Com Legal Cell
26 March 03

LAW ON CRIMINAL PROCEEDINGS

WITH AMENDMENTS

Number 23 of 1971

Decree number 230

In the name of the People

The Revolutionary Command Council

Based on the provisions of the 42nd article, sub-paragraph a, of the temporary Constitution, and derived from the submissions of the Minister of Justice.

The Revolutionary Command Council has decided, in its session held on 14 February 1971, to issue the following law:

Number 23 of 1971

LAW ON CRIMINAL PROCEEDINGS

BOOK ONE

CRIMINAL PROCEEDINGS [1]

Chapter One

Paragraph 1

A – The initiation of criminal proceedings for an oral or written complaint is submitted to the examining magistrate[2] or the investigator or any official in the police station or any member of the judicial system acting on behalf of the injured party or any person taking his place in law, unless the law stipulates otherwise. In the event of a witnessed offence the complaint may be submitted to whichever police officers or their delegates are present.

B – The offence is considered witnessed if it was witnessed whilst being committed or a shortly afterwards or if the victim followed the perpetrator afterwards or if shouting crowds followed him afterwards or if the perpetrator was found a short while later carrying the equipment or weapons or goods or documents or other things pointing to the fact that he was a perpetrator or participant in the offence or if traces or signs indicate this at the time.

Paragraph 2

The complaint may not be dropped, cancelled or withdrawn from nor can the judgement issued on it be withdrawn from or not executed, except under the circumstances explained in the law.

Paragraph 3

A – The complaint can only be set in motion on the basis of a complaint from the aggrieved party or someone taking his place in law in relation to the following offences:

i – Adultery or polygamy in contravention of the law of personal circumstances.

ii – Slander, verbal abuse, spreading false information, oral threats or slight injury provided that the offence was not committed against someone in the performance of a public service.

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[1] In accordance with the 4th and 5th sub-paragraphs of paragraph 65 of the Law of Judicial Regulation No 160 of 1979, the expression 'the Criminal Court' has replaced the expression 'the Supreme Penal Court' and the expression 'the Court of Misdemeanours' has replaced the expression 'the Penal Court' wherever they are mentioned in the laws, and the term 'examination jurisdiction' has become 'the examining court' with effect from 16 January 1980 in the following paragraphs.

[2] Since the issue of the Judicial System Law No 160 of 1979 the word 'Qadi' (magistrate judge) has been used instead of 'hakim' (judge).

iii – Theft, rape, breach of trust, fraud or acquisition of items by these means, if the aggrieved party is a spouse or relative of the perpetrator and these items were not seized legally or administratively or legally transferred to another person.

iv – Damage to property or sabotage, other than that involving state property, if the offence is not subject to aggravating circumstances.

v. – Violation of the sanctity of property, entering or passing through land that has been cultivated, prepared for cultivation or contains crops or allowing animals to go into such land.

vi – Throwing stones or other items at means of transport, houses, buildings, gardens or compounds.

vii – Other offence which the law stipulates cannot be set in motion except on the basis of a complaint by the injured party.

B – No criminal complaint can be set in motion in relation to offences that took place outside the Republic of Iraq except with the permission of the Minister of Justice.

Paragraph 4

A – If the aggrieved parties in the offences referred to in the previous paragraph are numerous, it is sufficient to have the complaint submitted by one of them.

B – In the case that there are numerous persons accused, and the complaint was submitted against one of them, it is considered to have been submitted against the other persons accused, except in the offence of adultery where the complaint is not set in motion against the alleged perpetrator unless it is also submitted against the adulterous husband or wife.

Paragraph 5

If there is a conflict of interests between the aggrieved party and the person representing him, or if he does not have anyone to represent him, the examining magistrate or the court must appoint someone to represent him.

Paragraph 6

A complaint, as detailed in paragraph 3 of this law, will no longer be accepted once 3 months has passed from the date when the aggrieved party became aware of the offence or from the disappearance of any compelling excuse which prevented the submission of the complaint; and the right to submit the complaint will be dropped in the event of the death of the aggrieved party unless the law stipulates to the contrary.

Paragraph 7

If the aggrieved party passes away after submitting the complaint, this death will have no effect on the processing of the complaint.

Paragraph 8

If the law on setting in motion a case stipulates that a complaint must be submitted, no action may be taken against the perpetrator of the offence until the complaint has been submitted.

Paragraph 9

A – The submission of the complaint should include the claim for criminal justice which is an application that penal measures be taken against the perpetrator of the offence and for the penalty to be imposed on him. The written complaint includes the claim for civil justice as long as the plaintiff does not declare otherwise.

B – The criminal court will not consider civil justice claims other than in accordance with criminal justice claims

C – The person who submitted the complaint has the right to withdraw from it. If a number of persons submitted the complaint and some of them withdraw, this does not invalidate the rights of the others.

D – If the person who had the right to submit the complaint dies, the right to submit the case does not transfer to his heirs.

E – If there are many persons accused and the complaint against one of them is withdrawn, this does not extend to the others, unless the law stipulates otherwise.

F – If the plaintiff withdraws his complaint, he will, as a consequence, lose his claim to criminal justice but will not lose his right to submit a civil case unless by his own declaration.

G – The withdrawal of a civil claim will not result in the loss of the right to submit a criminal claim except in circumstances stipulated by the law or by declaration of the plaintiff, and in any event does not affect the case of public justice.

H – Withdrawal of the complaint or from the civil case prohibits any claim for the restoration of the withdrawn right before any civil or criminal court.

I – The withdrawal of the complaint by the plaintiff prohibits the criminal court from looking into the civil case but does not prevent the plaintiff from petitioning the civil court, unless he makes a declaration to that effect.

BOOK TWO

Civil Proceedings

Section One

The civil plaintiff in and the person responsible under civil law for the actions of the accused

Paragraph 10

A person who has suffered direct material or ethical damage from any offence has the right to bring a civil case against the accused and the person responsible under civil law for the actions of the accused, under the provisions of paragraph 9. The complaint is made by petition or by oral request, confirmed in the written record, during the gathering of evidence or during the preliminary examination before the court which is already considering the criminal case, up to the issue of the definitive judgement. It is not permissible to raise it for the first time at the appeal stage.

Paragraph 11

If the person who has suffered damage from the offence is not competent to conduct a lawsuit under civil law then someone must be appointed to represent him legally, and if someone cannot be found then the examining magistrate or the court must appoint someone to take on the civil case in his place.

Paragraph 12

If the accused is not fit to be tried under civil law, then the civil proceedings are lodged against any person representing him legally and, if no one is representing him, someone is appointed to represent him in accordance with paragraph 11.

Paragraph 13

A civil case against those responsible under civil law may be brought either collectively or individually in accordance with criminal procedures.

Paragraph 14

The person responsible under civil law for the actions of the accused has the right to intervene in criminal proceedings at any time before the judgement is issued, in the event that there is no civil claim.

Paragraph 15

A – The accused or the person responsible for the actions of the accused under civil law has the right of objection before the criminal court against the intervention in the criminal proceedings of the civil plaintiff.

B – The civil plaintiff has the right to object to the intervention in the criminal proceedings of the person responsible under civil law.

Paragraph 16

A – The court will make a judgement on objections submitted in accordance with Paragraph 15 after hearing arguments from the opposing parties.

B – The court may issue a ruling that the civil plaintiff or person responsible for the actions of the accused may not intervene in the criminal proceedings, provided there are no grounds for doing so and no objections have been submitted.

C – If these objections are raised before the examining magistrate they are forwarded to the relevant court, to be examined in conjunction with the criminal proceedings.

Paragraph 17

The judgement of non-intervention of the civil plaintiff does not prevent the person responsible under civil law for the actions of the accused from referring to the civil courts.

Paragraph 18

The civil plaintiff has the right to consult the civil court for a judgement on compensation for excess damage after the issuing of a definitive criminal judgement.

Paragraph 19

If the civil court considers the progress of an examination required for judgement is being delayed by the criminal case, it will dismiss the case with the stipulation that the plaintiff retains the right of referral to the civil courts.

Paragraph 20

In making a judgement on a civil case raised before the criminal court the measures prescribed in this law are to be followed.

Section Two

Abandonment, suspension and termination of civil cases

Paragraph 21

The civil plaintiff has the right to abandon his civil case under any circumstances. This abandonment will have no effect on the criminal proceedings except in circumstances stipulated by the law.

Paragraph 22

The absence of the plaintiff or his representative, without an acceptable excuse, will be considered an abandonment of the criminal proceedings at the first court session after legal notification has been carried out.

Paragraph 23

If the civil plaintiff abandons a case lodged before the criminal court he may lodge it before the civil court unless by his own declaration he renounces his rights so to do.

Paragraph 24

If the civil plaintiff abandons his case the person responsible under civil law for the actions of the accused is also removed, if his involvement in the case was based on the request of the civil plaintiff.

Paragraph 25

A – If the civil plaintiff lodges his case with the civil court before the criminal proceedings have been lodged he may bring his civil case before the criminal court, on condition that the civil court be asked to drop the case. He will not then have the right to bring his case back before the civil court, unless the criminal court determines that he has such a right always provided he has not himself denounced the right.

B – If the civil plaintiff lodges his case with the civil court after lodging criminal proceedings he may not subsequently lodge it with the criminal court, unless he requests that the civil court drop the case.

Paragraph 26

The civil court must suspend any decision on the case in order to await judgement in the criminal proceedings, on which the level of award in the civil case will be based civil. The civil court has the right to determine any urgent and precautionary measures as it sees fit.

Paragraph 27

If the decision on a civil case is suspended in accordance with paragraph 26 and the criminal case is subsequently terminated, the civil court must proceed with the civil case and issue a judgement.

Paragraph 28

If a criminal case is terminated or suspended for a legal reason before a decision has been reached, the civil plaintiff has the right to consult the civil court.

Paragraph 29

The civil case will not be heard if it is lodged before the criminal courts after the expiry of the time period stipulated by law.

Chapter three

General Prosecution

Paragraphs 30 – 38 [3]

PART TWO

Investigation of offences, collection of evidence and initial investigation

Chapter One

Investigating officers

Paragraph 39

Investigating officers are the following persons, listed according to their areas of competence:

(i) Police officers, police station commanders and commissioners.

(ii) Mayors of villages and of urban neighbourhoods - in respect of the notification of offences, the apprehension of suspects and the safe custody of persons who should be detained.

(iii) Railway stationmasters and their deputies, train guards/conductors, port managers/harbourmasters, airport managers and captains of ships and aircraft and their deputies - in respect of offences committed within their areas of responsibility.

(iv) Heads of government departments and official or semi-official establishments and agencies - in respect of offences committed within their areas of responsibility.

(v) Public servants authorised to investigate offences and take appropriate action within the limits of the powers accorded to them by the relevant laws.

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[3] These paragraphs are repealed in accordance with the first clause of paragraph 71 of the Law of Public Prosecution no: 159 of 1979 published in Al-Waqai' Al-'Iraqiya issue 2746 on 16 January 1980.

Paragraph 40

A – Each investigating officer acts within the bounds of his area of competence, under the supervision of the Public Prosecutor's Office and in accordance with the provisions of the law.

B – Investigating officers are subject to the control of the examining magistrate, who may request the superiors of such officers to look into any case where an officer acts in a manner inconsistent with his duties or is remiss or negligent in his work and to institute disciplinary proceedings against him, such proceedings being without prejudice to the officer's liability to criminal proceedings should he commit an act that constitutes an offence.

Paragraph 41

Investigating officers are authorised within their areas of competence to inquire into offences and to receive any statements and complaints that may be made in regard to these offences. They are required to assist the examining magistrate, investigators, police officers and their authorised agents, to pass on to them any information concerning the offences that may come into their possession, to apprehend those who committed the offences and to deliver them to the appropriate authorities. They are also required to record all action taken in official reports signed by them, stating the time and place the action was taken, and to deliver immediately to the examining magistrate all statements, complaints, reports and other documents and all impounded items and substances.

Paragraph 42

Investigating officers are required to use all possible means to preserve evidence of an offence.

Paragraph 43

When an investigating officer, within his area of competence as specified in paragraph 39, is informed or becomes aware that an offence has been committed in the presence of witnesses, he is required to notify the examining magistrate and the Public Prosecutor's Office of the occurrence of the offence, to go immediately to the place where the offence occurred, to take down in writing a statement from the victim of the offence, to orally question the person about the accusation made against him, to impound any weapons and anything that may appear to him to have been used in the commission of the offence, to examine and preserve any material traces of the offence, to establish the status and whereabouts of the persons involved and of anything else that may assist in investigating the offence, to hear statements by any person who was present or that can obtained from other persons concerning the facts of the case or the perpetrator of the offence and to cause a written record of all such information to be duly made.

Paragraph 44

When an investigating officer goes to the place where a witnessed offence has occurred he may forbid those present to leave or move away from the scene of the offence until an official record has been made. He may also summon immediately any other person who may be able to supply information establishing the facts of the case; if any person refuses such summons the investigating officer shall note the refusal in the official record.

Paragraph 45

The investigating officer may request the assistance of the police if necessary.

Paragraph 46

The investigating officer's task ends when the examining magistrate, investigator or representative of the Public Prosecutor's Office arrives, except in regard to any matter for which they assign responsibility to him.

CHAPTER TWO

Notification of offences

Paragraph 47

Any person against whom an offence is committed and any person who learns that an offence has been committed in respect of which proceedings have been instituted without a complaint being submitted, or who learns that a suspicious death has occurred, may inform the examining magistrate or the investigator or the Public Prosecutor's Office or any police station.

Paragraph 48

Any public servant who, in the course of performing his duties or as a consequence of performing his duties, learns that an offence has been committed or suspects that a offence has been committed in respect of which proceedings have been instituted without a complaint, and any person who has given assistance in his capacity as a member of the medical profession in a case where there are grounds for suspecting that an offence may have been committed as well as any person who is present when a felony is committed must immediately inform one of the persons specified in paragraph 47.

CHAPTER THREE

Investigations conducted by the Police

Paragraph 49

A – Any station police officer receiving information that a felony or misdemeanour has been committed shall immediately record the informant's statement in writing and require the informant to append his signature. He shall then send a report of the matter to the examining magistrate or investigator. If the information he has received makes clear that the felony or misdemeanour took place in the presence of witnesses then he shall take the action specified in paragraph 43.

B – If the information he has received makes it clear that an actual offence has been committed, he shall send a summary report of the offence to the investigator or examining magistrate. The report shall give the name of the informant, the names of witnesses and the section of the law that applies to the incident.

C - The station officer must in every case enter in the station logbook a summary of the information received concerning an offence and the time at which the information was received.

Paragraph 50

A – As an exception to the first sub-paragraph of paragraph 49, the station officer shall conduct an investigation into any offence if he is instructed to do so by an examining magistrate or investigator or if he considers that referring the informant to an examining magistrate or investigator would delay necessary action and result in evidence of the offence being destroyed or lost, the course of the investigation being impaired or the suspect fleeing, provided that the officer submits the documentary record of the investigation to the magistrate or the investigator as soon as he has completed it.

B – In the circumstances specified in this paragraph and in paragraph 49, the station officer shall be an investigating authority.

CHAPTER FOUR

The initial investigation

Section One

General provisions

Paragraph 51

A – The initial investigation shall be conducted by examining magistrates or by investigators acting under the supervision of examining magistrates.

B – In case of necessity and if an examining magistrate is not available an immediate decision may be made or immediate action taken in the course of an investigation into a felony or misdemeanour, provided that the officer responsible for the investigation lays the matter before any magistrate within the examining magistrate's area of competence, or within an adjacent area, so that the magistrate may consider what action needs to be taken.

C – Any magistrate may conduct an investigation into a felony or misdemeanour that has taken place in his presence if an examining magistrate is not available.

D – The relevant documents in the cases specified in sub-paragraphs B and C shall be submitted as quickly as possible to the examining magistrate concerned and the decisions and action provided for in those two paragraphs shall be subject to the decisions and action taken by the examining magistrate.

E – The investigator shall be appointed by order from the Minister of Justice, provided he possesses a recognised qualification in law. Police officers and their authorised agents and legal officers of the Ministry of Justice may be granted the powers of an investigator by order from the Minister of Justice.

F – No investigator may perform the functions of his office for the first time unless he has sworn the following oath before the President of the Court of Appeal:

> "I swear by Almighty God that I shall perform the functions of my office with justice and shall apply the law faithfully"

Paragraph 52

A – The examining magistrate shall conduct the investigation into all offences in person or by means of investigators. He may authorise any investigating officer to carry out any particular action on his behalf.

B – The scene of the incident shall be examined by the investigator or magistrate so that he may take the action specified in paragraph 43, record the nature of any material trace or evidence of the offence and of the injury sustained by the victim,

note the apparent cause of any death that has occurred and arrange for a sketch-map of the scene of the incident to be made.

C – If the examining magistrate is notified of an offence that has occurred in the presence of witnesses he must, whenever possible and without delay, go to the scene of the incident in order that he may take the action specified in sub-paragraph B and notify the public prosecutor's office accordingly.

