

# Code of Criminal Procedure (Part III ~)

(Act No. 131 of July 10, 1948)

## Part III Appeals

### Chapter I General Rules

Article 351 (1) The public prosecutor or the accused may appeal.

(2) When a case which has been committed to trial pursuant to the provisions of item (ii) of Article 266 has been tried jointly with other cases and a decision has been rendered, the attorney who exercises the same function as a public prosecutor pursuant to the provisions of paragraph (1) of Article 266 and the public prosecutor in charge of the other cases may appeal the decision independently.

Article 352 A person, other than a public prosecutor or the accused, who has had a ruling rendered against him/her may file an Kokoku-appeal.

Article 353 A statutory agent or a curator of the accused may appeal for the accused.

Article 354 When the grounds for detention have been disclosed, the person who requested such disclosure may appeal the detention for the accused. He/She may also appeal against a ruling for dismissal of such an appeal.

Article 355 The accused's agent or counsel in the first instance may appeal for the accused.

Article 356 An appeal pursuant to the provisions of Article 353 to 355 may not be filed contrary to the intent that the accused has clearly indicated.

Article 357 An appeal may be filed against a part of the decision. When an appeal is not limited to that against a part of such decision, it shall be deemed to be an appeal against the decision in its entirety.

Article 358 The period of time during which an appeal may be filed shall begin from the day that the decision has been pronounced.

Article 359 A public prosecutor, the accused, or a person as set forth in the provisions of Article 352 may waive or withdraw an appeal.

Article 360 A person as set forth in the provisions of Article 353 or Article 354 may waive or withdraw an appeal with the written consent of the accused.

Article 360-2 An appeal against a judgment for the death penalty or life imprisonment with or without work may not be waived, notwithstanding the provisions of Article 359 and Article 360.

Article 360-3 A request to waive appeal shall be made in writing.

Article 361 A person who has waived or withdrawn an appeal cannot appeal again. The same shall apply to an accused who has consented to the waiver or withdrawal of an appeal.

Article 362 When a person who can appeal pursuant to the provisions of Article 351 through Article 355 was unable to appeal due to grounds not attributable to him/her or his/her representative, he/she can request the deciding court to restore the right to appeal during the period of time in which an appeal could have been filed.

Article 363 (1) A request to restore the right to appeal shall be made within a period that starts from the day on which the grounds have ceased and that corresponds to the period for appeal.

(2) A person who requests restoration of the right to appeal shall file an appeal at the same time as that request.

Article 364 An immediate appeal may be filed against a ruling on a request to restore the right to appeal.

Article 365 When there is a request to restore the right to appeal, the deciding court can issue a ruling to stay the execution of its decision until it has issued a ruling as set forth in the provisions of Article 364. In this case, the court can issue a detention warrant against the accused.

Article 366 (1) When an accused who is in a penal institution has submitted a written application for appeal to the warden of said penal institution or a representative thereof during the period for appeal, it shall be deemed that he/she has appealed during such time.

(2) When the accused cannot write an application by himself/herself, the warden of the penal institution or a representative thereof shall do so for him/her or shall have this done by an officer of the institution.

Article 367 The provisions of the preceding article shall apply mutatis mutandis to cases in which an accused in a penal institution waives or withdraws an appeal or requests the restoration of his/her right to appeal.

Article 368 through Article 371 Deleted

## **Chapter II Appeal to the Court of Second Instance**

Article 372 An appeal to the court of second instance may be filed against the judgment that a district court or the summary court has made in the first instance.

Article 373 The period for appeal to the court of second instance shall be 14 days.

Article 374 An appeal to the court of second instance shall be filed by submitting a written application to the court of first instance.

Article 375 When it is clear that a appeal to the court of second instance has been filed after the right to appeal has expired, the court of first instance shall, on a ruling, dismiss such an appeal. An immediate appeal against such a ruling may be filed.

Article 376 (1) A person who has filed an appeal to the court of second instance shall submit to the court of second instance a statement of the reasons for said appeal within the period of time set forth in the Rules of Court.

(2) The statement of the reasons for appeal shall be accompanied by any necessary material or a written guarantee from the public prosecutor or counsel in accordance with the Rules of Court.

Article 377 When an appeal to the court of second instance has been filed based on one of the grounds listed in the following items, the statement of the reasons for appeal shall be accompanied by a written guarantee from the public prosecutor or counsel which indicates that there is sufficient proof of the existence of the items:

- (i) The court that rendered the judgment was not configured in accordance with law;
- (ii) A judge who cannot take part in a judgment in accordance with laws and regulations took part in the judgment or
- (iii) There was a violation of legal provisions pertaining to the trial being open to the public.

Article 378 When an appeal to the court of second instance has been filed based on any of the grounds listed in the following items, facts which appear in the case records and evidence examined by the court of first instance which are sufficient to show the existence of the grounds in the item shall be cited in the statement of the reasons for appeal:

- (i) The court unlawfully found jurisdiction or lack of jurisdiction;
- (ii) The court unlawfully accepted or dismissed prosecution;
- (iii) The court did not reach a judgment in a case for which a trial had been requested, or did reach a judgment in a case for which a trial had not been requested; or
- (iv) The judgment was groundless, or there was a discrepancy regarding its grounds.

Article 379 Other than the cases set forth in the provisions of the preceding two articles, when an appeal to the court of second instance has been made on the grounds that there was a violation of laws and regulations in the court proceedings and it is clear that that violation has affected the judgment, facts which appear in the case records and evidence examined by the court of first instance which are sufficient to show that there was a violation of laws and regulations which would clearly affect the judgment shall be cited in the statement of the reasons for appeal.

Article 380 When an appeal to the court of second instance has been made on the grounds that there was an error in the application of laws and regulations and it is clear that that error has affected the judgment, the error and the fact that said error would clearly affect the judgment shall be indicated in the statement of the reasons for appeal.

Article 381 When an appeal to the court of second instance has been made on the grounds that a sentence is unreasonable, facts which appear in the case records and evidence examined by the court of first instance which are sufficient to show that the sentence is unreasonable shall be cited in the statement of the reasons for appeal.

