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Executive Summary

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PROCEDURAL PENAL CODE OF THE DOMINICAN REPUBLIC

1.- Introduction

On 27 September of the year 2004 the new Procedural Penal Code of the Dominican Republic went into effect established in accordance with Law No. 76-02 dated 19 July 2002.

This procedural legislation substitutes the ankylosed Criminal Code, a legacy from French judicial tradition which was adopted through Decree No. 58 promulgated on July 4 of 1845.

This new legislation implies a truly profound transformation of our penal procedural system, by adopting an accusatory model which shifts from the previous procedural legislation which was characterized by its essentially inquisitive nature, delimiting investigative functions from jurisdictional ones with regards to administration of penal justice.

Also, the new legislation adopts and makes it own basic principles which integrate the so called Constitutionality Block, *strengthening the oral, public and contradictory proceedings of criminal proceedings and the judicial functions of the judges; providing the Public Prosecutor with the appropriate means to investigate violations; guaranteeing legal, public or personal defense to every suspect; introducing alternative means to solve criminal conflicts; establishing liberty as a rule; ensuring legal custody of confusing interests; establishing controls of the duration of the proceedings; simplifying proceedings; creating alternative measures to preventive imprisonment, etc.*

The new Procedural Penal Code contains 449 articles and is divided in two (2) Sections: General Section and Special Section. For its enforcement several rules of procedures have been issued, such as Resolutions Nos. 1920-2003, dated 13 November 2003, for early enforcement of the Procedural Penal Code, and 1170-2004, dated 2 September 2004, regarding appointment of judges and bankruptcy courts, and Law No. 278-04 regarding Enforcement of Penal Proceedings established by Law No. 76-02.

This paper, presented in the format of an executive report, is a summary of the new procedural penal code which has been prepared with the goal of facilitating comprehension and knowledge of the main features of said legislation.

GENERAL SECTION

2.- Basic Principles

These principles devote a set of rights inherent to every person by the mere fact of being human. These rights were part of the Dominican legal order by being part of the Constitution of the Republic, as well as by international conventions approved by National Congress. Some of these rights apply to companies, which may be holders of some of them. Among these rights the following stand out:

- a) Principle of prior hearing: This principle implies that no one can be sentenced without prior celebration of a trial invested with all formalities.
- b) Principle of a regular judge: This principle implies that the judicial branch must preexist the punishable act; it must be of a permanent nature and must have been created by law, with the exclusive, not to be delegated and universal competence to judge the act.
- c) Impartiality and independence: This implies that the judge is prevented from acts which are inherent to the parties, such as propose, obtain or provide proofs.
- d) Legality of the sanction, sentence and proceeding: This principle ensures that no one will be the object of persecution, nor subject to a hearing, without the previous existence of a law which confers a legal basis for the intervention of the authorities.
- e) Reasonable term: This guarantee implies that no one can be submitted to any proceeding for an indefinite period of time and the State has the obligation to

establish clear and precise norms which guarantee that no one will be indefinitely submitted to a proceeding.

- f) The principle of sole prosecution or non bis idem: This principle implies that no one can be judged twice for the same crime.
- g) Guarantee of respect to human dignity: As a consequence of this principle, elements of proof obtained through torture and other cruel, inhuman and degrading treatment cannot be validly admitted in court.
- h) Equal protection of the law: This principle implies that the law is equal for all and that within the legal provisions there cannot be any type of discriminatory or unequal treatment.
- i) Equality of the parties in a proceeding: This principle implies that all persons are equal before the courts and Supreme Court, therefore equal treatment must be given both to the victim or plaintiff as well as to the accused or defendant.
- j) The right not to declare against one self: Every person has the right not to declare against himself; consequently, the accused cannot be induced, through the use of deception or violence, to make a statement or produce proof against his will. The statement of the accused is considered a means of defense and not a means of proof.
- k) Presumption of innocence: This principle implies that any person who is the object of criminal persecution is presumed innocent until proven guilty in an oral, public trial in the presence of both parties.
- l) Statute of freedom: The state of freedom of the person constitutes the principle and deprivation of freedom, the exception. Therefore, the latter is conceived as a temporary and precautionary measure, which must take place within a reasonable period of time. No one

can be imprisoned or deprived of freedom without an order motivated and written by an officer of the court.

