and then ask
him whether or not he has received the conclusion to indict or the conclusion to bring him to trial.

Article 182. The presiding judge shall explain to the victim and the accused their rights at the judicial examination, announce the composition of the court to the participants in the trial, and explain to them the right to submit a challenge, and then ask them whether they submit challenges.

Article 183. The appearance of the accused in court shall be obligatory in examination of a case (in a session of a court of first instance). However, examination of a case in the absence of the accused may be permitted in the following instances:

(1) when the accused has given an express consent to such examination;

(2) when it is clearly established that the accused has refused to receive the summons to appear or evaded appearance in court.

Article 184. If an accused does not appear without a valid reason, examination of the case must be postponed. In this connection, the court shall subject the accused to compulsory appearance, and then continue to hear the case.

Article 185. In the event that a defense counsel does not appear at a judicial session, examination of the case shall be postponed, if the accused does not, with a valid reason, consent to the replacement of the defense counsel. If a procurator does not appear, examination of the case may be continued in his absence.

Article 186. In the event that a civil plaintiff or his representative does not appear at a judicial session, the court shall not consider the civil suit: in this connection, the victim shall retain the right to bring a new civil suit by way of ordinary civil proceedings.

Article 187. In the event that a victim, or his representative does not appear at a judicial session of a case which has been initiated by the victim, the court shall dismiss the case; however, the accused shall have, in this connection, the right to petition that examination of the case be continued in the victim's absence.

In the event of such petition set forth in the preceding section, the court shall be obliged to consider the case on the merits.

Article 188. The presiding judge shall determine which of the witnesses or experts summoned for the case have appeared and why those who are absent have not appeared, after having ascertained that the parties to the action or their representatives are present. In the event that any of the witnesses or experts summoned does not appear, the court shall hear
the opinions of the parties concerning whether or not the hearing of the case should be continued, and shall rule on the question of the possibility of hearing the case in the absence of such witness, or expert, or of postponing it.

**Article 180.** In the event a court rules in conformity with requirements of the preceding Article that hearing of the case be continued, the court shall ask the parties whether they petition to summon new witnesses or experts, in addition to those previously summoned at a judicial session, or to acquire new real evidence, or to present at the judicial session the evidence in possession of them; in this connection, having heard the opinion of the remaining participants in the trial, the court shall rule on the above petitions.

**Article 190.** When a court deems it necessary to summon new witnesses or experts, or to acquire new real evidence, the court shall postpone examination of the case; however if it is possible to immediately acquire such evidence, or summon such person, the court shall not postpone examination of the case and shall be obliged to secure to the persons participating in the judicial examination an opportunity to do so.

**Article 191.** After having ascertained that witnesses who have appeared are present, the court shall explain to the witnesses their duty to relate everything known to them about the case, warn them of their responsibility for knowingly giving false testimony, obtain from them a written statement concerning the fact that they have been so explained and warned, and shall order that they be removed from the courtroom.

**Article 192.** An expert who has appeared at a judicial session shall remain in the courtroom; However, he may be removed from the courtroom on the court’s own motion or on the motion of the parties.

**Article 193.** The presiding judge shall, before beginning examination of a case, explain to the victim his right to bring a civil suit.

The presiding judge shall, before beginning examination of a case, explain to the accused his rights to put questions to a witness, expert, or another accused, and to make defenses at any time during examination of the case.

**Article 194.** A judicial investigation shall begin with a reading of the conclusion to indict or to bring the accused to trial by a secretary of the judicial session.

The presiding judge shall ask the accused whether or not he acknowledges the substance of the accusation specified in the conclusion to indict or to bring the accused to trial.

**Article 195.** In the event that the accused agrees with the facts set forth in the conclusion
to indict or to bring the accused to trial, and admit the accusation against him to be true, the court shall have the right to omit further examination of the case and to proceed to hear the arguments of the parties. However, if any member of the court, or any of the persons participating in the judicial examination requests further examination, the court shall be obliged to continue to hear the case.

**Article 196.** A court shall hear the proposals of the participants in the trial concerning the sequence of examination of the case, to-wit, the sequence of interrogation of the accused and witnesses, and shall render a ruling on it.

**Article 197.** Interrogation of an accused shall be conducted by the procurator, then by the civil plaintiff, defense counsel, another accused in the same case, the presiding judge, and people's assessor.