Article 382 When an appeal to the court of second instance has been made on the grounds that there was an error in the finding of facts and it is clear that that error has affected the judgment, facts which appear in the case records and evidence examined by the court of first instance which are sufficient to show that there is an error which would clearly affect the judgment shall be cited in the statement of the reasons for appeal.

Article 382-2 (1) Facts which can be proven by evidence whose examination could not be requested before oral arguments were concluded due to unavoidable circumstances, and which are sufficient to show that there are grounds for an appeal to the court of second instance as set forth in the provisions of the two preceding articles may be cited in the statement of the reasons for appeal even if such facts do not appear in the case records or are based on evidence not examined by the court of first instance.

(2) Facts which occurred before the rendering of a judgment and after the oral arguments were concluded in the first instance, and which are sufficient to show that there are grounds for appeal to the court of second instance as set forth in the provisions of the two preceding articles may be cited in the statement of the reasons for appeal even if such facts do not appear in the case records or are based on evidence not examined by the court of first instance.

(3) In the cases set forth in the provisions of the two preceding paragraphs, the statement of the reasons for appeal to the court of second instance shall be accompanied by material which makes prima facie showing of the facts. In a case set forth in the provisions of the paragraph (1), the paper also shall be accompanied by material which makes prima facie showing that examination could not be requested due to unavoidable circumstances.

Article 383 When an appeal to the court of second instance has been filed on the grounds listed in the following items, the statement of the reasons for appeal shall be accompanied by material which makes prima facie showing of the existence of the grounds of one of those items:

- (i) There are grounds on which it is possible to request a retrial; or
- (ii) There was abolition or a change of punishment or a general pardon was granted after the judgment was rendered.

Article 384 An appeal to the court of second instance can be filed only when the reason for the appeal is the existence of at least one of the grounds set forth in the provisions of Articles 377 through Article 382, and Article 383.

Article 385 (1) When it is clear that an appeal to the court of second instance violates a form specified in laws and regulations, or that it was filed after the expiration of the right to appeal, the court of second instance shall, on a ruling, dismiss said appeal.

(2) An objection as in paragraph (2) of Article 428 may be filed against the ruling prescribed in the preceding paragraph. In this case, the provisions concerning an immediate appeal shall also apply mutatis mutandis.

Article 386 (1) The court of second instance shall, on a ruling, dismiss an appeal to the court of second instance when:

- (i) The statement of the reasons for appeal is not submitted within the period of time set forth in paragraph (1) of Article 378;
  - (ii) The statement of the reasons for appeal violates a form set forth in this Code or the Rules of Court, or the statement of the reasons for appeal is not accompanied by the necessary materials or a written guarantee pursuant to this Code or the Rules of Court; or
  - (iii) The grounds for appeal to the court of second instance in the statement of the reasons for appeal clearly do not apply to the items set forth in the provisions of Article 377 through Article 382 and Article 383.
- (2) The provisions of paragraph (2) of the preceding article shall apply mutatis mutandis to a ruling as set forth in the preceding paragraph.

Article 387 Persons other than attorneys may not be appointed as counsel at the court of second instance.

Article 388 Arguments for the accused at the court of second instance cannot be made by persons other than counsel.

Article 389 During the trial, the public prosecutor and counsel shall base their arguments on the statement of the reasons for appeal to the court of second instance.

Article 390 The accused need not appear at the trial at the court of second instance; provided, however, that for offenses other than those punishable by a fine not exceeding 500,000 yen (50,000 yen for offenses other than those prescribed in the Penal Code, the Law concerning Punishment of Physical Violence and Others and the Act on Penal Provisions related to Economic Activities, until otherwise stipulated) or a petty fine, the court may order him/her to appear when it deems this to be essential for the protection of his/her rights.

Article 391 When counsel does not appear or has not been appointed, the court may render a judgment after hearing the opinion of the public prosecutor, except when the appointment of counsel is necessary pursuant to this Act or when the court, on a ruling, appoint counsel.

Article 392 (1) The court of second instance shall examine matters covered in the statement of the reasons for appeal.

(2) The court of second instance may conduct examinations ex officio with regard

to the items set forth in the provisions of Article 377 through Article 382 and Article 383, even when these are not covered in the statement of the reasons for appeal to the court of second instance.

Article 393 (1) The court of second instance may conduct an examination of the facts upon the request of the public prosecutor, the accused, or his/her counsel or may do so ex officio when it is necessary for the examination set forth in the preceding article; provided, however, that the court of second instance shall examine the facts of which the public prosecutor, the accused, or his/her counsel has made prima facie showing only when this is indispensable to proving that the sentence is unreasonable or that there was an error in the finding of facts that would have affected the judgment.

(2) When the court of second instance deems necessary, it may, ex officio, conduct an examination of any circumstances which occurred after a judgment in the first instance and which would have affected sentencing.

(3) The examination prescribed in the two preceding paragraphs may be carried out by a member of a judicial panel, or may be delegated to a judge of a district court, family court, or summary court. In this case, the commissioned or delegated judge shall have the same authority as a court or a presiding judge.

(4) When the examination prescribed in the first and paragraph (2) has been carried out, the public prosecutor and counsel may give their arguments based on the results.

Article 394 Evidence which was allowed in the first instance may be entered as evidence in the second instance as well.

Article 395 When an appeal to the court of second instance violates the form prescribed by laws and regulations, or it was made after expiration of the right to appeal, the court shall dismiss said appeal by a judgment.

Article 396 When there are no grounds as in the items set forth in the provisions of Article 377 through Article 382 and Article 383, the court shall dismiss said appeal by a judgment.

Article 397 (1) When there are grounds as in the items set forth in the provisions of Article 377 through Article 382 and Article 383, the court shall, on a judgment, reverse the judgment made by the court of first instance.

(2) As a result of the examination pursuant to the paragraph (2) of Article 393, the court of second instance may, on a judgment, reverse the judgment made by the court of first instance when it deems that not doing so would clearly be contrary to justice.