Paragraph 53

A – The legal jurisdiction of the investigation shall be determined by the place where the whole of the offence or part of it or an act supplementary to it was committed, or where any result consequent upon it occurred, or where an act that forms part of a composite, ongoing serial, or customary, offence was committed. It may also be determined at the place where the victim was situated or where money in respect of which the offence was committed was found, after having been conveyed there by the offender or by a person cognisant of the offence.

B – If the offence took place outside Iraq the investigation into it shall be conducted by an examining magistrate appointed for the purpose by the Minister of Justice.

C – If it is evident to the examining magistrate that the offence to be investigated is outside his area of competence then he may refer the papers on the case to an examining magistrate who is competent under the provisions of sub-paragraph A.

D – If the examining magistrate to whom the papers on the case are referred considers that he is not competent to investigate the offence he must submit the matter to the Court of Cassation, stating the grounds upon which the Court should issue a decree appointing an examining magistrate with the requisite competence as a matter of urgency. He himself must continue with the investigation until such time as the Court of Cassation decides the matter.

E – Measures and decisions by the examining magistrate shall not be invalid by virtue of their having been taken contrary to the provisions of sub-paragraph A.

Paragraph 54

A – If a complaint or allegation against a suspect is lodged with two or more of the competent authorities investigating the offence, the papers on the case must be passed to the authority with which the complaint or allegation was lodged first.

B – If there are several suspects for an offence and a complaint or allegation against some of them has been lodged with one competent investigating authority and against others with another such authority, the papers on the case must be passed to the authority with which the complaint or allegation was lodged first.

Paragraph 55

A – If there is a conflict of jurisdiction between two or more investigation authorities, the conflict shall be referred to the Court of Cassation, which shall issue a decree appointing the competent authority.

B – It is permissible for the case to be moved from the jurisdiction of one examining magistrate to the jurisdiction of another examining magistrate by order of the Minister of Justice or by a decision by the Court of Cassation or the Criminal Court within its area if the security situation requires it or if the transfer would help to establish the truth.

Paragraph 56

A – The examining magistrate may move to any other place within his area of jurisdiction to conduct any part of his investigation, if such a move is required in the interests of the investigation. He may move to any place outside his area of jurisdiction if the exigencies of the investigation so require. In this case he shall have powers of apprehension, arrest and search, and authority to hear witnesses, to question suspects and persons connected with the incident under investigation and to release persons with or without bail, provided that he notifies the examining magistrate of the district of the measures he has taken in that district.

B – If there is a need to conduct part of the investigation in an area outside the magistrate's area of jurisdiction he may authorise the examining magistrate of that area to conduct that part of the investigation on his behalf, provided that the matters he wishes to be investigated are specified in the decree authorising that examining magistrate to act on his behalf.

C – The magistrate so authorised may, if he fears that there is a shortage of time, take any action related to the matter in which he has been deputed to act or which he considers necessary to establish the truth.

Paragraph 57

A – An accused person, a plaintiff, a civil plaintiff, a person responsible in civil law for the actions of the accused and their representatives may attend the investigation while it is in progress. The magistrate or the investigator may prohibit their attending if the matter in hand so requires, for reasons that he shall enter in the record, with the proviso that they shall be granted access to the investigation as soon as the need to prohibit their attendance ceases and that they shall not have the right to speak unless permitted to do so and that if permission is withheld a note to that effect shall be entered in the record of the investigation.

B – Any person who makes a request may receive a copy of the papers unless the magistrate considers that to provide them would affect the course or confidentiality of the investigation.

C – No person other than those previously mentioned may attend the investigation unless the magistrate gives permission.

Section two

Hearing witnesses

Paragraph 58

An investigation is to commence with the recording in writing of the deposition of the plaintiff or informant, then of the testimony of the victim and other prosecution witnesses and of anyone else whose evidence the parties wish to be heard, and also the testimony of any person who comes forward of his own volition to provide information, if such information will be of benefit to the investigation, and the testimony of any other persons who the magistrate or investigator learns is in possession of information concerning the incident.

Paragraph 59

A – Witnesses are to be summoned by the magistrate or investigator to attend during the investigation by means of a writ of summons which will be served upon them by the Police or by an official of the department issuing the writ or by a village or district mayor or by any other person authorised by law. Writs of summons addressed to persons employed in government establishments or agencies or in official or semi-official departments may be served on them by their departments.

B – In the case of offences committed in the presence of witnesses the witnesses may be summoned orally.

C – An examining magistrate may issue an order for the arrest of any witness who fails to attend in due time and for him to be compelled to attend in order to give evidence.

Paragraph 60

A – Each witness is to be asked to state his full name, occupation, place of residence, relationship to the accused, to the victim, to the complainant and to the civil plaintiff.

B – Each witness who has attained the age of fifteen years is to be required, before he gives evidence, to swear on oath that the evidence he will give shall be the truth. Any person who has not attained the aforementioned age may be heard for the purposes of evidential inquiry without being on oath.

C – A complainant and a civil plaintiff may be heard as witnesses and may take the oath.

Paragraph 61

A – Testimony is to be given orally but permission may be given for the witness to refer to written notes if the nature of the evidence so requires.

B – Any person who is unable to speak may give his evidence in writing or in conventional sign language if he is unable to write.

C – If a witness does not understand the language in which the investigation is being conducted, or is deaf or dumb, a person may be appointed to translate what the witness says, or interpret the witness's sign language, after taking an oath that he will translate or interpret truthfully and faithfully.

D – In the case of felonies the magistrate shall record important evidence in writing.

Paragraph 62

The evidence of each witness shall be heard separately but witnesses may confront each other and the accused.

Paragraph 63

A – Statements by a witness shall be entered in the record of the investigation without any erasures, crossings out, amendments or additions to the text, which when complete shall be read through and signed by the witness, or if the witness cannot read shall be read out to him and then signed by the person who entered it in the record. No correction or alteration shall be accepted unless signed both by the magistrate or investigator and by the witness.

B – The accused and the other parties may make observations on evidence given and may ask for a witness to be questioned again, or for other witnesses to be questioned about other facts to which they refer, unless the magistrate considers that a response to the request would be impossible or impracticable or would delay the investigation unjustifiably or would pervert the course of justice.

Paragraph 64

A – No question may be addressed to a witness without the permission of the magistrate or investigator and no questions may be put to a witness that are not relevant to the case or which impinge upon others. A witness may not be addressed in a declaratory or insinuating manner and no sign or gesture may be directed at him that would tend to intimidate, confuse or distress him.

B – A witness may not be prevented from giving evidence that he wishes to give and may not be interrupted while giving it, unless he speaks at undue length on matters not relevant to the case or on matters that impinge on others, offend common decency or infringe security.

Paragraph 65

The magistrate or investigator must note in the record of the investigation anything he observes about a witness that may affect his fitness to give evidence or to sustain the process of giving evidence because of his age or physical, mental or psychological condition.

Paragraph 66

If so requested by a witness the magistrate shall assess the travel expenses and other necessary expenditure incurred by the witness, as well as any wages he has been deprived of, as a result of his attendance away from his normal place of residence, and shall order their reimbursement from Treasury funds.

Paragraph 67

If the witness is ill or if there is anything else which prevents him from attending then the magistrate or investigator shall go to the witness's current place of residence in order to receive and record his evidence.

Paragraph 68

A – No married person shall be a witness against his or her spouse unless he or she is accused of adultery or an offence against the spouse's person or property.

B – One of the persons aforementioned may be a defence witness for the other and any part of his or her evidence leading to the conviction of the accused shall be deemed to be invalid.

Section Three

Appointment of experts

Paragraph 69

A – The magistrate or investigator may, of his own accord or based on the request of the parties, appoint one or more experts to offer opinions on matters connected to the offence being investigated.

B – The examining magistrate or investigator may ask the expert to attend when called.

C – The magistrate may permit the wages of the expert to be borne by the treasury as long as the price is not unreasonably high.

Paragraph 70

The examining magistrate or investigator may compel the plaintiff or defendant in a felony or misdemeanour case to cooperate in physical examination or the taking of photographs, or through fingerprinting or analysis of blood, hair, nails or other items

for the purposes of the investigation. As far as possible, physical examination of a female should be conducted by another female.

Paragraph 71

The examining magistrate may, if necessary, give permission for the exhumation of a corpse by an expert or specialist doctor, in the presence of those with a connection who are able to attend, in order to establish the cause of death.

Section Three

Search

Paragraph 72

A – The searching of any person or entry of any house or any business premises for the purposes of a search are not permitted other than in cases stipulated by law.

B – The search should be undertaken by the examining magistrate, investigator or a member of the police force by order of the magistrate, or anyone granted authority by the law.

Paragraph 73

A – The searching of any person or entry of a house or other business premises for the purpose of a search is not permitted unless based on an order issued by the competent legal authority.

B – The police may search any location without prior permission in the event of a request for assistance from a person inside the location, or in the case of fire, drowning or other similar case of necessity.

Paragraph 74

If it appears to the examining magistrate that a particular person is holding items or papers which would inform the investigation, he may issue a written order for the items to be submitted. If he believes that the order will not be obeyed or is worried that the items will be removed, he may conduct a search procedure in accordance with the paragraphs below.

Paragraph 75

The examining magistrate may order the searching of any person or house or any other place owned by the person accused of committing an offence if the search may reveal the presence of documents, weapons, tools or persons who have had a part in the offence or are held against their will.

Paragraph 76

If it appears to the examining magistrate, based on information or an indication, that a residence or other place is being used to keep stolen money, or that it contains items involved in an offence, a person who is being held against his will or a person who has committed an offence, he may order the search of that location and take legal measures in relation to the money or persons, whether or not the location is owned by the defendant.

Paragraph 78

Search is not permissible except when looking for the items to which the search relates. If the search reveals the existence of another item indicating an offence, it may be seized.

Paragraph 79

The investigator or police office may search the person arrested in cases in which the arrest is permitted by law. In the event of the deliberate commission of a felony or misdemeanour which has been witnessed, he may inspect the house of the accused, or any place in his possession, or seize persons, papers or items which inform the investigation if there is a strong indication of their presence.

Paragraph 80

If a female is to be searched, the search must be conducted by a female appointed for the purpose, with the identity of the searcher being recorded in the record.

Paragraph 81

The person to be searched, or whose property is to be searched, in accordance with the law, must allow the persons searching to perform their duty. If he prevents the search, the person undertaking the search must carry it out through the use of force or may request police assistance.

Paragraph 82

The search should take place in the presence of the accused and the owner of the house or place of business, if appropriate, and in the presence of 2 witnesses, along with the mayor or his appointee. The person conducting the search is to prepare a record in which are recorded the procedures and time of the search along with the location, items seized with descriptions, names of those present in the location as well as a note of the accused and those connected with the case and the names of witnesses. This record should be signed by the accused, the owner of the place, the person who carries out the search and those present. Any refusal to sign should be noted in the record. The accused should be given a copy of the record on request, as may those connected to the case, and copies of letters or documents should be given to their owners, if that is not detrimental to the investigation.

Paragraph 83

The person carrying out the search must place seals on all locations and items containing evidence needed for the investigation, which should be protected. It is not permissible to break this seal except by order of the magistrate and in the presence of the accused and owner of the property and the person who checked the goods. If one of them is unable to attend or send a delegate, it is permissible to break the seal in his absence.

Paragraph 84

A – If, amongst the articles in the location being searched, there are letters, documents or other personal items, it is not permissible for anyone to read them other than the person conducting the search, the magistrate, the investigator and a representative of the public prosecutor.

B – If the items seized are papers which have been sealed in any way, it is not permissible for any person other than the examining magistrate or the investigator to open them and read them. This reading should take place in the presence of the accused and those connected with the location. If the papers have no connection with the case, they should be returned to the owner and not made public.

Paragraph 85

Any person conducting a search outside the area of jurisdiction of the judge who issued it, must, before the search is carried out, refer to the examining magistrate of the area in which the place to be searched is located. In urgent cases he may carry out the search immediately and then inform the examining magistrate of the area.

Paragraph 86

Objections to the search procedures should be submitted to the examining magistrate who must make a quick decision.

CHAPTER FIVE

Methods of Compulsion to Attend

Section One

Summons

Paragraph 87

The court, examining magistrate, investigator or official at the police station may issue a summons to the accused or to a witness or to anyone connected with the case. There should be 2 copies of the document on which are recorded the person issuing the summons and the person summoned, along with their place of residence, the time and place of the requested attendance, the type of offence being investigated, and the legal paragraph on which it is based.

Paragraph 88

The person summoned notes the contents of the summons and signs the original document with his signature or finger print. The other copy is handed to him and an indication is made on the original document that notification has been carried out, which includes a statement of the time and date of notification. If the person summoned will not accept the summons or is unable to sign, the person tasked with notification must ensure that he is informed of the contents in the presence of witnesses, and leave him the other copy, after noting this on both copies, followed by his signature and those of the witnesses.

Paragraph 89

A – If the person summoned is not present in his home or place of work and it is found that he is present in the country, the summons can be presented to his spouse, other relatives or relatives by marriage living with him, a person working for him or an employee at his place of work, who should sign the original copy and pass him the copy. If he does not, or cannot, sign, the procedures given in paragraph 88 above should be followed.

B – If the person tasked with notification does not find any of the persons mentioned above, he pins a copy of the paper on the outer door of the residence or place of work, after signing in front of witnesses, explaining the steps taken on both the copy and the original.

Paragraph 90

The notification of persons outside Iraq and of corporate bodies is done through use of a written summons in accordance with the procedures outlined in the code for civil procedures.

Paragraph 91

A summons to a person outside the jurisdiction of the party issuing that summons is sent to a party within the jurisdiction for notification in accordance with the guidelines.

Section Two

Arrest

Paragraph 92

Arrest or apprehension of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law.

Paragraph 93

The arrest warrant should contain the full name of the accused, with his identity card details and physical description if these are known, as well as his place of residence, his profession, and the type of offence to which the warrant relates, the legal provision which applies and the date of the warrant. It should be signed and stamped by the court. In addition to the details given, the warrant should contain an instruction to members of the police force to arrest the accused, by force if he will not come voluntarily.

Paragraph 94

A – The arrest warrant is valid in all areas of Iraq and must be executed by anyone to whom it is sent. It remains current until it has been executed or cancelled by the party issuing it or by a higher authority with legal right to do so.

B – The wanted person must be informed of the warrant which has been issued for his arrest and be brought before the party who issued the warrant.

Paragraph 95

The judge who issued the arrest warrant must record on it the duty to release the person arrested if he makes a written pledge to attend at a specific time, with or without bail as specified by the judge, or with a pledge accompanied by a financial deposit to the treasury for an amount specified by the judge. When the person arrested gives this pledge or sum of money he must be released. The persons to whom the warrant has been sent must inform the judge of steps taken.

Paragraph 96

If a person who should have had a summons or arrest warrant issued against him, appears before the judge or investigator, the judge must ask him for a written pledge, with or without bail, saying that he will attend at the required time. If he does not attend, and does not have a legal excuse, the judge must issue an arrest warrant.

Paragraph 97

If the person does not attend after being summonsed, without a legal excuse, or if there is a fear that he will abscond or influence the investigation, or if he does not have a specific place of residence, the judge may issue a warrant for his arrest.

Paragraph 98

Any judge may issue an arrest warrant against any person who has committed an offence in his presence.

Paragraph 99

In the case of an offence punishable by a period of detention exceeding one year, the accused is called to attend by the issue of an arrest warrant against him, unless the judge sanctions the issue of a summons. However, the issuing of a summons for an offence punishable by death or life imprisonment is not permitted.

Paragraph 100

If the arrest warrant is to be executed outside the area of jurisdiction of the judge who issued it, the person charged with its execution should present it to the appropriate judge in the area for permission to execute it, unless he believes that the opportunity to arrest the person will be missed.

Paragraph 101

A – If the arrest warrant is executed outside the jurisdiction of the judge who issued it, and if there is no permission to release the accused by pledge or bail as stipulated in paragraph 95, the judge must detain him and send him under escort to the judge who issued the warrant.

B – If the bail put forward by the accused is not accepted, or if he is unable to make the pledge as stipulated in paragraph 95, the judge must detain him and send him under escort to the judge who issued the warrant.

Paragraph 102

A – Any person may arrest any other person accused of a felony or misdemeanour without an order from the authorities concerned, in any of the following cases:

i. If the offence was committed in front of witnesses.

ii. If the person to be arrested has escaped after being arrested legally.

iii. If he has been sentenced in his absence to a penalty restricting his freedom.

B – Any person may, without an order from the authorities concerned, arrest any other person found in a public place who is in a clear state of intoxication or confusion and is a juvenile or has lost his reason.

Paragraph 103

Any member of the police or court officers must arrest any of the following if they encounter them:

i. Any person against whom an arrest warrant has been issued by the competent authorities;

ii. Any person carrying arms, whether openly or concealed, violating the provisions of law;

iii. Any person thought, based on reasonable grounds, to have deliberately committed a felony or misdemeanour and who has no particular place of residence;

iv. Any person who impedes a member of the court or public official from carrying out his duty.

Paragraph 104

All individuals must, if able, cooperate with the authorities concerned in an arrest being conducted in accordance with the law when asked to lend assistance.

