DECLASSIFIED E.O. 11652 SEC. 3(E) AND 3(D) OR (E) NRDC # 775 012

Where the defense counsel does not appear, or no defense counsel has yet been appointed for the cases of which the public trial cannot be conducted without the attendance of defense counsel, the presiding judge must, ex-officio, assign defense counsel for the accused.

Article 290. If defense counsel does not appear in cases falling under any one of the items of Article 37, a court may, ex-officio, assign a counsel.

Article 291. The indictment shall be read aloud by public procurator on opening the public trial.

After the indictment has been read, the presiding judge must notify the accused that he may be silent all the time and refuse to answer any question, and of other necessary matters which shall be provided by the Rules of Court for protection of the rights of the accused, and must afford the accused and defense counsel an opportunity to make any statement concerning the case.

Article 292. Examination of evidence shall be commenced after the completion of the procedure provided by the preceding article.

Article 293. Upon completion of the examination of evidence, public procurator shall sum up his opinion as to the question of fact and of the application of law.

The accused and defense counsel may also sum up their opinion.

Article 294. Hearing on the date for public trial shall be presided by the presiding judge.

Article 295. Presiding judge may reject any questions asked (of the witness and others except the accused) or any statements given by persons concerned in the trial, if they are unnecessarily repeated, irrelevant to the issue or the case, or inadmissible in any way, so far as it does not injure the essential rights of those persons.

The same shall apply where the accused is questioned by person concerned in the trial.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

Article 296. Public procurator shall, before entering into the examination of evidence, state what he expects to prove; however, he may not make any such statement not based upon evidence available or intended to offer which may tend to cause the court to hold prejudice or bias or to frame a conclusion in advance of trial.

Article 297. As regards the process of examination of evidences, court may determine its scope, order and method, after hearing the opinion and suggestion of public procurator and the accused or defense counsel.

Court may cause any one of its collegiate members to carry out the procedure mentioned in the preceding paragraph.

Court may, at any time when it deems it necessary, change the scope, order and method of examination of evidence determined before in accordance with Para. 1 after hearing the opinion and suggestion of public procurator and the accused or defense counsel.

Article 298. Public procurator, the accused and defense counsel may request the examination of evidences.

Court may, if it deems it necessary, examine evidences ex-officio.

Article 299. Before requesting examination of witness, expert, interpreter or translator, public procurator, the accused or defense counsel must give his opponent party, in advance, to know the name and address of the person; where documentary or real evidence is going to be produced for examination, the opponent party must be afforded an opportunity to inspect it. However, this shall not apply where the opponent party raises no objection.

Before rendering a ruling of examination of evidence, court must hear opinion of public procurator and the accused or defense counsel.

Article 300. Public procurator must request the examination of the documents which may be used as evidence in accordance with the provision of the last part of Item 2, Para. 1, Article 321.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 3(D) OR (E) NNDG # 775 012

Article 301. Where the statement of the accused which may be used as evidence in accordance with the provisions of Article 322 and Para. 1, Article 324 is his confession of the offense charged, examination thereof may not be requested until after the other evidences for proving facts constituting the offense are examined.

Article 302. Where the documents which may be used as evidence in accordance with the provisions of Articles 321 to 323 or 326 are the part of investigation records, public procurator shall request an examination thereof, separating it from other files as far as possible.

Article 303. Court must examine all the documents which contain the results of the examination of witnesses or other persons, of inspection and of seizure and search, and all the objects seised for preparation of public trial as documentary or real evidences respectively.

Article 304. Witnesses, experts, interpreters or translators shall be examined by the presiding judge or by associate judge first.

Public procurator, the accused or defense counsel may, after notifying the presiding judge, examine the witnesses, experts, interpreters or translators, after the examination mentioned in the preceding paragraph has been completed. In this case, where the examination of witnesses, experts, interpreters or translators is commenced upon the request made by public procurator, the accused or defense counsel, the person who has made such request shall examine them prior to the opponent.

Court may, if it deems it proper, change the order of examination mentioned in the preceding two paragraphs, after hearing the opinion of public procurator, the accused or defense counsel.

Article 305. In the case of examination of documentary evidences upon request made by public procurator, the accused or his defense counsel, the presiding judge shall cause the person who has made the request to read it aloud. However, the presiding judge may read it aloud himself, or may cause an associate judge or court clerk to do so.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

In case a court examines documentary evidences (collected) ex-officio, the presiding judge shall read the documents aloud himself, or cause an associate judge or court clerk to read them aloud.

Article 306. In the case of examination of real evidence upon request made by public procurator, the accused or defense counsel, the presiding judge shall cause the person who has made such request to show them.

In case a court examines real evidences (collected) ex-officio, the presiding judge himself shall show them to persons concerned in the trial or shall cause an associate judge or court clerk to do so.

Article 307. Documents, as real evidences, of which the contents serve as a proof, shall be examined in accordance with both Article 305 and the preceding Article.

Article 308. Court must afford a proper opportunity necessary for challenging the probative value of evidence to public procurator and the accused or defense counsel.

Article 309. Public Procurator, the accused or defense counsel may raise objections regarding the examination of evidences.

Public procurator, the accused or his defense counsel may raise objections to any dispositions effected by a presiding judge, besides the dispositions prescribed by the preceding paragraph.

Court shall render a ruling on the objections raised under the two preceding paragraphs.

Article 310. Documentary or real evidences of which the examination has been completed shall be presented to a court without delay; however, (as regards a document) a true copy may be presented in lieu of the original thereof.

Article 311. The accused may be silent all the time during the course of the trial or may refuse to answer any questions put to him.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 3(D) OR (E) NNDG # 775 012

Where the accused makes statement voluntarily, the presiding judge may at any time question him about necessary matters.

Associate judges, public procurator, defense counsel, co-defendant or defense counsel of co-defendant may also question the accused in cases mentioned in the preceding paragraph.

Article 312. Court shall permit public procurator to add, withdraw or change the count, or descriptions of laws or ordinances violated (charges) in the indictment, so far as it does not modify the identity (substance) of the offense charged.

Court may order public procurator to add or change counts or the names of laws or ordinances where it deems it proper according to the circumstances of the trial.

Where count or the descriptions of laws or ordinances violated (charges) have been added, withdrawn or changed, court must notify the accused of the part added, withdrawn or changed as promptly as possible.

Where there is an apprehension that the addition, withdrawal or change of the count or names of laws or ordinances in the indictment may cause a substantial prejudice to the defense of the accused, court must adjourn for a period necessary for having the accused prepare the sufficient defense.

Article 313. When it deems proper, court may, either on request of public procurator, the accused or defense counsel or ex-officio, by means of a ruling, separate or join the oral proceedings or reopen the oral proceedings which were concluded.

Court must, when it is necessary for the protection of the rights of the accused, by means of a ruling, separate the oral proceedings in accordance with the Rules of Court.

Article 314. If the accused is in a state of insanity, the procedure of the trial shall, after hearing the opinion of public procurator and defense counsel, be stayed by means of a ruling during continuance of such state. However, in case there are obvious reasons for which a decision of innocence, acquittal, remission of penalty or dismissal of public action shall be rendered, such judgment may be rendered at once instead of waiting the appearance of the accused.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

If the accused is unable to appear on account of sickness, the procedure of public trial shall, after hearing the opinion both of public procurater and defense counsel, be stayed by a ruling until it becomes possible for him to appear. However, this shall not apply where a proxy has been caused to appear in accordance with Articles 284 and 285.

Where a witness, essential for proving the existence or non-existence of the facts constituting a crime, cannot appear on the date for public trial because of illness, court must adjourn until it becomes possible for him to appear, except in case court deems it proper to examine him on other dates than for public trial.

Before staying trial in accordance with the three preceding paragraphs, court shall hear the opinion of one or more medical experts.