**Article 198.** A witness shall be interrogated after other witnesses not yet interrogated are removed from the courtroom. Before interrogation, the presiding judge shall establish the identity of the witness and shall ascertain his relationship to the participants in the trial and the case.

**Article 199.** The presiding judge shall be obliged to, after interrogation of a witness, secure to the participants in the trial an opportunity to put questions to such witness on the points deemed necessary to clarify. However, the presiding judge shall have the right to eliminate questions having no relation to the case.

**Article 200.** A witness shall be questioned first by the participant in the trial upon whose petition the witness has been summoned, and then by the other participants in the trial. One participant in the trial may put additional questions to the witness to clarify answers given to questions asked by other participants in the trial.

**Article 201.** A witness who has already been interrogated may be questioned again in the presence of other witnesses, or may be personally confronted by them.

**Article 202.** Witnesses who have been interrogated shall remain in the courtroom and may not withdraw before the completion of the judicial investigation without the special permission of the presiding judge. The presiding judge may not allow witnesses who have been interrogated to withdraw from the courtroom earlier than the completion of the judicial investigation without the consent of the participants in the trial.

**Article 203.** If the testimony which has been given by the accused or a witness during a pretrial investigation is not disclosed in court, or if there exists substantial contradiction
between such testimony and the testimony of them in court, the accused or the witness may be permitted to read the testimony given during the pretrial investigation.

**Article 204.** In the event that the truth of a case has been clearly established in the course of the judicial examination, the court shall have the right at any time to terminate interrogation of witnesses.

**Article 205.** The rules set forth in Articles 135–137 of the present Code shall apply *mutatis mutandis* to the interrogation of an expert.

The opinion of an expert shall be orally stated at the judicial session, shall be submitted by the expert in writing, and shall be attached to the file of the case.

**Article 206.** In the event of insufficient clarity or completeness of an opinion, or in the event of disagreement among the experts, a court may, both upon its own initiative and upon the petition of any of the participants in the trial, assign supplementary or repeated expert examination.

**Article 207.** Real evidence may be viewed and any written documents may be publicly disclosed at any moment of the judicial investigation both upon the initiative of the court and upon petition of the participants in the trial.

**Article 208.** If a court deems it necessary to view the scene of commission of a crime, the court shall have the right to entrust such view to one of the members of the court.

**Article 209.** If a court deems that the case under consideration is not sufficiently clear but nevertheless it deems that new evidence can be obtained, the court shall postpone examination of the case both upon its own initiative and upon the petition of the participants in the trial, and shall acquire new evidence. When the court deems it inappropriate to acquire new evidence by itself, it may, upon a reasoned ruling, return the case to a procurator for the conduct of further supplementary investigation.

**Article 210.** After consideration of all the evidence, the presiding judge shall ask the participants in the trial whether they wish to supplement the judicial investigation. In the event that petitions are submitted to supplement the judicial investigation, the court shall render a ruling granting or refusing to grant the petition.

If the court refuses to grant the ruling set forth in the preceding section, the presiding judge shall announce that the judicial investigation is completed.

**Article 211.** After completion of a judicial investigation, the court shall pass on to the hearing of oral argument: Oral argument shall consist of speeches, first of the procurator
as well as of the civil plaintiff, then of defense counsel, and of the accused if a defense counsel does not participate in the judicial session.

Article 212. In making oral arguments, participants in the trial shall not have the right to refer to new evidence which has not been the subject of consideration in the judicial investigation. In the event that it is necessary to refer to new evidence, they may petition to reopen the judicial investigation.

Article 213. In the event that the accused's guilt in committing a crime is not proved in the opinion of a procurator, he shall, in his oral argument, make a speech in favor of the innocence of the accused. However, this shall not relieve the court of the responsibility to continue further hearing of the case and to decide whether the accused is guilty or not.

Article 214. After all the participants in oral argument have given their speeches, they may each appear once more with a rebuttal of what was said in the speeches.

Article 215. The presiding judge shall have the right to stop persons participating in the argument if they touch on circumstances having no relation to the case under consideration.

Article 216. After completion of oral argument, the presiding judge shall announce that oral argument has completed and grant the accused the last word. Having heard the last word of the accused, the court shall retire for conference to decree judgment.

The court and the participants in the trial shall not be permitted to put questions to the accused during the last word.