Article 398 When the court of second instance reverses the judgment of the court of first instance on the grounds that it unlawfully found lack of jurisdiction or dismissed prosecution, a judgment shall be rendered to remand the case to the court of first instance.

Article 399 When the court of second instance reverses the judgment of the court of first instance on the grounds that it unlawfully found jurisdiction, the case shall, on a judgment, be transferred to the court of first instance that has jurisdiction thereover; provided, however, that the court of second instance shall conduct the trial as the court of first instance when said court has jurisdiction over said case as the court of first instance.

Article 400 When the court of second instance reverses the judgment of the court of first instance on grounds other than those set forth in the preceding two articles, a judgment shall be rendered to remand the case to the court of first instance, or to transfer the case to a court which is equal to the court of first instance; provided, however, that the court of second instance may render an additional judgment on the case when it finds that it possible to do so based on the case records and the evidence examined by the court of first and second instances.

Article 401 When the court of second instance reverses the judgment of the court of first instance in favor of the accused and the grounds therefor are common to a codefendant who appealed, the court shall also reverse said judgment in favor of said codefendant.

Article 402 With regard to a case for which an appeal has been filed by the accused or for the accused, the court shall not render a heavier sentence than that rendered by the court of first instance.

Article 403 (1) When the court of first instance has not unlawfully made a ruling of dismiss prosecution, the court shall, on a ruling , dismiss prosecution.

(2) The provisions of paragraph (2) of Article 385 shall apply mutatis mutandis to the ruling prescribed in the preceding paragraph.

Article 403-2 (1) An appeal against a judgment rendered in speedy trial procedure may not be filed on grounds as prescribed in Article 382 for which the relevant facts are probative of the crime indicated in the rendered judgment , notwithstanding the provisions of Article 384.

(2) The court of second instance may not reverse a judgment rendered in speedy

trial procedure on grounds as prescribed in Article 382 for which the relevant facts are probative of the crime indicated in the rendered judgment, notwithstanding the provisions of paragraph (1) of Article 397.

Article 404 Except as otherwise provided in this Code, the provisions in Part II pertaining to public trials shall apply *mutatis mutandis* to the trial of second instance.

### **Chapter III Final Appeal**

Article 405 A final appeal may be filed against a high court judgment of first or second instance on the grounds that:

- (i) There is a violation of the Constitution or an error in the interpretation of the Constitution;
- (ii) A determination has been rendered that conflicts with a Supreme Court precedent; or
- (iii) In the event that there is no Supreme court precedent, a determination has been rendered that conflicts with a precedent of the former Supreme Court (*daishin'in*) or a high court that was the court of the final appellate instance, or that conflicts with a precedent of a high court that was the court of second instance at a time after the enforcement date of this Act.

Article 406 The Supreme Court, as the final appellate instance, may accept a case that is deemed to involve important matters relating to the interpretation of laws and regulations pursuant to the Rules of Court, only before the judgment on the case has become final and binding, even if it is not a case in which a final appeal may be filed pursuant to the preceding Article.

Article 407 The grounds for a final appeal shall be clarified in the written statement of the reasons for appeal, pursuant to the Rules of Court.

Article 408 The final appellate court may enter a judgment to dismiss the final appeal without hearing oral arguments when it is deemed to be clear that there are no grounds for a final appeal in the statement of the reasons for appeal or other documents.

Article 409 In the final appellate court, it is not necessary to summon the accused to appear at the trial.

Article 410 (1) The final appellate court shall, on a judgment, reverse the judgment of the court of first or second instance when there are grounds as

prescribed in the items of Article 405; provided, however, that this shall not apply when it is clear that this would not affect the judgment.

- (2) The provisions of the preceding paragraph shall not apply when there are grounds as in item (ii) or item (iii) of Article 405 alone, and when the final appellate court deems it is appropriate to alter that precedent and to uphold the judgment of the court of first or second instance.

Article 411 Even in absence of grounds as prescribed in the items of Article 405, the final appellate court may render a judgment to reverse the judgment of the court of first or second instance, on any of the following grounds when it deems that not doing so would clearly be contrary to justice:

- (i) There is a violation of laws and regulations which would have affected the judgment.
- (ii) The degree of punishment is seriously unfair;
- (iii) There is an erroneous finding of a material fact which would have affected the judgment.;
- (iv) There are grounds to request a retrial;
- (v) There was abolition or a change of punishment or a general pardon was granted after the judgment was rendered.

Article 412 When the decision of the court of first or second instance is reversed on the grounds that jurisdiction was unlawfully found, a judgment shall be rendered to remit the case to the competent court of second or first instance.

Article 413 When the judgment of the court of first or second instance is reversed on grounds other than those prescribed in the preceding Article, a judgment shall be rendered to remit the case to the deciding court or the court of first instance or to remit the case to another court of the same level; provided, however, that the final appellate court may immediately render a further judgment on the case when it deems that it is possible do so based on the case records and the evidence examined in the deciding court and the court of first instance.

Article 413-2 The final appellate court may not reverse the judgment of the court of first instance that was rendered in the speedy trial procedure, on grounds as prescribed in item (iii) of Article 411 for which the relevant facts are probative of the crime indicated in the rendered judgment, notwithstanding the provisions of Article 411.

Article 414 Except as otherwise provided in this Code, the provisions of the preceding Chapter shall apply mutatis mutandis to a trial in its final appeal.

Article 415 (1) When the final appellate court finds an error in the contents of an appealed judgment, the court may render a judgment to amend such a judgment upon the request of the public prosecutor, the accused, or his/her counsel.

(2) A request as prescribed in the preceding paragraph shall be made within ten days from the day of pronouncement of said judgment..

(3) The final appellate court may extend the period prescribed in the preceding paragraph upon the request of a person prescribed in paragraph (1), when it deems appropriate.

Article 416 Judgment for amendment may be rendered without hearing oral arguments.