Paragraph 105

Any person who is sent an order to arrest someone, and any person charged with making an arrest in a witnessed offence must pursue the accused in order to arrest them, and if the presence of the accused is in doubt, or he hides somewhere, persons in that place should be asked to hand him over or to offer all possible facilities to enable his arrest. If this is not allowed, the person making the arrest must enter this place or any place in which the accused has taken refuge, by force, in order to arrest him.

Paragraph 106

Any person arresting someone in accordance with paragraphs 102 and 103 must bring the person arrested to the nearest police station or hand him over to a member of the judicial authorities, who must hand him over to the police, and if comes to the attention of an official in the police station that a warrant has been issued for the arrest of this person, he must bring him before the person who issued the warrant. If it is clear that he has committed an offence, the police official must take legal steps in this regard, and if it is clear that he is not guilty of the charge, steps must be taken to release him immediately.

Paragraph 107

Anyone who arrests someone in accordance with the law must take from him any weapons he is carrying and hand them over immediately to the person issuing the arrest warrant or to the nearest police station or to any member of the police.

Paragraph 108

If the accused resists arrest or tries to escape, the person arresting him in accordance with the law may use reasonable force to enable him to carry out the arrest and to move him without allowing him to escape, provided that this does not lead to the death of anyone who has not committed an offence for which the death penalty or life imprisonment is prescribed.

Section Three

Detention and release of the accused

Paragraph 109

A – If the person arrested is accused of an offence punishable by a period of detention not exceeding 3 years or by imprisonment for a term of years or life imprisonment, the judge may order that he be held for a period of no more 15 days on each occasion or order his release on a pledge with or without bail from a guarantor, and that he attend when requested if the judge rules that release of the accused will not lead to his escape and will not prejudice the investigation.

B – If the person arrested is accused of an offence punishable by death the period stipulated in sub-paragraph A may be extended for as long as necessary for the investigation to proceed until the examining magistrate or criminal court issues a decision on the case on completion of the preliminary or judicial investigation or the trial.

C – The total period of detention should not exceed one quarter of the maximum permissible sentence for the offence with which the arrested person is charged and should not, in any case, exceed 6 months. If it is necessary to increase the period of detention to more than 6 months, the judge must submit the case to the criminal court to seek permission for an appropriate extension, which must not itself exceed one quarter of maximum permissible sentence, or he should order his release, with or without bail, under the terms of sub-paragraph B.

Paragraph 110

A – If the person arrested is accused of an offence punishable by a period of detention of 3 years or less or by a fine, the judge must release him on a pledge with or without bail unless he considers that such a release will obstruct the investigation or lead to the accused absconding.

B – If the person arrested is accused of an infraction, he may not be held unless he has no particular place of residence.

Paragraph 111

The judge who issued the decision to detain the accused may decide to release him on a pledge, with or without bail, before the end of the period of detention stipulated in sub-paragraph B of paragraph 109, and he may return him to the holding detention if necessary for the investigation.

Paragraph 112

Investigators in locations which are distant from the office of the judge should hold those accused of felonies. In the case of misdemeanours, they should release the accused on bail and must, in all cases, report the matter to the judge as quickly as possible, and carry out whatever order is prescribed.

Paragraph 113

An order to hold a person should include the full name of the person to be held, the paragraph of law under which he is held, the date of the start of the detention and the date of its expiry. It should be signed by the issuing judge and stamped by the court.

Paragraph 114

A – The amount of the pledge or bail is set according to the conditions of each case, and it must be appropriate for the type of offence and the circumstances of the accused.

B – Bail is accepted if the judge or investigator or official in the police station is satisfied that it can be paid.

C – The bail money is accepted from the accused or bailsman in cash and deposited in the court treasury or police station.

Paragraph 115

When the pledge, bail or cash sum is submitted, the accused is released if he is not being held for another offence.

Paragraph 116

If the bailsman dies or if the bail is broken, because the bailsman is unable to pay or has been deceitful is deception or if there appears to be a mistake in the bail, or there is another reason that the bailsman is not able to fulfil the bail, the judge may issue an arrest warrant against the accused or another bail order, and if this too remains unpaid, he is detained.

Paragraph 117

The bailsman may request exemption from the bail if the person bailed appears in front of the judge or is handed over to a police station. At the time, the judge will issue a decision to cancel the bail and may order the detention of the accused if he does not pay the bail.

Paragraph 118

The bail or pledge is exempt from taxes.

Paragraph 119

A – If the accused does not fulfil his pledge, or the bailsman does not pay the bail, he is transferred to the court of misdemeanour on a decision from the examining magistrate or criminal court, so that the sum which should have been paid can be collected. The court may decide to take all or part of the money, depending on the circumstances of the case, may excuse the accused if there were reasons of necessity for the lack of payment, or may make an order either that the money be paid in instalments over a period of no longer than a year or that the sum deposited in cash in accordance with paragraph 114 be confiscated, or that the accuser's possessions be seized and sold in accordance with the law of implementation, based on the report presented by the court to the person in charge of the implementation, with the sum specified taken from the price achieved, due regard being given to the provisions of other laws specifying items which may not be seized and sold.

B – If the sum raised by the sale of possessions is not sufficient to pay the due sum, and if there are no more goods to be seized, or if the issue of a decree to obtain the due sum is forestalled by a statement of settlement which is acceptable, the court may decree a period of detention not exceeding 6 months.

C – The money seized or realised from sale of the seized goods is confiscated and paid to the treasury.

D – If the sum deposited is not confiscated by the court because of an infraction of the pledge or bail, it returns to the owner after a verdict of not guilty or not liable, release of the accused or definitive rejection of the complaint against him.

Paragraph 120

A – If the accused dies, procedures against him and against the bailsman for any infringement of the pledge or bail are stopped.

B – If the bailsman dies, procedures against him for any violation of the bail are stopped.

C –Procedures for the seizure and sale of goods and payment by instalments are stopped in the situations mentioned in sub-paragraphs A and B above, and there is no need for the estate to pay the money not recovered.

Section four

Seizure of possessions of an accused person who has absconded

Paragraph 121

A – If an arrest warrant issued against the accused for the commission of a felony is not executed, the investigating magistrate and criminal court may issue an order for the confiscation of the moveable and immoveable property of the accused. After execution, papers are immediately sent to the Court of Felony, and if supported by the court, the authorities who decided on the detention will issue a statement, published in the local newspapers, on the television and using other methods of publication as appropriate, which states the name of the accused, the offence of which he is accused and the property which has been seized. It will ask him to give himself up to the nearest police station within 3 days. It will also ask that any person with knowledge of the location of the accused inform the nearest police station. If the Court of Felony does not support it, the seizure is cancelled. If the decree of seizure was issued by the Court of Felony, it is implemented, and the statement is issued without need for approval from any other authority.

B – If the accused does not give himself up within the period stipulated, the authorities which issued the decree of seizure will deposit moveable assets with the judicial guard for safekeeping and they will be administered under his supervision. The immoveable assets will be handed over to the Office for Confiscated Property to administer, in its capacity as property with an absentee owner. The property will remain confiscated in this way until the death of the accused is proven, or he is sentenced or proved guilty or not liable, or is released, or the complaint against him is dropped. At that point, the property will be returned to him or whoever is the rightful owner.

C – If the property seized will deteriorate quickly or is expensive to maintain, or if the authorities issuing the decree of seizure decide to sell it, it is sold in accordance with the Law of Implementation based on a memo sent to the person in charge of implementation.

D – If the accused gives himself up or is arrested, either the seized property or its value is returned in full.

E – Any person to whom an accused person who has absconded owes money on a legal basis, shall be paid monthly from the seized assets at the same rate as payment was being made before the seizure, by decree of the authorities which issued the decree of seizure.

Paragraph 122

If a person applies to the authorities issuing the decree of seizure, claiming ownership of the seized items, and presents sufficient proof, the authorities will hand over the

items to him. If his request is rejected, he has the right to make a claim in a civil court or use the legal appeal process against the decision.

Section Five

Questioning of the accused

Paragraph 123

The examining magistrate or investigator must question the accused within 24 hours of his attendance, after proving his identity and informing him of the offence of which he is accused. His statements on this should be recorded, with a statement of evidence in his favour. The accused should be questioned again if necessary to establish the truth.

Paragraph 124

The accused has the right to make his statement at any time after listening to the statements of any witness, and to discuss it or to request that he is summoned for this purpose.

Paragraph 125

If it becomes clear that the accused is a witness against another defendant, his testimony is recorded and the 2 cases are separated.

Paragraph 126

A – The accused does not swear the oath unless acting as a witness for other defendants.

B – The accused does not have to answer any of the questions he is asked.

Paragraph 127

The use of any illegal method to influence the accused and extract a confession is not permitted. Mistreatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants are considered illegal methods.

Paragraph 128

A – Statements of the accused are recorded in the written record by the magistrate or investigator and signed by the accused and the magistrate or investigator. If the accused is unable to sign, this should be recorded on the written record.

B – If the statement of the accused includes a confession to the commission of an offence, the magistrate must record the statement himself, and read it back after a period of time. The magistrate and accused must then sign. If the accused would like

to write down his statement in his own hand, the magistrate must enable him to do this, but it must be in the presence of the magistrate who must sign it, along with the accused, and after recording this in the written report.

C – Testimony which the accused asks to present in his defence should be recorded in the written report along with investigation of other proof presented by him, unless the magistrate decides not to grant the accused's request, because he believes it be an unjustified attempt to impede the investigation, or to mislead the judge.

Paragraph 129

A – The examining magistrate may offer immunity with the agreement of the Criminal Court, for reasons recorded in the record, to any defendant accused of an offence in order to obtain his testimony against others involved in its commission, on condition that the accused will give a full and true statement. If he accepts the offer, his testimony is heard and he remains a defendant until a decision on the case is issued.

B – If the accused does not submit a full and true statement, whether through deliberate concealment of any important issue or through false statements, he loses his right to immunity by decree of the criminal court, and procedures are taken against him for the offence for which he was offered immunity or any other related offence. His statements are used as evidence against him.

C – If the criminal court finds that the statement given by the accused who has been offered immunity is full and true, then it will halt permanently legal proceedings against him and release him.

Section Six

Decisions of the judge after the end of the investigation

Paragraph 130

A – If the examining magistrate finds that the action is not punishable by law or that the complainant has withdrawn the complaint, or that the offence is one over which he has no authority without reference to the judge, or that the accused is not legally responsible because he is a minor, he issues a decision rejecting the case and closing the case file definitively.

B – If the act is punishable by law and the magistrate finds that there is sufficient evidence for a trial, a decision is issued to transfer the accused to the appropriate court. If there is insufficient evidence he is not transferred, an order is issued for his release and the case file is closed temporarily, with a statement containing the reasons for the closure.

C – If the magistrate finds that the perpetrator is unknown or that the incident was an act of God, he issues a decision to close the case temporarily.

D – An accused who has been detained will be released once the decision to reject the case or to release him has been issued.

E – The magistrate informs the public prosecutor when the decision is issued in accordance with this paragraph.

Paragraph 131

A decision of transfer should list the name of the accused, his age, profession, place of residence and the offence of which he is accused as well as the time and date of its occurrence and the law which applies, the name of the victim and the evidence obtained, along with the date of issue of the decision, signed by the magistrate and stamped by the court.

Paragraph 132

A – If several offences are attributed to the accused, a single case is brought against him in the following circumstances:

i. If the offences resulted from one action;

ii. If the offences resulted from actions linked to each other and for a common purpose;

iii. if the offences are of the same type and are committed by the same defendant against the same victim, even if they occur at different times;

iv. If the offences are of the same type and occurred within one year against different victims, on the condition that there are no more than 3 victims for each case.

B – The offences are considered of the same type if they are punishable by the same type of penalty as stipulated by the same paragraph of the law.

Paragraph 133

A single case is brought as stipulated in paragraph 132 if there are several defendants, whether as principals or accessories.

Paragraph 134

A – The person accused of a felony is transferred to the Court of Felony for a non-summary case, and the person accused of a misdemeanour is transferred to the Court of Misdemeanour if the penalty is a term of detention exceeding 3 years, or based on a summary or non-summary case.

B - The person accused of an infraction is transferred to the Court of Felony on a decision from the judge or on an order from the investigator based on the summary case.

C – The statement of the defendant must be recorded before issue of the decision to transfer the case in accordance with sub-paragraph B, and an investigation of the infraction is mounted at the decision of the judge.

D – With the exception of the provisions in sub-paragraphs 134.B and 134.C, the examining magistrate must make an immediate decision on infraction cases in which there is no claim for compensation or return of property, without taking a decision to transfer the case to the Court of Misdemeanour. The sentence of detention shall not be carried out until a degree of certainty is obtained.[4]

Paragraph 135

If the defendant does not appear before the examining magistrate or investigator, and is not arrested despite the use of methods of compulsion as stipulated in this law, or if he escapes after arrest or detention, and if there is sufficient evidence for a transfer to court, the examining magistrate issues a decision of transfer to the court responsible in order for a trial to be conducted his absence.

Paragraph 136

A –Transfer of the accused for trial at criminal courts stipulated in this code is not permitted except with permission from the Minister of Justice, for offences relating to the external or internal security of the state or involving insulting the government, ministers, representative bodies, armed forces, symbols of the state or its work, foreign nations, international organisations and their heads, representatives, work or symbols, and offences occurring outside Iraq which are punishable under Iraqi law.

B – With the exception of infractions punishable by the amended Traffic Code number 48 of 1971, and related statements, the transfer of the accused for trial in an offence committed during performance of an official duty, or as a consequence of performance of this duty is possible only with permission of the minister responsible, in accordance with the stipulations of other codes. [5]

C – The transfer of the accused for trial before the criminal court is not permissible in a case of false testimony, false information or provision of false evidence except with the permission of the court in which the offence took place or where the official who witnessed the offence is employed. The decision in this case is subject to appeal at the Court of Cassation within 30 days, starting from the day following the issue of the decision, unless the decision has been issued by the Court of Cassation, in which case it is final.

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[4] This sub-paragraph was added in accordance with Law number 23 of 1980 (Amendment 7 to the Code on the Principles of Criminal Trials number 23 of 1971) published in 'Al-Waqa'i Al-'Iraqiya' number 2757 on 18 February 1980.

[5] This sub-paragraph has been amended in accordance with Law number 201 of 1978 (Sixth amendment of the Law of Judicial Regulation number 23 of 1971) published in 'Al-Waqa'i Al-'Iraqiya' in issue 2691 of 8 January 1979.

BOOK THREE

Courts

SECTION ONE

Types of Penal Court and their jurisdictions

Paragraph 137

A – Penal courts are the Court of Misdemeanour, Court of Felony and Court of Cassation. These courts have jurisdiction to consider all criminal cases with a few special exceptions.

B – Civil government officials who do not have authority, may be granted judicial authority for misdemeanours by decree of the Minister of Justice based on a proposal from the minister responsible for the implementation of penal authorities stipulated in the relevant laws.

Paragraph 138

A – The Court of Misdemeanour has jurisdiction in cases of misdemeanours and infractions and can be authorised to give rulings cases of involving only misdemeanours or only infractions.

B – The Court of Felony has jurisdiction to rule on cases of felonies and to review the cases of other offences stipulated by law.

C – The Court of Cassation has jurisdiction to review provisions and rulings issued on felonies, misdemeanours and other cases stipulated by law.

Paragraph 139

A – If, either before or after a judicial investigation or, in connection with a case transferred in a non-summary form, a trial the Court of Misdemeanour, having examined the papers, believes that the ruling in the criminal case is outside its jurisdiction and within the jurisdiction of the Court of Felony, then it rules that the accused be transferred to the Court of Felony. If the Court of Felony finds that the ruling in the case is within the jurisdiction of the Court of Misdemeanour, it may either rule on the case or return it to the Court of Misdemeanour.

B – If the Court of Felony finds that decision in the case referred to it from the investigating magistrate is within the jurisdiction of the Court of Misdemeanour, it may decide on it or transfer the accused to the Court of Misdemeanour.

C – The decision of the Court of Felony to transfer or return is legally binding.

Paragraph 140

If it becomes clear to the Court of Misdemeanour that the offence on which the defendant is being tried is connected to another case on which the accused is being tried in another criminal court, it must transfer the defendant to this court either before or after charging him with the related offence. This transfer would be from one Court of Felony to another.

Paragraph 141

The provisions of paragraphs 53, 54 and 55 apply in deciding on territorial jurisdiction for trial and in any dispute over territorial jurisdiction between criminal courts.

Paragraph 142

A case may be transferred from the jurisdiction of a criminal court to the jurisdiction of another criminal court of the same level by order of the Minister of Justice or decision from the Court of Cassation or Court of Felony within its region, on grounds of security or if the transfer assists in the uncovering of the truth.

SECTION TWO

Appearance in court of defendant and other litigants

Paragraph 143

A – The court, on receipt of the case file, must set a date for the trial and inform the public prosecutor, the defendant and those with any connection and any of the witnesses who are to testify, by means of a written summons, at least one day before the trial in the case of an infraction, 3 days before for a misdemeanour and 8 days before for a felony. Informing the defendant's lawyer of the order to attend does not dispense with the need to inform the defendant.