- m) Personality of the persecution: According to this principle, no one can be responsible for someone else's actions.
- n) Rights of defense: According to this principle, no one can be judged without having been heard or having been duly summoned, or without the observance of procedures established by the law to ensure an impartial trial and the exercise of the rights of defense.
- o) Precise filing of charges: By virtue of this principle, the persecuting authority has the procedural obligation to personalize, describe, detail and specify the fact constituting the criminal offence of which the defendant is accused, stating the particulars of the offence and the basis of the accusation.
- p) The right to appeal to a higher court: This principle implies the right of the accused to appeal before a higher judge or court the sentence passed against him.
- q) Separation of roles: According to this principle, judicial offices must be separate from the functions directed to investigation and accusation.
- r) The obligation to rule: This principle implies the right of every person to have his claims brought before justice to be decided upon or solved one way or the other.
- s) Cause for ruling: Every sentence must have a reason, that is, it must contain the reasons on which the court based its decision.
- t) Legality of evidence: Proofs, and only those legally admitted, are relevant in accreditation of the truth of the alleged fact and justification for the motivation of the condemning or absolving sentence.

- u) Right to legal aid: The accused has the right to be assisted by a lawyer to help him with his defense.

3.- Actions arising from punishable acts

Under the new Procedural Penal Code, criminal action may be public or private. When it is public is exercise corresponds to the Public Prosecutor, without detriment of participation of the victim. When it is private, its exercise corresponds solely to the victim.

Public action cannot be suspended, interrupted nor stopped, but only in those cases and according to that established by the Procedural Penal Code.

- i) Public action at private request: In this case, the Public Prosecutor is only authorized to exercise action with submission of the petition and while it is maintained. Public Prosecutor may exercise public action directly when the punishable act is prejudicial to a disabled person who does not have representation or when committed by a parent, tutor or legal representative.
- ii) Punishable acts whose prosecution depends on private motion:
 - a) "Vias de hecho";
 - b) Blows and cuts;
 - c) Threats, except those made against public officials with regards to the exercise of their functions;
 - d) Theft without violence or weapons;
 - e) Fraud;
 - f) Betrayal of confidence;
 - g) Work paid for and not performed;
 - h) Disclosure of secrets;
 - i) Misrepresentation of private deeds

iii. Acts prosecutable by private action :

- c) Violation of property;
- d) Defamation and insult
- e) Violation of law regulating checks

iv. Civil action exercise and regime: Civil action to compensate for damages caused or to restore the object of the punishable act may be exercised against the accused and the person civilly responsible for all those who suffered the consequences of said damage, his heirs and legatees. This action may be exercised jointly with criminal action in accordance with the provisions set forth by the code or attempted separately before civil court. When civil action is attempted separately before civil courts, this is suspended until criminal action is decided. This is confirmation of the rule: "criminal action keeps civil action pending".

Civil action accessory to criminal action can only be exercised while criminal prosecution is pending.

v. Collective or extended interests: These interests or rights are those whose holder is not a person in particular but a set of many people, a collectivity, etc. They are also known as third generation rights. These rights are also subject to effective protection of the law under the new Procedural Penal Code, when it refers to violations affecting collective or extended interests.

4.- Criteria of Timeliness

Timeliness of public action: The Public Prosecutor may, through reasoned opinion, omit public action with regards to one or several of the deeds attributed regarding one or several of the accused or limit itself to one or several of the possible judicial classifications under specific conditions.

5.- Abatement of criminal action

Penal action ends due to:

- a) Death of the accused; b) Prescription; c) Amnesty; d) Abandonment of the indictment in the case of private action violations; e) Abrogation or rejection of private appeal, when public action depends on that one; f) Enforcement of timeliness criteria; g) Expiration of the conditional suspension of the term for the penal proceeding, without the intervention of abrogation; h) Death of the victim in the case of private action, except that already initiated and is continued by his heirs, in accordance with the provisions of this code; i) Integral compensation of the personal or fiscal damage caused, realized prior to the trial, in violations against property without serious violence against the persons, in culpable violations; j) Conciliation; k) Expiration of the maximum term of the proceeding; l) Expiration of the maximum term of the preparatory proceedings without an accusation having been filed or other conclusive requirement; m) Payment of the maximum fine established for the penalty, in the case of violations sanctioned only with this type of penalty.

