

## **Summary of Iraqi Criminal Procedure Law**

Numbers relate to paragraphs in the Law on Criminal Proceedings No 23 of 1971. Where these have been amended by Orders and Memoranda of the CPA, this is marked in the summary in italics. The headings are my own, and do not correspond to the headings in the Code.

### **Initiation of Proceedings**

Criminal proceedings are initiated by an oral or written complaint to an examining magistrate, police investigator or official or member of the judicial system (1). Certain complaints (e.g. adultery, slander, and dishonesty offences when the aggrieved is a relative or spouse of the perpetrator) can only be set in motion by the aggrieved or someone taking his place in law (3). These complaints are not accepted after three months from when the aggrieved became aware of the offence (6). If offences took place outside Iraq a complaint can only be set in motion with the permission of the Minister of Justice (3). If there are numerous accused, a complaint against one of them is considered against all of them (4). The person who submits a complaint has the right to withdraw from it (9).

Investigating officers include police officers, mayors, and public servants where offences occur within their area of responsibility (39). They work under the supervision of the Public Prosecutor's Office and are subject to the control of the examining magistrate (40). They can make enquiries, receive statements, question the accused and preserve evidence (41-4). Their task ends when the examining magistrate, investigator or representative of the Public Prosecutor's office arrives (46).

### **Initial Investigation**

The initial investigation is conducted by examining magistrates or investigators acting under their supervision (51). This includes examining the scene, noting evidence of the offence and injuries sustained (52). If it is not within his geographical area of competence he must submit the matter to the Court of Cassation (53). If 2 or more competent authorities receive complaint about the same offence, the papers are passed to the authority which received a complaint first (54).

The accused person and his representatives may attend the investigation while it is in progress (57). The magistrate or investigator may prohibit this if the matter in hand so requires.

The investigation commences with the recording of the deposition of the informant, then the testimony of the victim and other prosecution witnesses and anyone else the parties or magistrate wish to be heard (58) Each witness over fifteen years old will give evidence on oath (60). Evidence is given orally, but a witness may refer to written notes if the nature of his evidence so requires. In the case of felonies the magistrate shall record important evidence in writing (61).

Statements shall be entered in the record and read and signed by the witness (63). No question may be put to the witness without the permission of the magistrate or investigator (64). A witness may not be addressed in a declaratory or insinuating manner, and no sign or gesture may be directed at him which would tend to intimidate, confuse or distress him. He may not be interrupted unless his evidence is irrelevant.

One spouse may not give evidence against the other unless he or she is accused of adultery or an offence against the spouse's person or property (68).

The magistrate or investigator may appoint experts of his own accord or at the request of a party (69). He can compel the complainant or defendant to co-operate in a physical examination, or the taking of photographs or samples (70).

Searches should be undertaken by the examining magistrate, investigator, member of police by order of the magistrate, or anyone granted authority by law (72). Further provisions on searches (73-86). Provisions on issuance and serving of summonses (87-91).

### **Arrest and Detention**

Arrest can only be on warrant from a court or judge, or in other cases as stipulated by law (92-108). If the person arrested is accused of an offence carrying imprisonment, the judge may order him to be held for no more than 15 days on each occasion, or order his release on a pledge with or without bail if he rules that his release will not lead to his escape or prejudice the investigation (109). *N.B. CPA Order 31 Section 6 allows a judge to order a person suspected of an offence punishable by life to be held without bail to trial.*

The total period of detention on remand should not exceed one quarter of the maximum sentence for the offence, and should not in any case exceed 6 months. If a period of more than 6 months is necessary the judge must seek permission from the criminal court, or order his release with or without bail (i.e. security (114)) (109).

Investigators in locations distant from the office of the judge should hold those accused of felonies (113). They must report the matter to the judge as quickly as possible and carry out whatever order he prescribes.

If an accused person does not give himself up after the issuance and publication of an arrest warrant for a felony, his possessions may be seized (121).

### **Questioning the Accused**

The examining magistrate or investigator may question the accused within 24 hours of his attendance. His statements should be recorded (123). *N.B. The right to silence and the right to legal representation are added by CPA Memorandum 3 Section 4c..*

The accused has the right to make his statement at any time after listening to the statements of any witness (124). If it becomes clear that the accused is a witness against any other defendant, his testimony is recorded and the 2 cases are separated (125). The accused does not swear an oath unless acting as a witness for other defendants. He does not have to answer any of the questions he is asked.

The use of illegal methods is not permitted to influence the accused or extract a confession. This includes mistreatment, threats, injury, enticement, promises. Psychological influence and the use of drugs or intoxicants (127).

Statements of the accused are recorded and signed. If it includes a confession, the magistrate must record the statement himself, and read it back, and he and the accused must both sign it (128). Testimony which he accused asks to present in his defence, and investigation of any other proof offered by him, should be included in the written report, unless the magistrate decides not to grant the accused's request because he believes it to be an unjustified attempt to impede the investigation or to mislead the judge (129).

The magistrate may offer immunity with the agreement of the criminal court in order to obtain a defendant's testimony against others. The accused loses this immunity if he does not submit a full and true statement. His statements are then used as evidence against him (129).