B – The summons to attend contains the name of the person to be notified and includes his role in the case, the names of the defendant and victim, the court, case number, type of offence, the legal paragraph applicable and the time when they must appear in court.

C – If it becomes clear, once the notification has been issued, that the defendant has absconded, a summons or arrest warrant is pinned up at his place of residence if known, published in 2 local newspapers and announced on the radio or television in the case of significant felonies or misdemeanours, in accordance with a decision by the court. An appointment is set for the trial within a period of no less than a month from the last date of publication in the newspaper for a misdemeanour or an infraction and 2 months for felonies.

Paragraph 144

A – The Head of the Court of Felony appoints a lawyer for the defendant if he has not appointed one and the court sets remuneration for the lawyer during judgement on the case at a rate of no less than 10 dinars and no more than 50 dinars, with the cost borne by the state treasury. The decision to appoint the representative is considered an order of delegation. If the lawyer can demonstrate a legal excuse for not accepting the brief, then it is for the head of the court to appoint an alternative lawyer.

B – The appointed lawyer must prepare the submission and defend the accused, or be replaced by an appointed lawyer, with the court imposing a fine of no more than 50 dinars, implemented by a memo written by the head of the court to the department of implementation, without violating the procedural rules of the court, in accordance with the Lawyer Code. He shall be exempt from the fine if at any time it is proved that he was excused from attending the session in person or through a representative.

Paragraph 145

The accused must appear in person in a trial of contention [translator's note- trial in which both parties appear in person]; the attendance of his representative is not acceptable.

Paragraph 146

The defendant may present a written excuse if he does not attend, and his representative or one of his relatives may present this report. If it is accepted by the court, another time is fixed for the trial, and the defendant and others connected with the case are given notification.

Paragraph 147

A – The trial will take place when the two parties attend. If the accused has absconded or is absent without legal excuse, despite his having been informed, a trial will take place in his absence.

B – If the accused does not attend and has not been notified in person, the trial will not take place until he has been notified ((in person)).

Paragraph 148

If there are a number of defendants and amongst them is one who has absconded or is absent, the trial of those who are present takes place, as does the trial of those absent, but the case of those present takes precedence over the case of those who are absent.

Paragraph 149

A – The trial of an absent defendant or one who has absconded is conducted according to the guidelines for the conduct of trials where the defendant is present.

B – Notification of the *in absentia* judgement is given to the person against whom the judgement has been made. If the defendant has absconded at the time of notification, notification is given as stipulated in paragraph 143.

C – The court issues an arrest warrant against the person who has been sentenced *in absentia* to a penalty restricting his freedom, for a felony or misdemeanour.

Paragraph 150

If the civil plaintiff abandons his claim, whether by his absence or in accordance with the provisions of paragraph 22, or through a request presented to the court, he is considered to have given up his right to a review of the civil case before the criminal court and the court considers the criminal case. It may imply from his absence that he has abandoned his complaint in accordance with paragraph 9.

Paragraph 151

In the case of a defendant who absconds after presenting his defence but before the issue of a verdict, without informing the court of any legal excuse, an arrest warrant is issued, requiring him to attend for delivery of the verdict.

Part three

Court Procedures

Section one

General Principles in the trial

Paragraph 152

Trial sessions must be open unless the court decides that all or part should be held in secret and not attended by anyone not connected with the cases, for reasons of security or maintaining decency. It may forbid the attendance of certain groups of people.

Paragraph 153

The court and those entrusted with its administration may prohibit any individual from leaving the court room, and if someone leaves in violation of this prohibition, without the permission of the court, the court may rule immediately for detention for 24 hours or a fine not exceeding 3 dinars, with no right to appeal against this ruling. The court may however issue a pardon before the end of the session and retract the ruling issued.

Paragraph 154

The court may prevent the parties and their representatives speaking at undue length or speaking outside the subject of the case, repeating statements, violating guidelines or making accusations against another party or a person outside the case who is unable to put forward a defence.

Paragraph 155

A – It is not permissible to try any defendant who has not been referred to the court.

B – If it becomes clear to the court before judgement on a case is made, that there are other persons linked to the offence, either as principals or as accessories, and procedures have not been taken against them, it may consider the case with regard to the defendant present, and request that the investigative authorities take legal proceedings against the other persons or decide to suspend the case until the investigation has been completed.

Paragraph 156

The defendant attends the court room without restraint or handcuffs and the court must use necessary means to ensure the security of the court room.

Paragraph 157

The court may, at any time whilst the case is being considered, order the release of the defendant with or without bail unless he is accused of an offence punishable by death. It may order his arrest or detention following any release, stating the reasons for this in the order issued.

Paragraph 158

The defendant may not be removed from the court room during consideration of the case unless he violates the rules of the court, in which case procedures continue as if he were present. The court must keep him informed of the procedures which took place in his absence.

Paragraph 159

A – If a person commits a misdemeanour or infraction whilst in the court room, the court may evaluate the case against him at the time, suspending the initial case and making a ruling after listening to statements from a representative of the public prosecutor, if present, and statements in defence of the person mentioned, or transferring him to an examining magistrate after making a written record of the incident.

B – If a felony is committed, the court makes a written record of the event and transfers the defendant to an examining magistrate for the necessary legal steps to be taken.

Paragraph 160

A- If the ruling on a criminal case is suspended, pending the result of the ruling in another criminal case, the ruling of the first must be suspended until the ruling on the second has been made.

B – If it is proved that the defendant is absent for reasons outside his control, for example because he is imprisoned or missing, the examining magistrate or criminal court issues a ruling, according to the circumstances, ordering the suspension of criminal proceedings against him temporarily, and the suspension of any civil case until such a time as he returns or his fate becomes clear. The civil plaintiff in this case does not have the right to refer to the civil court.[6]

Paragraph 161

If the case is being reviewed by a judge whose place is taken by another judge, the second judge may base his judgement on procedures and investigations undertaken by his predecessor or he may repeat these procedures and investigations himself.

Paragraph 162

The court may decide on the suspension of a case for a suitable period if necessitated by circumstances. It must inform the defendant, other litigants and witnesses who have not yet testified that they are to attend the session when it resumes and the court will meet the cost of their expenses.

Paragraph 163

The court may order that any investigatory procedure or procedures be taken, or that any person be ordered to hand over information, document or items, if that will assist the investigation. In the event of a refusal to hand over something in his possession, a person should be transferred to an examining magistrate for legal procedures to be taken against him.

Paragraph 164

The court orders that items seized be brought to the court room wherever possible, where the defendant and other parties are able to see and note them.

Paragraph 165

The court may proceed to conduct an investigation if it appears that this will assist in establishing the truth and should allow the litigants to attend the investigation.

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[6] This sub-paragraph was added in accordance with law number 78 of 1984 (the ninth amendment of the law on Principles of Criminal Courts number 23 of 1971), published in Al-Waqa'i Al-'Iraqiya issue 3010 of 10 September 1984.

Paragraph 166
The court may appoint one or more experts in matters requiring their opinion and may permit the wages of the expert to be borne by the treasury as long as the price is not unreasonably high.

Section 4
Court Procedures in non-summary cases

Paragraph 167

The trial begins with the summoning of the defendant and other parties and the formal identification of the defendant. A decree of transfer is then issued. The court hears the testimony of the complainant and the statements of the civil plaintiff, then sees the evidence and orders the reading of the reports, investigations and other documents. The statements of the defendants are then heard, along with the petitions of the complainants, civil plaintiff, civil prosecutor and public prosecutor.

Paragraph 168

A - Before giving testimony each witness is asked to give his full name, profession, age, place of work and relationship to the parties. Before giving his testimony, he must swear that he will speak the truth and nothing but the truth.

B - The witness gives his testimony orally and it is permissible to interrupt him during its delivery. If he is unable to speak due to disability, the court will give him permission to write his statement. The court may ask any questions necessary in order to clarify the facts after completion of the testimony. The public prosecutor, complainant, civilian plaintiff, a civil official and the defendant may discuss the testimony via the court and ask questions and request clarifications to establish the facts.

C - It is permissible to remove the witness whilst the testimony of another witness is being heard and the witness may be confronted by another witness during the testimony.

Paragraph 169

The testimony should be based on the facts which the witness is able to recall through one of his senses.

Paragraph 170

The court may order that testimony, previously given in the written report collating the evidence or during the initial investigation or before it or any another criminal court, be heard in front of it, if the witness claims not to recall all or some of the facts to which he testified, or if the previous statement clarifies his current statement before the court. The court and other parties may discuss all of this.

Paragraph 171

The court may hear the testimony of anyone who attends it and anyone who puts himself forward with information. It may summon any person to attend to deliver his testimony if it is considered that this testimony will help establish the truth.

Paragraph 172

If the witness does not appear or his testimony cannot be heard because he has died, is unable to speak or is no longer qualified to testify or because his whereabouts are unknown or if his appearance before the court would cause delay or exorbitant expense, the court may decide to hear testimony previously given in the written record of the collection of evidence or during the initial investigation, or in front of another criminal court in the same case. This testimony will be treated as though it were given in front of the court.

Paragraph 173

If the witness is excused, due to illness or any other reason, for his inability to attend to give his testimony, the court, after informing the parties, may delegate a member of the court, an examining magistrate or misdemeanour judge to transfer to the witness's location to hear the witness and send a written report to the court.

The parties may attend in person or through representatives and direct the questions they think appropriate. If, after the transfer or sending of a judge to the location of the witness, the reason is deemed not to be valid, a penalty may be imposed as prescribed by law for failure to attend.

Paragraph 174

A - If the witness does not attend, the court may, despite his prior notification, permit that he be re-summoned to attend or it may issue an arrest warrant against him for attendance to deliver the testimony and the witness may be given a penalty as prescribed by law for not attending.

B - If the witness attends the court before the trial has been completed and it becomes clear that he has an acceptable excuse for being late, the court may retract the judgement issued against him.

Paragraph 175

The court may itself, or based on the request of the parties, request discussion of a testimony or return to its discussion and seek clarification of what the witness has said in order to establish the facts.

Paragraph 176

If the witness refuses to swear the oath or give testimony, other than in cases where this is permissible by law, the court may issue a sentence against him as prescribed by

law for refusal to testify and may order the reading of his previous statement which should then be treated as a testimony which was given in front of the court.

Paragraph 177

An appeal may be made before the Criminal Court against judgements made against witnesses by the Court of Misdemeanour in accordance with legally prescribed guidelines. The decision will be final. It is also permissible to appeal against these judgements to the Court of Cassation if they are issued by the Penal Court. The decision of the Court of Cassation is final. It will be sufficient in these cases to send a written record of the session and a copy of the judgements issued against the witness during the appeal review.

Paragraph 178

Provisions of section 2 of part 4, Book 2 should be applied as far as possible when hearing witness testimony in court.

Paragraph 179

The court may ask the defendant any questions considered appropriate to establish the truth before or after issuing a charge against him. A refusal to answer will be considered as evidence against the defendant.

Paragraph 180

If the defendant refuses to answer questions directed to him or if his answers are contradictory or contradict his previous statements, the court may order the reading and hearing (of the statements) for the imposition of penalties.

Paragraph 181

A – If the complainant withdraws the complaint or the court considers that the complaint has been withdrawn in accordance with the provisions of paragraph 150 and if the offence is one in which conciliation is permissible without a court agreement, the complaint is considered as rejected.

B - If, after taking steps to clarify the situation as described above, it becomes clear to the court that the evidence does not point to the defendant having committed the offence with which he is charged, his release is ordered.

C – If it appears to the court, after the aforementioned steps have been taken, that the evidence indicates that the defendant has committed the offence being considered, then he is charged as appropriate, the charge is read to him and clarified and he is asked to enter a plea.

D - If the defendant confesses to the charge against him and the court is satisfied of the truth of his confession and that he understands its implications, then it listens to his defence and issues a judgement in the case without any requirement for further evidence. If he denies the charge or does not offer a defence, if he requests a trial or

if the court considers that his confession is confused, or that he does not understand the consequences or if the offence is punishable by death then the case goes to trial , defence witnesses are heard and the remaining evidence in his defence is heard, unless the court finds it to be an unjustified attempt to impede the investigation or to mislead the court. When this has been completed the commentary of the other parties, the public prosecutor and the defence of the defendant are heard. The end of the trial is then announced and the court issues its verdict in the same session or in another session held soon afterwards.

E – The defendant should be the last to speak in the judicial investigation or trial.

Paragraph 182

A - If, after the trial has been conducted as above, the court is satisfied that the defendant committed the offence of which he is accused, it issues a verdict of guilty and rules on the penalty to be applied.

B – If the court is satisfied that the defendant did not commit the offence of which he is accused or that the action in question is not a criminal offence, a verdict of not guilty is issued.

C – If it becomes clear to the court that there is insufficient evidence to condemn him the charge is dropped and he is released.

D – If it becomes clear to the court that the defendant is not legally responsible for his actions, the court issues a judgement of diminished responsibility and follows the steps stipulated by law.

E - A detainee is released when a verdict of not-guilty, diminished responsibility, release or rejection of the complaint is issued, as long as there is no other legal reason for his detention.

Section Three

Seizure of Defendant's Assets

Paragraph 183

A - The examining magistrate and judge may seize the assets, whether movable or immovable, of the person accused of committing a felony. The seizure will include all assets transferred to him or which he has received as compensation. Items which may not be seized in accordance with the law may be seized if it is proven that they were obtained as a consequence of an offence.

B – The Court, when issuing a sentence *in absentia* against a person accused of an offence, must order seizure of assets if not previously seized previously.[7]

Paragraph 184[8]

A – The examining magistrate and judge must, based on a request from the public prosecutor or the appropriate administrative party, order precautionary seizure of assets immediately, if the action on which it is based forms an offence related to the external or internal security of the state or is an offence against the rights or property of the state, including assets considered to be public assets or those connected to public welfare. This will not be endorsed without a seizure order directly from the judicial authorities concerned, who will issue such an order if necessary even if a request has not been submitted to them.

B – In the circumstances indicated in sub-paragraph 184.A, it is permissible to request seizure of assets before a case has been lodged, when it is lodged, or at any stage of the criminal case, up to the point where a definitive verdict has been given.

C – All moveable and immovable assets of the defendant which are legally liable to seizure, are subject to seizure, whether in his possession and subject to his control or whether possession or control have been transferred to another party. The seizure includes all assets if the rights and damages resulting from the offence are unlimited. If they are, or subsequently become limited, a seizure order is issued, or amendment, which will guarantee that the state recovers the rights and damages to which it is entitled, but no more.

Paragraph 185[9]

A – If the seizure is put in place before the complaint is lodged, the person who requested the seizure must lodge his complaint within 3 months of the decision to make the seizure.

B – The accused whose assets have been seized, the person who holds the seized assets, and the person who claims rights over the seized assets, may challenge the decision of seizure with the judicial authority which issued it, within 8 days from the date of notification of the seizure order or from the date on which they became aware of it.

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[7] This paragraph has been amended in accordance with the first paragraph of law number 193 of 1975 (4th amendment of the Law of principals of criminal courts number 23 of 1971) published in Al-Waqa'i Al-'Iraqiya issue 2504 on 15 December 1975.

[8] This article has replaced the repealed paragraph 184 in accordance with the second paragraph of law number 193 of 1975 (4th amendment of the Law of principals of criminal courts number 23 of 1971) published in Al-Waqa'i Al-'Iraqiya issue 2504 on 15 December 1975.

[9] This paragraph replaces paragraph 185 which was repealed in accordance with the with the second paragraph of law number 193 of 1975 (4th amendment of the Law of principals of criminal courts number 23 of 1971) published in Al-Waqa'i Al-'Iraqiya issue 2504 on 15 December 1975.

C – If the party requesting the seizure does not submit the complaint against the person whose assets have been seized within the period specified in sub-paragraph 185.A, the seizure order is cancelled and all resulting legal effects are cancelled.

D – If the complaint is submitted within the time limit specified in sub-paragraph 185.A, the judicial authorities to whom the criminal case passes may decide to leave the seizure order in place or to amend it or to cancel it, depending on the facts of the case and the case which has been made against the seizure.

Paragraph 186[10]

A – The seizure in progress is considered, under the terms of paragraphs 183, 184 and 185, as a precautionary seizure and remains in place during procedures to contest it; the assets seized and claims over them are administered under civil law so long as it does not conflict with the provisions of the paragraphs above.

B – If the criminal case ends for any legal reason, before a judgement has been issued, the seizure remains current in accordance with the provisions of paragraphs 184 and 185, and the administrative party concerned must establish a legal case on the rights and damages covered by the criminal case within 3 months of notification of the end of the criminal case. In the case of failure to comply with this, the seizure order is cancelled and the seized property returned to its owner.

C – If a verdict of guilty is issued against the defendant, the assets remain seized and are transferred to a state of implementational seizure once the judgement is definitive.

D – If a verdict of not guilty or diminished responsibility is reached, or if an order is issued to release the defendant or throw out the complaint, once this decision is final the seizure is cancelled and the assets restored to the owner even if this is not stipulated in the court's ruling.