6.- Prescription

Penal action prescribes:

- a) Upon expiration of a term equal to the maximum of the punishment, in violations with punishment that deprives of liberty; under no circumstances can this term exceed ten years not be less than three;
- b) At the end of a one year term, when it deals with violations sanctioned with punishment which do not represent deprivation of liberty or imprisonment.

7.- Conciliation and Mediation

The new penal proceedings, instituted by Law No. 76-02 dated 19 July 2002, provides criminal conflicts with an

alternative mechanism for solution, such as conciliation and mediation.

Conciliation applies in the following punishable acts:

- a) Infractions;
- b) Private action infractions;
- c) Public action infractions at private petition;
- d) Voluntary manslaughter; and
- e) Infractions subject to conditional pardon of the punishment.

In public action violations, conciliation is appropriate at any time prior to opening of the trial. In the case of private action violations it is appropriate at any stage of the cause.

To facilitate agreement between the parties, the Public Prosecutor may request the advice and assistance of experts, individuals or companies, in mediation or suggest that the interested parties appoint one.

8.- Criminal Jurisdiction and Competence

Criminal jurisdiction is exercised by the judges and courts established by the Procedural Penal Code and are the following:

- a) Supreme Court of Justice; b) Courts of Appeal; c) Judge of the First Instance; d) Trial Judges; e) Judges of Criminal Court; f) Justice of the Peace.

Competence of various courts:

- The Supreme Court of Justice, in addition to the cases conferred by the Constitution and the laws, is competent to hear:

- a) Appeals to the Supreme Court; b) Appeals for judicial review; c) Procedure relating to conflicts of competence between the Courts of Appeals or among judges or courts of various judicial departments; d) Challenging of judges of Appeal Courts; e) Complaints due to delays in proceedings or denial of justice against Appeal Courts; f) Proceedings for extradition petition.

Appeal Courts are competent to hear:

- a) Appeals; b) Conflicts of competence within its jurisdiction, except those corresponding to the Supreme Court of Justice; c) Challenging of Judges; d) Complaints due to delays in proceedings or denial of justice; e) Criminal lawsuits against judges of first instance, trial judges, criminal court judge, judges of original jurisdiction of the land courts, fiscal prosecutors and provincial governors.

Judges of the First Instance are competent to hear:

To know in a *unipersonal mode* the hearing for punishable acts which are liable for monetary fines or punishment depriving liberty, for a maximum of two years, or both penalties at the same time. They are also competent to know in a unipersonal mode the habeas corpus actions brought before the court and private action punishable acts. To hear the cases whose maximum punishment depriving of liberty is greater than two years, the court is integrated by three judges of first instance.

That is, courts of first instance, depending on the case, act as a unipersonal body with only one (1) judge or as a collegiate body integrated by three (3) judges.

Trial judges are competent to resolve all issues in which the Law requires the intervention of a judge during a preparatory proceeding to conduct the preliminary audience, to dictate relevant resolutions and to dictate sentence in accordance with abbreviated rules of procedure.

Judges of Criminal Court are responsible for controlling enforcement of sentences, for the conditional suspension of the proceeding, and for hearing of the case and resolution of all issues submitted regarding implementation of the sentence.

Justices of the Peace are competent to hear and rule:

a) Trial due to misdemeanors; b) Trials due to violations related to motor vehicle transit; c) Trial due to violations related to municipal matters; c) control of the investigation in such cases which cannot be delayed and it is not possible to obtain the immediate intervention of the competent trial judge; e) Requests for measures of coercion in those cases which cannot be delayed and it is not possible to obtain the immediate intervention of the trial judge or that is convenient to facilitate the participation of all concerned; f) All other punishable acts whose hearing and ruling are assigned to them by special laws.

9.- Challenge and Restraint

Judges may be challenged by the parties or restraint, among other reasons, for the following:

a) Be a spouse, living together or a relative within the fourth degree of consanguinity, adoption or second degree of affinity, of any of the parties or his legal or conventional representative; b) Be a creditor, debtor or guarantor, him, his spouse or person cohabiting with any of the parties, except when it is for an institution of the public sector, banking, financial, or insurance institution; have feelings of antagonism, hate or resentment which results from known facts with any of the parties and participants; c) Any other cause based on serious motives, which affect his impartiality or independence.