### **Transfer for Trial**

At the end of the investigation the magistrate decides whether there is an offence over which he has authority, and whether there is sufficient evidence for a trial. If there is sufficient evidence the case is transferred to the appropriate court (130).

Offences may be tried together if they result from one action, or actions linked to one another and for a common purpose, or the offences are of the same type and are committed by the same defendant against the same victim, or the offences are of the same type and are committed against no more than 3 different victims and occurred within one year of each other (132). Offences are considered to be of the same type if they are punishable by the same type of penalty as stipulated by the same paragraph of the law.

Transfer of cases is to the Court of Felony or the Court of Misdemeanour as appropriate (134). If the defendant has absconded, he may be transferred for trial in his absence (135). *N.B. Paragraph 136, which requires the permission of the Minister of Justice before certain types of case can be transferred, has been suspended by CPA Memorandum 3 Section 4d.*

Penal Courts consist of the Court of Misdemeanour, the Court of Felony and the Court of Cassation (137).

### **Trial**

The court on receipt of a file must set a date for trial, and inform the prosecution, defence and witnesses (at least 8 days in advance for a felony) (143). The head of the Court of Felony appoints a lawyer for the defendant if he has not appointed one, and sets remuneration for him (144).

If an accused who has been notified has absconded or is absent without legal excuse, the trial will take place in his absence (147). The trial of an absent defendant is conducted according to the guidelines for the conduct of trials where the defendant is present (149).

Trials must be open unless the court decides that all or part should be held in secret for reasons of security or maintaining decency (152).

The court may prevent the parties and their representatives from speaking at undue length, irrelevance, repetition, or making accusations against a party or person outside the case who is unable to put forward a defence (154).

The court may order that any investigatory procedures be taken, or order a person to hand over information, document or items, if that will assist the investigation (163). The court may appoint experts and may permit the wages of the expert to be borne by the treasury (166).

At trial, the court hears the testimony of the complainant and statements of the civil plaintiff, then sees the evidence and orders the reading of reports, investigations and other documents. The statements of the defendant are then heard, along with the petitions of complainant, civil plaintiff, and civil and public prosecutor (167).

Each witness takes an oath and gives his testimony orally and it is permissible to interrupt him. The court may then ask questions necessary to clarify the facts. The prosecutor, complainant, civil plaintiff, civil official and defendant may discuss the testimony and ask questions and request clarifications to establish the facts (168). *N.B. CPA Memorandum 3 Section 4f deletes the requirement that the parties must make such enquiries "via the court"*.

The testimony should be based on facts that the witness is able to recall via one of his senses (169). The court may order that [a witness's] previous testimony in the initial investigation, or before another criminal court, be heard in front of it if the witness is unable to recall all or some of the facts to which he testified, or if the previous statement clarifies the current statement (170).

If a witness is unable to attend the court may hear his testimony given in the initial investigation. It will be treated as though it were given in front of the court (172). If a witness is excused due to illness or any other reason, a judge may attend at another location to hear the witness and send a written report to the court (173). The parties may attend or be represented and may ask the questions they think appropriate.

The court may ask the defendant any questions considered appropriate to establish the truth (179). *N.B. CPA Memorandum 3 Section 4g has deleted the provision that a refusal to answer will be considered as evidence against the defendant.*

If it becomes clear that the evidence does not point to the defendant having committed the offence his release is ordered. If the evidence indicates that the defendant has committed the offence, he is charged as appropriate, the charge is read to him and clarified and he is asked to enter a plea. If the defendant confesses to the charge, and the court is satisfied of the truth of his confession, then it listens to the defence and issues judgement without the requirement to hear further evidence. If he denies the charge or requests a trial or the court considers his confession is confused or that he does not understand the consequences then the case goes to trial, defence witnesses are heard as well as the remaining evidence for the defence. The commentary of other parties, the prosecutor and the defence are heard. The end of the trial is announced and the court issues its verdict (181).

### **Verdict**

The court issues a verdict of guilty and rules on a penalty if it is satisfied the defendant committed the offence. It issues a verdict of not guilty if it is satisfied the defendant did not commit the offence. If there is insufficient evidence, the charges are dropped and the defendant is released. If it becomes clear the defendant is not legally responsible for his actions, the court issues a judgement of diminished responsibility (182).

Conciliation is acceptable by decision of the examining magistrate or judge if it is requested by the victim or his representative (194). A decision announcing the acceptance of conciliation has the same effect as a verdict of not guilty (198).

The Director of Public Prosecutions may request the Court of Cassation to put an end to a procedure either temporarily or permanently, if there is a reason justifying this action (199). *N.B. CPA Memorandum 3 Section 4i dispenses with the need for such a request to be based on the permission of the Minister of Justice.* The Court of Cassation accepts the request if it finds that there is justification. The decision to suspend proceedings permanently has the same effect as a not guilty verdict (200).