If in the last word the accused reports new circumstances of essential significance for the case, the court shall be obliged to reopen the judicial investigation both upon its own initiative and upon the petition of the participants in the trial.

Article 217. In the event that an accused has contracted mental illness or defects after committing the crime for which he is indicted, the court shall suspend the judicial investigation of the case until the accused has been completely cured of the illness or defects.

If the court deems it impossible to cure the mental illness or defects of the accused, the court shall dismiss the case.

Chapter Twenty: Change of the Accusation and Initiating Criminal Case With Respect to New Person

Article 218. Examination of a case in court shall be conducted only with respect to the accused and in accordance with the accusation upon which he has been brought to trial.

Article 219. If a court discovers during a judicial examination circumstances indicating that
the accused has committed a crime for which no accusation has been previously presented to him and which is not connected with the original accusation, the court shall initiate a case upon a new accusation, and shall, upon a reasoned ruling, refer the necessary materials to a procurator. In the event that the new accusation is connected with the original one, the court shall suspend examination of the case and return the whole file of the case to the procurator for the conduct of pretrial investigation and judicial examination of the case in the usual manner.

Article 220. If a court discovers during a judicial examination circumstances which require change of the accusation in court, and changing the accusation involves imposition of more severe punishment, the court shall suspend examination of the case and return the file of the case to the procurator for the conduct of pretrial investigation and judicial examination in the usual manner.

If changing an accusation does not involve imposition of more severe punishment, the court shall continue examination of the case and render a judgment.

Article 221. If a court discovers during a judicial investigation circumstances indicating commission of a crime by a person against whom criminal proceedings have not been instituted, the court shall, after hearing the opinion of a procurator, render a reasoned ruling to initiate a case with respect to such person.

In this connection, the court shall give to such person notification thereof, and refer the case to a procurator for the conduct of pretrial investigation and judicial examination in the usual manner. Further, the court may take measures to prevent evasion of justice.

Chapter Twenty-One: The Decree of Judgment

Article 222. Only the judges comprising the membership of the court in a given case may be present in the conference room during the judges’ conference.

Article 223. The court shall found the judgment exclusively on evidence which has been recorded in the file of the case and considered at the judicial session.

The judges shall evaluate evidence according to their own conviction based on the examination of the given case.

Article 224. When decreeing a judgment, a court shall resolve the following questions in the conference room:

(1) whether the act which the accused is indicted for having committed has taken place;
(2) whether such act contains the constituent elements of a crime;
(3) whether the accused has committed such act;

(4) whether the accused is subject to punishment for the crime committed by him;

(5) exactly what kind of punishment, compulsory measure of medical character, or of educational character must be imposed upon the accused; and whether it is subject to being served by the accused;

(6) whether the civil suit which has been filed is subject to satisfaction, or, if a civil suit has not been filed, whether or not measures should be taken to secure execution of judgment on a civil suit which might be filed in the future;

(7) how to dispose of the real evidence;

(8) to whom court costs must be charged;

(9) whether or not the measure taken to prevent evasion of justice is subject to change or whether a measure must be taken to prevent evasion of justice until the judgment has taken legal effect.

**Article 225.** In instances when, during a pretrial investigation or judicial examination, the question has arisen of the imputation of an accused, the court shall be obliged to resolve this question again when decreeing judgment even though such question may have already been decided in the administrative session of the court.

**Article 226.** The presiding judge shall pose the questions to be resolved by the court in the order indicated in Article 224 of the present Code.

Each question must be presented in such a form that either a positive or negative answer might be given to it.

The presiding judge shall direct the judges’ conference.

In resolving all questions, none of the judges shall have the right to abstain from voting.

The presiding judge shall give his vote last.

**Article 227.** All questions shall be decided by a simple majority vote. A judge who finds himself in the minority shall have the right to set forth a special opinion in writing in the conference room, and to attach it to the judgment.

However, the special opinion shall not be announced when proclaiming the judgment.

**Article 228.** A judgment of a court shall be decreed in the following forms:

(1) Imposition of punishment, compulsory measure of medical character, or of educational character upon the accused;

(2) relieving the accused, who has been found guilty, from serving punishment because of
an amnesty;

(3) a judgment of acquittal shall be decreed in instances when:

a. the event of a crime is not established;

b. there exist insufficient grounds for the indictment of the accused.