10.- Procedural Subjects

Victim: is the person directly offended by the punishable act; the spouse, known partner, child or biological or adopted parent, relatives within the third degree of consanguinity or second affinity, heirs, with regards to punishable acts whose direct result is the death of the victim of the offense; partners, associates or members with regards to punishable acts which

affect a company, committed by those who manage, administer or control it.

Plaintiff: the victim or its legal representative may act as plaintiff, promote penal action and accuse under the terms and conditions set forth in the code.

Civil party: whoever pretends to be compensated for the damage derived from the punishable act must become a civil actor through a reasoned demand.

Accused: is any person against whom the criminal prosecution is directed.

Third party sued: is the person who, due to legal provisions or contractual relationship, must answer for damages that the accused provokes by the punishable act and with regards to which a compensatory civil suit is brought.

Public prosecutor: it is a body of the judicial system, guarantor of Rule of Law, functionally independent. It is responsible for directing the investigation of criminal acts in the name of society.

11.- Public Prosecutor

The Public Prosecutor directs the investigation and exercises or orders relevant and useful steps to determine the occurrence of the punishable act and who is responsible.

- *Principles ruling the Public Prosecutor:* The Public Prosecutor is governed by the following principles: legality, continuity of actions, indivisibility, hierarchy, irresponsibility, independence, honesty, and timeliness.
- *Composition of the Public Prosecutor:* Members: Public Prosecutor is composed of the following officials: a) the Attorney General of the Republic, who chairs it; b) a First Assistant Prosecutor; c) a Second

Assistant Prosecutor; d) assistant general prosecutors whose number cannot be less than seven (7); e) general prosecutors before the Courts of Appeal; f) assistant prosecutors of Courts of Appeal whose number cannot be less than two; g) public prosecutors before the Courts of First Instance; h) assistant public attorneys, whose number will be determined by the Attorney General of the Republic, according to need; i) public attorneys before ordinary Justice of the Peace Courts.

Also part of the Public Prosecutors Office are the attorneys of the State before the Higher Court of Land and its attachments; the Attorney General of the Environment and its attachments; the Attorney General before the Administrative-Tax Court (*Tribunal Contencioso-Tributario*) and its attachments; public counsel for the minor; the Attorney General for Labor Court before the Labor Appeal Court and its attachments; the Public Prosecutor before the Labor Court of First Instance and its attachments; Prosecutor before special justices of the peace.

12.- Proceedings - Stage of the Proceedings

Language: All actions of the proceedings will be carried out in Spanish. All documents written in a foreign language, to be entered in a trial, must be translated into Spanish by a judicial interpreter.

Time: Proceedings can be carried out any day at any time, save exceptions foreseen in this code.

Registration: Proceedings can be registered in writing, images or sounds, and in any other way that guarantees its exactness.

Acts and Resolutions: All procedural steps registered in written form must state the place, date and time of its writing, the persons intervening and a summary of the acts performed.

Recordings: Recording of images and sounds may be used to document totally or partially acts of proof or hearings. However, all forms of edition of the images and sounds registered is prohibited.

Terms: Proceedings must be completed within the terms set forth in the Procedural Penal Code. Terms are peremptory and unpostponable and expire at twelve midnight of the last day stipulated, except that the Law may allow its deferral or subordinate its expiration to a specific activity or statement.

13.- Control of the Duration of the Proceeding

Maximum duration: Maximum duration of any proceeding is three (3) years, counted as of the date the investigation is initiated. This term can only be extended for six (6) months in the case of a guilty verdict, in order to allow processing of appeals.

Escape or contempt of the part of the accused interrupts the term of duration of the proceeding which would be reinitiated when he appears or is arrested.

Duration of the proceeding cannot exceed the term foreseen for prescription of criminal action, when it is lower than the maximum set forth in this article.

Term to conclude the investigation: The Publish Prosecutor must conclude the preparatory proceeding and submit the summons or prepare the file within a maximum term of three (3) months if preventive detention or house arrest has been ordered against the accused, and six (6) months if any other of the coercion measures foreseen under Article 226 of the Procedural Penal Code has been ordered. These terms apply even when coercion measures have been revoked.

These terms can only be extended once upon request of the Public Prosecutor, with due justification of the need to

file the accusation. Deferment cannot exceed two (2) months.

