

Criminal Procedure Law of the People's Republic of China (2018 Amendment)[Effective]

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Criminal Procedure Law of the People's Republic of China

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Chapter I Opening a Case

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Section 1 General Rules

Article 11 People's courts shall hear cases in open court, except as otherwise provided for by this Law. A defendant shall have the right to defense, and a people's court shall have the duty to ensure that a defendant acquires defense.

Article 12 No person shall be found guilty without being judged so by a people's court in accordance with the law.

Article 13 In trying cases, people's courts shall apply the people's assessor system in accordance with this Law.

Article 14 People's courts, people's procuratorates, and public security authorities shall protect the defense right and other procedural rights legally enjoyed by criminal suspects, defendants, and other litigation participants.

Litigation participants shall have the right to file accusations against judges, prosecutors, and investigators who infringe upon their procedural rights or inflict personal insult on them.

Article 15 Where a criminal suspect or defendant voluntarily and truthfully confesses to his or her crime, admits to the facts of the crime that he or she is charged with, and is willing to accept punishment, the criminal suspect or defendant may be granted leniency in accordance with the law.

Article 16 Under any of the following circumstances, a person shall not be subject to criminal liability, and if any criminal procedure has been initiated against such a person, the case shall be dismissed, a non-prosecution decision shall be made, the trial shall be terminated, or the person shall be acquitted:

- (1) the circumstances of the alleged conduct are obviously minor, causing no serious harm, and the alleged conduct is therefore not deemed a crime;
- (2) the time limitation for criminal prosecution has expired;
- (3) exemption of criminal punishment has been granted in a special amnesty decree;
- (4) the alleged crime is handled only upon a complaint in accordance with the Criminal Law, but there is no such a complaint or the complaint has been withdrawn;
- (5) the criminal suspect or defendant dies; or
- (6) the person is otherwise exempted by law from criminal liability.

Article 17 Where a foreigner commits a crime and shall be subject to criminal liability, this Law shall apply.

Where a foreigner with diplomatic privileges and immunities commits a crime and shall be subject to criminal liability, the case shall be resolved through diplomatic channels.

Article 18 In accordance with the international treaties which the People's Republic of China has concluded or acceded to or under the principle of reciprocity, the judicial authorities of China and a foreign country may request judicial assistance from each other in criminal matters.

Chapter II Jurisdiction

Article 19 Investigation of criminal cases shall be conducted by public security authorities, except as otherwise provided for by law.

Where, in performing its statutory duty of supervision of legal proceedings, a people's procuratorate discovers that any justice functionary commits a crime of false imprisonment, extortion of a confession by torture, or illegal search or any other crime that infringes upon a citizen's rights or damages the fair administration of justice by taking advantage of his or her functions, the people's procuratorate may open an official investigation into the crime. Where a case regarding a

Article 249 A collegial panel consisting of three judges shall be formed for the Supreme People's Court to review a death sentence or for a higher people's court to review a death sentence with a suspension.

Article 250 The Supreme People's Court reviewing a death sentence shall make a ruling to approve or disapprove the death sentence. If the death sentence is disapproved, the Supreme People's Court may remand the case for retrial or render a new sentence.

Article 251 The Supreme People's Court reviewing a death sentence shall arraign the defendant and, if the defense lawyer files a request for presenting an opinion, hear the opinion of the defense lawyer.

During the review of a death sentence, the Supreme People's Procuratorate may present an opinion to the Supreme People's Court. The Supreme People's Court shall notify the Supreme People's Procuratorate of the review result.

Chapter V Trial Supervision Procedures

Article 252 A party or his or her legal representative or close relative may file a petition with a people's court or a people's procuratorate against an effective sentence or ruling, but the execution of the sentence or ruling shall not be suspended.

Article 253 Where a petition of a party or his or her legal representative or close relative meets any of the following conditions, the people's court shall conduct a retrial:

- (1) there is new evidence to prove that the facts are erroneously determined in the original sentence or ruling, which may affect conviction and sentencing;
- (2) the evidence on which conviction and sentencing are based is not hard and sufficient or shall be excluded in accordance with the law, or the material evidence on the facts of the case contradicts each other;
- (3) the application of law in the original sentence or ruling is incorrect;
- (4) the statutory procedures are violated, which may affect a fair trial; or
- (5) a judge committed embezzlement, bribery, or fraud for personal gains or bended the law when trying the case.