**Article 229.** With regard to a civil suit in a criminal case, the court shall render a ruling:

(1) to leave the suit unconsidered in the event of acquittal of the accused because of the absence of the constituent elements of a crime;

(2) to deny satisfaction of the civil suit in the event of acquittal of the accused because the event of the crime is not proved;

(3) either to grant or to deny satisfaction of the civil suit in all other instances, depending upon whether the grounds of the suit have been proved.

**Article 230.** In the event that the civil suit is left unconsidered in accordance with the provision set forth in section one of the preceding Article, the victim shall have the right to bring a civil suit de novo by way of usual civil proceedings.

**Article 231.** Articles and documents obtained by a criminal act which nevertheless do not constitute real evidence in a criminal case shall be returned to their owners, even though the latter have not brought any civil suit. In the event that the ownership of such articles and documents is disputed, it shall be decided by way of ordinary civil proceedings. In this connection, such articles and documents shall not be returned until the ownership thereof is finally decided.

**Article 232.** Article 164 of the present Code shall apply mutatis mutandis to the disposition of real evidence when a court decrees a judgment.

**Article 233.** Upon deciding all the questions, a court shall pass on to the drawing up of the judgment.

The judgment shall be composed of a reasoned part and a resolutory part.

**Article 234.** The reasoned part of a judgment shall indicate: the name, and age of the accused; his social position and status; the place, time, and method of commission of the crime; an explanation of circumstances of the case and evidence which serve as the basis for convicting or acquitting the accused; and such other distinguished facts as may be necessarily involved in terms of the circumstances of the case.

The resolutory part of a judgment shall indicate: a decision to declare the accused guilty or innocent; the laws and decrees in accordance with which the accused is found guilty or in-
nocent; and the type and extent of punishment, compulsory measure of medical character, or of educational character assigned for the accused.

A judgment must contain an indication of the procedure and time limit for appealing from the judgment in the event that one disagrees with it.

**Article 235.** Punishment, compulsory measure of medical character, or of educational character must be specified in such a manner that no doubt relating to the type or extent of punishment or compulsory measure assigned by the court will arise during execution of the judgment.

When a court deems it necessary to mitigate punishment, or compulsory measure of medical character, or of educational character, the judgment must indicate:

1. the original measure of punishment or compulsory measure of medical or educational character assigned by the court;
2. the grounds for mitigation;
3. the final type and extent of punishment or compulsory measure of medical or educational character.

If the accused is convicted of several crimes, the judgment must indicate:

1. the type and extent of punishment, or compulsory measure of medical or educational character assigned for the accused for each crime;
2. the final measure of punishment or compulsory measure of medical or educational character assigned by the court.

If an accusation is presented to the accused in accordance with the several articles of the criminal law but the accused is convicted of only a part of them, the judgment must indicate precisely under which of them the accused is acquitted and under which convicted.

**Article 236.** The judgment must be written out by hand by one of the judges and certified by the signatures and personal seals of all the judges who participates in decreeing it.

**Article 237.** After certifying a judgment by the signatures and personal seals of the judges, the court shall return to the courtroom.

The presiding judge shall proclaim the judgment in such a manner that all those present in the courtroom might hear it. All those present in the courtroom shall stand while hearing the judgment.

The judgment of a court shall be rendered in the name of the DPRK.
Article 238. When acquitting an accused, or relieving him from punishment, or from serving punishment, the court shall release the accused immediately after proclamation of the judgement.

However, the president of the Supreme Court or the Procurator General shall have the right to suspend the release of the accused except for the instance of the judgement of the Supreme Court.

Article 239. A judgment imposing upon the accused punishment, or compulsory measure of medical or educational character shall be executed only after it has taken legal effect.

A judgment shall take legal effect in the following instances:

(1) it shall take legal effect upon expiration of the period for bringing an appeal or protest, if it has not been appealed from or protested. In the event that an appeal or protest is brought, the judgment shall take legal effect, if it is not vacated, upon consideration of the case by a higher court.

(2) a judgment which is not subject to appeal shall take legal effect from the moment it is proclaimed.

In the event that only a part of a judgment is appealed from, the remainder of the judgment shall take legal effect upon expiration of the period for bringing an appeal.