14.- International Judicial Cooperation

Judges and the Public Prosecutor must extend maximum cooperation to requests from foreign authorities, as long as they are formulated in accordance with that set forth in international treaties and this code.

Joint Investigations: The Public Prosecutor may coordinate investigation with proper authorities of the interested State, forming to this end research teams, led by the Public Prosecutor and subject to the control of the judges.

Extradition: Extradition is ruled by the Constitution, norms contained in international treaties, conventions and agreements adopted by public powers and its special law in those aspects which is not in contradiction with the Procedural Penal Code.

Competence to make a decision regarding extradition: The Supreme Court of Justice will rule on extradition.

Extradition Proceeding: Once the extradition request is received by the Criminal Chamber of the Supreme Court of Justice, an oral hearing is scheduled within thirty days (30) following the notification addressed to applicant. Appearing before this hearing are the accused or person to be extradited, his counsel, the Public Prosecutor and the representative of the requesting State, who present their allegations. Once the hearing is concluded, the Supreme Court of Justice will rule within a term of fifteen (15) days.

Lawyers in the Extradition Proceeding: Foreign states may appoint a lawyer to defend their interests in the proceedings.

15.- Means of Proof

The means of proof can only be valued if they have been obtained through a lawful mean and in accordance with the provisions of this Code.

Proofs gathered without observance of the forms and conditions that imply violation of the rights and guarantees of the accused, provided for in the Constitution of the Republic, international treaties and the Procedural Penal Code cannot be considered valid to serve as a basis for a judicial decision. Also, proofs which are the direct consequence of them, except if another licit information has been obtained that produces the same results, cannot be accepted.

Probation: Punishable acts and its circumstances may be established through any type of proof allowed, except expressed prohibition.

16.- Measures of Personal Coercion

Among the measures of personal coercion set forth in the new Procedural Penal Code are the following:

Citation: This is a measure ordered by the Public Prosecutor or a judge, as appropriate, by virtue of which the accused is asked to appear before said authorities his presence being required to carry out the proceeding.

Arrest: To carry out this measure a warrant is required. To perform an arrest the police does not need a warrant in the following cases:

- a. When the person is caught on the act or immediately after, or while being persecuted, or when carrying objects or shows signs that reasonably make presume that the person has participated in a crime.
- b. When the person has escaped from a prison or detention center.

- c. When holding objects, weapons, instruments, evidence or papers that leads to a reasonable presumption that the person is the author or an accomplice in a crime, and that may hide, escape or leave the place.
- d. The obligation to appear periodically before the judge or designated authority.
- e. Placement of electronic trackers, as long as this does not imply violence or damage to the dignity or physical integrity of the accused.

Under no circumstances can an arrest be made when it relates to a violation of a private action or those for which imprisonment is not contemplated.

- Warrant of arrest: The Public Prosecutor may order an arrest when:
 - a. His presence is necessary and there is sufficient evidence to sustain, reasonably, that he has committed a violation, or is an accomplice, and that he may hide, escape or leave the place.
 - b. After being cited to appear, does not do it, and his presence is necessary during the investigation or hearing of a violation.

- Extension of the arrest: The arrest cannot be prolonged beyond exhaustion of the formalities or acts that caused it.

17.- Other Measures of Coercion

In addition to the coercion measures stated above, upon request of the Public Prosecutor or the plaintiff and in the way and conditions set forth in the Procedural Penal Code, the judge may impose upon the accused the following coercion measures:

- a. Submission of a adequate economic guarantee.
- b. Prohibition to leave without approval the country, community of residence or the location determined by the judge.
- c. The obligation to submit to the care or supervision of an assigned person or institution to keep the judge informed on a regular basis.

- f. House arrest, in his own home or in the custody of another person, without any type of surveillance or with the one ordered by the judge.
- g. Protective custody. Protective custody, in addition to the general circumstances that demand implementation of coercion measures, is only applicable when escape of the accused cannot reasonably be avoided through the imposition of one or several of those that are less onerous to the person.

Protective custody cannot be imposed to a person older than seventy (70), if it is considered that, in the case of a sentence, he would not be liable to a sentence in excess of five years of imprisonment. Also, it cannot be applied to pregnant women, mothers during the nursing period or a person with a serious and terminal illness.