Section 4

Charge

Paragraph 187

A – The charge is written down on a special piece of paper in the name of the judge issuing it, with his position and includes the name of the accused, his identity details, the place and time of commission of the offence and a legal description of the offence and the name of the victim or of the item against which the offence was committed, the way in which it was committed and the legal paragraphs which apply. The paper is dated and signed by the judge or head of the court.

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[10] This paragraph replaces the repealed paragraph 186 in accordance with the with the second paragraph of law number 193 of 1975 (4th amendment of the Law of principals of criminal courts number 23 of 1971) published in Al-Waqa'i Al-'Iraqiya issue 2504 on 15 December 1975

B – In setting out the description for the offence, the court is not restricted to the definition in the arrest warrant or summons or transfer decision.

Paragraph 188

A – One charge is made for each offence ascribed to a particular individual.

B – One charge is made for multiple offences as stipulated in paragraph 132 A.

C – One charge is made for each connected offence as stipulated in paragraph 132 B.

D – It is permissible to make one charge against all the perpetrators of one offence.

E – There will be a trial for each charge.

F – The trial will take place as if for a single case under the circumstances stipulated in paragraphs 132 and 133.

Paragraph 189

A – If the defendant is accused of treachery or embezzlement of public funds, it is sufficient in the charge to state the sums involved in the offence without giving details or dates of the appropriation.

B – The court notifies the defendant of any change or amendment to the charge.

Paragraph 190

A – If it becomes clear that the defendant is accused of an offence punishable by a more severe penalty than that with which he has been charged, or if there is a difference between the descriptions given in the charge and the accusation, the charge must be withdrawn and a new charge issued.

B – The court notifies the defendant of all changes and amendments made to the charge in accordance with sub-paragraph A and grants a period of time for defence against this new charge if this is requested.

C – A decision to withdraw the charge is organised along the same lines as if an innocent verdict had been issued.

Paragraph 191

If the defendant is charged with an offence consisting of a number of actions, and it subsequently appears that the defendant committed only part of the offence, the court completes the trial and issues a verdict without the need for a new charge to be issued.

Paragraph 192

If it appears that the defendant has committed a minor offence which has no connection with the offence with which he has been charged, the court completes the trial and issues the verdict without the need for a new offence; an attempted offence is considered a minor offence.

Paragraph 193

Material negligence or error does not nullify the charge provided that it does not alter its legal character and does not affect the defendant's defence.

Section Five

Conciliation

Paragraph 194

Conciliation is acceptable by decision of the examining magistrate or court if requested by the victim or the person representing him legally in the case. Action on the complaint will be suspended in accordance with the provisions laid out in the following paragraphs.

Paragraph 195

A – If the offence indicated in paragraph 194 is punishable by a term of detention of a year or less or by a fine, conciliation is acceptable without reference to the judge or court.

B – If the offence is punishable by a period of detention exceeding a year, conciliation is only possible through reference to the judge or court.

C – Conciliation is acceptable through the agreement of the court or judge in offences of threats, damage, spoiling or sabotage of property if they are punishable by a period of detention not exceeding a year.

Paragraph 196

A – The request of conciliation with a defendant is not applicable to another defendant.

B – Conciliation is not acceptable if accompanied by conditions.

Paragraph 197

A – A request for conciliation will be accepted at all stages of investigation and trial up to the issue of the verdict.

B – If legal conditions in the request for conciliation are fulfilled, the examining magistrate or court will issue a ruling on acceptance and release the defendant if detained.

Paragraph 198

The decision announcing the acceptance of conciliation has the same effect as a verdict of not guilty.

Section Six

Cessation of Criminal Proceedings

Paragraph 199

A - The Director of Public Prosecutions may, based on permission from the Minister of Justice, request that the Court of Cassation put an end to the procedures of examination or trial, either temporarily or permanently, in any case up to the point of the issue of the final verdict, if there is a reason justifying this action.

B – The request must include the justification and, when submitted to the Court of Cassation, the papers of the court are requested, and the examining magistrate or court must send them for examination on the case.

C – The Court of Cassation checks the request and decides whether to accept it and suspend proceedings permanently or temporarily for a period not exceeding 3 years, if he finds justification. If there is no justification, the request will be refused.

D – After the Court of Cassation has issued its decision, the file is returned and a copy of the decision is sent to the Director of Public Prosecutions.

E – If the decision stipulates a suspension of proceedings, the examining magistrate or court must release the accused if he is detained. The issue of this decision will not prejudice the right of the judicial authorities or court to confiscate items, the possession of which is illegal.

F – The decision to suspend proceedings temporarily may be converted to one of permanent Cassation in accordance with the provisions stipulated in this section.

Paragraph 200

A – The investigation and trial will resume after the end of a period of temporary suspension from the point where they stopped.

B – The decision to suspend proceedings permanently has the same legal effect as a not guilty verdict, although it does not prejudice potential damages from a civil case raised, or the payment of compensation.

Section seven

Trials in Summary Cases

Sub-section one

Trial and Ruling

Paragraph 201

The provisions and procedures for trials in non-summary cases are followed, as far as possible, in trials for summary cases as per the following paragraphs.

Paragraph 202

If it is clear to the Misdemeanour Court that the infraction being ruled upon is liable to a penalty of detention or if a request for compensation or return of property has been submitted, it must set a date for a session to review the case and give notice to the defendant, other litigants and witnesses to attend.

Paragraph 203

A – The process of a [summary] trial entails the court hearing the testimony of the complainant or plaintiff in a civil case, and of the witnesses, reading reports, then hearing a statement from the defendant, if in attendance, without any charge being made, and recording a written summary of this , thus covering all aspects of the case.

B – If the court is satisfied, after taking the steps described in paragraph A, that the defendant committed the offence of which he is accused, it issues a guilty verdict and a ruling on the penalty to be imposed.

C – If the court is satisfied that the defendant did not commit the offence of which he is accused, or if there is insufficient evidence for conviction, or if the action which was committed is not a criminal offence, a ruling is made that the defendant be released.

Paragraph 204

A – In cases of infractions, transferred in summary form, if the court finds that the offence of which the defendant is accused is a misdemeanour, it must review the case either in summary or non-summary form with regard to the provisions of sub-paragraph A of paragraph 134 or return it to the examining magistrate for a preliminary investigation, in accordance with the basic facts. If the court finds that it is a felony, it must return the case to the examining magistrate for investigation as stated above.

B – The court may review, in non summary form, a case of misdemeanour transferred to it in summary form or may review, in summary form, a case which has been transferred to it in non-summary form, with regard to the provisions of sub-paragraph A of paragraph 134.

C – If the court reviews a case of misdemeanour in summary form, it may not give a judgement exceeding the maximum penalty for an infraction as stipulated in the Penal Code.

Sub-section Two

Penal Order

Paragraph 205

A – If the court finds, from examination of the case papers, that the infraction is not liable to a sentence of detention, and a request for compensation or return of property has not been submitted, and the action of the defendant is proven, it may issue a legal order for a fine or other penalty without trial.

B – If it is clear to the court that there is insufficient evidence to prove that the defendant committed the action of which he is accused, or that the law does not provide for a penalty, it issues an order of release.

Paragraph 206

The penal order or release order is issued in writing and the defendant is notified of the order, in accordance with basic principles.

Paragraph 207

The defendant may contest the penal order by a petition submitted to the court within 7 days of the date of notification and the court will appoint a date for trial and notify the defendant in accordance with basic principles.

Paragraph 208

A – If the contesting party attends the session, and the contestation was submitted within the legal time limit, the court will conduct a trial in accordance with the paragraphs above and will issue a verdict on the case in accordance with the provisions of the law, with the condition that the penalty against the defendant shall be no more severe, and the verdict will be subject to appeal through legal methods.

B – If the contesting party does not attend the session, and it is clear that the contestation was submitted after the legal time limit, the court will reject it.

Paragraph 209

If there are a number of persons against whom a penal order has been issued, and only some of them contest it, the provisions of contestation apply only to those who have contested the order.

Paragraph 210

If the penal order is uncontested or the contestation is rejected in accordance with sub-paragraph B of paragraph 208, the penal order is absolute.

Paragraph 211

When the penal order is executed, the accused may submit a defence that he retains the right of contestation because he was not notified in accordance with basic principles. In this case his defence is submitted as a petition to the court, which may refuse it if it finds that the grounds on which it is based are untrue. If it is accepted, the penal order will not be executed and a date will be set for a session to review the case in accordance with previous proceedings.

Chapter Eight

Rulings and their reasons

Section One

The reasons

Paragraph 212

The court is not permitted, in its ruling, to rely upon a piece of evidence which has not been brought up for discussion or referred to during the hearing, nor is it permitted to rely on a piece of paper given to it by a litigant without the rest of the litigants seeing it. The judge cannot give a ruling on the basis of his personal knowledge.

Paragraph 213

A- The court's its verdict in a case is based on the extent to which it is satisfied by the evidence presented during any stage of the inquiry or the hearing. Evidence includes reports, witness statements, written records of an interrogation, other official discoveries, reports of experts and technicians and other legally established evidence.

B- One testimony is not sufficient for a ruling if it is not corroborated by other convincing evidence or a confession from the accused. The exception to this rule is if the law specifies a particular way of proving a case, which must be followed.

C- The court can accept a confession only if it is satisfied with it and if there is no other evidence which proves it to be a lie.

Paragraph 214

The court must decide that the witness is not fit to give testimony if it becomes clear that he is unable to remember details of the event or that he is not fully aware of the value of the testimony he is giving due to his age or his physical or psychological state.

Paragraph 215

The court has absolute authority in evaluating the testimony. It can either fully accept it, or reject it, accept the statements given by the witness during the police investigation or during reports from the primary investigation or given in front of another court in the same case, or completely reject the witness' statements.

Paragraph 216

The court must accept the statement of any victim under threat of death as evidence relating to the offence and its perpetrator or any other relating matter.

Paragraph 217

A - The court has absolute authority in evaluating the witness' statement and acting upon it whether it was given in front of the court, in front of the examining magistrate, during another court hearing of the same case or in another case, even if the witness subsequently withdraws his statement. The court can accept his confession to the examining magistrate if there is enough evidence to convince it that the examining magistrate did not have sufficient time to present the accused to the judge so that his confession could be recorded.

B- Confessions may not accepted be if the conditions stipulated in A are not present.

Paragraph 218

It is a condition of the acceptance of the confession that it is not given as a result of coercion, whether it be physical or moral, a promise or a threat. Nevertheless, if there is no causal link between the coercion and the confession or if the confession is corroborated by other evidence which convinces the court that it is true or which has led to uncovering a certain truth, then the court may accept it.

Paragraph 219

It is permissible for the court to divide the confession up, accept the part which it believes to be correct and reject the rest. It is not however permissible to interpret the confession or divide it into parts if it is the only piece of evidence in the case.

Paragraph 220

A- Reports of investigations and of the collating of evidence, and all the details in them about procedures of disclosure, searching, and other official reports, are

regarded as elements of proof to be taken into consideration by the court. The litigation can discuss them or prove the opposite.

B- The court must treat events written down by the officials in their reports as part of their official duties as evidence which corroborates their statement, provided they wrote them when they occurred or not long afterwards.

Paragraph 221

The minutes, reports, and official letters written by officials and employees dealing with an infraction are regarded as proof of the events they contain. The court must rely on these as its reason for its ruling in the infraction. It is not however obliged to investigate their veracity. The defendant's side nevertheless has to prove that that they are true.

Section 2

The ruling

Paragraph 222

Everything that takes place in the court is written up in a report. The judge or the chief justice signs all its pages. The report must include the date of each hearing, whether it was public or closed, the names of the judge or judges who considered the case, the clerk, the public prosecutor, the names of the defendants, and other members of defendants' team, the names of the witnesses, a report on the papers which were read out, the requests made, the procedures concluded, a summary of rulings, and everything else that occurred during the trial.

Paragraph 223

A – The court retires before giving its ruling. After it has formulated the ruling, the hearing is resumed publicly. The ruling is read out to the defendant or its contents are made clear to him.

B – If the verdict is guilty, then the court must issue another ruling at the same hearing with the penalty and explain them both.

Paragraph 224

A – The ruling should contain the name of the judge or judges who have issued it, the defendant, the other parties and a representative of the public prosecutor, a description of the offence he is accused of perpetrating, the paragraph of law which applies, the reasons for the court's ruling and the reasons for the level of sentence passed. The ruling on the penalty must contain the principal and subsidiary penalty penalties imposed by the court; the amount of compensation for which the court has ruled the defendant or person, if any, taking civil liability to be liable; or the court's decision on

the return, confiscation or destruction of assets or items claimed. The judge or the court's panel signs and dates every ruling and seals them with the seal of the court.

B – Rulings are issued on the basis of consensus or a majority of them. All those dissenting from the majority decision must explain their views in writing.

C – Any person disagreeing with the guilty ruling must still express his opinion on the most appropriate penalty for the offence on which a guilty ruling has been made.

D – If the court issues a death sentence, it must explain to the person given the sentence that his case papers will be sent automatically to the Court of Cassation for review. He may also appeal against the ruling at the Court of Cassation within 30 days, starting from the day after the ruling has been issued.

E- The term subsidiary penalties mentioned in this law means consequent and supplementary penalties, and the precautionary measures stipulated in the Penal Code.

Paragraph 225

The court is not permitted to retract, alter or change a ruling it has issued except to correct a material error. This must be noted down in the margin and considered a part of the ruling.

Paragraph 226

The case file must include the original ruling issued. When requested, a photocopy of it must be given to the defendant.

Section Nine

Arguments of Provisions and Decrees

Paragraph 227

A - A final criminal verdict of guilty or not guilty is proof of the event to which the offence relates, ascribing it to its perpetrator and its legal status.

B - A decision from the Court of Cassation or the examining magistrate to release a defendant has the force of a not guilty verdict once it has been made absolute.

C - The civil court is not bound by the verdict or absolute penal decision in matters and facts on which no ruling has been made or on which the ruling made was not necessary.

Paragraph 228

The provisions of paragraph 227 also apply to the penal order.

Paragraph 229

A verdict issued without the involvement of the criminal court cannot be used in the criminal court as an argument in relation to the veracity of the events forming the offence or its legal description or proof that the defendant perpetrated the offence.

Chapter 4

Proceedings against those with Diminished Responsibility

Section One

Insane Persons

Paragraph 230

If it appears during an investigation or proceedings, that the accused is not able to conduct his own defence, on the grounds of mental illness, or if the situation requires an examination of his mental faculties, in order to test his criminal responsibility, the investigation or court proceedings are suspended, by decision of the examining magistrate, or court, and, if he has been charged with an offence for which he cannot be released on bail, he is placed under supervision in a government health institution, capable of treating mental illness. For other offences, however, he is placed in a government, or non-government health institution, at his expense on the request of whoever is acting on his behalf in law, or at the expense of his family, on payment of a surety by a guarantor. A specialist government medical committee is charged with carrying out an examination and presenting a report on the state of his mental health.

Paragraph 231

If it appears from the report of the committee referred to in Paragraph 230that the accused is not able to present his own defence, the investigation is postponed until he has sufficient mental awareness to make his own defence, and he is placed under the supervision of a government health institution if he is accused of an offence for which he cannot be released on bail. But in the case of other offences, he can be handed over to one of his relatives on a surety from a guarantor, on condition that a commitment is made that he should receive treatment in Iraq, or elsewhere.

Paragraph 232

If it appears from the decision of the medical committee that the accused was not criminally responsible owing to mental illness at the time the offence was committed, the judge will decide diminished responsibility and the court will issue a judgement of diminished responsibility and will take whatever action is necessary for handing him

over to one of his relatives, on payment of a guarantee, to undergo whatever treatment is necessary.

Section Two

Juveniles

Paragraph 233

A – No court action is taken against a young person who has not attained the age of seven.

B – The age of the juvenile at the time the offence was committed is the basis for choosing the appropriate court for proceedings against him.

C – If the juvenile reaches the age of 18 during the investigation, he is referred to the Court of Misdemeanours, but if he reaches this age after being referred to the Juvenile Court, then this court continues to consider the case.

Paragraph 234

A – The examining magistrate or investigating officer is responsible for gathering the evidence on each offence raised against the juvenile.

B – One or more judges, or one or more investigators can be assigned to the investigation into juvenile offences on the order of the Minister of Justice in the places designated by him.

Paragraph 235

A – If a juvenile and a person of full legal age are accused ((together)) of committing an offence, it is for the examining magistrate to divide the case accordingly and refer each of them to the appropriate court.

B – If it appears to the Juvenile Court that one of the accused reached the age of 18 before being referred, it is to continue examining the case of the juvenile, separate the case pertaining to the youth of full legal age, return the relevant documentation to the examining magistrate and refer him to the appropriate court.

Paragraph 236

It is for the examining magistrate and the court considering the case of a juvenile in the Court of Misdemeanours and the Court of Felonies to ask for help from organisations such as the official health and social services, and from experts and doctors, to investigate the social, medical, mental, psychological and environmental situation of the juvenile, and the reasons which might have driven him to commit the

offence, in cognisance of the content of other laws, which make compulsory referral of a juvenile to the competent authorities for the purpose given.

Paragraph 237

A – A juvenile is not detained for an offence, but he can be detained on a misdemeanour or felony for the purpose of investigating him, studying his personality, or in the event that he cannot be released on bail. However, if he is accused of an offence punishable by death, and he is more than ten years old, then detention is mandatory.