Article 315. Where a judge or judges was or were changed subsequent to the commencement of hearing, the procedure of public trial shall be renewed. However, this shall not apply when a judge or judges should only pronounce judgment already decided by other judge or judges.

Article 316. The procedure of action taken by a single judge of a District Court shall not lose its effect, even if the case in question turns out to be one which should have been tried by a collegiate court.

Section II. Evidence

Article 317. Facts shall be found on the basis of the evidence.

Article 318. The probative value of evidence shall be left to the free discretion of judges.

Article 319. Confession made under compulsion, torture or threat, or after prolonged arrest or detention, or which is suspected not to have been made voluntarily shall not be admitted in evidence.

The accused shall not be convicted in case where his own confession, whether made in open court or not, is the only proof against him.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

Confession mentioned in the two preceding paragraphs includes any admission of the accused which acknowledges himself to be guilty of the offense charged.

Article 320. Except as otherwise provided by Articles 321 to 328, no documents or oral description of a statement made by a person who is not present in public trial shall be used as evidence as a substitute for a statement of him given orally in public trial court.

Article 321. A written statement made by a person other than the accused, or a document which contains a statement given by a person above mentioned and which is signed and sealed by him may be used as an evidence only in cases falling under any one of the items as follows:

(1) As regards the document which contains a statement of a person given before a judge, where he does not appear or testify on the date either for preparation for the public trial or for the public trial (before trial court or requisitioned or commissioned judge) because of death, unsoundness of mental condition, missing, staying outside of Japan or being so physically incapacitated that he cannot testify or where he appearing on the date above mentioned has given a testimony different in any way from his previous statement;

(2) As regards the document which contains a statement of a person given before a public procurator, where he does not appear or testify as above mentioned because of death, unsoundness of mental condition, missing, staying outside of Japan or being so physically incapacitated that he cannot testify, or where he appearing on the date above mentioned has given a testimony contrary to, or materially different from, his previous statements; however, in the last case this shall apply only where there exist special circumstances, because of which court may find that the previous statements are more credible than the testimony given in the course of interrogation on the date above mentioned;

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

(3) As regards written statements other than provided in the two preceding items, where the person who has given the statements does not appear or testify as above mentioned because of death, unsoundness of mental condition, missing, staying outside of Japan or being so physically incapacitated that he cannot testify, and his previous statements are essential for proof of the offense indicted; however, this shall apply only in case where there exist special circumstances under which the statements had been made, and which lend a special credibility.

A written record which contains the statements given by a person other than the accused before the trial court or a requisitioned or commissioned judge, or a written record of inspection prepared by a judge or a court, and which describes the result of the inspection may, despite the preceding paragraph, be used as evidence.

A written record of inspection prepared by a public procurator, secretary of Public Procurator's Office or a judicial police official, and which describes the results of his inspection may, despite the first paragraph of this Article, be used as evidence, if he who has prepared it appears on the date for public trial and verifies the document on being examined (by both parties and court.)

The preceding paragraph shall apply mutatis mutandis to the document prepared by an expert and which describes his conclusions and process under which he has formulated his opinion.

Article 322. A written statement made or signed and sealed by the accused may be used as evidence against him, if the statement contains an admission by the accused which is adverse to his interests, or if the statement was made under unusual circumstances which lend a special credibility. However, where the written statement contains an admission of the accused which is adverse to his interests and there exist any suspicion that the admission has not been made voluntarily, it may not be used as evidence against the accused as well as in cases prescribed by Article 319, even though the admission is not a confession of a crime.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

A written record which contains the statement given by the accused before the trial court or a requisitioned or commissioned judge may be used as evidence, insofar as the statement appears to have been made voluntarily.

Article 323. Documents other than provided by the two foregoing articles, and which may be used as evidence are as follows:

(1) A copy of one's census register, a copy of a notarial deed or such other public documents certifying the facts which the public official (including an official of a foreign government) has the duty or authority to certify;

(2) An account book, a voyage log and other documents prepared in regular course of business;

(3) Documents other than provided by the two foregoing items, prepared and kept under special circumstances which lend a special credibility to the assertions of fact contained therein.

Article 324. As to the oral statements given by a person other than the accused before the trial court or a requisitioned or commissioned judge and which describes the pre-trial statements of the accused, the provision of Article 322 shall apply mutatis mutandis.

As to the oral statements given by a person other than the accused as above mentioned and which describes the pre-trial statements of a person other than the accused, the provision of Item 3, Para. 1, Article 321 shall apply mutatis mutandis.

Article 325. Before admitting as evidence written statements or oral description of a statement either before the trial court or a requisitioned or commissioned judge according to the four preceding articles, court shall investigate whether or not the statement has been made voluntarily.

Article 326. Despite Articles 321 to 325, any evidence may be used as such if public procurator and the accused give consent thereto and if the court finds it proper after considering the circumstances under which evidence was obtained.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

In cases where examination of evidences may be carried out in spite of non-attendance of the accused and the accused does not appear, he shall be deemed to have given a consent mentioned in the foregoing paragraph. However, this shall not apply where his defense counsel or agent appears for him.

Article 327. When agreed to by public procurator and the accused or defense counsel, written stipulations as to the contents of any document, or the substance of any testimony which would be rendered if the witness were to appear in court may be used as evidence without examining the original document or interrogating the witness in public trial. However, the probative value of the stipulation may be challenged at any time.

Article 328. Any written statement or oral descriptions of statements, which may not be used as evidence by virtue of the Articles 321 to 324, may be used as a method for the purpose of determining the credibility of the accused, witness or other persons (who have given the statements outside of the court).

Section III. Decision in Public Trial

([redacted])

Article 329. In the event of the case pending against the accused not coming within the jurisdiction of a court, a pronouncement of incompetency shall be made by a judgment. But as regards the case which has committed to the trial of a District Court under Article 266, Para. 2, that court may not make a pronouncement of incompetency.

Article 330. If a case for which a public action has been instituted in High Court as one coming within its special jurisdiction is found to come within the jurisdiction of a lower court, it may be transferred to the competent court by a ruling, notwithstanding the provisions of the preceding article.

DECLASSIFIED E.O. 12958 SEC. 3(E) AND 3(D) OR (E) NNDG # 775 012

Article 331. A court may not make a pronouncement of incompetency in regard to territorial jurisdiction, except upon the application of the accused.

No plea of incompetency may be preferred after the procedure of the examination of evidence has been commenced in regard to the case pending against the accused.

Article 332. A Summary Court shall, by ruling, transfer a case to a District Court which has jurisdiction, if it deems it proper that the case is to be tried by a District Court.

Article 333. Where there is proof of guilt in regard to the case pending against the accused, a penalty shall be pronounced by a judgment, except in the case of Article 334.

Suspension of execution of a penalty shall be pronounced by a judgment simultaneously with such penalty.

Article 334. Where the penalty is remitted in regard to the case pending against the accused, a pronouncement to such effect shall be made by a judgment.

Article 335. In pronouncing the accused guilty, the facts constituting the offense, an inventory of the evidence and the application of laws and ordinances shall be indicated.

When there has been allegation of any facts which constitute legal grounds for non-consummation of a crime or for aggravating or commutation of penalty, an estimate of such facts shall be given.

Article 336. If the case against the accused does not constitute an offense, or if proof of the crime is lacking, the accused shall be pronounced "not guilty" by a judgment.

Article 337. A pronouncement of acquittal shall be made by a judgment in the following cases:

(1) Where a finally binding judgment has already been rendered;

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 3(D) OR (E) NNDG # 775 012

(2) Where the penalty has been abolished by a law or ordinance enforced subsequent to the commission of the offense;

(3) Where a general amnesty has been proclaimed;

(4) Where prescription has been completed.

Article 338. The public action shall be dismissed by a judgment in the following cases:

(1) Where a court does not have jurisdiction over the accused;

(2) Where a public action was instituted in violation of Article 340.