Article 417 (1) When not rendering a judgment for amendment, the final appellate court shall promptly dismiss the request on a ruling.

(2) A request as prescribed in paragraph (1) of Article 415 shall not be made against a judgment for amendment.

Article 418 The judgment of the final appellate court shall become final and binding when the period prescribed in Article 415 has elapsed since the date said judgment was rendered or when a request as prescribed in paragraph (1) of the same Article has been made within that period and a judgment for amendment or a ruling for dismissal of the request has been pronounced.

#### **Chapter IV Kokoku-Appeal**

Article 419 A kokoku-appeal may be filed against a ruling made by a court, except when there are specific provisions to the effect that an immediate appeal may be filed; provided, however, that this shall not apply when otherwise specifically provided in this Code.

Article 420 (1) A kokoku-appeal shall not be filed against a ruling before the judgment on the court's jurisdiction or on court proceedings, except when there are specific provisions to the effect that an immediate appeal may be filed.

(2) The provisions of the preceding paragraph shall not apply to a ruling for detention, bail, seizure, or the return of seized articles, nor shall they apply to a ruling for detention pending expert evaluation.

(3) Notwithstanding the provisions of the preceding paragraph, an appeal against a detention may not be filed on the grounds that there is no suspicion that a crime has been committed.

Article 421 A kokoku-appeal against a ruling, except an immediate appeal, may be filed at any time; provided, however, that this shall not apply when no disadvantage would actually be caused even if the original ruling were rescinded.

Article 422 An immediate appeal shall be filed within three days of a ruling.

Article 423 (1) In order to file a kokoku-appeal against a ruling, a written application shall be submitted to the ruling court.

(2) The ruling court shall correct its ruling when it finds that there are grounds for appeal. It shall send the written application, along with its written opinion thereon, to the appellate court within three days of having received such the written application when it believes that there are no grounds for appeal in whole or in part.

Article 424 (1) A kokoku-appeal against a ruling, except an immediate appeal, has no effect to suspend execution of the decision; provided, however, that the ruling court may, on a ruling, suspend execution of its decision until a decision has been rendered on the appeal.

(2) The appellate court may suspend execution of a decision on a ruling.

Article 425 The execution of a decision shall be suspended when the time limit for filing an immediate appeal has not yet expired, or when an immediate appeal has been filed.

Article 426 (1) A ruling shall be rendered to dismiss a kokoku-appeal, when the procedure for filing the appeal was carried out in violation of the provisions therefor, or when the kokoku-appeal is without grounds.

(2) When there are grounds for kokoku-appeal, the original ruling shall be rescinded on a ruling, and a further decision shall be made when it is deemed necessary.

Article 427 A kokoku-appeal may not be filed against an appellate court ruling.

Article 428 (1) A kokoku-appeal may not be filled against a high court ruling.

(2) An objection may be filed against a high court ruling when there are provisions to the effect that an immediate appeal may be filed or when a kokoku-appeal may be filed pursuant to the provisions of Articles 419 and 420.

(3) The provisions concerning a kokoku-appeal shall apply mutatis mutandis to an objection as prescribed in the preceding paragraph. The provisions

concerning an immediate appeal shall also apply mutatis mutandis to an objection against a ruling for which there are provisions to the effect that an immediate appeal may be filed.

Article 429 (1) A person who is dissatisfied with a decision rendered by a judge of a summary court may file a request with the district court with jurisdiction for said decision to be rescinded or altered, and a person who is dissatisfied with the decision rendered by a judge of another court may file a request with the court to which such judge is assigned for said decision to be rescinded or altered, when the judge renders one of the following decisions:

- (i) A decision dismissing a motion for recusal;
  - (ii) A decision regarding detention, bail, seizure, or the return of seized articles;
  - (iii) A decision ordering detention pending expert evaluation;
  - (iv) A decision ordering a civil fine against or compensation of expenses for a witness, an expert witness, an interpreter, or a translator; or
  - (v) A decision ordering a civil fine against or compensation of expenses for a person who is to undergo a body search.
- (2) Paragraph (3) of Article 432 shall apply mutatis mutandis to the request prescribed in the preceding paragraph.
- (3) The district court or the family court to which the request prescribed in paragraph (1) was made shall render its ruling by judicial panel.
- (4) The request to rescind or alter a decision as prescribed in item (iv) or item (v) of paragraph (1) shall be filed within three days after such decision has been rendered.
- (5) Where the time limit for a request as prescribed in the preceding paragraph has not yet expired, or when such request has been filed, execution of the decision shall be suspended.

Article 430 (1) A person who is dissatisfied with measures as prescribed in paragraph (3) of Article 39 or with measures concerning the seizure or return of seized articles undertaken by a public prosecutor or a public prosecutor's assistant officer may file a request with the court corresponding to the public prosecutor's office where such public prosecutor or public prosecutor's assistant officer is assigned that such measures be rescinded or altered.

(2) A person who is dissatisfied with measures as prescribed in the preceding paragraph undertaken by a judicial police officer may file request with the district court or summary court which has jurisdiction over the place where such judicial police officer executes his/her duties for such measures to be rescinded or altered.

(3) The provisions of laws and regulations concerning administrative proceedings

shall not apply to the requests prescribed in the preceding two paragraphs.

Article 431 A written request shall be submitted to the competent court to file a request as prescribed in the preceding two Articles.

Article 432 The provisions of Article 424, Article 426, and Article 427 shall apply mutatis mutandis to requests as prescribed in Article 429 and Article 430.

Article 433 (1) An appeal on a ruling or order against which an appeal may not be filed pursuant to this Code may be specially filed with the Supreme Court only when the reason therefor is that there are grounds as prescribed in Article 405.

(2) The period for filing a kokoku-appeal as prescribed in the preceding paragraph shall be five days.

Article 434 The provisions of Article 423, Article 424, and Article 426 shall apply mutatis mutandis to a kokoku-appeal as prescribed in paragraph (1) of the preceding Article, except as otherwise provided for in this Code.