B – The decision is taken to detain a juvenile in premises where he can be observed, but if this is not possible, steps must be taken to ensure he does not mix with older detainees.

Paragraph 238

A – Proceedings against a juvenile are held in private session which is only attended by: members of the court and officials; those people connected with the case; relatives of the juvenile; those acting for his defence; witnesses and other accused persons; officials from the health and social services; and representatives from associations concerned with juvenile affairs.

B – It is for the court to remove the juvenile from the proceedings after being questioned on offences in breach of public order, but he is summoned again later and asked what he has been doing in the meantime since his last appearance.

Paragraph 239

It is for the court, after issuing a judgement against the juvenile to pay a fine, to determine the means of acquiring the money via the Department of Implementation, in accordance with the Law of Implementation, or to reach a decision over detaining him instead at a reform school, or lodging house at a school for girls, in accordance with the circumstances, but for a period of not less than 6 months and no more than one year.

Paragraph 240

Every decision, procedure or judgement has to be notified to the juvenile and, if possible, to one of his parents, or to his guardian, and it is for any one of these to consult the competent authorities on all matters relating to the investigation into the offence involving the juvenile, the proceedings arising from them, or the judgement or decision issued against him, the appeal lodged regarding them or their implementation.

Paragraph 241

Neither the juvenile, nor any of the persons listed in Paragraph 240 is allowed to contest the judgement for the juvenile to be handed over to one of the parents, or the person in whose care he resides.

Paragraph 242

A – The procedures stipulated in the Law on Juveniles are applicable to the arrangements for the investigation and the court proceedings, as well as for appeal and implementation, while taking into consideration the provisions appearing in the earlier paragraphs.

B – The juvenile is excused from giving fingerprints for the purpose of the investigation stipulated in Paragraph 70.

Book Four

Methods of Appealing against Judgements

Chapter One

Objection to Judgement in absentia

Paragraph 243

A – The person judged in absentia is notified of the judgement issued on him in accordance with the terms of paragraph 143, and if thirty days pass from the date of notification of the judgement in the case of an offence, three months from the date of notification of the judgement in the case of misdemeanour and six months in the case of a felony without his presenting himself to the court which issued the judgement or to any police station and without his objecting to it within the period mentioned, the verdict of guilty and the principal and subsidiary penalties will have the status of a judgement in the presence of the parties.

B – The objection by the person sentenced is to be submitted in a petition either directly to the court or to any police station or in a written report regulated by the court or in any police station after asking the person sentenced immediately after his arrest or after giving himself up whether he wants to object to the verdict and if he wants to make a written record of the reasons for his objection. If he does not want to do so, then this is stated in the written report.

Paragraph 244

A – If the person sentenced gives himself up or is arrested and the objection procedures are completed within the period specified in Paragraph 243, the court will decide to detain him and set a date for the objection to be reviewed and then notify him and those concerned in accordance with the rules, The court may decide to release him on bail unless the offence for which he is sentenced does not permit him to be released on bail.

B – The period the sentenced person spends in detention will be taken into account.

C – If the sentence issued is a fine and the person convicted pays it to the court or to the police station then he is released and the aforementioned procedure is to be followed in submitting his objection.

Paragraph 245

A – If the objection is submitted within the time limit and the objector does not attend any of the court objection sessions without legitimate excuse, having been notified according to the rules, or if he absconds, the court will decide to reject the objection and it will be a judgement in absentia and the decision to reject it will be notified in accordance with the rules with the status of a judgement in the presence of the parties which cannot be appealed against except by other legal means.

B – If the objection is submitted after its time limit has elapsed, the court will decide to reject it formally without any need to notify the objector of the decision to reject it and it is considered a judgement in absentia with the status of a judgement in the presence of the parties which cannot be appealed against except by other legal means.

C – If the objector attends and the objection is submitted within its legal time limit, the court will decide to accept it and examine the case again in the light of the objection and will issue its judgement with the support of the judgement in absentia or will amend it or cancel it, on condition that it will be not judged more harshly than the sentence imposed in absentia.

D – The exception to paragraphs A and B is in the case of the death sentence or a sentence to life imprisonment.

Paragraph 246

A – Submission of an objection results in the suspension of the examination into the appeal against judgement in absentia submitted to the Court of Felonies or to the Court of Cassation from the Public Prosecutor or other defendants or anyone connected with the case against the sentence which is issued in the objection trial.

B – Appeal against the judgement issued as a result of the objection trial is permissible by other appeal methods prescribed by law.

C – If there is an appeal against the judgement to reject the objection in accordance with sub-paragraph A of paragraph 245, this appeal will include this judgement and the judgement in absentia against which the objection is being made, even if this is not made clear in the appeal petition. The appeal against the judgement issued in accordance with sub-paragraph B does not include anything except the judgement to reject the objection.

Paragraph 247

A – When a person is arrested and sentenced in absentia to death or to a prison sentence, be it life imprisonment or imprisonment for a term of years, or gives himself up to the court or to any police station, his trial will resume and the court has the right to issue any judgement permitted under the law. Its decision will be subject to appeal by any other legal means.

B – If a person sentenced in absentia to death or to a prison sentence, be it life imprisonment or imprisonment for a term of years, flees again, the provisions of paragraph 245 in its sub-paragraphs A,B and C only will apply.

Paragraph 248

Considering the judgement in absentia with the status of a judgement in the presence of the parties has the following consequences:-

1 – Minor and major penalties, other than the death penalty, may be implemented;

2 –The Penal Court issues an order to arrest the person convicted;

3 – The ruling on reimbursement and compensation is implemented in accordance with the law of implementation on condition that the person sentenced puts forward guaranteed surety of an amount the court considers appropriate, if this is found to be necessary. This surety will be forfeited after three years;

4 – The person sentenced to death or to life imprisonment or imprisonment for a term of years is forbidden, as long as he is on the run, to administer or spend his money. The court must put a block on his money and its administration in accordance with the rules for managing seized money pursuant to the provisions of this law, if it has not already been seized. He is also forbidden to bring any legal action in his name and any commitment or action he undertakes will be considered null and void under the rule of law.

Chapter Two

Cassation

Paragraph 249

A – The Public Prosecutor, the accused, the complainant, the civil plaintiff and the person who is liable under civil law have the right to appeal in the Court of Cassation against the provisions, decisions and judgements issued by the Court of Misdemeanours or the Court of Felonies on a misdemeanour or felony, if it was based on a breach of the law or a mistake in the application of the law or in its

interpretation, or if there was a fundamental error in the standard procedures or in the assessment of the evidence or of the penalty, and this error influenced the judgement.

B – A mistake in the proceedings cannot be ignored unless it has not been damaging to the defence of the accused.

C – No individual appeal for cassation will be accepted over decisions issued on matters of jurisdiction , over preparatory and administrative decisions or any other decision on which there has not been a ruling in the case, unless it is subject to a halt in progress in the case; decisions involving arrest, detention and release on bail, or release without bail are also excluded.

Paragraph 250

An appeal against a judgement or decision on which there has been a ruling in the case must include all the judgements and decisions already issued or connected with it.

Paragraph 251

A – An appeal by the Public Prosecutor is restricted to criminal cases and an appeal by the civil plaintiff and the person with civil liability is restricted to civil cases. An appeal by the complainant is restricted to whichever of the two he has requested. However, an appeal by the accused includes both criminal and civil cases, unless there has been a restriction to just one of them.

B – If an appeal was submitted by the Public Prosecutor, it can reverse a judgement regarding all the persons convicted, but if it was submitted by only one of those convicted, the judgement will only be reversed in respect of that person, unless the reasons on which the appeal is based also apply to the other convicted persons. In that situation the decision can be reversed with regard to all of them.

C – In the process of cassation over an appeal, steps are taken to ensure that the appellant is not prejudiced by the fact that an appeal is lodged, unless the judgement against which an appeal has been made is evidence of the fact that the law has been violated.

Paragraph 252

A – The appeal takes place by means of a petition presented by the petitioner, or his legal representative, to the Criminal Court which issued the judgement, to any other Criminal Court, or direct to the Court of Cassation, within a period of thirty days, starting from the day after the judgement was issued, if in the presence of the parties, or from the date it was regarded as having the status of being issued in the presence of the parties, if it was in absentia.

B – If the petitioner is in prison, in detention, or in any way inhibited, he may present the petition through a prison, detention centre or appropriate official.

C – The petition contains the name of the petitioner, a summary of the judgement against him and its date, the name of the court which issued the judgement, the grounds on which the appeal is based and the final result.

D – The petitioner may show the grounds for the appeal separately on the petition, or he may give new grounds, before the decision is made. It is the responsibility of all parties involved in the case to present their own written statements and applications.

Paragraph 253

It is up to the court that issued the judgement or decision for cassation to send a file on the case to the Court of Cassation, as soon as an appeal petition has been presented to it, or as soon as the Court of Cassation calls for it, in pursuance of Paragraph 249, sub-paragraph C.

Paragraph 254

A – If the Criminal Court has issued a sentence of death or life imprisonment, it must send a file on the case to the Court of Cassation within ten days of the issue of the judgement, so that it can be reviewed for cassation, even if an appeal has not been lodged.[12]

B – The Court of Cassation accepts statements submitted by the accused and those involved in the case before it issues its decision.

Paragraph 255

In accordance with Paragraph 254, the Court of Cassation sends the case file to the head of the Public Prosecutor's Office, immediately upon its receipt together with the grounds for the appeal, petitions and statements received from the parties involved in the case, presenting their demands and queries about the judgement or decision within 20 days of their receipt.

Paragraph 257

An appeal for cassation over judgements and decisions does not imply suspension of their implementation unless the law so stipulates.

Paragraph 257

In observance of the provisions of the Law on Criminal Procedures:

A – The Court of Cassation Penal Board specialises in considering appeals into judgements and decisions issued by the Court of Misdemeanours and the Court of Felonies.

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[12] This Subparagraph replaced Subparagraph A cancelled in accordance with Paragraph 1 of Law No.91/1976 (5th amendment of the Law on Principles of Criminal Trials No.23/1971) published in "Iraqi Facts" No. 2545 of 23/8/1976.

B – The General Board at the Court of Cassation specialises in reviewing cases where there is the sentence of death and cases which are dealt with directly by the President of the Court of Cassation, or in accordance with a proposal from the board stipulated in sub-paragraph A for referring the case. This applies also to cassation for other cases stipulated in the law.

Paragraph (258)

A – If it appears to the Court of Cassation that an appeal against a judgement or decision issued by the Criminal Court has not been presented within the period specified in law, it will confirm its formal rejection.

B – It is up to the Court of Cassation to summon the accused, the plaintiff, the civil plaintiff or person with civil liability (or both), or the representative of the Public Prosecutor to hear their statements or for any purpose it requires in order to obtain the truth.

Paragraph 259

A – It is up to the Court of Cassation, after checking the case documentation, to issue its decision on the matter in one of the following ways:

1. Confirm the ruling on the evidence presented and the principal and any supplementary penalties passed, as well as any other legal clauses;

2. Confirm the ruling of not guilty, conciliation, diminished responsibility or the decision to discharge, or any other ruling or decision in the case;

3. Confirm the conviction with a reduced penalty;

4. Confirm the conviction and return the documents, for review of the penalty, with a view to increasing its severity;

5. Return the documents to the Court once again to review the verdict of not guilty, with a view to passing a sentence;

6. Reverse the guilty verdict and the principal and supplementary penalties, and any other legal judgements, with a view to passing a verdict of not guilty, annulling the charge and releasing the accused.

7. Reverse the conviction ruling and penalty ruling and return the documentation to the Court for a re-trial, either complete or partial;

8. Reverse the ruling of not guilty, conciliation or diminished responsibility, or the decision to discharge, or any other ruling or decision in the case, return the documentation for a re-trial or a repeat judicial investigation.

9. Confirm the ruling issued in a civil case, reverse it completely, or reduce the amount of the penalty awarded, or return the ruling to the court to complete

the investigation, or to hold a review with the aim of increasing the amount of the penalty awarded.

B. The Court of Cassation will explain in its decision the grounds on which it is based.

Paragraph 260

The Court of Cassation may change the legal description of the offence for which a verdict of guilty has been issued against the defendant to another description which corresponds with the nature of the act committed and may pronounce him guilty in accordance with the paragraph of the law which applies to this action, and review the penalty to see if it is appropriate or to make is more lenient.

Paragraph 261

If the Court of Cassation reverses the verdict issued by a court which does not have jurisdiction, the case is transferred to the court which does have jurisdiction and the court which issued the verdict is given notification.

Paragraph 262

If the verdict is reversed and a re-trial is ordered, the re-trial of the case in whole or in part is conducted in accordance with the stipulations of the decree of reversal, without reference to decisions or procedures which are not covered by the decree. A new verdict is issued for whole or part of the case.

Paragraph 263

A – If the case is returned for a review of the sentence, it must be reviewed by the same judge or judiciary body which issued the verdict unless there is an excuse.

B – If the court issued a verdict following the review, the case is then submitted to the Court of Cassation, and the judiciary body must ratify the decision if it finds it to be in accordance with the law, or must make the penalty more lenient. If it finds that a guilty verdict should be issued against the defendant or that the penalty must be of increased severity, the case is transferred to the Public Body of the Court of Cassation and it is for this body to issue the guilty ruling or the penalty to be imposed or to approve the judgement previously issued by the court.

Paragraph 264

A – In addition to the provisions put forward, the Court of Cassation may, either of its own accord or in response to a request from the public prosecutor or anyone else connected with the case, ask for the file on any criminal case to check the provisions and rulings issued on it, as well as the procedures and orders. In this case, it has the authority stipulated in this decision to consider an appeal, although it may not reverse a finding of not guilty or increase the severity of the penalty, unless it is requested so to do within 30 days from the date of issue of the judgement or ruling.

B – The Court of Cassation has the authority to intervene in accordance with sub-paragraph A if an appeal is prescribed in accordance with sub-paragraph A of paragraph 258.

C – The Court of Cassation may not exercise its authority under the terms of this paragraph in cases previously reviewed by appeal, with the exception of cases stipulated in sub-paragraph B.

Paragraph 265

A – Appeal before an appropriate Criminal Court is permissible as stipulated in paragraph 249, based on the provisions, decisions and procedures of the Felony Court in cases of infractions, and in decisions issued by the examining magistrate, within 30 days, starting from the day following the date of issue.

B – In addition to the provisions of sub-paragraph A, the Criminal Court may bring any case mentioned in the sub-paragraph mentioned or any written record of investigation in an offence in accordance with the provisions stipulated in paragraph 264.

C – The provisions of sub-paragraph C of paragraph 249 are considered on the question of decisions which cannot be appealed.

D – The Criminal Court, in the cases laid out in this paragraph, has authority prescribed by the Court of Cassation in applying these provisions and decisions, and its decisions in these cases will be final.

Chapter 3

Correction of the Cassation Decision

Paragraph 266

A – The Public Prosecutor, the convicted person and all others connected with a criminal case may request the correction of a legal error in the decision issued by the Court of Cassation, provided the request is submitted within 30 days, counted from the date a convicted, imprisoned or detained person is notified of the Court of Cassation decision or, otherwise, from the date the court dealing with the case receives the case documentation from the Court of Cassation.

B – The request is submitted directly to the Court of Cassation, or through the court, or prison or centre administration, if the convicted person is already in prison or detained.

Paragraph 267

A request for correction is not accepted for the following decisions:

1 – A decision for reversal and re-trial or a second judicial investigation;

2 – A decision issued for the return of case documentation for review of the judgement;

3 –A decision or judgement issued by the Court of Cassation General Board[13]

Paragraph 368

A – The Penalties Board reviews requests for correcting the decisions it has issued, provided that the President of the Court of Cassation has not been requested to do so by the General Board[14].

B – If the Board reviewing the request for correction considers that the request does not comply with legal conditions, it will decide to reject it, or to accept it and correct the decision of cassation, either in full or in part.

Paragraph 269

A – A request for correction can only be accepted on one occasion.

B – Decisions to turn down or accept a request for correction cannot be corrected after issue.

Chapter 4

Re-trial

Paragraph 270

A re-trial can be requested for a case which resulted in a sentence or imposition of a penalty for a felony or misdemeanour under the following circumstances:

1 – If the accused was convicted of murder and the person for whose murder he was convicted is found alive;

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[13] This sub-paragraph was added in accordance with Paragraph 2 of Law 91/1976 (5th amendment of the Law on Principles of Criminal Trials No.23/1971) published in Al-Waqa'i Al-'Iraqiya No. 2545 of 23 August 1986.

[14] This sub-paragraph was added in accordance with Paragraph 2 of Law 91/1976 (5th amendment of the Law on Principles of Criminal Trials No.23/1971) published in "Iraqi Facts" No. 2545 of 23/8/1976.

2 – If a person was convicted of an offence and a judgement was later issued against another person for committing the same offence since one of the two judgements must be against a person innocent of the offence;

3 – If a person is convicted on the basis of the testimony of an expert or the opinion of a specialist, or document, and later a definitive judgement is issued against the witness or expert on the basis of having borne false witness, or the document is proven to be a forgery;

4 – If after the judgement is issued, facts come to light, or documents are presented which were not known at the time of the trial, and these prove the innocence of the convicted person.