(3) Where, on a case respecting which a public action was brought, another action has been brought to the same court;

(4) Where the procedure for instituting a public action is void by reason of its having been contrary to the provisions relating thereto.

Article 339. Public action shall be dismissed by a ruling in the following cases:

(1) Where all the counts in the indictment, even if true, do not constitute any specified offense;

(2) Where it has been withdrawn;

(3) Where the accused has died or, being a juridical person, has ceased to exist;

(4) Where adjudication is barred by the provisions of Articles 10 or 11.

Against the ruling mentioned in the preceding paragraph, immediate kokoku appeal may be instituted.

Article 340. In case where a ruling dismissing public action, as a result of its rescission, becomes finally binding, new public action may be instituted for the same offense only when it is based upon a newly discovered material evidence.

Article 341. In case the accused has refused to make a statement, retired from court without permission, or been ordered by the presiding judge to retire

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

from court for maintenance of order, a judgment may be rendered without hearing his statement.

Article 342. The judgment shall be made known by pronouncement in public trial court.

Article 343. Bail or suspension of execution of detention shall lose its effect at the time of rendition of sentence to imprisonment or graver penalty. If such a case takes place, and where a new ruling of bail or of suspension of execution of detention is not rendered, Article 98 shall apply mutatis mutandis.

Article 344. The provisions of Article 89 shall not apply after the time of rendition of sentence to imprisonment or graver penalty.

Article 345. A warrant of detention shall lose its effect at the time of rendition of a judgment of "not guilty," acquittal, remission of penalty, suspension of execution of penalty, dismissal of public action, incompetency, or of a fine or minor fine.

Article 346. When no pronouncement of confiscation is made in regard to articles seized, a pronouncement releasing such articles from seizure shall be deemed to have been made.

Article 347. If, in regard to criminally obtained goods under seizure, there is a clear reason for restoring to the injured party, a pronouncement directing the restoration of such goods to the injured party shall be made.

A case in which the injured party demands delivery of any articles acquired as consideration for criminally obtained goods shall also be governed by the preceding paragraph.

When one special pronouncement is made to the contrary in regard to goods provisionally restored, pronouncement of restoration shall be deemed to have been made.

Notwithstanding the provisions of the three preceding paragraphs, any persons interested may assert their rights in accordance with civil procedure.

DECLASSIFIED E.O. 11652 SEC. 3(E) AND 5(D) OR (E) NNDG # 775 012

Article 348. When a court pronounced a fine, minor fine or additional collection to the accused, the court may, upon the request of public procurator or ex-officio order the provisional payment of such amount of money as being pronounced if he considers there is apprehension that it is impossible or extremely difficult to execute the judgment, in case the execution is prolonged until the judgment becomes finally binding.

If the decision for a provisional payment mentioned in the preceding paragraph is to be given, it shall be pronounced by a judgment simultaneously with the pronouncement of penalty.

The decision ordering provisional payment may be executed immediately.

Article 349. In case a pronouncement suspending execution of a penalty is to be rescinded, public procurator shall demand such rescission to the District Court, or the Summary Court which has the jurisdiction over the area where the convicted person is or stayed last.

When the demand mentioned in the preceding paragraph has been made, a court shall render a ruling after hearing the opinion of the accused or his proxy. Against such ruling immediate kokoku appeal may be filed.

Article 350. In case a penalty is to be determined in accordance with Article 52 of the Criminal Code, public procurator shall demand the same to the court which has rendered final judgment upon the case. In this case, the provisions of the second paragraph of the preceding Article shall apply mutatis mutandis.

DECLASSIFIED EO 12958 SEC. 3(E) AND 3(D) OR (E) NNDG # 775 012

Book III

Appeal

([redacted])

Chapter I

General Provisions ([redacted])

Article 351. Appeal (Joso) may be instituted by public procurator or the accused.

When a case committed to the trial of a court in accordance with Article 266, Para. 2 has been jointly tried with another case and one decision has been rendered, the advocate who exercises the functions of public procurator in accordance with Article 268, Para. 2 and public procurator engaged in the case may respectively institute an appeal independently against such decision.

Article 352. Kokoku appeal may be instituted by a person, other than a public procurator or the accused, against whom a ruling has been rendered.

Article 353. The legal representative or curator of the accused may institute an appeal on behalf of the accused.

Article 354. When the reason for detention was indicated, the person who requested the indication may also make an appeal against the detention on behalf of the accused. The same shall apply to the ruling which rejects the appeal.

Article 355. Proxy or counsel in the original instance may institute an appeal on behalf of the accused.

Article 356. Appeal mentioned in the three preceding articles may not be taken against the clearly expressed intention of the accused.

Article 357. Appeal may be instituted against a part of the decision. An appeal which is not specially limited to a part shall be deemed to have been taken against the entire decision.

Article 358. The period for making an appeal shall begin to run from the day on which the decision was made known.

DECLASSIFIED E.O. 12958 SEC. 3(E) AND 3(D) OR (E) NNSD 770 072

Article 359. A public procurator, the accused or the person mentioned in Article 352 may withdraw an appeal.

Article 360. The persons mentioned in Article 353 or 354 may withdraw an appeal with the consent of the accused.

Article 361. A person who has withdrawn an appeal may not take another appeal in respect of the same case. The same shall apply to the accused who has given consent to the withdrawal of the appeal.

Article 362. When a person entitled to make an appeal by virtue of Articles 351 to 355 has been prevented by a cause not imputable to himself or his representatives from instituting appeal within the period for instituting an appeal, he may apply to the original court for recovery of his right of appeal.

Article 363. Demand for recovery of the right of an appeal shall be made in writing within a period equivalent to the period for an appeal beginning on the day on which the cause which prevented an appeal ceased to exist.

A person who demands recovery of the right of appeal shall make an application for an appeal simultaneously with such demand.

Article 364. Immediate kokoku appeal may be filed against the ruling made regarding the demand for recovery of the right of appeal.

Article 365. When a demand has been made for the recovery of the right of appeal, the original court may render a ruling staying the execution of the decision until the ruling provided for in the preceding Article has been rendered. In this case, a warrant of detention may be issued against the accused.

Article 366. If the application for appeal was submitted by an accused who is in prison to the chief prison officer or his deputy within the period for an appeal, such appeal shall be deemed to have been taken within the prescribed period.

If the accused is unable to prepare a written application himself, the chief prison officer or his deputy shall write it instead, or cause an official under him to do so.

Article 367. The provisions of the preceding Article shall apply mutatis mutandis in cases where an accused who is in prison withdraws an appeal or demands recovery of the right of appeal.

Article 368. In case an appeal which has been instituted only by public procurator is dismissed or withdrawn, the State shall compensate the then accused of the case for the expenses incurred by him because of the appeal in each instance after the appeal has been lodged.

Article 369. The amount of the compensation shall cover travelling expenses, daily expenses and lodging charge which have been incurred by the then accused and the then defense counsel for the purpose of appearing on the date for the preparation for public trial or for public trial, and the remuneration which the then accused has given to the then defense counsel. As regards the amount which shall be granted, the provisions concerning the witness and defense counsel of the Criminal Procedure Expenses Law shall apply mutatis mutandis to the then accused and the then defense counsel respectively.

Article 370. Compensations shall be allowed upon request of the then accused or his agent, by means of a ruling, by the Supreme Court or the High Court which has exercised the appellate jurisdication over the case in question.

The request mentioned in the preceding paragraph shall be made within two months after the judgment dismissing the appeal has been notified or the appeal has been withdrawn.

To the ruling rendered by High Court by virtue of Para. 1, objections may be made according to Article 428, Para. 2. The provisions concerning immediate kokoku appeal shall also mutatis mutandis apply to the objections above mentioned.

Article 371. Except the provisions provided in this Code, the Rules of Court shall cover the request, payment of compensation and other proceedings regarding the compensation.