A court is not permitted in its ruling to rely on evidence which has not been brought up for discussion or referred to before the court (212). The court's verdict is based on the extent to which it is satisfied by the evidence. One testimony is not sufficient for a ruling if it is not corroborated by other convincing evidence or a confession from the accused. The court can accept a confession only if it is satisfied with it (213). *N.B. CPA Memorandum 3 Section 4j deletes the words "and if there is no other evidence which proves it to be a lie."* The court has absolute authority in evaluating testimony (215).

A confession can only be accepted if it is not given as a result of coercion (218). *N.B. CPA Memorandum 3 Section 4k deletes the ensuing qualification.*

The court retires before giving its ruling. The hearing is resumed and the ruling is read out to the defendant. If the verdict is guilty the court must issue another ruling with the penalty at the same hearing, and explain them both (223). The rulings should contain reasons (224). Rulings may be based on consensus or majority. Any judge dissenting from the majority must explain his views in writing. Any judge dissenting from a guilty ruling must still express his views on penalty for the offence (224).

### **Mental Health Issues**

If it appears that the accused is not able to conduct his defence through mental illness, proceedings are suspended, and he is placed with a health institution. A specialist government medical committee carries out an examination and presents a report (230). If it appears that the accused is not able to present his own defence, he is placed under the supervision of a government health institution, or handed over to one of his relatives on a surety on condition that he should receive treatment (231). If it appears that the accused was not criminally responsible owing to mental illness at the time of the offence, the court will issue a judgement of diminished responsibility.

### **Juveniles**

No court action is taken against a child under the age of 7. Juvenile Courts deal with offender between the ages of 7 and 18 (233). If a juvenile is accused with a person over 18, the cases are separated and each tried by the appropriate court (235). It is for the court to ask for help from organisations such as the official health and social services to investigate the situation of the juvenile (236). Proceedings against a juvenile are held in private session (238).

### **Appeals**

If a person tried in absentia does not present himself and object within the relevant period (up to 9 months) the verdict and penalties have the status of a judgement. Any objection is submitted in a petition to the court (243). If it is within the time limit, the court will accept it and examine the case again in the light of the objection and will issue its judgement (245).

The Prosecutor and accused, as well as the complainant and the civil plaintiff, have the right to appeal to the Court of Cassation against provisions, decisions and judgements of the lower courts, based on breach or mistake of law, or fundamental error in the standard procedures or in the assessment of evidence or penalty. A mistake in proceedings cannot be ignored unless it has not been damaging to the defence of the accused (249). Appeals will not be accepted before a final ruling in the case against decisions on matters of jurisdiction, preparatory and administrative decisions, or decisions involving arrest, detention and release with or without bail.

Appeals must be lodged by petition within 30 days of the day of judgement (252). If the sentence is life imprisonment the court which issued it must send a file to the Court of

Cassation within 10 days so that it can be reviewed for cassation even if there is no appeal (254). If an appeal is not presented within the time limit it will be formally rejected (258).

The Court of Cassation can summon the relevant parties to hear their statements or for any purpose it requires in order to obtain the truth (258). The Court may confirm or reverse any ruling, or return the documents to the lower court for review or retrial. The Court will explain in its decision the grounds on which it is based (259). It may also change the legal description of the offence and review the penalty in the light of this (260).

If the case is returned for review, the new ruling is submitted to the Court of Cassation for ratification (263).

The Court may of its own accord or in response to a request from anyone connected with the case ask for the file on any criminal case to check its provisions, rulings, procedures and orders. However, if it does so it may only reverse a not guilty verdict or increase a sentence if it is requested to do so within 30 days of the judgement (264).

Anyone connected with the case may request a correction of a legal error in the decision of the Court of Cassation within 30 days of the decision (266).

The convicted person can request the Public Prosecutor for a retrial if matters or facts are later discovered which prove the innocence of the accused or the falsity of the allegations against him (270). The Public Prosecutor submits the case, together with his assessment, to the Court of Cassation. If the Court finds the request justified it will return the case for a re-trial (275). The court to which the case is returned may decide that there is no just cause to interfere with the original judgement, or may annul the judgement in whole or in part (276).

## **Penalties**

*N.B. Provisions concerning the implementation of the death penalty (285-293) are suspended by CPA Memorandum 3 Section 4m.*

The period spent in detention is deducted from the final sentence (295).

Conditional discharge of a person given a custodial sentence may be granted if he has served three quarters of his sentence (two thirds in the case of juveniles) and if he has been of good behaviour. This is subject to a number of exceptions (331). The remainder of the sentence of a person released on conditional discharged is suspended (332).

A court may decide to pardon a person in a case in which conciliation is possible (338). The request for pardon is submitted by the victim or his representative. If the victims are numerous, a request for pardon will not be accepted unless it is on behalf of all of them. The request must be unconditional (339).

### **Legal Assistance and Extradition**

Requests by foreign states to pursue an investigation in Iraq must be sent to the Ministry of Justice (353). The Minister of Justice may refer the request to the examining magistrate in whose geographical area it falls in order to achieve the requested measures. The magistrate will submit the documents to the Ministry of Justice for forwarding to the foreign state (354).

Extradition (357-368).