5 – If the judgement was based on a judgement which was quashed or annulled by lawful means.

6 – If a guilty or not guilty judgement, or a final decision for discharge was issued on the basis of a criminal act, either separate or related to the ((original)) offence;

7. If for any lawful reason the offence or sentence no longer apply to the accused.

Paragraph 271

A request for a re-trial is submitted to the Public Prosecutor by the person convicted, or whoever represents him in law. If the person convicted has died the request can be submitted by his wife or one of his relatives, but the request must clearly explain the grounds on which it is based and be accompanied by supporting documentation.

Paragraph 272

The Public Prosecutor will carry out an examination of the grounds supporting the request and will check the case documentation. He then submits the papers, together with his assessment, to the Court of Cassation as quickly as possible.

Paragraph 273

The request for a re-trial can only halt implementation of a sentence if it was in respect of the death penalty.

Paragraph 274

The Court of Cassation reviews the request by carrying out an inspection of the case documentation and it is up to the court to undertake whatever inquiries and questioning of witnesses it considers necessary.

Paragraph 275

If the Court of Cassation finds that the request for a re-trial fails to satisfy the necessary legal conditions, it will decide to turn it down. If it finds the request justified, it will return the documentation to the court which issued the judgement, or to the court which has taken its place, together with its decision for a re-trial.

Paragraph 276

The trial takes place on the basis of the requested re-trial referred back to it, and if it decides there is no just cause to interfere with the original judgement, it issues a decision accordingly; if however it decides on annulment, either total or partial, and that the person convicted is not guilty, it will issue a new judgement, but this will not be more severe in its sentence than the previous one. Its judgement will be in accordance with legal procedures.

Paragraph 277

If the person convicted has died, or if he dies after the request has been submitted, the court continues with the measures for a re-trial and appoints someone to be responsible for the defence, if the person who requested the re-trial had not already appointed someone to represent his defence. The court then issues its decision not to interfere with the original judgement, or for annulment, either in full or in part, or for a declaration of not guilty on the part of the deceased. Its decision will be in accordance with legal procedures.

Paragraph 278

Following the annulment of a judgement, all its civil or criminal consequences are removed, either in total or in part, and the amount of any fine or compensation is returned, together with any impounded or confiscated property. If such items are no longer present, their value is paid out, unless the confiscation was not a legal duty.

Paragraph 279

If the request for a re-trial is turned down, or if a decision is issued for non-interference with the original judgement, the request cannot be submitted for a second time, on exactly the same grounds as were used in the first request.

Chapter 2

Implementation of the Death Penalty

Paragraph 285

A – The person condemned to death is placed in prison until steps have been taken for carrying out the sentence.

B – The death sentence is only carried out on a decree of the Republic in accordance with the provisions of the following paragraphs.

Paragraph 276

If the Court of Cassation confirms the death sentence as issued, it will send the case file to the Minister of Justice, who is responsible for passing it on to the President of the Republic to seek the necessary decree for carrying out the sentence.

The President of the Republic issues the decree for carrying out the sentence, or for commuting it , or for pardoning the condemned person. If he issues the decree for implementation, the Minister of Justice issues an order to that effect, including the decree of the Republic, in accordance with legal provisions.

Paragraph 287

A - If the condemned person is pregnant when the order for implementation arrives, it is the responsibility of the prison administration to inform the head of the Public Prosecutor's Office to present a notification to the Minister of Justice to delay execution of the sentence, or to reduce it. The Minister of Justice then submits this notification to the President of the Republic. Implementation of the sentence is delayed until another order is issued by the Minister of Justice in accordance with the decision of the President of the Republic. If the renewed order rules for implementation of the death sentence, it is not carried out until 4 months after the date of delivery of the child, whether the delivery is before or after the arrival of the order.

B – The judgement in sub-paragraph A is applicable to a condemned person whose child is delivered before the arrival of the order for implementation if the period of 4 months from the date of her confinement has not expired. The sentence is not carried out until 4 months have elapsed from the date of her confinement, even if the renewed order for implementation arrives.

Paragraph 288[16]

The sentence of death is carried out by hanging within the prison, or any other place in accordance with the law after the issue of the Republic decree for the sentence to be carried out in accordance with paragraph 286. The execution is witnessed by the Implementation Board, comprising a criminal court judge, a member of the Public Prosecution, if available, a representative of the Ministry of the Interior, the director of the prison and the prison doctor, or any other doctor delegated by the Ministry of Health. The accused's legal representative is excused attendance if he so requests.

[16] This paragraph was amended by Law 65/1984 (3rd amendment of the Law on Principles of Criminal Trials No.23/1971), published in Al-Waqai' Al-'Iraqiya No 348 of 7/5/1984

Paragraph 289

A – The director of the prison reads the Republic decree for the implementation of the sentence to the condemned person at the place of execution, so that the others present can hear.

B – If the condemned person wishes to make a statement, the judge notes down what is said and this is endorsed by the other members present.

C – Once sentence has been carried out, the director of the prison signs a form, on which the doctor confirms death, and the time this took place, and the remainder of those present sign the document accordingly.

Paragraph 290

The death penalty cannot be carried out on official holidays and special festivals connected with the religion of the condemned person.

Paragraph 291

It is the responsibility of the relatives of the condemned person to visit on the day before sentence is to be carried out. It is the duty of the prison administration to inform them of the date accordingly.

Paragraph 292

If the religion of the condemned person requires him to make confession before death, the necessary arrangements are to be made for him to meet a cleric of his religion.

Paragraph 293

The corpse of the executed person is handed over to relatives if they so request. Otherwise the prison authorities will carry out the burial at government expense, but there will be no funeral ceremony.

Chapter 3

Implementation of Custodial Sentences and Fines

Paragraph 294

A – The sentence is calculated from the day it is implemented against the convicted person until noon on the day he is discharged.

B – If the period of imprisonment or detention is only 24 hours, then the convicted person need not spend longer than this time in prison.

Paragraph 295

The period of detention is deducted from the period of the sentence issued against the convicted person for the same offence. If there are several offences within the same case, this period is deducted from the least severe penalty.

Paragraph 296

If a man and his wife are both awarded custodial sentences for a period of more than one year for different offences, and they have not been in prison before, implementation of the sentence with regard to one of them can be postponed if they have responsibility for a young child of less that 12 years and they have a fixed place of residence.

Paragraph 297

The decision to postpone implementation of a sentence is issued in accordance with Paragraph 296 by the court which issued the sentence, in response to the request of the convicted person. The court will demand bail to guarantee that he returns to serve the sentence upon expiry of the period of time in question. The court calculates the amount of the bail and includes it in the decision issued granting the postponement of implementation. It is the responsibility of the court to make appropriate arrangements in this way to ensure the convicted person does not run away.

Paragraph 298

If a person is sentenced to a fine only, and he has already been detained for the offence of which he has been convicted, the amount of the fine can be reduced by one half of one dinar for every day he was detained. If the person is sentenced to imprisonment and a fine, and the period he spent in detention is longer than the period of the prison sentence, the amount of the fine is to be reduced by one half of one dinar for every extra day served. If the number of days in question adds up to exceed the amount of the fine payable, then the court can decide to discharge him.

Paragraph 299

A – If a person is sentenced to a fine, whether or not with imprisonment as well, and he does not pay the money, the court will sentence him to imprisonment for half of the maximum period for the offence concerned, if he was sentenced to both prison and a fine.

B – If a offence was punished by a fine only, the period of imprisonment to which the court can sentence the accused in the event of the fine not being paid is one day for each one half of one dinar outstanding. However the total period of the prison sentence must not exceed 2 years.

C – The prison sentence comes to an end, in the event of non-payment of the fine, upon the discharge of the fine, or a part of it relative to the remainder of the sentence.

D – Payment of the fine, or a portion of it, can be paid to the court, police station or prison administration, and when this happens the convicted person can be discharged immediately.

Part 6

Miscellaneous

Chapter 1

Conclusion of a Criminal Case

Paragraph 300

A criminal case is concluded upon the death of the accused, the issue of a guilty or not guilty judgement, or a judgement or decision of diminished responsibility for the offence concerned, or a final decision for discharge of the accused or a pardon, or the permanent cessation of proceedings, or for other reasons stipulated in law.

Paragraph 301

There cannot be a return to investigation and court proceedings against the accused, for whom the criminal case has been concluded, except under circumstances stipulated in law.

Paragraph 302

A – The final decision issued for the rejection of a complaint in accordance with paragraph 130 Sub-section A, and the final decision for the rejection of a complaint in accordance with paragraph 181 Sub-section A, on account of the plaintiff giving up his complaint, both prevent the continuation of proceedings against the accused.

B – The decision issued to reject the complaint on account of the absence of the plaintiff does not prevent the resumption of the complaint on another occasion, if the plaintiff had just cause for being absent.

C – The final decision issued for the discharge of the accused in accordance with paragraph 130 sub-section B, or paragraph 181 sub-section B does not preclude continuation of the proceedings against the accused on the appearance of new evidence requiring it. But no action can be taken if a period of a year has passed since the decision for discharge was issued by the court, and 2 years after the decision issued by the examining magistrate. Each of these decisions is final and subject to the consequences outlined in paragraph 300.

D – The definitive decision to close a case finally precludes any further investigation proceedings, but if the decision to close it is temporary, the investigation cannot resume until new evidence is presented.

Paragraph 303

The investigation or court proceedings against an accused may be resumed after the criminal case has been closed if, after the issue of the judgement or definitive or final decision, it emerges that there was an act or consequence of the offence for which the accused was tried, or had proceedings taken against him, which was fundamentally different from the facts as presented in the trial.

Paragraph 304

If the accused dies during the investigation or trial, then the decision is issued to bring the proceedings to a final halt, and the civil case will also stop in consequence. In this case, the civil plaintiff has the right to consult the Civil Court.

Paragraph 305

If a general amnesty is called, and the proceedings and trial against the accused are stopped, the victim of the offence has the right to refer to the Civil Court.

Paragraph 306

The issue of a Republic edict for a special amnesty wipes out the principal and secondary penalties, without prejudice to the right to restitution, compensation, or confiscation.

Paragraph 307

The discharge of a case for any lawful reason does not prevent the confiscation of goods whose possession is prohibited in law.

Chapter 2

The Handling of Impounded Goods

Paragraph 308

At any stage of the investigation or trial the examining magistrate or court judge has the right to issue a decision regarding documents, assets or impounded items, or items used to commit an offence or which were the object of an offence, in accordance with the provisions stipulated in the following paragraphs.

Paragraph 309

A – Weapons and other items subject to confiscation orders are to be handed over to the nearest police station, for the legal provisions to be applied, the value of any items sold being retained for the benefit of the Treasury.

B – The provisions of sub-paragraph A apply to weapons and subject to confiscation orders before this law comes in force.

Paragraph 310

Other impounded goods are to be handed over to the person holding them at the time they were impounded, unless they played a role in the offence, or were obtained as a result of the offence, in which case they are to be handed back the previous rightful owner.

Paragraph 311

All assets transferred or exchanged and all assets acquired, either directly or indirectly, through such transfers or exchanges are taken into account in the ruling..

Paragraph 312

No decision to hand over goods can be implemented until it has become definitive, and no decision to destroy manuscript or printed materials can be implemented until the criminal proceedings are complete in respect of all the accused persons.

Paragraph 313

A – The decision of the judge or court to hand over impounded goods does not preclude referral to the civil court by the person claiming their ownership.

B – If a dispute arises over the ownership or possession of an impounded item, and a person connected with it seeks a postponement of the decision to hand it over, the handover may be deferred until the dispute is resolved by the Civil Court, and the judge or the court will proceed with the investigation or trial.

C – If the items mentioned in sub-paragraph B are deteriorating rapidly or the cost of their retention is extremely high, the examining magistrate or Criminal Court are permitted to sell them in accordance with the Law of Implementation and to retain the proceeds until the results of the court proceedings.

Paragraph 314

A – If no one claims ownership of impounded goods, the examining magistrate or court is to issue a list of the items concerned. People then have 6 months in which to come forward to prove their claim to the items within a period. The list is displayed on notice-boards in the court and at the police station. If the property impounded was valuable, then the notice will also be published in local newspapers as well.

B – The magistrate or court may hand over the impounded goods to anyone able to prove ownership within the period stipulated in law, otherwise they are to be sold on the decision of the judge or court, in accordance with the Law of Implementation, and the income becomes a benefit to the Treasury.

Paragraph 315

Anyone finding items or property thought to be the result of a offence should inform the examining magistrate or the court, whose duty it is to dispose of the items in the manner prescribed above.

Paragraph 316

All rights to ownership of the items mentioned in the above provisions are forfeit unless claims are made within a period of 5 years from the date announced for handover or for sale for the benefit of the Treasury.

Chapter 3

Commitment to Keep the Peace and to be of Good Behaviour

Part 1

Commitment to Keep the Peace

Paragraph 317

It is the responsibility of the examining magistrate or Public Prosecutor to inform the judge of the Court of Misdemeanours if there is a risk that a certain person will commit misdemeanours or carry out acts which amount to a breach of the peace. This must be accompanied by a supporting statement of investigation and evidence.

Paragraph 318

If such a report reaches the judge of the Court of Misdemeanours, he is to take steps to require the person to whom the report refers to be bound over to keep the peace for a period of not less than 6 months, and not more than one year. This commitment may or may not be subject to bail, as covered in the following paragraphs.

Paragraph 319

The judge issues a summons the person on whom the report has been made to appear before him on an appointed day, to present his defence or to rebuff the charge as reported. The sum which will be payable in bail and the period of commitment to good behaviour which will be required must be stated in the summons.

Paragraph 320

On the appointed day, the judge undertakes an investigation of the veracity of the information and listens to the defence of the person reported to him. Once the investigation is concluded, he issues a decision, either rejecting the application if no steps to keep the peace are required or accepting it and binding over the person concerned , with or without bail, and with the payment, within a specified period, of surety of not less than 20 dinars and not more than 200 dinars, if he has committed an action laid down in paragraph 317.

Section Two

Commitment to good behaviour

Paragraph 321

The public prosecutor or examining magistrate may inform the Misdemeanour Judge of the following persons, if he fears that they might commit an act breaching security, and this should be accompanied by written documents or supporting evidence:

1 – Any person who does not have a clear means of making a living.

2 – Any person with 2 or more judgements against him involving a offences of damage to person or property or sheltering thieves or absconders, offences against public decency or offences involving public transport or falsifying, copying or forging stamps and paper and metal currency in common or legal circulation.

Paragraph 322

If notification is given to the Judge of Misdemeanour, he must take steps to bind over the person who is the subject of the report to good behaviour for a period of no less than a year and not exceeding 3 years, with or without the payment of bail, in the manner prescribed in the following paragraphs.

Paragraph 323

The judge sends a written summons to the person reported, citing the report against him and asking him to appear before him on a particular day, having prepared his defence or a rebuttal of the report. The sum which will be payable in bail and the period of commitment to good behaviour which will be required must be stated in the summons.

Paragraph 324

On the appointed day, the judge undertakes an investigation into the veracity of the information and listens to the defence of the person reported to him. Once the investigation is concluded, he issues a decision, rejecting the application if no steps to keep the peace are required, or accepting it and binding over the person concerned , with or without bail, and with the payment of a surety of no less than 50 dinars and not exceeding 500 dinars within a specified period if he has committed an action stipulated in the second sub-paragraph of paragraph 321.

Section Three

Joint Rulings to Keep the Peace and be of Good Behaviour

Paragraph 325

If the person reported does not attend without any legal excuse and has been notified in accordance with the regulations, the judge may decide that he should be arrested and held, under the provisions of paragraph 109.

Paragraph 326

A - A cash surety can accepted from this person in place of bail.

B – If this person agrees to be bound over and pays the cash surety or bail, he is released. Otherwise the court decides to hold him in prison until the expiry of the period set by the court for him to be bound over. If he agrees within that period to be bound over and pay the surety or bail he is then released.

C – The decision of the judge is called "administrative detention".

Paragraph 327

A - If the person who has made the commitment to be bound over does not, for the period stipulated, commit the offence mentioned in the 2 previous sub-paragraphs, the sum of surety paid is returned to him, and the bail is considered discharged.

B – If it is proven that the person breaks his commitment to be bound over under the definitive judgement issued against him, the bail money is obtained from him in accordance with the Law of Implementation and handed over by the judge to the Director[17] of Implementation. It is to be paid in cash, as income to the Treasury.

Paragraph 328

The judge requires the person who was bound over to hand over the bail money under the conditions stipulated in Paragraphs 116 and 11). If he refuses, he is detained until the period covered by the commitment to be bound over is discharged or he hands over the money required.

Paragraph 329

An appeal may be lodged with the Court of Cassation within 30 days of the day following the date of issue of the ruling issued in accordance with this chapter , . The Court of Cassation is to decide whether to confirm the ruling, reverse it, amend the terms of the commitment to be bound over, the sum of the surety or the period of time for which the person is to be bound over, change the bail , or return the documentation for judicial investigation, issuing any decision as stipulated in Chapter 2 of part 4.

