

CHAPTER THREE: PROCEEDINGS OF CIVIL CASES IN COURTS

ARTICLE FORTY

Proceedings of all the civil cases in the courts of Afghanistan shall be public, unless such public hearing adversely affects public order or leads to the exposure of the secrets of the people's lives. Proceedings shall include a means to identify and protect confidential information.
~~Proceedings of all the civil cases in the courts of Afghanistan shall be public, unless such public hearing adversely affects public order or leads to the exposure of the secrets of the people's lives.~~

ARTICLE FORTY-ONE

Public hearings are held on official days and interested persons are allowed to attend.

ARTICLE FORTY-TWO

The judgment of the court in all situations is announced publicly.

ARTICLE FORTY-THREE

Proceedings in the camera are held in the presence of persons involved in the case and their legal representatives and, if needed, witnesses, experts and interpreter shall also attend the proceedings.

ARTICLE FORTY-FOUR

A person who has not completed the age of 15 and who is not involved in the case cannot attend the judicial hearing.

ARTICLE FORTY-FIVE

The office of the court documents is obligated, prior to the holding of the hearing, to place the plaintiff, defendant or their legal representative, witnesses, experts and interpreter in the specifically assigned places.

ARTICLE FORTY-SIX

The judicial panel shall enter the hearing chamber when the time of the hearing has approached and the persons mentioned in Article 45 have attended.

ARTICLE FORTY-SEVEN

Upon the entry of the judicial panel into the hearing chamber, all those in attendance shall stand up and when the judges take their seats, they shall sit down.

ARTICLE FORTY-EIGHT

The presiding judge opens the official hearing in the name of God, the Almighty and Just, informs the attendees of the composition of the judicial panel, prosecutor and experts, interpreter and the secretary of the session.

ARTICLE FORTY-NINE

The presiding judge explains the rights, duties and responsibilities of the persons involved in the case and in the hearing and instructs the secretary of the judicial session to read out the agenda of the hearing; and, after introducing the plaintiff, the defendant or their legal representative shall commence the proceedings of the case.

ARTICLE FIFTY

During the proceedings, the chairman of the session shall first allow the plaintiff or his/her legal representative and then the defendant or his/her representative to read out their claim and defense.

ARTICLE FIFTY-ONE

The parties to the claim shall freely read out their respective statements and give explanations. Before one side has ended reading its statement, the other side does not have the right to interrupt the statement of that side.

ARTICLE FIFTY-TWO

It shall be within the authority of the presiding judge to demand explanations from the plaintiff, the defendant and other persons involved. If during the trial there are issues concerning which the members of the judicial panel require explanation, the parties shall accordingly be questioned, with the permission of the presiding judge.

ARTICLE FIFTY-THREE

The secretary of the trial session is obligated to record without any addition or omission in the book of the records of the session all the proceedings of the trial in relation to the claim and defenses, testimony of witnesses and declarations of the experts, and obtain the signature of the president and the relevant persons at the end of the trial.

ARTICLE FIFTY-FOUR

The leadership and management of the judicial hearing shall be within the authority of the presiding judge.

ARTICLE FIFTY-FIVE

The persons involved in the case, the legal representative of the parties to the claim, the witnesses, the experts, the interpreters and others involved in the judicial hearing are obligated to observe the orderly conduct of the trial and to follow the orders of the presiding judge.

ARTICLE FIFTY-SIX

The plaintiff, the defendant or their legal representative, the witnesses, the experts and the interpreters are obligated to stand up while reading their statements and while explaining issues, unless the presiding judge gives them permission to sit down.

ARTICLE FIFTY-SEVEN

The presiding judge shall warn the person who disturbs the order of the hearing. In case of violation, the presiding judge can expel the persons creating the disturbance from the trial chamber.

ARTICLE FIFTY-EIGHT

If those disturbing the orderly conduct of the hearing are the plaintiff, the defendant or their legal representative and, in case such violation is repeated, the court can impose a monetary fine of no more than three thousand Afghanis or a sentence of imprisonment of up to one week upon such a person.