Article 254 Where the president of a people's court at any level discovers that there are any definite errors in fact finding or application of law in an effective sentence or ruling of the court, the sentence or ruling must be submitted to the judicial committee for handling.

Where the Supreme People's Court discovers any definite errors in an effective sentence or ruling of a people's court at any level or a people's court at a higher level discovers any definite errors in an effective sentence or ruling of a people's court at a lower level, it shall have the authority to directly retry the case or order a people's court at a lower level to retry the case.

Where the Supreme People's Procuratorate discovers any definite errors in an effective sentence or ruling of a people's court at any level or a people's procuratorate at a higher level discovers any definite errors in an effective sentence or ruling of a people's court at a lower level, it shall have the authority to file an appeal under the trial supervision procedures with the people's court at the same level.

The people's court accepting an appeal of a people's procuratorate under the trial supervision procedures shall form a collegial panel to retry the case; or, if the facts are unclear or evidence is insufficient in the original sentence, may order a people's court at a lower level to retry the case.

Where a convict appears before court after a judgment or ruling takes effect, the people's court shall deliver the convict for execution of the criminal penalty. The people's court shall, before delivering the convict for execution of the criminal penalty, inform the convict that he or she has the right to raise an objection to the judgment or ruling. If the convict raises any objection to the judgment or ruling, the people's court shall try the case anew.

Where there is any definite error in the handling of the convict's property based on an effective judgment or ruling, the property shall be returned, and compensation shall be made.

Article 296 Where the defendant is unable to appear before court for suffering a serious illness, and trial is suspended for more than six months, if the defendant is still unable to appear before court, and the defendant or his or her legal representative or close relative applies for or agrees to the resumption of the trial, the people's court may try the case in absentia without the defendant's presence in court, and render a judgment in accordance with the law.

Article 297 Where the defendant dies, the people's court shall rule to terminate the trial. However, if there is any evidence proving the innocence of the defendant, and the people's court confirms his or her innocence by trial in absentia, it shall render a judgment in accordance with the law.

Where the defendant dies in a case retried by a people's court under the trial supervision procedures, the people's court may try the case in absentia, and render a judgment in accordance with the law.

Chapter IV Confiscation Procedures for Illegal Income in Cases Where a Criminal Suspect or Defendant Escapes or Dies

Article 298 Where, in a case regarding a serious crime such as embezzlement, bribery, or terrorist activities, a criminal suspect or defendant escapes and cannot be present in court after being wanted for a year, or a criminal suspect or defendant dies, if his or her illegal income and other property involved in the case shall be recovered in accordance with the Criminal Law, a people's procuratorate may file an application with a people's court for confiscation of illegal income. Deeming that the circumstances as mentioned in the preceding paragraph exist, a public security authority shall prepare a written opinion on confiscation of illegal income and transfer it to a people's procuratorate.

An application for confiscation of illegal income shall provide evidential materials related to the facts of a crime and illegal income and state the types, quantities, and locations of property as well as any seizure, impoundment, or freezing measures taken.

When necessary, a people's court may seize, impound, or freeze the property to be confiscated upon application.

Article 299 An application for confiscation of illegal income shall be heard by a collegial panel formed by the intermediate people's court at the place of crime or place of residence of a criminal suspect or defendant.

After accepting an application for confiscation of illegal income, a people's court shall make a public announcement. The public announcement period shall be six months. The close relatives of a criminal suspect or defendant and other interested parties shall have the right to apply for participating in the procedure, and may retain litigation representatives to participate in the procedure.

A people's court shall hear an application for confiscation of illegal income upon expiration of the public announcement period. If any interested party participates in the procedure, the people's court shall hold a court session to hear the application.

Article 300 A people's court shall render a ruling to confiscate illegal income and other property involved in the case that are confirmed at trial, except those legally returned to the victims; or, for property which shall not be recovered, shall render a ruling to dismiss the application and terminate the seizure, impound, or freezing measure taken.

Against a ruling rendered by a people's court under the preceding paragraph, the close relatives of a criminal suspect or defendant, other interested parties, or the people's procuratorate may appeal.