Chapter II Kosо Appeal

Article 372. Kosо appeal may be lodged against judgments rendered in first instance by a District Court or by a Summary Court.

Article 373. Period allowed for Kosо appeal shall be fourteen days.

Article 374. Kosо appeal shall be lodged by presenting a statement of the reasons for kosо appeal to the court of the first instance.

Article 375. Where it is obvious that a kosо appeal has been lodged after the termination of the right of kosо appeal, the court of the first instance shall dismiss it by means of ruling.

An immediate kokoku appeal may be instituted against such ruling.

Article 376. Appellant must present the statement of reasons for Kosо appeal within the period which shall be prescribed by Rules of Court.

Presumptive proof or certification of public procurator or defense counsel must be appended to the statement of reasons for kosо appeal as required in this law or Rules of Court.

Article 377. Where kosо appeal is lodged on the following ground, the statement of reasons for the appeal shall be appended with a certification of public procurator or defense counsel to the effect that sufficient proof of the existence of such grounds can be offered (if an opportunity is afforded):

(1) When the original court was not constituted as prescribed by law.

(2) When a judge who for some legal reason ought not to have participated in the judgment, did in fact participate in the judgment.

(3) When the provisions relating to open (public) trial were contravened.

Article 378. Where kosо appeal is lodged upon the following grounds, the statement of reasons for the appeal shall contain an adequate reference to matters, to make credible the ground alleged, appearing in the record which describes the procedure done and the contents of evidence taken by the original court:

(1) When the court illegally considers itself competent or incompetent.

(2) When the public action was illegally accepted or dismissed.

(3) When a judgment was not given in regard to one count in the indictment, or when it was given in regard to a count not made in indictment.

(4) When the judgment was not accompanied by reasons, or the reasons contradictory.

Article 379. Where kogo appeal is lodged upon the ground, other than prescribed by the two preceding articles, that a certain law of procedure was violated and that the violation is material to the judgment, the statement of reasons for the appeal shall contain an adequate reference to matters, to make credible the ground alleged, appearing in the record which describes the procedure done and contents of evidence taken by the original court.

Article 380. Where kogo appeal is lodged upon the ground of a mistake in the construction, interpretation or application of law by the original court, and that the mistake is material to the judgment, the statement of reasons for the appeal shall specifically point out the mistake and its materiality to the judgment.

Article 381. Where kogo appeal is lodged upon the ground that the penalty has been determined improperly or unjustly, the statement of reasons for the appeal shall contain an adequate reference to matters, to make credible the ground alleged, appearing in the record which describes the procedure done and the contents of evidence taken by the original court.

Article 382. Where kogo appeal is lodged upon the ground of errors in finding fact and its obvious materiality to the judgment, the statement of reasons for the appeal shall contain an adequate reference to matters, to make credible the ground alleged, appearing in the record which describes the procedure done and the contents of evidence taken by the original court.

Article 383. Where kosо appeal is lodged on the following ground, the statement of reasons for the appeal shall be appended with the presumptive proof for the ground:

(1) When there exists a fact which would support a reopening of procedure (saishin).

(2) When, subsequent to the rendition of the judgment in the lower court, the penalty has been abolished or changed or general amnesty has been proclaimed.

Article 384. Kosо appeal may be lodged by asserting that any of the grounds for appeal prescribed by the seven preceding articles exist.

Article 385. Where it is obvious that the application for kosо appeal has been made not following the form established by law or subsequent to the termination of the right of appeal, the court of kosо appeal shall dismiss it by means of a ruling.

Against the ruling mentioned in the preceding Para., an objection may be instituted in accordance with Article 428, Para. 2; in this case, provisions of immediate kokоku appeal shall apply mutatis mutandis.

Article 386. Court of kosо appeal shall dismiss the kosо appeal by means of a ruling:

(1) When the statement of reasons for kosо appeal is not presented within the period provided by Article 376, Para. 1.

(2) When the statement of reasons for kosо appeal does not follow the form established by this law and the Rules of Court, or when it is not appended with the necessary presumptive proof or certification provided by this law or the Rules of Court.

(3) When it is obvious that the contents of the statement of reasons for kosо appeal does not form any ground for the appeal provided by Articles 6 to 12.

As to the ruling mentioned in the preceding paragraph, Para. 2 of the preceding article shall apply mutatis mutandis.

Article 387. For a trial on kosso appeal, no person other than an advocate may be appointed counsel.

Article 388. In a trial on kosso appeal, only the counsel may argue on behalf of the accused.

Article 389. On the date of hearing, public procurator and counsel shall argue on the basis of the statement of reasons for kosso appeal.

Article 390. In a trial on kosso appeal, the accused is not required to appear on date for public trial. However, in case of the offense other than punishable by fine not exceeding five thousand yen or minor fine, the court of kosso appeal may order the accused to appear on the date for public trial, if it deems it essential for the protection of the rights of the accused.

Article 391. If counsel does not appear, or no counsel has been appointed, judgment may be given after hearing the statement of public procurator, except in case where counsel is required by this law, or counsel has been assigned by a ruling.

Article 392. Court of kosso appeal shall investigate all the matters contained in the statement of the reasons for kosso appeal.

Court of kosso appeal may investigate any matters provided by the Articles 377 to 383 even though they are not contained in the statement of the reasons for kosso appeal.

Article 393. Court of kosso appeal, when it deems it necessary for the investigation mentioned in the preceding articles, may, upon request of public procurator, the accused or defense counsel or ex-officio examine evidence. However, where a presumptive proof is presented showing that evidence could not be offered for examination before the conclusion of the oral proceeding in the first instance, and where the evidences are essential to the proof of improper determination of penalty or of the errors in finding fact material to the judgment, court must examine evidences.

The examinations in the preceding paragraph may be caused to be carried out by a member of a collegiate court; or judge of a District Court or a Summary Court may be requisitioned to conduct it. In such case, a commissioned judge and a requisitioned judge shall have the same authority and powers as a court or a presiding judge.

Article 394. Any evidence which was admitted or used as evidence in the court of first instance may be used as evidence also in the court of kosо appeal.

Article 395. When an application for kosо appeal has been made not following the form established by law or subsequent to the termination of the right of kosо appeal, the court of kosо appeal must dismiss it by means of judgment.

Article 396. Where there exists no ground for kosо appeal prescribed by Articles 377 to 383, it shall be dismissed by means of a ruling.

Article 397. Where there exist any of the grounds for kosо appeal prescribed by Articles 377 to 383, the original judgment shall be quashed by means of judgment.

Article 398. When the original judgment is to be quashed on the ground that the original court illegally pronounced itself incompetent or illegally dismissed the public action, the case shall be sent back to the original court by means of a judgment.

Article 399. When the original judgment is to be quashed on the ground that the court illegally considered itself competent, the case shall, by a judgment, be transferred to the competent court of first instance. However, if the court of kosо appeal has itself the jurisdication of first instance over the case, it shall try the case as court of first instance.

Article 400. When the original judgment is to be quashed on any ground other than the grounds mentioned in the two preceding articles, the case shall be either sent back to the original court or transferred to another court in the same class as the original court by means of a judgment. However, if the court recognises

that it may immediately render a judgment on the ground of record and evidences already made and examined by the original court or the court of appeal, it may render the judgment for the case.

Article 401. In case the original judgment is quashed for the benefit of the accused, such judgment shall be quashed also for the co-accused by whom Kego appeal was lodged if the ground for quashing is common to such co-accused.

Article 402. In a case respecting which Kego appeal has been lodged by, or for the benefit of, the accused, no penalty severer than that imposed by the original judgment may be pronounced.

Article 403. In the event of the original court having illegally failed to render a ruling dismissing the public action, the public action shall be dismissed by a ruling.

As to the ruling mentioned in the preceding paragraph, Para. 2, Article 385 shall apply mutatis mutandis.

