

Circular 1993 No. 5 - Instruction for the Implementation of the Law on Criminal Procedure

This is an unofficial translation. The Circular was issued by the the State Minister and the Minister of Justice dated 18 November 1993.

Concerning the Law on Criminal Procedure, the Ministry of Justice has already given instruction directly to all the judges and prosecutors during the refresher training course. But upon this instruction, the Ministry has noticed that all the judges and prosecutors are still having different views on the matter concerning the technical process which is to be applied in practice. In order to avoid this difference in views, the Ministry shall have duty to give instruction of the some important technical processes of this as follows:

I- PROSECUTORS:

As to the principle, the main job of the prosecutors are to make accusations then sue to the adjudicate courts, for all criminal offenses, in order to avoid effects to the public security and order. Thus when upon receiving a complaint, or a minute/statement from the justice police of a criminal case, the prosecutor shall take actions as hereunder:

1If upon seeing that it is not part of the crimes as specified in the law which should be subjected to punishment, the prosecutor shall decide to keep the file in suspense without taking further action through a Decision, then the prosecutor shall inform this to the complainant within a delay not exceeded 2 months from the date of reception of the complaint, in order to give time for the complainant to make an appeal to the Appeal Court against this Decision. After this the prosecutor shall write down a mention in the Complaint Registre Book, on the minute/statement and also on the complaint for the remark.

2If upon seeing that it is a misdemeanour or crime, which are required to be punishable by the law, even though if there is a file or not, the accused person must be brought in. The prosecutor shall order for an investigation to be carry out immediately then make a conclusion on what is called a " Commentary Dispatch Memo of sending the case for inquiry ". In this Memo, the prosecutor shall make a preliminary charge, in which should indicate precisely of the accused person, the offense/crime and the related provision of the law; and after this the prosecutor shall send this Commentary Dispatch Memo with the file to the investigating judge to conduct investigation in accordance with the law.

3In this Commentary Dispatch Memo of sending the case for inquiry, the prosecutor when thinks necessary, may have rights to make a conclusion recommending the investigating judge to detain the accused person. But this last conclusion is not for the purpose of compelling the investigating judge to make a decision following what is recommended, if the investigating judge thinks otherwise. In case when the investigating judge thinks otherwise differently from the conclusion of the prosecutor, this judge shall have obligation to send immediately his/her Decision together with the file to the prosecutor, in order to have possibility to proceed it further in conformity with the law. The prosecutor shall have right to either file immediately or not to file an opposition to the Appeal Court against such Decision.

4If seeing that there is no clarity, for any file which the accused person is not brought along with it, and it is not possible to make a conclusion as to what is the kind of crime ? the prosecutor may have power to carry out personally a preliminary investigation, in order to collect evidences as basis for making an accusation.

When there are enough evidences for making an accusation, the prosecutor shall, if necessary, send the Commentary Dispatch Memo the same way as said above, to the investigating judge; or during such personal investigation, if the prosecutor could collect sufficient evidences, enough to submit to the court for the trial right away, he/she need not refer that file to the investigating judge, but should instead make out preliminary charge/ indictment then send the file directly to the Court for trial. Could be proceeded in this way, only for those crimes which are due to be punishable by the law for a maximum term which should not be exceeded one (1) year.

5In case when it is to examine on the minutes/statements made by the Customs, Forestry, Fishery and Taxation departments, for those cases which concerned with the abuses of the Customs, Forestry, Fishery and Taxation Laws, the Prosecutor shall make a preliminary charge/indictment to forward the case directly to the court for trial right away, by considering that those minutes/statements of the above departments as incriminating evidences for making charges and for submitting the file to the court for trial.

6As for the flagrant delicto crimes, the Prosecutor may have power to take actions with the Justice Police directly, in going down to investigate on site, by asking for statements from the accused person, to conduct searches, arrests or seizures as evidences and taking statements from the witnesses etc.... Upon receiving the minutes of the activities that he/she conducted the investigation on site, the prosecutor shall have to make out a Commentary Memo the same way as said above then refer the case to the judge for inquiry in accordance to the law.

7For Flagrant delicto misdemeanour cases, which are required by the law for condemnation to imprisonment for a term not exceeded one (1) year, the Prosecutor, upon receiving the file and the accused person, may also have power to conduct immediately an inquiry then shall make a preliminary charge/indictment for referring the case and brining the accused to the court directly for trial, and it is not necessary to make a Commentary Dispatch Memo to send the case to the Investigating judge for investigation again.