#### **Part IV Retrial**

Article 435 A request for a retrial may be filed against a final and binding judgment of guilt, when filed in the interests of the person who has been found guilty, and when:

- (i) It has been proven through a final and binding judgment that documentary or material evidence which served as evidence in the original judgment is false or has been altered;
- (ii) It has been proven through a final and binding judgment that testimony, expert evaluation, interpretation, or translation which served as evidence in the original judgment was false;
- (iii) It has been proven through a final and binding judgment that a person who has been found guilty was falsely accused; provided, however, that this shall only be when such person was found guilty on the basis of such false accusation;
- (iv) A decision which served as evidence in the original judgment has been altered by final and binding judgment;
- (v) With regard to cases where a person has been found guilty of criminal infringement of a patent right, utility model right, design right, or trademark right, a trial decision that voided such right has become final, or a judgment that voided such right has been rendered;
- (vi) Clear evidence which should make the court render an acquittal or a

dismissal , for judicial bar to the person who has been sentenced, or make the court render a remission of punishment for the person to whom punishment has been rendered or make the court find a lesser crime than the crime which was found in the original judgment; or,

- (vii) It has been proven through a final and binding judgment that a judge who participated in the original judgment, a judge who participated in making documentary evidence which served as evidence in the original judgment, or the public prosecutor, public prosecutor's assistant officer, or judicial police officer who compiled a document or gave a statement which served as evidence in the original judgment, committed a crime with regard to his/her duty in the case; provided, however, that this shall be limited to when prosecution against such judge, public prosecutor, public prosecutor's assistant officer, or judicial police officer was instituted before rendition of the original judgment, and when the original court did not know such fact.

Article 436 (1) A request for a retrial may be filed against a final and binding judgment that dismissed an appeal to the court of second instance or a final appeal, when filed in the interests of the person to whom such judgment was rendered, and when:

- (i) There are grounds as prescribed in item (i) or (ii) of the preceding Article; or,  
(ii) There are grounds as prescribed in item (vii) of the preceding Article, with regard to a judge who participated in the original judgment or drafted documentary evidence which was used in the original judgment.

(2) After a judgment has been rendered in a case for which a retrial was requested against a final and binding judgment of first instance, no request for retrial may be filed against a judgment to dismiss any appeal to the court of second instance.

(3) After a judgment has been rendered in a case for which a retrial was requested against a final and binding judgment of first or second instance, no request for retrial may be filed against a judgment to dismiss a final appeal.

Article 437 When the fact that the crime has been proven by a final and binding judgment pursuant to the provisions of the preceding two Articles should be the grounds for requesting a retrial, and when it is impossible to get such final and binding judgment, a retrial may be requested by proving said fact; provided, however, that this shall not apply when it is impossible to get such final judgment on the grounds that there is no evidence.

Article 438 The court which rendered the original judgment may exercise jurisdiction over the request for a retrial.

Article 439 (1) A retrial may be requested by:

- (i) The public prosecutor;
- (ii) The person who has been found guilty;
- (iii) The legal representative or curator of the person who has been found guilty; or
- (iv) The spouse, lineal relative, brother, or sister of the person who has been found guilty, in the event that said person is deceased or is in a state of insanity.

(2) Only the public prosecutor may file a request for retrial on the grounds prescribed in item (vii) of Article 435 or item (ii) of paragraph (1) of Article 436 when the person who was found guilty induces another to commit such crime.

Article 440 (1) When a person other than the public prosecutor requests a retrial, such person may appoint counsel.

(2) The appointment of counsel prescribed in the preceding paragraph shall have its effect until a judgment is rendered in the retrial.

Article 441 A request for a retrial may be filed even when the sentence has been fully executed or when it has come to pass that the sentence will not be executed.

Article 442 The request for a retrial shall have no effect to suspend the execution of sentence; provided, however, that the public prosecutor of the public prosecutors office corresponding to the competent court may suspend the execution of sentence until a decision on the request for a retrial is made.

Article 443 (1) A request for a retrial may be withdrawn.

(2) A person who has withdrawn a request for a retrial shall not make any further requests for retrial on the same grounds.

Article 444 The provisions of Article 366 shall apply mutatis mutandis to a request for a retrial and its withdrawal.

Article 445 The court that has received a request for a retrial may, when it deems necessary, request a judge on a judicial panel to conduct an examination of the facts to determine the grounds for the request for a retrial, or may delegate this to a judge of a district court, family court, or summary court. In this case, an authorized judge or a delegated judge shall have the same authority as a court or a presiding judge.

Article 446 Where a request for a retrial has been filed contrary to the form

provided in laws and regulations or has been made after loss of the right to request a retrial, a ruling shall be rendered to dismiss such request.

Article 447 (1) Where a request for a retrial is groundless, a ruling shall be rendered to dismiss such request.

(2) When a ruling as prescribed in the preceding paragraph has been rendered, no person may further request a retrial on the same grounds.

Article 448 (1) When there are grounds for a request for a retrial, a ruling shall be rendered to commence a retrial.

(2) When a ruling to commence a retrial has been rendered, a ruling may be rendered to suspend execution of the sentence.

Article 449 (1) When a retrial has been requested against a final and binding judgment which dismissed an appeal and the judgment of first instance was made final and binding by the court of first instance rendered judgment a retrial, the court of second instance shall dismiss request for a retrial on a ruling.

(2) When a retrial has been requested against a judgment which dismissed the final appeal against the judgment of first instance or second instance and the judgment in the first instance or second instance was made final and binding by such judgment, and the court of first instance or the court of second instance rendered the judgment of retrial, the court of final appellate instance shall dismiss the request for a retrial on a ruling.

Article 450 An immediate appeal may be filed against a ruling as prescribed in Article 446, paragraph (1) of Article 447, paragraph (1) of Article 448, or paragraph (1) of the preceding Article.

Article 451 (1) The court shall try cases for which commencement of a retrial has been determined in accordance with its instance, except in the circumstances prescribed in Article 449.