Real Measures of Coercion: In order to guarantee compensation of damages resulting from the punishable act and payment of legal fees of the proceedings, the parties may file before the judge an embargo petition, a mortgage or other pledging measures foreseen under civil law.

The Public Prosecutor may request these measures be taken to ensure payment of fines or legal fees or when the civil action is delegated to him.

Appeal against measures of coercion: Rulings related to measures of coercion set forth in Book V of the Procedural Penal Code are appealable. Appeal does not suspend enforcement of the resolution.

Revision of measures of coercion: Except that provided for protective custody, the judge, at any stage of the

proceedings, by request or on its own initiative, in benefit of the accused, reviews, substitutes, modifies or ends the measures of coercion through a reasoned resolution, when so determined by changes in the conditions which at the time justified it.

Court costs and damages: Every decision that puts an end to criminal prosecution, files it, or solves any subsidiary issue, pronounces on court costs. Costs are imposed on the losing party.

When, due to revision of the sentence, the guilty party is absolved or a lower penalty is imposed, he must be compensated for the time he was deprived of freedom or disqualification suffered or the time served in excess.

The State is always obliged to pay the compensation, without detriment of its right to impose it against another liable.

SPECIAL PART

18.- Preparatory Proceedings

This procedure is for the purpose of determining the existence of legal grounds to have a hearing, through the recollection of the items of proof that provide a basis for accusation of the Public Prosecutor, the plaintiff and the accused defense.

The Public Prosecutor has the responsibility of directing the investigation of all violations prosecutable by public action and acts with the assistance of the police.

19.- Initial Acts. Accusation and Complaint

Accusation: Capacity to accuse: Any person that has the knowledge of a criminal action may report it to the Public Prosecutor, the police or any other executive agency that may perform investigation activities.

- Form and content: The complaint may be presented orally or in writing, personally or by proxy with a special power. When the report is oral, the official who receives it must prefer an indictment.
- Obligation to report: Are obliged to report all criminal actions that, because of the exercise of their duties, become known to them: a) public officials; b) physicians, pharmacists, nurses, and any other person who perform any activity related to medical science; c) authorized public accountants and notary public, regarding violations that affect equity or public income.
- Participation of the informant: This is not part of the process and does not incur in any responsibility, except when the allegations are false.

Complaint: the act by which persons authorized by this Code promote proceedings for criminal action or request intervention in the process already started by the Public Prosecutor.

- Form and content: The complaint must be filed in writing before the Public Prosecutor and must contain minimum data as follows:
 - a) General information about the identity of the complainant; b) name, domicile and personal information of its legal representative in the case of companies; c) report stating the circumstances of the fact, if possible, with identification of perpetrators, accomplices, aggrieved and witnesses; d) details of information or items of proof and documentary evidence and indication as to where it can be found.
- Admissibility of the complaint: If the Public Prosecutor considers that the complaint meets the conditions of form and content and that there are conditions to verify the occurrence of the alleged act, proceeds with the

investigation. If it has already been started, the complainant becomes part of the proceeding.

The complainant and the accused may appear before the judge in order for him/her to decide about the position adopted by the Public Prosecutor regarding admissibility of the complaint. The parties may oppose before the judge the admission of the complaint and the intervention of the complainant, through the corresponding exceptions.

Resolution of the judge regarding admissibility of the complaint is appealable.

- Time when the complaint must be filed: This must be filed before opening of the hearing is issued. If the complaint is filed during the preliminary hearing, all conditions of form and content must be complied with during this stage.

The complainant may withdraw the complaint at any time during the proceedings and must pay the court costs caused.

- Intervention of the criminal investigation department: Officers of the police who have direct knowledge of a criminal action must inform the Public Prosecutor, without unnecessary delay and always within the maximum term of twenty-four (24) hours following their intervention.

Officers of the police carry out preliminary formalities geared to obtaining and ensuring the items of proof, to avoid escape or hiding of suspects, receive statements from witnesses and prevent the act from resulting in ulterior consequences.

If the violation is a private action one, the criminal investigation department should only proceed when it receives an order from the judge or the Public Prosecutor. But, if it is an action dependant on a private motion, it acts on the complaint filed by the person authorized to represent it, without detriment to immediate actions to

preserve the proof or prevent the fact from ulterior consequences.