Article 240. The term of a judgment condemning a person to penal servitude shall be reckoned from the day on which the judgment is executed. If the accused is being held in custody, the term of the punishment shall be reckoned from the day on which the accused was taken into custody.

Chapter Twenty-Two: Appealing from Court Judgment and Ruling

Article 241. A procurator shall have the right to protest the judgment or ruling of a court. An accused and his defense counsel shall have the right to appeal from the judgment or ruling of a court.

Article 242. A procurator of district procuracies shall have the right to protest judgments and rulings of district people’s courts; a procurator of province procuracies shall have the right to protest judgments and rulings of province people’s courts; a procurator of special procuracies the right to protest judgments and rulings of special courts; a procurator of the Supreme Procuracy the right to protest judgments and rulings of province, district people’s courts, or special courts.

Article 243. A procurator who has not participated in the consideration of a given case
shall not be prohibited from protesting the judgments and rulings relating to the case.

If a higher procurator deems a protest of a lower procurator improper, he shall have the right to revoke the protest.

**Article 244.** Appeals from and protests of judgment or ruling of a court may be submitted to a higher court within 10 days from the day a copy of the judgment or ruling is served. Not later than 48 hours after the proclamation of judgment, a copy thereof must be served.

**Article 245.** Written appeals and protests shall be brought through the court which has rendered the judgment or ruling; however, submission of the written appeal or protest directly to a court of second instance shall not be an obstacle to consideration of the appeal or protest.

Submitting an appeal from or protest of a judgment shall suspend execution of the judgment.

**Article 246.** Judgments of the Supreme Court as a court of first instance shall not be appealed from and protested; however, they may be appealed from to the plenary session of the Supreme Court only by way of extraordinary appeal.

**Article 247.** Participants in the trial shall be notified of the day of consideration of the case by way of cassation. However, nonappearance of the said persons shall not obstruct its consideration.

**Article 248.** Consideration of the case in a court of second instance shall commence in a courtroom with the report of one of the members of the court.

In the event that the parties are participating in the judicial session, the court shall hear the conclusions of them. In this connection, the party who brings the appeal or protest shall make speech first in the oral argument.

**Article 249.** A court of second instance shall not be obliged to limit itself to consider the grounds for the appeal or protest presented by the parties but consider all the proceedings in the case by way of a review of the file of case.

**Article 250.** The grounds for vacating a judgment (in the consideration of a case by way of cassation) are:

1. Incompleteness or inadequateness of the inquiry, or of the pretrial, or judicial, investigation;
2. substantial violation of the forms of judicial procedure;
3. violation or incorrect application of laws and decrees;
4. manifest injustice of the judgment.
Article 251. An inquiry or a pretrial or judicial investigation shall be deemed incomplete or inadequate, if it has left circumstances unclarified to such a extent that their establishment might have necessarily affected the outcome of the case.

Article 252. Those violations of the requirements of the provisions of the present Code which, by infringing upon or suppressing the rights guaranteed by law of participants in a case during consideration of the case or otherwise, have prevented the court from thoroughly examining the case and thus have influenced or might have influenced the decreeing of an impartial judgment, shall be deemed substantial violation of the forms of judicial procedure.

Article 253. A violation of the forms of judicial procedure shall be deemed to exist by itself:

1. if the court rendering the judgment is illegally constituted;
2. if the case has been tried by a court which has no jurisdiction over it;
3. if the case has not been dismissed by the court when there exist grounds for dismissal provided for by laws and decrees;
4. if the case is decided in the absence of the accused in instances when his presence is legally obligatory;
5. if the case is considered without the participation of defense counsel in instances when his participation is legally obligatory.

Article 254. The following shall constitute violation or incorrect application of laws and decrees:

1. failure of a court to apply the laws and decrees which should have been applied;
2. application of an inapplicable law or decree;
3. incorrect interpretation and application of law or decree, contradicting its precise meaning and general idea;
4. application of decisions and regulations issued by any institution other than the proper authorities, or by improper procedures, or in violation of laws and decrees.

Even if there exists a ground set forth in the preceding section, a judgment shall not be reversed unless such error committed by the court has resulted in the imposition of punishment different from that which should have been imposed had the laws and decrees properly applied.

Article 255. A judgment shall be deemed manifestly unjust if the punishment assigned by the court, although not exceeding the limits provided by laws and decrees, does not clearly
correspond with the gravity of the crime committed by the accused.