(2) The provisions of the main text of paragraph (1) of Article 314, and item (iv) of paragraph (1) of Article 339 shall not apply to a trial as prescribed in the preceding paragraph when:

(i) The request for a retrial is made for a person who is deceased or a person in a state of insanity

(ii) The person who has been found guilty dies or falls into a state of insanity with no prospect for recovery, before the judgment in the retrial.

(3) In the case set forth in the preceding paragraph, the court may try the case in absence of the accused; provided, however, that the trial cannot begin in

absence of counsel.

(4) In the case set forth in paragraph (2), when the person who has filed a request for a retrial has not appointed counsel, the presiding judge shall appoint counsel for the accused ex officio.

Article 452 The court cannot render a heavier sentence on retrial than that rendered in the original judgment.

Article 453 When the accused is acquitted on retrial, such judgment shall be made public in the Official Gazette and newspapers.

### **Part V Extraordinary Appeal**

Article 454 The Prosecutor-General may file an extraordinary appeal with the Supreme Court when he/she finds, after a judgment has become final, that the trial was in violation of laws and regulations.

Article 455 In the filing of an extraordinary appeal, a written application which gives the grounds therefor shall be submitted to the Supreme Court.

Article 456 At the trial, the public prosecutor shall make his/her argument based on the written application.

Article 457 When the extraordinary appeal is without grounds, a judgment for dismissal shall be rendered.

Article 458 When there are grounds for extraordinary appeal, a judgment must be rendered according to the following classification:

- (i) When the original judgment was in violation of laws and regulations, the part of the judgment that violates any law or regulation shall be reversed; provided, however, that the court shall, when the original judgment was against the accused, render a further judgment on the charged case; and
- (ii) When trial proceedings were in violation of laws and regulations, those proceedings shall be reversed.

Article 459 The judgment in an extraordinary appeal shall not affect the accused, except for a judgment pursuant to the proviso to the preceding Article (i).

Article 460 (1) The court shall investigate the matters that are included in the application.

(2) The court can investigate the facts with regard to the jurisdiction of a court,

acceptance of prosecution, and the court proceedings. In this case, the provisions of paragraph (3) of Article 393 shall apply mutatis mutandis.

## **Part VI Summary Proceedings**

Article 461 Upon the request of the public prosecutor and based on a summary order, the summary court may impose a fine or petty fine of not more than 1,000,000 yen before the trial, for cases under its jurisdiction. In this case, the summary court can suspend the sentence, order a confiscation, or take other supplementary measures.

Article 461-2 (1) The public prosecutor shall, when requesting a summary order, explain to the suspect the matters necessary for him/her to understand the summary proceedings, notify the suspect that he/she may be tried pursuant to regular provisions, and confirm that he/she has no objection to the application of summary proceedings.

(2) The suspect shall, when he/she has no objection to application of summary proceedings, clarify to that effect in a written document.

Article 462 (1) A request for summary proceedings shall be filed in a written document at the same time as institution of prosecution.

(2) The written document set forth in the preceding paragraph must have attached thereto a document as set forth in paragraph (2) of the preceding Article.

Article 463 (1) In cases where the request prescribed in the preceding Article has been made, the court shall, when it deems it impossible or inappropriate to issue a summary order, try the case pursuant to regular provisions.

(2) The provisions of the preceding paragraph shall also apply when the public prosecutor fails to follow the procedures prescribed in Article 461-2 or files a request for a summary order in violation of paragraph (2) of the preceding Article.

(3) The court shall, when it tries a case in accordance with regular provisions pursuant to the provisions of the preceding two paragraphs, notify the public prosecutor to that effect immediately.

(4) Article 271 shall apply in the cases referred to in paragraph (1) and paragraph (2); provided, however, that the period prescribed in paragraph (2) of Article 271 shall be two months from the date of the notification prescribed in the preceding paragraph.

Article 463-2 (1) Except for the circumstances set forth in the preceding Article,

when the accused has not been notified of a summary order within four months from the date that the request for said summary order was filed, institution of prosecution shall lose effect retroactively.

- (2) In the case referred to in the preceding paragraph, the court shall render a ruling to dismiss prosecution. In cases where a public prosecutor has already been notified of a summary order, the court shall rescind the summary order and rule for a dismissal.
- (3) An immediate appeal may be filed against a ruling as prescribed in the preceding paragraph.

Article 464 A summary order shall show the facts constituting the crime, the laws and regulations applied, the sentence to be imposed, and supplementary measures, and shall also give an indication to the effect that it is possible to request a formal trial within fourteen days from the date that notification of the summary order is given.

Article 465 (1) The person who receives the summary order or the public prosecutor may, within fourteen days from the date of receiving notification, request a formal trial.

- (2) Requests for a formal trial shall be made in writing to the court that rendered the summary order. The court shall, when there is a claim for a formal trial, promptly notify the public prosecutor and the person who received the summary order to that effect.

Article 466 The request for a formal trial may be withdrawn until the judgment of the first instance is rendered.

Article 467 The provisions of Article 353, Article 355 through Article 357, Article 359, Article 360, and Article 361 through Article 365 shall apply *mutatis mutandis* to a request for a formal trial and its withdrawal.

Article 468 (1) The court shall, when a request for a formal trial violates the forms provided for in laws and regulations, or when a request is made after loss of the right to request, dismiss, on a ruling, said request. An immediate appeal may be filed against this ruling.

- (2) The court shall, when a request for a formal trial is deemed to be lawful, try the case in accordance with regular provisions.
- (3) In the case set forth in the preceding paragraph, the trial is not to be restricted by the summary order.

Article 469 When a judgment is made based on a request for a formal trial, the

summary order shall cease to be effective.

Article 470 A summary order shall, where the time period for a request for a formal trial has lapsed or where such request is withdrawn, have the same effects as a final and binding judgment.

### **Part VII Execution of l Decisions**

Article 471 A decision is to be executed after it becomes final and binding, except as otherwise provided for by this Code.