8In case which an offense is a crime or misdemeanour, that the Prosecutor thinks that there is a special ground of incrimination in it, the Prosecutor shall inform it immediately by any feasible and quick method, to the General Prosecutor to the Appeal Court and the Minister of Justice, and the Prosecutor shall always comply with the orders which he/she received from both officials above.

9Working relations between the prosecutors and the investigating judges:

The Prosecutors shall follow up and control all the activities of the investigating judges through " Dispatch Memos of sending the file" of the investigating judges which referred such file to the Prosecutors for examination. In such condition, the prosecutor shall check that file thoroughly, when thinks that there are sufficient evidences in such file, the investigation was exactly done, and it is enough to be submitted to the court for trial; then he/she shall make his/her conclusion on a Dispatch Memo of sending the file" which was sent to him/her by the investigating judge for examination. Or otherwise the prosecutor shall make a separate conclusion, in order that the investigating Judge will make a Dispatch Memo to refer the file to the court for trial, if this judge has the same idea.

Beside this, upon examination, if the prosecutor thinks that the file has yet no sufficient evidence and may not be submitted for trial, he/she shall make his/her conclusion on such Dispatch Memo of

sending the file of the investigating judge, in order that this latter will make out an order to acquit the charge, if the investigating judge has this same idea.

If the prosecutor and the investigating judge had different ideas on the same file. For instance if the prosecutor thinks that there is culpability onto the accused person; but as to the investigating judge he thinks that there is no culpability basing on the ground such as what has a character as a civil case etc..., such investigating judge will decide to acquit the charge through that Decision. The investigating judge has obligation to refer the file and the Decision immediately, in order that the prosecutor may have possibility to make an opposition according to what specified by the law.

Besides, if the investigating judge has requested the prosecutor to start to make a preliminary charge with an offence/a crime other than which he/she has made, the prosecutor shall have to start to make another additional charge, in order that the investigating judge shall have rights to proceed to investigate the new additional offense/crime that has just been arisen.

10 Apart from the above duties, the prosecutors shall have obligation to participate in the hearings according to what specified by the laws and without absent, in order to defend the charges they made and the interests of the laws. In civil cases, the prosecutors, if deems necessary, may also participate in the hearing. But for those cases which effects the public order, the interests of the incapable persons, it is necessary for the prosecutors to consider themselves as complaining party and to attend with out absent in the hearings. So the prosecutor may have rights to make opposition against all the decisions of the investigating judges, when they think that it is necessary to do in all the criminal cases. If they think that the decisions of the courts are not correctly in conformity with the laws for the reasons of acquitting the accused persons from charges or for sentencing convicted persons with too long or too short term of punishment comparably to what is due. For the Civil cases, the prosecutors may not appeal, unless they considered themselves as the complaining party.

II- INVESTIGATING JUDGES:

The investigating judges may have rights to undertake to investigate in all criminal cases which the prosecutors have forwarded through Commentary Dispatch Memos to them for investigation, and in those Dispatch Memos the prosecutors had made charges and demonstrated of the articles of the laws which required to be punished. In such case the investigating judges shall have rights and duties as follows:

1 When upon receiving a Commentary Dispatch Memo which is sent to investigating judge, this latter shall create a file and register it in the inquiry book, then he/she shall proceed with it in accordance with the sequence of actions as specified in the procedure, such as making an inquiry of the accused person in front of the lawyer if there is a lawyer, victims, witnesses; and making order to take other actions such as to manage to conduct an expertise or to go down by himself/herself to the place of incidence for investigation to search for evidences, for elements of the crime as what accused by the prosecutor. But during this investigation, if it is found that it arises a new crime different from what charged by the prosecutor so far, the investigating judge shall make a Dispatch Memo to send the file back to the prosecutor, in order to enable the prosecutor to start to make out a preliminary charge with such new crime which just arised, except for when such new crime which just arised is only a contravention. The investigating judge may have power to start to investigate the new charged crime, only after receiving the new charge. If the prosecutor did not make a new charge, the investigating judge may not start to proceed the investigation on that new arisen crime. This is [an] important principle which have been stated in the articles 70 and 71 of the law on Criminal Procedure.