Article 256. A court of second instance shall vacate a judgment of the court of first instance and dismiss the case without remanding it to the latter court, if the latter has convicted the accused of an act which does not constitute any crime; or if the latter fails to dismiss the case although there exists a ground for the dismissal.

Article 257. In vacating a judgment rendered in a court of first instance which has not jurisdiction over a case, the case shall be reversed and remanded to the appropriate court which has jurisdiction.

Article 258. In the event that laws and decrees have been improperly applied by the court of first instance, or punishment has been assigned which lacks correspondence with the gravity of the crime, the court of second instance may, without referring the case for a new consideration, introduce necessary changes into the judgment; the punishment according to the changed judgment shall not, however, exceed the punishment originally assigned, and shall not be less than the punishment provided for by the applicable law and decree.

If a court of first instance fails to assign a supplementary measure of punishment, the court of second instance shall have the right either to introduce necessary changes into the judgment or to reverse the judgment and remand the case for new consideration by the court of first instance.

If a court of first instance fails to apply, an amnesty or has applied it improperly, the court of second instance shall be obliged to apply the appropriate provision specified in the amnesty and to mitigate the punishment originally assigned.

Article 259. Except for the cases specified in the preceding three Articles, the court of second instance, in vacating a judgment, shall be obliged to remand the case for a new consideration to another collegium of the same court of first instance that has rendered the judgment, or to another court of first instance.

Article 260. In the event that a case is remanded by a court of second instance for a new consideration, the court of first instance shall obey the instructions specified in the rulings of the court of second instance.

The court of first instance shall recommence proceedings of the case at whatever stage of the judicial investigation is specified in the ruling of the court of second instance reversing and remanding the case for a new consideration.

Article 261. In the event that the original judgment has been vacated upon an appeal of the convicted person, increasing the punishment in a new consideration of the case by a court
of first instance shall not be permitted.

If the original judgment has been vacated because of the mildness of the punishment upon cassational protest of a procurator, a more severe punishment than the punishment originally assigned may be imposed in a court of first instance.

**Article 262.** Although a court of second instance does not vacate the original judgment, it shall have the right, upon its ruling, to indicate any violation of laws and decrees which nevertheless does not amount to a ground for vacating the original judgment.

The court of first instance shall obey the instructions of the second instance specified in the above indication.

**Article 263.** An appeal from and protest of a ruling of a court of second instance may not be brought except by way of extraordinary appeal to the Supreme Court.

---

**Chapter Twenty-Three: Extraordinary Appeal**

**Article 264.** The president of the Supreme Court and the Procurator General shall have the right to demand, in order to bring an extraordinary appeal, any case at any stage in the proceeding from any judicial organ. A procurator of province procuracies shall have such right to demand a case over which he has jurisdiction, as specified in section one of the present Article.

A procurator of district procuracies shall have such right to demand a case over which he has jurisdiction, as specified in section one of the present Article.

A procurator of military and transport procuracies shall have such right to demand a case over which he has jurisdiction, as appropriate, as specified in section one of the present Article.

Bringing extraordinary appeals set forth in the above four sections shall not be subject to the limitation of periods.

**Article 265.** The president of the Supreme Court and the Procurator General shall have the right to suspend the execution of the judgment of a case they have demanded in order to bring an extraordinary appeal.

However, the execution of the judgment decreed by the Supreme Court shall not be suspended.

**Article 266.** In the event that the person who has demanded a case for extraordinary appeal fails to discover any substantial violation of laws and decrees, he shall immediately return the case to the court from which they have demanded the case.
Article 267. In the event that a chief procurator of district procuracies, province procuracies, military procuracies, and transport procuracies discovers any substantial violation of laws and decrees, he shall refer the case to the Supreme Procuracy along with his own explanation.

Article 268. In the event that the president of the Supreme Court or the Procurator General deems that there exists a ground for extraordinary appeal, they shall have the right to bring it from judgments and rulings of any court which have taken legal effect, except those of the Supreme Court, to the Criminal and Special Collegiums of the Supreme Court. With regard to judgments and rulings of the Supreme Court which have taken legal effect, they shall have the right to bring an extraordinary appeal to the plenary session of the Supreme Court.

Article 269. The plenary session of the Supreme Court shall be composed of the president, the vice-president, and other associate judges of the Supreme Court.