Article 404. The provisions relating to public trial in Book II shall apply mutatis mutandis to trial on Kego appeal, except as otherwise provided in this law.

Chapter III

Jokoku Appeal

Article 405. Jokoku appeal may be lodged against a judgment in first or second instance rendered by High Court in the following cases:

(1) On the ground that there is a violation of the constitution or an error in construction, interpretation or application of the constitution.

(2) On the ground that a judgment has been formed incompatible with the judicial precedents formerly established by the Supreme Court.

(3) In cases for which there exist no judicial precedents of the Supreme Court, on the ground that a judgment has been formed incompatible with the judicial precedents formerly established by the former Supreme Court (Dai Shin In) or by the High

Court as the court of jokoku appeal or, after the enforcement of this law, by the High Court as the court of kosso appeal.

Article 406. The Supreme Court, as the court of the jokoku appeal, may, in accordance with the Rules of Court, admit any cases which it deems involve an important problem of the construction of law, before the original judgments become finally binding, even though the cases be not those of which the jokoku appeals may be lodged by virtue of the preceding article.

Article 407. Statement of reasons for jokoku appeal shall specifically point out the ground for the appeal in accordance with the Rules of Court.

Article 408. Where court of jokoku appeal finds, after examining the statement of reason for jokoku appeal and other documents, that the appeal is not sustainable, it may dismiss the appeal by means of a judgment without holding the oral proceedings.

Article 409. Court of jokoku appeal is not required to summon the accused on date for public trial.

Article 410. Court of jokoku appeal shall quash the original judgment in case it finds out that there exist any of the grounds for quashing provided by each item of Article 405. However, this shall not apply if the existence of the ground does not effect the judgment at all.

The preceding paragraph shall not apply to the case where, though there exist some grounds for quashing the original judgment, so far as the application of Items 2 and 3, Article 405 is concerned, yet the court of jokoku appeal deems it rather proper to break or change the judicial precedent in question instead of quashing the original judgment.

Article 411. Even where there exists no ground as prescribed by each item, Article 405, if the court of jokoku appeal deems it incompatible with justice not to quash the original judgment because of the existence of the following causes, it may quash it by means of judgment.

(1) When there exists any mistake of construction, interpretation or application of law or violation of law which is material to the judgment.

(2) When the penalty has been imposed too unjustly and improperly.

(3) When there exists a gross error in finding facts which are material to the judgment.

(4) When there exists any reason which would support a reopening of procedure (saishin).

(5) When the penalty has been abolished or changed or a general amnesty has been proclaimed after the rendition of the original judgment.

Article 412. When the original judgment is to be quashed on the ground that the court illegally considered itself competent, the case shall by a judgment, be transferred to the competent court of first instance or competent court of kosso appeal.

Article 413. When the original judgment is to be quashed on any ground other than the grounds mentioned in the preceding article, the case shall be either sent back to the original court or the court of first instance, or transferred to another court in the same class as these courts by a judgment. However, if the court of jokoku appeal recognizes that it may immediately render a judgment on the ground of record and evidences already made and examined by the original court or court of the first instance, it may render the judgment for the case.

Article 414. The provisions of the preceding chapter shall apply mutatis mutandis to the trial of the jokoku instance, except as otherwise provided in this law.

Article 415. The court of jokoku appeal, where it notes error in the contents of its judgment, may amend it by another judgment upon request of public procurator, the accused or defense counsel.

The request mentioned in the preceding paragraph shall be made within ten days after the day when the judgment has been pronounced.

The court of kokoku appeal, if it deems it proper, may extend the term fixed by the preceding paragraph upon request of those mentioned in paragraph 1 of this article.

Article 416. Judgment for amendment may be rendered without opening oral proceedings.

Article 417. The court of kokoku appeal shall reject the request by means of a ruling without delay in case it will not render a judgment for amendment.

No further request may be brought forward against the judgment for amendment by virtue of Para. 1, Article 415.

Article 418. The judgment of the court of kokoku appeal shall become finally binding by expiration of the term mentioned in Article 415, or where any request is made in accordance with paragraph 1 of the same article, by rendition of judgment for amendment or of a ruling rejecting the request.

Chapter IV Kokoku Appeal

Article 419. In addition to the cases where it is specially provided that immediate kokoku appeal may be made, kokoku appeal may be made against a ruling rendered by a court, except as otherwise provided in the law.

Article 420. Against a ruling rendered prior to the judgment concerning the jurisdiction of a court or the proceeding, no kokoku appeal may be made except in cases where it is specially provided in this law that immediate kokoku appeal may be made.

The provisions of the preceding paragraph shall not apply to rulings relating to detention, releases on bail, seizure or restoration of articles seized or a ruling relating to confinement necessitated for expert evidence.

Against detention, no kokoku appeal may be made on the ground that there is no suspicion of crime, notwithstanding the provisions of the preceding paragraph.

Article 421. With the exception of immediate kokoku appeal, kokoku appeal may be made at any time. But this shall not apply when there would no longer be any actual advantage in having the original ruling cancelled.

Article 422. The period allowed for immediate kokoku appeal is three days.

Article 423. Kokoku appeal shall be filed in writing to the original court.

In case where the original court finds the kokoku appeal to be well-founded, it shall correct error in the ruling.

In case where it finds the whole or a part of the kokoku appeal to be groundless, it shall send the written kokoku appeal with the written opinions attached thereto to the court of kokoku appeal within three days after the day when it received the written kokoku appeal.

Article 424. With the exception of immediate kokoku appeal, kokoku appeal shall not have the effect of suspending the execution of the decision, but the original court may, by a ruling, suspend the execution until the kokoku appeal shall have been adjudicated upon.

The court of kokoku appeal may suspend the execution of decision by a ruling.

Article 425. The execution of decision is suspended during the period allowed for immediate kokoku appeal and when such kokoku appeal has been made.

Article 426. In the event of a kokoku appeal having been made in a manner contrary to the provisions governing it, or if the kokoku appeal is without grounds, the kokoku appeal shall be dismissed by a ruling.

Should the kokoku appeal be well-founded, the original ruling shall be cancelled by a ruling and, if necessary, a decision rendered anew.

Article 427. Against a ruling of the court of kokoku appeal no further kokoku appeal may be made.

Article 428. Against a ruling of a High Court, no kokoku appeal may be made.

To a ruling made by a High Court against which an immediate kokoku appeal is allowed by a special provision and a ruling against which a kokoku appeal may be made by virtue of Articles 419 and 420, an objection may be made to the High Court.

The provisions relating to Kokoku appeal shall apply mutatis mutandis to the objection mentioned in the preceding paragraph. The provisions relating to immediate kokoku appeal shall apply mutatis mutandis to an objection against a ruling against which immediate kokoku appeal is allowed by a special provision.

Article 429. Any person dissatisfied with any of the following decisions rendered by a judge of a District or Summary Court may request for quashing or change of the decision to the District Court to which the judge belongs, or which has the upper jurisdiction over the Summary Court to which the judge belongs:

(1) A judgment dismissing a motion for challenge;

(2) A judgment relating to detention, temporary detention, seizure or restoration of articles seized;

(3) A judgment ordering confinement for the purpose of the expert evidence;

(4) A judgment imposing a non-penal fine upon a witness, expert witness, interpreter or translator or ordering the same to bear the costs;

(5) A judgment imposing a non-penal fine or ordering compensation for expenses upon the individual of which the person is to be examined.

The provisions of Article 420, Para. 3 shall mutatis mutandis apply to the request prescribed in the preceding paragraph.

A District Court which has received the request mentioned in Paragraph 1 shall make a ruling by a collegiate court.

The request for the cancellation or revision of a judgment imposing a non-criminal fine upon a witness, expert witness, interpreter or translator or ordering the same to bear the costs shall be made within three days from the day on which such judgment was rendered.