In conclusion the investigating judges shall proceed the investigations only following the charges of the prosecutors.

2 During the inquiry, at their discretion the investigating judges may have power to decide by Decisions for detaining the accused persons to prevent them from fleeing away, to escape from punishment or from destroying the evidences, or they may also decide not to detain the accused " through bails or without bail", if they thought that the accused has committed a misdemeanour of low degree only, and he/she got their specific/fix residences and who will not escape from punishment. See I(3) for problems relating to the Commentary Dispatch Memo for sending the cases for investigation, of the prosecutors.

3 During the investigation to collect evidences, when thinks that the investigation is ended and that there is no incriminating evidence suitable for making accusation on the accused person, the investigating judge shall make out a Decision to acquit the accused from the charge. But before making such decision, the investigating judge shall make a Dispatch Memo to send the case to the prosecutor to examine and make conclusion on it before hand. The prosecutor within 3 days from the day of receiving the file, shall make a written conclusion then return the file to the investigating judge in order that this latter will make out a Decision. In this Decision, the reasons must be very clearly specified. Within a delay of 24 hours, if the prosecutor makes an appeal against the Decision of acquitting the accused from the charge of the investigating judge, the accused person if being detained, should remain the same must not be released yet, and for the file it must be sent immediately to the Appeal Court according to what specified by the law. But if the prosecutor has accepted with Decision of the Investigating Judge to acquit the accused person from the charge, the investigating judge shall make out an order to release immediately such person. The accused should not be detained any more.

4 Principles to remember:

the judges may not decide by themselves the extend right away their investigation on any new arisen crime. It requires therefore to have an additional conclusion on it from the prosecutor through a Commentary Dispatch Memo at first.

the Commentary Dispatch Memo of the prosecutor is not a tie which binds the investigating judge that he/she shall always make Decision in compliance with it.

Judges may extend their investigations on all persons, even though if the names of those persons have not been inscribed in the conclusion in the preliminary charge of the prosecutor, but it has mentioned the word: "colleague or partner".

III- COURTS:

The court may proceed the hearings on criminal cases only for those accused persons who have been charged and their files have been forwarded to trial by the prosecutor, or through a Dispatch Memo of the investigating judge when upon a charge has been already made by the prosecutor, or through Judgements of dispatching files of the other courts, or through bringing immediately the accused to trial in flagrant delicto cases.

Once a judge has undertaken to investigate any criminal case or who has once conducted a hearing on such case, such same judge may not be allowed to proceed the hearing again on this same case.

In case when the judge thinks that the specification of the (type of) offense/ crime for a committed act as mentioned in the conclusion of the charged which is sent to him/her is not correct, the court then may rectify it to suit with such committed act, but the judge may not add anything to the elements which are closely related to the act mentioned in the charge or in the Dispatch Memo.

This above rectification of the (type of) offense/crime, shall indicate clearly the reasons in the judgement.

In the condition if there is not sufficient evidence which the judge thinks that it is not possible to conduct a trial, he/she shall issue by an order to carry out an investigation by himself/herself or by assigning this task to the investigating judge or the prosecutor to do it.

The judge has no power the keep the file suspense without proceeding the trial, except only in urgent case where it is compelled to wait for the Decision of the Civil judge on such urgent case first.

For a flagrant delicto crime which has been already charged by the prosecutor, and which both the file and the accused have been brought before the court for trial, the judge who is to assume this task shall firstly consider and make decision on matter of: " whether should the accused be detained or released pending trial, or should he/she pay a bail or not ?" before he/she put this case for hearing later on.

In the judgement of the court, which decided to sentence the convicted, shall point out the offence/crime that the person has committed and the article of the law which is required to punish.

Beside this if in the judgement it stated about damages or compensations, shall also point out the article of the law and number of the days of imprisonment which shall be applied to force the concerned person to pay compensation.

The Ministry of Justice is hoping that this above instruction, even though that it is not very comprehensive, but may help also in the works of the judges and prosecutors in all the provincial and municipal courts in the implementation of the Penal Procedure. In case of encountering any difficulty in the course of implementing this above instruction, please raise the questions to the Ministry of Justice, the Ministry will provide further additional instruction.

Signature and seal of:

CHEM SGNUON.

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Ministry of Interior and Ministry of Justice