Article 472 (1) The execution of a decision is to be directed by a public prosecutor of the public prosecutor's office corresponding to the court that rendered said decision; provided, however, that this shall not apply in the cases set forth in the proviso to paragraph (1) of Article 70, the proviso to paragraph (1) of Article 108, or any other case in which the court or judge should direct the execution of its decision.

(2) In cases where the decision made by a lower court is to be executed due to a decision on appeal or due to the withdrawal of an appeal, execution of the decision of the lower court is to be directed by a public prosecutor of the public prosecutor's office corresponding to the appellate court; provided, however, that, where the case records are kept in the lower court or its corresponding public prosecutor's office, the execution is to be directed by a public prosecutor of that corresponding public prosecutor's office.

Article 473 The execution of decisions shall be directed in writing and a copy or extract of the written judgment or trial records which describe the court proceedings shall be attached thereto; provided, however, that, excluding a direction to execute a sentence, this may be done by affixing a seal of approval to the original written judgment, a copy or extract thereof, or a copy or extract of the trial records which describe the court proceedings.

Article 474 With regard to execution of two or more principal sentences, except for a fine or petty fine, the heaviest sentence shall be executed prior to the others; provided, however, that the public prosecutor may, by suspending a heavier sentence, direct the execution of the other sentences.

Article 475 (1) Execution of the death penalty shall be ordered by the Minister of Justice.

(2) The order set forth in the preceding paragraph shall be rendered within six months from the date when the judgment becomes final and binding; provided,

however, that, where a request to restore the right to appeal or a request for a retrial, an extraordinary appeal, or an application or request for a pardon is made, the period before these proceedings have finished shall not be included in this period. Neither shall the period before the judgment becomes final nor binding for persons who are co-defendants be included in this period.

Article 476 When the Minister of Justice orders the execution of the death penalty, the death penalty shall be executed within five days.

Article 477 (1) The execution of the death penalty shall be attended by the public prosecutor, the public prosecutor's assistant officer, and the warden of the penal institution or his/her agent.

(2) No person may enter the execution site unless he or she is permitted to do so by the public prosecutor or the warden of the penal institution.

Article 478 The public prosecutor's assistant officer who attends the execution of the death penalty shall produce an execution report, and along with the signatures and seals of the public prosecutor and the warden of the penal institution or his/her agent, shall affix his/her signature and seal thereto.

Article 479 (1) Where the person who has been sentenced to death is in a state of insanity, the execution shall be suspended by order of the Minister of Justice.

(2) Where a woman who is sentenced to death is pregnant, the execution shall be suspended by order of the Minister of Justice.

(3) In cases where execution of the death penalty has been suspended pursuant to the provisions of the preceding two paragraphs, the death penalty shall not be executed without an order from the Minister of Justice after the person has returned to a state of sanity or after such woman has given birth.

(4) The provisions of paragraph (2) of Article 475 shall apply mutatis mutandis to the order referred to in the preceding paragraph. In this case, "the date when the judgment becomes final and binding" shall be read as "the date when the person has returned to a state of sanity or has given birth."

Article 480 When a person who has been sentenced to imprisonment with or without work or misdemeanor imprisonment without work is in a state of insanity, the execution of the sentence shall be suspended at the direction of either the public prosecutor of the public prosecutor's office which corresponds to the sentencing court or the public prosecutor of the local public prosecutor's office which has jurisdiction over the residence of the sentenced person at the time in question, until such a time as said person recovers.

Article 481 (1) In cases where execution of a sentence is suspended pursuant to the provisions of the preceding paragraph, the public prosecutor shall transfer the sentenced person to either a person under obligation to care for him/her or to the head of the local government, and have such a person deliver the sentenced person to a hospital or any other appropriate location.

(2) Until the measures under the preceding paragraph are taken, a person whose sentence has been suspended shall be detained in a penal institution, and the period of such detention shall be included in the term of his/her sentence.

Article 482 Where there are any of the reasons below for a person who has been sentenced to imprisonment with or without work or misdemeanor imprisonment without work, execution of the sentence may be suspended at the direction of the public prosecutor of the public prosecutor's office which corresponds to the sentencing court or at the direction of the public prosecutor of the local public prosecutor's office which has jurisdiction over the residence of the sentenced person at the time in question:

- (i) Execution of the sentence is likely to damage the health of the person or it is feared that the person would not be able to survive its execution;
- (ii) The person is 70 years of age or older;
- (iii) The person is 150 days pregnant or more;
- (iv) It is less than 60 days since the person gave birth;
- (v) It is feared that irrevocable harm will be caused due to execution of the sentence.
- (vi) The person's grandparents or parents are 70 years of age or older, seriously ill or disabled, and there are no other relatives who can take care of them;
- (vii) The person's child or grandchild is an infant and there are no other relatives who can take care of him/her;
- (viii) There are other significant reasons.

Article 483 During the time period for the request referred to in Article 500 or when that request has been filed, execution of the decision ordering court costs to be borne shall be suspended until the decision on such request becomes final and binding.

Article 484 When a person who has been sentenced to death, imprisonment with or without work or a misdemeanor imprisonment without work is not under detention a public prosecutor shall summon that person. If that person does not respond to a summons, the public prosecutor shall issue a writ of commitment.

Article 485 When a person who has been sentenced to death, imprisonment with

or without work or a misdemeanor imprisonment without work escapes or where it is likely that said person will do so, a public prosecutor may issue a writ of commitment or have a judicial police officer issue the writ.

Article 486 (1) When a person who has been sentenced to death, imprisonment with or without work or a misdemeanor imprisonment without work is of residence unknown at the time in question, a public prosecutor may request the Superintending Prosecutor that said person be confined to a penal institution.

(2) The Superintending Prosecutor who receives such a request shall have the public prosecutor within the pertinent jurisdiction issue a writ of commitment.

Article 487 A writ of commitment shall include the name, residence, age, the category and term of the sentence, and any other matters necessary for confinement, and a public prosecutor or a judicial police officer shall affix his/her seal thereto, next to his/her name.