The execution of judgment is suspended during the period allowed for the request under the preceding paragraph and when such request is made.

Article 430. Any person who has any objection to the dispositions mentioned in Article 39, Para. 3, or the dispositions concerning seizure or the restoration of seized articles which were effected by a public procurator or the secretary of a public procurator's office, may make a request for the withdrawal or alteration of such dispositions to the court corresponding to the public procurator's office to which the said public procurator or secretary belongs.

Any person who has an objection to the dispositions mentioned in the preceding paragraph which were effected by a judicial police official may make a request for the withdrawal or alteration of such dispositions to the District Court or the Summary Court having jurisdiction over the place where the said judicial police official takes his office.

The provisions of law and ordinance concerning administrative litigations shall not apply to the requests mentioned in the two preceding paragraphs.

Article 431. Requests mentioned in the two preceding articles shall be made in writing to the competent court.

Article 432. The provisions of Articles 424, 426 and 427 shall apply mutatis mutandis in case where the requests mentioned in Articles 429 and 430 have been made.

Article 433. Against a ruling or order to which no objection is allowed in this law, a kokoku appeal may be filed to the Supreme Court only on the ground that there exists reason provided in Article 405.

The period allowed for the kokoku appeal mentioned in the preceding paragraph is five days.

Article 434. The provisions of Articles 423, 424 and 426 shall apply mutatis mutandis to the kokoku appeal mentioned in paragraph 1 of the preceding article, except as otherwise provided in this law.

Book IV

Reopening of Procedure ([redacted])

Article 435. Request for reopening of procedure may be made for the benefit of a person against whom a judgment of guilty has become finally binding in the following cases:

(1) When documentary evidence or pieces of evidence, on which the original judgment was based, has been proved by another finally binding judgment to have been forged or altered;

(2) When a testimony, expert opinion, interpretation or translation on which the original judgment was based has been proved by another finally binding judgment to be false;

(3) When the offense of false accusation committed against a person pronounced guilty has been proved by another finally binding judgment; but this only where the judgment of guilty was rendered because of such false accusation;

(4) When the decision on which the original judgment was based has been altered by a finally binding decision;

(5) When, in a case in which a verdict of guilty has been rendered for the offense of infringing a patent right, an utility model right, a design right or a trade-mark right, a decision of the Patent Office holding such right to be void has become finally binding or a judgment of a court has been rendered to the same effect;

(6) When clear evidence has been newly discovered that in regard to a person pronounced guilty an acquittal or the remission of a penalty should be pronounced, or that a lighter offense than that found by the original judgment should be recognized;

(7) When it is proved by a finally binding judgment that there had been offenses in office committed by a judge who participated in the original judgment, by a

judge who participated in making the evidential record which formed a basis of original judgment, or by a public procurator, secretary of Public Procurator's Office or judicial police official who made evidential statement orally or in writing which formed a basis of original judgment. But this shall apply only where, in case a public action was instituted against such judge, procurator, secretary of public procurator's office or judicial police officer or constable prior to the delivery of the original decision, the court which delivered the original decision was unaware of such fact.

Article 436. Request for reopening of procedure may be made against a finally binding judgment by which kosso appeal or jokoku appeal was dismissed, for the benefit of the person to which the judgment was delivered, in the following cases:

(1) If the causes specified in the preceding articles, No. 1 or No. 2 exist;

(2) If the causes specified in the preceding articles, No. 7 exist in regard to a judge who took part in the original judgment or in the preparation of the documentary evidence which was adopted as evidence in the original judgment.

After a judgment for reopening of procedure has been delivered on a case in which reopening of procedure against a finally binding judgment in first instance was requested, reopening of procedure may not be requested against a judgment dismissing the kosso appeal.

After a judgment for reopening of procedure has been delivered on case in which reopening of procedure against a finally binding judgment in the first or second instance was requested, reopening of procedure may not be requested against a judgment dismissing the jokoku appeal.

Article 437. When it is impossible to obtain such finally binding judgment in a case where the fact of an offense having been proved by a finally binding judgment is to be made the cause of the request for reopening of procedure in accordance with

two preceding articles, reopening of procedure may be requested on proving such facts. But this shall not apply to the case where such finally binding judgment cannot be obtained for want of evidence.

Article 438. Request for reopening of procedure shall come within the jurisdiction of the court which delivered the original judgment.

Article 439. Following persons may request reopening of procedure:

(1) A procurator corresponding to the competent court;

(2) A person who has been pronounced guilty;

(3) The legal representative and curator of a person who has been pronounced guilty;

(4) The spouse, lineal relatives and brothers and sisters of a person who has been pronounced guilty, if the latter has died or is in a state of unsound mind.

Request for reopening of procedure for the causes specified in Article 435, No. 7, Article 436, Para. 1, No. 2 may be made only by a procurator if the offense was instigated by the person who has been pronounced guilty.

Article 440. When a person other than a procurator requests reopening of procedure, he may appoint a counsel.

The appointment of counsel under the provisions of the preceding paragraph shall remain valid until judgment is rendered in the reopening of procedure.

Article 441. Reopening of procedure may be requested even after the execution of the penalty has been completed or where the penalty is not to be executed.

Article 442. Request for reopening of procedure shall not have the effect of staying the execution of the penalty, but a procurator of a public procurator's office corresponding to a competent court may stay the execution of the penalty until a decision is rendered in regard to the request for reopening of procedure.

Article 443. Request for reopening of procedure may be withdrawn.

A person who has withdrawn a request for reopening of procedure may not again request reopening of procedure for the same cause.

Article 444. The provision of Article 366 shall apply mutatis mutandis to request for reopening of procedure and the withdrawal thereof.

Article 445. On receipt of request for reopening of procedure a court may, if necessary, cause a member of the collegiate court to conduct an investigation of facts relating to the cause of the request for reopening of procedure or may requisition a judge of a District Court or a judge of a Summary Court to undertake it. In such case, a commissioned judge and a requisitioned judge shall have the same power as a court or a presiding judge.

Article 446. When a request for reopening of procedure has been made contrary to the form of law and ordinance or subsequent to the extinction of the right to make such request, it shall be dismissed by a ruling.

Article 447. When a request for reopning of procedure is without grounds, it shall be dismissed by a ruling.

After the ruling mentioned in the preceding paragraph has been rendered, reopening of procedure may not again be requested for the same cause by any person.

Article 448. When a request for reopening of procedure is well founded, a ruling for commending reopening of procedure shall be rendered.

When a ruling for commending reopening of procedure has been rendered, execution of the penalty may be stayed by a ruling.

Article 449. When, in case reopening of procedure has been requested in respect to a finally binding judgment dismissing koso appeal and a judgment of first instance which has become finally binding by the above judgment, the court of first instance has rendered a judgment for reopening of procedure, the court of koso appeal shall, by a ruling, dismiss the request for reopening of procedure.

When in case reopening of procedure has been requested in respect to a finally binding judgment dismissing jokoku appeal against a judgment in first or second instance and judgment of first or second instance which has become finally binding by the above judgment, the court of first instance or second instance has rendered judgment for reopening of procedure, the court of jokoku appeal shall, by a ruling, dismiss the request for reopening of procedure.

Article 450. Immediate kokoku appeal may be made against the rulings mentioned in Articles 446, 447, Para. 1, or 448, Para. 1 and the preceding article, para. 1.

Article 451. In a case respecting which a ruling for commencing reopening of procedure has become finally binding, a court shall, except in the case of Article 449, conduct a trial anew according to its grade.

The provisions of Article 314, body of Para. 1 and Article 339, Para. 1, No. 2, however, shall not apply to the trial mentioned in the preceding paragraph in the following cases:

(1) When the request for reopening of procedure has been made on behalf of a deceased person or a person who is in a state of unsound mind and for whom there is no hope of recovery;

(2) When a person who has been pronounced guilty has, prior to judgment to be rendered on reopening of procedure, died or fallen into a state of unsound mind from which there is no hope of recovery.