Paragraph 330

Any custodial sentence passed before a ruling has been made to detain the person or which is passed during the period of detention must be at least as long as the period of the detention.

[17] The Chairman of Implementation became known as the Director of Implementation in accordance with the provisions of the Law of Implementation No 45 (1980).

Chapter 4

Conditional Discharge[18]

Paragraph 331

A – Conditional discharge of a person given a custodial sentence may be granted in accordance with the provisions of this law if he has served three quarters of the period, or two thirds of it if he is a youth, and if it appears to the court that he has been of good behaviour for the duration. However, the period served must not be less than 6 months. If consecutive sentences were passed, then the time is calculated on the basis of the total amount, regardless of the number of sentences, even if it exceeds the highest limit for implementation in law. Time spent in detention in connection with the case in question is deducted. If part of the sentence is removed as a result of a special or general amnesty, the remaining period is considered as the basis for the sentence itself.

B – The provisions for conditional discharge apply to someone against whom procedures were issued in accordance with Criminal Proceedings in under the Law on the Principles of Criminal Procedures or of Criminal Courts, and special laws. Any person subject to military court proceedings in accordance with the Principles of Military Procedures is excepted from these provisions.

C – The request for conditional discharge is reviewed by the local Court of Misdemeanours, whose jurisdiction covers the prison or rehabilitation centre in which the convicted person serves his sentence. When the request is submitted, even if he has been transferred to another prison or centre, the President of the Court of Appeal may specify one or more Courts of Misdemeanour, distributing the work between them by means of a formal notification. The decision issued by the court is subject to appeal through cassation by the Public Prosecutor or the petitioner for conditional discharge at the Court of Misdemeanours. This is to take place within 30 days, from the day after the date on which it was issued[19].

D – The following convicted persons are excluded from procedures for conditional discharge:

1. A recidivist who has exceeded the limit for the maximum penalty for a particular type of offence, in accordance with the provisions of paragraph 140 of the Penal Code No. 111 (1969) or paragraph 68 of the Baghdad Penal Code;

2. A person convicted of an offence against the external security of the state, or of counterfeiting money, postage stamps or government financial bonds;

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[18] Paragraphs 331 – 334 were amended and the text became as they are now in accordance with Law No. 23 (1984), the Law of the 2nd Amendment of the Principles of Criminal Procedures, No.23 (1981), published in Al-Waqai' Al-'Iraqiya, No 2333 of 27 March 1984.

[19] The text of sub-paragraph C was amended by Paragraph 331 (amended) and became such in accordance with the ruling of Paragraph 4 of Law No. 91 (1976) (5th amendment of the Principles of Criminal Procedures No. 23/1971) published in Al-Waqai' Al-'Iraqiya, No 2545 of 23 July 1976.

3. A person convicted of non-consensual sexual intercourse, buggery, or assault , or of non-consensual sexual intercourse or assault without violence, threat or deception against a person under the age of 18 years, or of non-consensual sexual intercourse or buggery with female relatives, or incitement to prostitution and fornication;

4. A person sentenced to hard labour or imprisonment for an offence of theft, if he has previously been sentenced to hard labour or imprisonment for another theft, even if the sentence has been discharged for any legal reason;

5. A person sentenced to of hard labour or imprisonment for embezzlement of public funds, if he had been previously sentenced to hard labour or imprisonment for a similar offence , or sentenced to imprisonment for two or more separate consecutive offences of embezzlement or for an offence of embezzlement, comprising two or more consecutive acts, even if the sentences for these offences have been discharged for any legal reason.

Paragraph 332

A – A conditional discharge may be requested by the convicted person; if he is a youth he may do so on his own behalf, or through a parent, or legal guardian, a legally responsible person, or one of his relatives. The court applies to from the prison administration or the rehabilitation centre, where the sentence has been carried out for a report his conduct. The court may also request any other authority for a report on the behaviour of the convicted person. The court may approach any authority and seek such assistance as it considers necessary. After it has listened to the report of the Public Prosecutor, the court will issue its decision to accept or reject the request.

B – If the court issues a decision for conditional discharge in accordance with sub-paragraph 332.A, the convicted person is released and implementation of the remainder of his sentence is suspended. The court may order the implementation or suspension, during this period, of all supplementary sentences issued against him, or the implementation of some and the suspension of others. The court may review this decision based on the report of the Public Prosecutor, or based on any information that might reach it, and to order the postponement of what it has decided to implement, or to implement what it had decided to postpone, and it has also to decide whether or not to ban the individual for a specified period of time from the freedom to come and go, or from visiting public houses and coffee houses, or any places he would often go to.

C – The decision for grant a conditional discharge reaches the prison administration or rehabilitation centre of the person to whom it has been issued before the discharge and they are to advise him that if he commits a felony or misdemeanour with intent, or in any way violates the conditions imposed upon him by the court within the trial period specified, the conditional discharge will be revoked.

D – If the person concerned is under the age of 25, he will be handed over to one of the persons mentioned in sub-paragraph 332.A , if they are considered suitable people to look after him, or to another person considered appropriate, after he has made a

commitment, supported by a surety fixed at an appropriate level, to be of good behaviour for the period specified.

E – The Public Prosecutor will supervise the conduct of the person subject to the conditional discharge to ensure that the conditions stipulated in the paragraph are implemented. He is to inform the court if any of the conditions is violated, whereupon the subject will be summoned for the court for a decision on appropriate steps , as set out in this paragraph, or to revoke the decision to grant a discharge.

F – If the request for a conditional discharge is turned down in accordance with sub-paragraph 333.A, it cannot be re-submitted, until three months has passed from the date of the issue of the decision to reject it, unless the grounds for the rejection were procedural; after correction of the procedural error, a new application can be accepted.

Paragraph 333

A – If the person released on conditional discharge has been given a custodial sentence for a period of no less than 30 days for a felony or misdemeanour committed during the period of his discharge, he attracts the maximum sentence for the judgement originally awarded and the court in question will revoke the discharge which it granted.

B – If the person released on conditional discharge violates the conditions stipulated in sub-paragraph 332.E, amended by this law, the court with jurisdiction will revoke its decision to grant him a discharge.

C – If the court with jurisdiction decides to revoke the decision to grant conditional discharge, it will issue a decision that the person concerned should be arrested and handed over to the prison or rehabilitation centre from which he was released, in order to serve the remainder of his sentence, to which any outstanding supplementary sentence will be added.

Paragraph 334

If the period of suspension of sentence expires without a decision being made to revoke the conditional discharge, in accordance with the provisions of paragraph333, which amends this law, the sentences which were suspended before completion become null and void.

Paragraph 335

If. while implementation of the remainder of his original sentence is suspended, the person granted the conditional discharge is given a custodial sentence of no less than two years for an intentional felony or misdemeanour, an order revoking his conditional discharge will be issued, together with an order for his arrest to serve the

remainder of the original sentence.

Paragraph 336

A conditional discharge in accordance with this Chapter cannot be granted to a person who has had a conditional discharge revoked.

Paragraph 337

The Felony Court may, when considering an appeal over a decision to grant a conditional discharge, confirm, discharge or reject it and to return the papers to the court for carrying out any investigation, or completing any steps, or to come to a definitive decision on the matter; its decision will be final[20].

Chapter 6

Pardon by the Victim

Paragraph 338

The court which issued a judgement, or its successor, may issue a decision to pardon a person given a custodial sentence for an offence for which conciliation is possible , whether or not the judgement had reached the stage of final adjudication.

Paragraph 339

A – The request for a pardon is submitted by the victim, or anybody representing him in law.

B – If the victims are numerous, a request for pardon will not be accepted unless it is on behalf of all of them.

C – If the persons convicted are numerous, a request for pardon for one or more of them does not apply to all the others.

D – The court accepts the pardon, if the offence is one for which conciliation is possible without the agreement of the court, and it the court may accept in other circumstances.

E – The request for pardon cannot be revoked and it will not be accepted if it is linked with other conditions, or conditional itself.

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[20] This Paragraph replaced Paragraph 337, cancelled in accordance with Paragraph 5 of Law No.91 (1976) (5th amendment of the Principles of Criminal Procedures No. 23/1971) published in Al-Waqai' Al-'Iraqiya, No 2545 of 23 July 1976.

Paragraph 340

On receipt of the request, the court can annul the remainder of the principal sentence, as well as supplementary sentences apart from confiscation orders, and can decide on the immediate release of the person convicted.

Paragraph 341

Within ten days of issuing its decision the court sends the case papers to the Court of Cassation to review the decision. For this purpose the Court of Cassation has the powers stipulated in paragraph 337.

Chapter Six

Rehabilitation

Paragraphs 342 – 351 Cancelled [12]

Chapter Seven

Requests for Legal Assistance and Extradition of Criminals

Paragraph (352)

In requests from foreign countries for legal assistance and in the extradition of accused and sentenced persons the instructions stipulated in this chapter will be followed in consultation with the regulations of international treaties and agreements and the principles of international law and the principle of reciprocity.
Al

[12] These paragraphs have been cancelled as well as the Rehabilitation law no: 3 of 1967 in accordance with Republican Command Council Decree No 997 of 30 July 1978 published in Al-Waqai' Al-'Iraqia" No 2667 of 7 August 1978.

Section One

Requests for Legal Assistance

Paragraph 353

If a foreign state wants to take measures to pursue an investigation into any offence by means of the judicial authorities in Iraq it must send a request to this effect through diplomatic channels to the Ministry of Justice and the request must be accompanied by a complete statement of the circumstances of the offence, the evidence for the charge, the paragraphs of the law which apply and a detailed specification of the measures which it wishes to take.

Paragraph 354

A – If the Ministry of Justice considers that the request meets in full all its legal conditions and that its implementation does not contravene the public regime in Iraq, it will refer it to the examining magistrate in whose geographical area it falls in order to achieve the requested measures and a representative from the state requesting the legal assistance is permitted to come and carry them out.

B – The Ministry of Justice has the right to ask the state requesting the legal assistance to deposit an appropriate sum in order to cover witness expenses, experts' fees and charges for documents etc.

C – If the requested measures are carried out the magistrate will submit the documents to the Ministry of Justice for forwarding to the foreign state.
If the Iraqi judicial authorities request legal assistance from the judicial authorities in another state to carry out specific measures, the request will be submitted to the Ministry of Justice so that it can send it through diplomatic channels to the judicial authorities in that state; the judicial measures which are taken in accordance with this legal assistance will have the same legal effect they would have had if they had been taken by the judicial authorities in Iraq.

Paragraph 356

The examining magistrate or court must request from the Iraqi Consul the completion of a testimony or statement from any Iraqi person abroad and the request must be submitted by the Ministry of Justice with an explanation of the matters about which they wish to ask, and the completed testimony or statement will be considered pursuant to the testimony or statement completed by an examining magistrate.

Section Two

Extradition of Criminals

Paragraph 357

A – It is stipulated in the request for extradition that the person who is the subject of the request should:

1 – Be accused of committing an offence which took place either inside or outside the state requesting the extradition and the offence should carry a prison sentence of not less than two years under the laws of the state requesting extradition and of the Iraqi Republic.

2 –Been sentenced by the state requesting extradition to a prison sentence of not less than six months.

B – If the person whose extradition is requested has committed many offences the request for extradition will be considered valid if the conditions are met for any one of them.

Paragraph 358

Extradition is not permitted in the following circumstances :

1 – If the offence for which the extradition is requested is a political or military offence under Iraqi law;

2 – If the offence could be tried before the Iraqi courts in spite of occurring abroad;

3 – If the person who is the subject of the request for extradition is pending investigation or trial inside Iraq for the same offence or if a verdict of guilty or not guilty has been passed on him or if an Iraqi court or an examining magistrate has ruled that he should be released or if the criminal proceedings have expired under the terms of Iraqi law or of the law of the state requesting his extradition;

4 – If the person requested is of Iraqi nationality.

Paragraph 359

If the person whose extradition is requested is pending investigation or trial in Iraq for an offence other than the one for which his extradition is requested, the request will not be deferred until a judgement is issued on his release or his innocence or guilt and the penalty is implemented.

Paragraph 360

The extradition request is to be submitted in writing through diplomatic channels to the Ministry of Justice with the following documents attached if possible:

1 – A full statement about the person whose extradition is requested, his description, his photo and papers confirming his nationality if he is a citizen of the state requesting his extradition;

2 – An official copy of the arrest warrant giving the legal description of the offence and the penalty applied and a copy of the investigation papers and of the judgement passed on him. In order to expedite matters the request may be made by telegram or telephone or post without attachments.

Paragraph 361

A – If it the request for extradition meets the legal conditions the Ministry of Justice will refer it to the Court of Felonies designated by the minister.

B – The court will require the person who is the subject of the request to appear before it at a specified session. It will hear what he has to say, have the attachments read out to him, listen to a statement from the representative of the requesting state or his representative if any. It will then listen to the witnesses in the defence of the person who is the subject of the request and to evidence submitted to refute the charges against him.

C – The person who is the subject of the request for extradition may appoint a lawyer to represent him and if the offence is a felony under Iraqi law the court must appoint a lawyer to defend him.

D – After the court has heard the person's defence it will decide whether to accept or reject the request on the basis of the extent of the evidence put before them.

E – It is not permissible to appeal against the decision of the court to accept or reject the request for extradition.

Paragraph 367[13]

A – The court has the right to hold the person whose extradition is requested until it has finished its measures taking into account the provisions of paragraph 109.

B – If it is decided to reject the request for extradition the person is released immediately and the Ministry of Justice is informed of this. No repeat application is permitted for the same offence.

C – If it is decided to accept the extradition for extradition then the papers are sent over to the Ministry of Justice with the judgement.

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[13]) Paragraphs c and d of this paragraph have replaced the cancelled paragraphs c and d of the first paragraph of law No 201 of 1980. (the eighth amendment of Penal Courts Law No 23 (1981) published in Al-Waqa'i Al-'Iraqiya No 2807 on 15 December 1980.)

D – The Minister of Justice has the right, with the agreement of the Foreign Minister, to agree to or refuse the handover, and if he agrees to it he has the right to stipulate that the person who is the subject of the request should not tried for an offence other than the one for which he was handed over and his decision in this matter will be final.

Paragraph 364

The Minister of Justice has the right to ask the Iraqi authorities to monitor the person who is the subject of the extradition request until all the documents required have been presented or passed to the court; in this case the Iraqi authorities must take adequate precautions to monitor the person or to place the matter before the examining magistrate in his geographical area for a decision to detain or release him taking into account the provisions of paragraph 109.

Paragraph 365

A – If more than one state requests a extradition for one offence, then the request of the state whose security or interests were damaged by the offence is submitted first, then that of the state in whose territory the offence took place and then that of the state of which the requested person is a citizen.

B - If circumstances demand, the state will present previous records in the request for extradition [extradition].

C – If the request for extradition refers to numerous offences, the question of which is given more weight will depend on the circumstances of the offence and its seriousness.

Paragraph 366

On issuing the decision to agree to the request for extradition the court must decide to hand over all items in the possession of the person who is the subject of the request which are connected with the offence or which were used in the commission of the offence or which could be used as evidence against him, provided this does not prejudice the rights of others.

Paragraph 367

If extradition is agreed and the requesting state does not take steps to transfer the person within two months of the date of notification that he was ready for extradition, he is to be released immediately and he cannot be extradited after that for the same offence.

Paragraph 368

If the Iraqi authorities request the extradition from abroad of an accused person or criminal so that he can be tried or can complete a sentence already passed on him, this request must be put to the Ministry of Justice attached to the documents stated in

paragraph 360 to take the necessary steps to request his extradition by diplomatic means.

Chapter Eight

Transitional Provisions

Paragraph 369

A – The Court of Cassation examines the provisions, the decisions and the measures which the law stipulates will be appealed at the Court of Felonies if the cassation judgement is submitted to the Court of Cassation before this law comes into effect.

B – The Criminal Court will refer cases of felony and misdemeanour in connection with which appeals were lodged before this law came into effect to the Court of Cassation for a decision.

C – The Court of Misdemeanours will refer criminal cases which were transferred to it before this law came into effect to the relevant Criminal Court for decision.

Paragraph 370

A – The provisions of Chapter Three of Book Four on correcting the cassation judgement does not apply to cassation judgements issued before this law took effect.

B – The provisions of the sub-paragraphs 302.c and 302.d apply to judgements issued before this law took effect.

Chapter Nine

Final Paragraphs

Paragraph 371

A – The Baghdad law of the principles of the Criminal Court, its appendices and amendments is cancelled and those provisions of the 1923 law of the Rehabilitation of Criminals and its amendments and from the law of Rehabilitation No 3 of 1967 which conflict with the provisions of this law are void.

B – Every stipulation of any other law which conflicts with the provisions of this law in general is void.

Paragraph 372

This law takes effect thirty days after the date of its publication in the Official Gazette.

Paragraph 373

The ministers must carry out the provisions of this law.

Written in Baghdad on the eighth of Dhu Al-Hijja 1390 AH corresponding to the fourth of February 1971.

AHMAD HASAN AL-BAKR

Head of the Revolutionary Command Council