Article 488 A writ of commitment shall have the same effect as a subpoena

Article 489 With regard to execution of a writ of commitment, the provisions regarding subpoenas shall apply *mutatis mutandis*.

Article 490 (1) Decisions imposing a fine, petty fine, confiscation, collection of a sum of equivalent value in lieu of confiscation, non-penal fine, non-penal confiscation, compensation for costs, and provisional payment are to be executed by order of the public prosecutor. Such an order has the same effect as a title of obligation.

(2) The execution of the decisions referred to in the preceding paragraph shall be carried out in accordance with the provisions of the Civil Execution Act (Act No. 4 of 1979) and any other laws concerning compulsory enforcement; provided, however, that the process of the decisions need not be served before their execution.

Article 491 When a person has been sentenced to confiscation, fines, or collection of a sum of equivalent value in lieu of confiscation in accordance with the provisions of laws and regulations on taxation and other public impositions and on monopolies, in the event that said person dies after the decision becomes final and binding, the sentence may be executed on said person's estate.

Article 492 When a juridical person has been sentenced to a fine, petty fine or collection of a sum of equivalent value in lieu of confiscation, and that juridical

person is dissolved in a merger or consolidation after the decision becomes final and binding, the sentence may be executed on the company that survives the merger or on the consolidated company created in the consolidation.

Article 493 (1) In cases where the decisions are rendered for provisional payment in the first and second instances and the decision for provisional payment in the first instance has already been executed, execution of that decision shall be deemed to be execution of the final decision of provisional payment in the second instance, to the extent that said provisional payment was within the limit of the amount that was ordered to be paid in the decision for provisional payment in the second instance.

(2) In the case set forth in the preceding paragraph, when the amount procured through the execution of the decision for provisional payment in the first instance exceeds the amount which was ordered to be paid in the decision for provisional payment in the second instance, such excess amount shall be returned.

Article 494 (1) In cases where the decision for a fine, petty fine, or collection of a sum of equivalent value in lieu of confiscation becomes final and binding after execution of the decision for provisional payment, the sentence shall be deemed to have been executed to the extent of that executed amount.

(2) In the case set forth in the preceding paragraph, where the amount procured through execution of the decision for provisional payment exceeds the amount of the fine, petty fine, or collection of a sum of equivalent value in lieu of confiscation, that excess amount shall be returned.

Article 495 (1) All the days of pre-sentencing detention during the period for filing an appeal, except the days in pre-sentencing detention after an appeal has been filed, shall be included as time served toward the sentence.

(2) The days in pre-sentencing detention after the filing of an appeal shall be included as time served toward the sentence when:

(i) A public prosecutor filed the appeal; or

(ii) A person who was not the public prosecutor filed an appeal and the original judgment was reversed in the appellate instance.

(3) With regard to the inclusion set forth in the preceding two paragraphs, one day in pre-sentencing detention shall be calculated as either one day of imprisonment or as 4,000 yen.

(4) Pre-sentencing detention after the appellate court has reversed the original judgment shall be included in time served, based on the number of days in pre-sentencing detention.

Article 496 Confiscated articles must be dealt with by the public prosecutor.

Article 497 (1) In cases where a person who has the right to a confiscated article files a request for delivery of said article within three months of confiscation being executed, except for those articles which are to be destroyed or abandoned, the public prosecutor shall deliver said article.

(2) In cases where the request set forth in the preceding paragraph is made after the confiscated article has been disposed, the public prosecutor shall deliver the proceeds obtained in the public auctioning of said article.

Article 498 (1) When a counterfeit or altered article is returned, the counterfeit or altered portion thereof shall be indicated thereon.

(2) When a counterfeit or altered article is not seized, it shall be submitted and shall be subject to the procedures set forth in the preceding paragraph; provided, however, that, when said article belongs to a public agency, said public agency shall be notified of the portion of said article which is counterfeit or altered, and said public agency shall take appropriate measures.

Article 499 (1) In cases where a seized article cannot be returned because the address of the recipient of that item is unknown or for any other reason, a public prosecutor shall give a public notice to that effect using a method prescribed by Cabinet Order.

(2) When a request for the return of an article has not been made within a period of six months since the public notice, said article shall become the property of the national treasury.

(3) Even within the period set forth in the preceding paragraph, articles of no value may be destroyed and articles that are inconvenient to store may be sold at a public auction and the proceeds received may be kept in safekeeping

Article 500 (1) When a person who has been ordered to bear the court costs cannot pay those costs due to indigence, he/she may, in accordance with the Rules of Court, request to be exempted in whole or in part from execution of the decision for him/her to pay said court costs.

(2) A request as set forth in the previous paragraph shall be made within twenty days of when the decision that orders the person to bear court costs becomes final and binding.

Article 501 When a person who has been sentenced has doubts about the interpretation of a decision, he/she may file a request for interpretation of the decision with the court which imposed the sentence.

Article 502 A person subject to the execution of a decision, or his/her legal representative or guardian may file an objection with the court that rendered said decision when he/she finds the public prosecutor's methods of executing said decision to be inappropriate.

Article 503 (1) A request as set forth in Article 500 and the two preceding Articles may be withdrawn before a ruling is issued thereon.

(2) The provisions of Article 366 shall apply mutatis mutandis to a request and withdrawal as set forth in Article 500 and the two preceding Articles.

Article 504 An immediate appeal may be filed against the ruling on a request as set forth in Article 500, Article 501, and Article 502.

Article 505 The provisions on the execution of a sentence shall apply mutatis mutandis to the execution of detention in a workhouse in the event that the person subject to the sentence cannot complete the payment of a fine or petty fine.

Article 506 The costs for the execution of the decision prescribed in Article 490, paragraph (1) shall be borne by the person whose sentence is executed, and shall be collected at the same time as the execution in accordance with the provisions of the Civil Enforcement Act and other laws and regulations with regard to the procedures of compulsory execution.

Article 507 The public prosecutor or a court or a judge may, when it deems necessary for the execution of a decision, ask public offices or public or private organizations to report on necessary matters.