In the case of the preceding paragraph, trial may be held without the appearance of the accused. But it may not be held if his counsel does not appear.

If, in the case of the first paragraph, the person who has requested reopening of procedure does not appoint counsel, a presiding judge shall, ex-officio, assign a counsel.

Article 452. In reopening of procedure, no penalty heavier than that pronounced in the original judgment may be imposed.

Article 453. When a pronouncement of "not guilty" has been made in reopening of procedure, such judgment shall be published in the Official Gazette and newspapers.

Book V

Extraordinary Appeal

Article 454. When it has been discovered after a judgment has become finally binding that the trial or judgment of the case was in violation of law or ordinance, the Procurator-General may lodge an extraordinary appeal in the Supreme Court.

Article 455. Written application stating reasons for extraordinary appeal shall be presented to the Supreme Court in order to make an extraordinary appeal.

Article 456. Public procurator shall argue on the written application for the extraordinary appeal on date for public trial.

Article 457. When an extraordinary appeal is without grounds, it shall be dismissed by a judgment.

Article 458. When an extraordinary appeal is considered to be well founded, a judgment shall be rendered according to the following categories:

(1) When the original judgment was in violation of law or ordinance, the part in violation shall be quashed; but if the original judgment was disadvantageous to the accused, it shall be quashed and a judgment rendered anew in the case;

(2) When any procedure was in violation of law or ordinance, the procedure in violation shall be quashed.

Article 459. With the exception of a judgment rendered under the proviso of No. 1 of the preceding article, the effect of a judgment in extraordinary appeal shall not extend to the accused.

Article 460. Court shall investigate only those matters which are stated in the written application for the extraordinary appeal.

Court may examine evidences to determine whether or not the original court had

competent jurisdiction, whether or not the public action was duly admitted, and whether or not the procedure of the case was duly carried out in this case the provision of Article 393, Para. 2 shall apply mutatis mutandis.

Book VI

Summary Procedure

Article 461. In a matter coming within its jurisdiction, the Summary Court may, on the procurator's demand, impose a criminal or minor fine not exceeding five thousand yen by a summary order prior to public trial. In this case, stay of the execution of penalty, confiscation and other accessory measures may be effected.

A summary order may be given only in case where seven days have passed from the day when the suspect was notified of the demand for a summary order by the public procurator and where there is no objection to summary procedure on the part of the suspect.

Article 462. Demand for summary order shall be made in writing simultaneously with the institution of public action.

Article 463. If, in case a demand has been made under the foregoing article, it should be considered that the case does not admit of a summary order being issued or that it is not proper to do so, trial shall be conducted in accordance with the usual provisions. However, if the case is that which is provided by Article 33, Para. 2, Court Organization Law, it shall be transferred to the competent District Court by means of ruling.

Article 464. In the summary order, the fact constituting an offense, the law or ordinance which has been applied, the penalty and other necessary measures to be imposed, and a statement that an application for formal trial may be made within seven days from the day of notification of summary order shall be entered.

Article 465. A person against whom a summary order has been issued, or a public procurator may apply for formal trial within seven days from the day on which such person received a notification thereof.

An application for formal trial shall be made in writing to the court which has issued the summary order. When an application for formal trial has been made, the court shall promptly notify the fact to the public procurator or the person against whom the summary order has been issued.

Article 466. An application for formal trial may be withdrawn prior to the rendering of a judgment in first instance.

Article 467. The provisions of Articles 353, 355-357, and 359-365 shall mutatis mutandis apply to applications for formal trial or withdrawals thereof.

Article 468. In the event of an application for formal trial having been made contrary to the forms of laws and ordinances or subsequent to the termination of the right of application, it shall be dismissed by a ruling. Against such a ruling immediate kokoku appeal may be made.

Should an application for formal trial be considered legal, trial shall be conducted in accordance with the usual provisions. In such case, the proviso of Article 463 shall apply mutatis mutandis.

In case of former part of preceding paragraph, the summary order shall not be binding.

Article 469. On a judgment being given on an application for formal trial, the summary order shall lose its effect.

Article 470. A summary order shall acquire the same effect as an irrevocable judgment upon the lapse of period for application for formal trial or upon the withdrawal of such application. The same shall apply where a decision dismissing the application for formal trial has become irrevocable.

Book VII

Execution of Decision

Article 471. Except as otherwise provided in this law, a decision shall be executed after it has become finally binding.

Article 472. The execution of decision shall be directed by public procurator of the public procurator's office corresponding to the court which rendered such decision. But this shall not apply to the cases mentioned in the proviso of Article 70, Para. 1 and the proviso of Article 108, Para. 1 nor to ruling or order which is of such nature that it should be directed by a court or a judge.

In case a decision of an inferior court is to be executed as the result of a decision on appeal or of the withdrawal of an appeal, a public procurator of the public procurator's office corresponding to the court of appeal shall direct its execution. But if the records of the case are in the inferior court or in the public procurator's office corresponding to that court, the public procurator of the public procurator's office corresponding to the court shall direct the execution of the judgment.

Article 473. The execution of decision shall be directed in writing, and such writing shall be accompanied by a copy of, or an extract from, the document of decision or the protocol containing the decision. But the direction, unless it be for the execution of a penalty, may also be given by affixing a mitome-in (initialling seal) to the original or a copy, or extracts from the document of decision, or a copy of or extracts from the protocol containing the decision.

Article 474. In case there are two or more principal penalties, other than fines and minor fines, the heaviest shall be executed first. However, a public procurator may stay execution of the heavier penalty and cause the other penalty to be executed, with permission of the Procurator-General, when he is a public procurator of the Supreme Public Procurator's Office or with permission of the

Chief of the High Public Procurator's Office, when he is a public procurator other than of the Supreme Public Procurator's Office.

Article 475. The death penalty shall be executed under an order from the Attorney-General.

The order mentioned in the preceding paragraph shall be given within six months from the day when a judgment becomes finally binding. However, in cases where request for the recovery of right of appeal or for a reopening of procedure, or petition of application for an extraordinary appeal or execution clemency has been made, the term for finishing the procedure thereof and the term for which the judgments pronounced upon co-defendants, if any, remains not finally binding shall not be calculated in the said term.

Article 476. In the event of the Attorney-General having ordered the execution of the death penalty, such execution shall be carried out within five days.

Article 477. The death penalty shall be executed in the presence of a Public Procurator, a Secretary of a Public Procurator's Office and either a Warden of the prison or his representative.

No person may enter the place of execution except with the permission of a procurator or a chief prison officer.

Article 478. A Secretary of a Public Procurator's office who attends at the execution of the death penalty shall made an account of the execution, which shall be signed and sealed by him together with the Public Procurator and the Warden of the prison or his representative.

Article 479. If a person cohdemned to death is in a state of unsound mind, the execution shall be stayed by order of the Attorney-General.

If a woman condemned to death is pregnant, the execution shall be stayed by order of the Attorney-General.

In case the execution of the death penalty has been stayed under the provisions of the two preceding paragraphs, the penalty may not be executed unless order is given by the Attorney-General subsequent to recovery from state of unsound mind or delivery.

The provisions of Para. 2 of Article 475 shall apply mutatis mutandis to the order mentioned in the preceding paragraph. In such case, "the day when a decision becomes finally binding" in said Article shall read "the day of recovery from state of unsound mind or of the day of delivery."

Article 480. If a person condemned to penal servitude, imprisonment or detention is in a state of unsound mind, the execution shall be stayed until his recovery, subject to the direction of a procurator of the public procurator's office corresponding to the court which pronounced the penalty or of a procurator of a District Public Procurator's Office having jurisdiction over the place where the condemned is.