Basic principles to act: To carry out an arrest the following steps must be followed:

- a) Identification at the time of the arrest, as an officer of the police and verify the identity of the person being arrested. Prior identification of the person subject of the arrest is not required in the cases of actual crimes;
- b) abstain from the use of force, except when it becomes strictly necessary and always in proportion required by execution of the arrest;
- c) abstain from the use of weapons, except when resistance endangers the life or integrity of the people, or with the objective of preventing other crimes, within need and in proportion referred to in the previous literal;
- d) not to inflict, promote or tolerate acts of torture, torment or other cruel, inhuman or degrading treatment or punishment;
- e) inform the person, at the time of the arrest to keep silent and to name a lawyer;
- f) not to allow presentation of the arrested person to any social or communication media without expressed consent, which must be granted before counsel for the defense, prior consultation, which must be recorded in the respective formalities;
- g) inform relatives, a close person or the attorney named by the arrested person, regarding the arrest and the place where the person is being held;
- h) record, in an inalterable registry the place, day and time of the arrest, the order or circumstances in which it occurred and the officials or policemen responsible for carrying it out.

20.- Preliminary investigation

Once the accusation, the complaint, the police report or the first investigations of their own are carried out, the Public Prosecutor immediately open the corresponding record, where the following information is registered:

a) A brief description of the object of the investigation; b) particulars of the accused, if known; c) date the investigation is started; d) provisional legal classification of the alleged acts; e) the name of the Public Prosecutor official responsible.

Prosecution of action: If the Public Prosecutor decides to take the matter to court, it proceeds on its own or orders the police to carry out under its direction the investigation that does not require legal authorization nor have a jurisdictional character. Requests the judge the necessary authorizations required by the provisions of the Procedural Penal Code.

Shelving: The Public Prosecutor may order shelving of a case through reasoned opinion when a series of grounds set forth by the Procedural Penal Code concur, among which are the following:

a) There is not enough evidence to verify the act occurred; b) a legal obstacle prevents exercise of the action; c) it has not been possible to individuate the accused; d) the items of proof are insufficient to document the accusation and there is not a reasonable possibility to incorporate new evidence; e) an evidentiary fact coincides or the person cannot be considered criminally responsible; f) it is evident that the fact does not constitute a criminal action; g) criminal action has prescribed; h) the parties have settled; i) a criteria of timeliness applies.

Development of the investigation: Procedural steps: The Public Prosecutor may demand information of any person or public official, establishing a term according to the circumstances of the case, and exercise on its own or through police officials any type of procedural steps. It must request judicial intervention when established by this Code.

The parties have the power to propose procedural steps at any time during the preparatory procedures. The Public

Prosecutor carries them out if it considers them relevant; on the contrary, it may reject them. In this case, the parties may approach the judge to decide whether the proposed steps are appropriate.

Nature of the proceedings: The preparatory enquiry is not open to third parties. The proceedings can only be examined by the parties, directly or through their representatives. Attorneys who invoke a lawful interest are informed by the Public Prosecutor of the act being investigated and regarding the accused, so that they may decide if they wish to participate in the case.

Conclusion of the preparatory procedures: Conclusive acts: Once the investigation is concluded, the Public Prosecutor may request the following in writing:

a) the opening of trial through accusation; b) implementation of a summary procedure through relevant accusation; c) conditional stay or proceedings.

Accusation: When the Public Prosecutor deems that the investigation provides a basis for the accused to stand trial, it files the accusation requesting opening of trial.

Summons: The Public Prosecutor notifies the plaintiff of the accusation or the victim with a known residence that may be informed of the proceedings, to express if they will file their own accusation or will adhere to the one filed by the Public Prosecutor, in which case it must be stated in writing within the following three (3) days. The plaintiff's accusation must be filed before the judge within ten (10) days following expiration of the previous term.

21.- Preliminary Hearing

When an accusation is filed, the secretary will notify the parties and the Public Prosecutor to make available to the parties the evidence gathered during the investigation, who may examine them within a term of five (5) days. By the same act, will summon the parties to a public and

oral hearing which must take place within a term of not less than ten (10) days nor more than twenty (20).