The Procurator General and the Minister of Justice shall be obliged to participate in the plenary session of the Supreme Court.

Chapter Twenty-Four: Reopening of Cases

Article 270. Reopening of a case in which judgment, or ruling of a court has taken legal effect shall be permitted only on the basis of newly discovered circumstances.

The following shall constitute grounds for reopening a criminal case on the basis of newly discovered circumstances:

(1) the establishment of the falsity of the evidence on which the judgment or ruling is based;

(2) the establishment of criminal abuses committed in connection with the given case by the judges participating in the consideration of the case in the conference room;

(3) the establishment of any other circumstances which, in themselves, or together with circumstances established earlier, prove that the convicted person is not guilty, or that he has committed a less grave or graver crime than that of which he has been convicted. Even such circumstances as could not have been known to the court when decreeing the judgment or ruling shall be considered new.

Article 271. Review of a judgment of acquittal shall be permitted only either within one year from the day the new circumstances are discovered, or within five years from the day the judgment has taken legal effect.

However, in cases of amnesty, or completion of the prescription in criminal prosecution,
review of a judgment of acquittal shall not be permitted even within the period set forth in the preceding section.

Article 272. Criminal abuses committed by judges in consideration of the given case, the known falsity of the testimony of a witness, or opinion of an expert, and other spuriousness of any other evidence shall constitute grounds for reopening a case only if these circumstances have been established by a judgment of a court which has taken legal effect.

Article 273. The death of a convicted person shall not prevent the reopening of a case concerning him.

Article 274. Motion to reopen a case shall be submitted by the interested citizens or institutions to the procurator.

When receiving such petition, the procurator shall conduct a necessary investigation; upon completion of the investigation, if he deems a ground for reopening the case to exist, he shall refer the case to the Supreme Court.

In the event that the procurator, on his own initiative, deems such a ground to exist, the same rule set forth in the preceding section shall apply.

In the event that the Supreme Court renders a ruling to reopen a case, it shall refer the case to a court which has jurisdiction over it.

Chapter Twenty-Five: Execution of the Judgment

Article 275. The presiding judge of a court which has decreed judgment shall direct execution of the judgment.

The presiding judge shall send, for the purpose of executing a judgment, a copy of the judgment to the agency of Internal Affairs and any other agency which is charged with the duty of executing the judgment.

The procurator shall supervise the execution of a judgment.

A judgment condemning a person to death penalty shall be executed only upon the approval of the Presidium of the Supreme People's Assembly.

Article 276. In the event that a person condemned to penal servitude by a judgment is prevented from serving the punishment because of serious illness, execution of the judgment shall be postponed until he completely recovers.

In the event that a person condemned to penal servitude by a judgment is pregnant, execution of the judgment shall be postponed from six months after pregnancy until two months after delivery.
In the event that immediate serving of the punishment may entail grave consequences for
the convicted person or his family in view of a natural disaster or any other miserable family
situations, execution of the judgment may be postponed for a reasonable period.

Article 277. If a person serving punishment in the form of penal servitude has been com-
mitted to a medical institution because of mental or other illnesses, the time spent there by
the convicted person shall be reckoned in the period of serving punishment.

Article 278. Money fines and court costs shall be recovered from the property of convicted
persons by bailiffs.

Where there are no bailiffs, money fines and court costs shall be recovered by workers in
the Ministry of Internal Affairs.

Article 279. Payment of a money fine may be deferred or arranged in installments for a
reasonable period if immediate payment of the fine is impossible for the convicted person.

Article 280. Questions of postponing execution of a judgment, of deferring payment of
money fine, of arranging payment of a fine in installment and any other questions connected
with the execution of a judgment shall be considered and ruled by the court which has
proclaimed the given judgment.

Article 281. When a court renders a ruling in the preceding Article, it shall notify the
procurator and the convicted person thereof.

If the question specified in the preceding Article concerns the execution of the part of a
judgment relating to a civil suit, the civil plaintiff shall also be notified. Nonappearance of
the persons indicated in the above two preceding sections shall not stop consideration of the
case.

Consideration of a case shall commence with the report of a member of judges of the
court, after which the court shall hear oral arguments of the procurator who has appeared,
then of the convicted person, his defense counsel, and of the civil plaintiff.

After having the oral arguments indicated in the preceding section, the court shall render
its ruling.