Article 481. In case the execution of a penalty has been stayed in accordance with the preceding Article, a procurator shall deliver the condemned to the person who is bound to guard and protect him or to the head of the local public entities and cause them to be placed in a hospital or other suitable place.

A person for whom the execution of a penalty has been stayed shall be detained in prison until the imposition provided for in the preceding paragraph has been effected, and the period of such detention shall be included in the term of the penalty.

Article 482. The execution of penal servitude, imprisonment or detention, may be stayed, subject to the direction of a public procurator of the public procurator's office corresponding to the court which has pronounced the penalty or of a public procurator of a District Public Procurator's Office having jurisdication over the place where the condemned is. However, the public procurator who directs the staying of the execution must beforehand obtain permission of the Procurator General, when he

is a member of the Supreme Public Procurator's Office, or permission of the Chief of the High Public Procurator's Office, when he is a public procurator other than of the Supreme Public Procurator's Office:

(1) If the health of the condemned will be seriously impaired as a result of the execution of the penalty or there is apprehension that he will not survive it;

(2) If the condemned is at least seventy years of age;

(3) If the condemned has been pregnant for one hundred and fifty days or more;

(4) If sixty days have not elapsed after the condemned was delivered of a child;

(5) If there is apprehension that irretrievable disadvantage will result from the execution of the penalty;

(6) If the grandparents or parents of the condemned are at least seventy years of age or crippled or seriously ill, and there are no relatives to protect them;

(7) If the children or grandchildren of the condemned are in their infancy and there is no relative to look after them;

(8) If there is any other serious cause.

Article 483. The decision ordering the costs of the suit to be borne shall not be executed within the period allowed for making the request provided by Article 500, nor, in case such request has been made, until a decision thereon has become finally binding.

Article 484. If a person condemned to death, imprisonment with or without hard labor or detention is not under confinement, a procurator shall call him for the purpose of the execution of the penalty. If he does not appear in response to the calling, a writ of commitment shall be issued.

Article 485. If a person condemned to death, imprisonment with or without hard labor or detention has taken flight, or if there is apprehension that he may take flight, a procurator may immediately issue a writ of commitment or order a judicial police officer to do so.

Article 486. If the whereabouts of a person condemned to death, imprisonment with or without hard labor or detention are unknown, a procurator may request a chief of High Procurator's Office to commit him to prison.

A chief of High Procurator's Office so requested shall direct a procurator in his district to issue a writ of commitment.

Article 487. In a writ of commitment, the name, dwelling and age of the person condemned, the name and duration of the penalty and other matters necessary for the arrest shall be entered and it shall bear the sign and seal of a procurator or judicial police officer.

Article 488. A writ of commitment shall have the same effect as a warrant of production.

Article 489. The provisions relating to the execution of warrants of production shall apply mutatis mutandis to the execution of writs of commitment.

Article 490. A judgment imposing a penal fine, minor fine, confiscation, additional collection, non-criminal fine, sequestration, the costs of trial, compensation for costs or provisional payment shall be executed by an order of a procurator. Such an order shall have the same effect as an executable title of obligation.

The provisions of law and ordinance concerning the civil procedure shall apply mutatis mutandis in regard to the execution of decisions referred to in the preceding paragraph. But the service of the decision is not necessary prior to the execution.

Article 491. Confiscation, or a fine, or additional collection imposed under the provisions of law or ordinance relating to taxes or other imposts or a Government monopely, may be executed upon the property of succession in the event of the condemned having died after the judgment became finally binding.

Article 492. If, in case a juridical person has been condemned to fine, minor fine, confiscation or additional collection, such juridical person has been extin-

guished by amalgamation after the judgment became finally binding, the penalty may be executed on the juridical person which remains in existence after the amalgamation or which was formed by the amalgamation.

Article 493. If, in case decision of provisional payment were made in the first and second instances, the decision in the first instance has been executed, such execution is deemed to be for the decision in the second instance to the extent of the amount of money ordered to be paid by the said decision.

In the case of the preceding paragraph, where the amount of money obtained by the execution of decision of provisional payment in the first instance exceeds the amount of money ordered to be paid by such decision in the second instance, the exceeding amount shall be reimbursed.

Article 494. If, in case a decision of provisional payment has been executed, a decision of a fine or minor fine has become finally binding, the penalty shall be deemed to have been executed to the extent of the amount paid.

In the case of the preceding paragraph, when the amount of money obtained by the execution of decision of provisional payment exceeds the amount of fine, minor fine or additional collection, the exceeding amount shall be reimbursed.

Article 495. The number of days of detention during the period for taking an appeal shall be included in the calculation of the regular penalty, except the number of days of detention pending judgment subsequent to the application for appeal.

The number of days of detention pending judgment subsequent to the application for appeal shall be included in the calculation of the regular penalty, in the following cases:

(1) In the case where application for appeal has been made by a public procurator.

(2) In the case where application for appeal has been made by a person other than a public procurator, and the original judgment is quashed by the court of appellate jurisdiction.

For the purpose of calculation under the two preceding paragraphs, one day of detention pending judgment shall be counted as one day of penal term or a sum of twenty yen.

Detention pending judgment effected after the court of appellate jurisdiction appeal has quashed the original judgment shall be included in the calculation following the example of the number of days of detention pending judgment during the pendency of the appeal.

Article 496. Goods which have been confiscated shall be disposed of by a procurator.

Article 497. If, within three months after the execution of confiscation, delivery of the goods confiscated be demanded by the person entitled, a procurator shall deliver them, with the exception of those which are to be destroyed or thrown away.

If the demand mentioned in the preceding paragraph is made after the confiscated goods have been disposed of, a procurator shall deliver the price realized at the public sale.

Article 498. In case an article forged or altered is restored, the part which is forged or altered shall be indicated on the article itself.

In case the article forged or altered has not been seized, it shall be caused to be produced and the measure specified in the preceding paragraph taken. But if the article belongs to a public office, the latter shall be notified of the part forged or altered and caused to take suitable measures.

Article 499. In case goods under seizure cannot be restored because the whereabouts of the person entitled to such restoration are unknown, or for any other reason, a procurator shall give public notice to such effect in Official Gazette.

If restoration is not requested within six months from the time of publication, the goods shall accrue to the National Treasury.

Even within the period specified in the preceding paragraph, things of no value may be thrown away, and any things which it would be inconvenient to keep in custody may be sold at public sale and the price held in custody.

Article 500. If a person who has been ordered to bear the costs of trial cannot make full payment because of poverty, he may request the court which rendered the decision ordering such costs to be borne by him to exempt him from the execution of decision in respect of the whole or a part of such costs.

The request mentioned in the preceding paragraph shall be made within ten days from the time when the decision ordering the costs of the trial to be borne became finally binding.

Article 501. If a person condemned to a penalty has any doubt in regard to the interpretation of the judgment, he may request the court by which it was pronounced to interpret the decision.

Article 502. If a person on whom a judgment is to be executed, or his legal representative or curator, considers any disposition effected by a procurator in regard to the execution to be improper, he may raise an objection in the court which pronounced such decision.

Article 503. The motions contemplated in the three preceding articles may be withdrawn at any time before ruling is rendered thereon.

The provisions of Article 366 shall apply mutatis mutandis to the motions mentioned in the three preceding articles and to the withdrawal thereof.

Article 504. Against a ruling rendered in relation to the motion mentioned in Articles 500-502, immediate kokoku appeal may be made.

Article 505. As regards the execution of detention in a labor house in a case of inability to make full payment of a fine or a minor fine, the provisions relating to the execution of penalties shall apply mutatis mutandis.

Article 506. The cost of execution of any of the decisions referred to in Article 490, Para. 1 shall be charged to the person on whom such execution is levied, and shall be collected simultaneously with the execution in accordance with the provisions of law and ordinance concerning the civil procedure.

Supplementary Provisions

This law shall come into force as from the day January 1, 1949.

1177