Defense: Within five (5) days of the notification, the accused may:

a) object the injunction formulated by the Public Prosecutor or the plaintiff due to formal or substantial defects; b) opposed the exceptions foreseen in this Code, when they have not been previously raised or are based on new facts; c) request conditional stay or proceedings; d) request an order of no cause to opening of the trial; e) request substitution or ending of a measure of coercion; f) request implementation of abbreviated procedure; g) offer evidence for the trial, in accordance with demands stated for the accusation; and h) submit any other issue that may allow better preparation for the trial.

Within the same term, the accused must provide the necessary means of proof to solve the issues relative to the preliminary hearing. The secretary prepares everything necessary for the organization and development of the hearing and submission of proof.

Development of the hearing: On the appointed day the hearing takes place with the mandatory presence of the Public Prosecutor, the accused, the counsel for the defense and the plaintiff. Absence of the Public Prosecutor and the counsel for the defense are immediately corrected, in the latter case, the court appoints counsel or allows its replacement. The judge asks the accused to plead in his defense, requests presentation of proof and grants enough time for each part to document its arguments.

Order for opening of trial: The judge dictates the order for opening of trial when he considers that the accusation has enough merits to justify the probability of a sentence. This resolution is not susceptible to any appeal. Instead, the "order of no cause" is appealable.

Preparation of the debate. Calling of a hearing and solution of motions. The chairman of the court, within forty-eight (48) hours of receipt of motions, sets the day and time of the hearing, which is held between the following fifteen (15) to forty-five (45) days.

Exceptions and incidental issues based on new facts and challenges are filed within five (5) days of the summons to trial and are decided by the chairman of the court in only one act within the five (5) days, unless he decides to defer any for the time of sentencing, as is appropriate to the hearing. This resolution is not appealable.

General principles of the hearing: The accused appears free, but the court may exceptionally order his custody to avoid evasion or the occurrence of acts of violence.

General principles of the hearing are: immediacy, publicity and orality. (There are exceptions to the latter principle.)

The chairman directs the hearing, orders presentation of evidence and the necessary readings, makes legal warnings, moderates the debate, rejects everything that tends to prolong the hearing without a degree of certainty of the results and, consequently, prevents irrelevant interventions that do not lead to ascertainment of the truth.

Continuity of the debates: The debate is carried out in a continuous manner in only one (1) day. In those cases when it is not possible, the debate continues during the consecutive days that may be necessary until its conclusion. It may be suspended only once for a term not to exceed ten (10) days.

Division of the trial: In the cases when the sentence may exceed ten (10) years in prison, the court, upon request from the defense, may split the trial in two (2) parts. In the first part, deal with everything related to the existence of the act and the guilt of the accused; in the second, that related to individualization of the applicable sentence.

22.- Special Procedures

Procedures for infringements; procedures for private action infringements; summary trial; procedures for complex issues; procedures for those immune from prosecution.

23.- Appeals

Rulings are only appealable by the means in the cases expressly established in the Procedural Penal Code. The right to appeal corresponds to those who are expressly approved by law. The parts can only contest rulings which are unfavorable.

Appeals set forth by the new Procedural Penal Code are:

Opposition is applicable only against decisions which solve a step or motion of the proceeding, in order for the judge or court that issued it examine the issue again.

Remedy of appeal is admissible against a sentence of acquittal or conviction. The rulings of the justice of the peace or the investigating judge stated by the Procedural Penal Code are appealable before the Court of Appeals. The term for this petition is of five (5) days as of the date of notification of the sentence.

Abrogation is admissible against the sentences of the Court of Appeals which end the procedure or deny

suspension of the sentence. Term for filing of this appeal is one (1) month.

Revision may be asked against an absolute sentence of any jurisdiction, as long as it favors the convict, in the cases determined by the Procedural Penal Code.

24.- Conclusion

In conclusion we wish to reiterate that the country was in need of an in-depth transformation of its procedural penal legal system, to cope with the demands and needs of the time. We can state that a change in the administration of penal justice was needed, to be sustained by a new vision of the penal procedure. Also, it was necessary to change and update the investigation methods of criminal acts, to create new measures of coercion to solve the dead weight of preventive imprisonment, provide the process with greater guarantees, subject authorities' actions to judicial review, eradicate once and for all the culture of "throw him in jail".

The constitutionalization of the process should not be cause to fear that the Code favors criminals, because it places in the hands of justice administrators the necessary tools to confront and sanction criminals. The system's operators are the ones responsible for demonstrating with their actions the virtues and defects of this code.

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