ARTICLE FIFTY-NINE

If the person disturbing the order of the hearing is a civil prosecutor, the court shall, by issuing a judicial ruling, take an action to replace him.

ARTICLE SIXTY

If the person who disturbs the order of the hearing is a defense attorney, the court shall discipline him/her according to the provisions of law.

ARTICLE SIXTY-ONE

If a person commits the crime of obscenity or a misdemeanor during the hearing, he/she shall be punished by the court according to the provisions of the law.

ARTICLE SIXTY-TWO

The court shall determine the mandatory punishments provided for under Articles 58 to 60 of this Code and the judgment of the court to this effect shall not be subject to appeal.

ARTICLE SIXTY-THREE

In situations provided for under Articles 58 to 60 of this Code, the court can cancel the judgment that has been issued prior to the end of the hearing.

ARTICLE SIXTY-FOUR

In case of a misdemeanor, if the court does not convict the accused in the same hearing session, or if the wrongdoing is a crime, the court is obligated to prepare the records of the incident and issue an order for the arrest of the accused and refer the issue to the relevant prosecutor. Issuance of judgment in this regard takes place in the nearest court.

CHAPTER EIGHT: NOTICE, SUMMON AND APPEARANCE

ARTICLE ONE HUNDRED TWENTY-EIGHT

The court shall directly inform the party to a claim or summon him/her through relevant authorities.

ARTICLE ONE HUNDRED TWENTY-NINE

The court can request the presence of an expert and a third party whose statements for the clarification of the case are effective.

ARTICLE ONE HUNDRED THIRTY

If either party does not come to the court on the day specified, it shall be summoned by the court.

ARTICLE ONE HUNDRED THIRTY-ONE

One original and two copies of the summons form are prepared and shall contain the following:

- 1- Name and address of the court.
- 2- Identity and accurate address of parties to the claim.
- 3- Date and time of presence.
- 4- Introduction of the issue, including sufficient detail about the claim and its basis. ~~Introduction of the issue.~~

5- Reminders to the person summoned regarding preparation and presentation of documents related to the issue.

6- Warning about consequences of non-appearance

ARTICLE ONE HUNDRED THIRTY-TWO

The court can request in any manner possible, including telephone and telegraph, the presence of the parties to the claim, witnesses and experts.

ARTICLE ONE HUNDRED THIRTY-THREE

The summons form of the court shall be issued to the office of summons and appearance together with an official letter.

ARTICLE ONE HUNDRED THIRTY-FOUR

The office of summons and appearance is obligated to give the summons form to the relevant person or his legal representative, and to obtain his signature and agreement to appear on the second copy and send it to the court.

ARTICLE ONE HUNDRED THIRTY-FIVE

If the person summoned is illiterate, his fingerprint shall be put on paper in a professional and clear manner.

ARTICLE ONE HUNDRED THIRTY-SIX

In case the person summoned refuses to sign or give his fingerprint, the matter shall be recorded in the form accordingly and the signature of one of the followings persons is taken on it:

1- Signature of the head of the council of the place of residence or two neighboring persons or residents of the place.

2- Signature of the head of the office of summons and, in case the person refusing is a worker of the government office or organizations, the signature of the head of the concerned office.

ARTICLE ONE HUNDRED THIRTY-SEVEN

The office of summons and appearance shall in compliance with the steps provided for in Article 136 return the form to the court together with an official letter.

ARTICLE ONE HUNDRED THIRTY-EIGHT

If the person summoned is a staff member of the government offices, organizations or companies, the summons form can also be sent to his relevant office.

ARTICLE ONE HUNDRED THIRTY-NINE

If finding the person is temporarily postponed for some reasons, the relevant places are obligated to officially inform the court of the issues and, after the removal of the obstacles, shall proceed with processing of the summons form.

ARTICLE ONE HUNDRED FORTY

If the person summoned is an escapee, absentee or missing the documents related to his/her investigations shall be completed and the matter recorded in the summons form and then sent to the court.

ARTICLE ONE HUNDRED FORTY-ONE

If the person summoned is a member of the armed forces, the summons form is served on him through the relevant military squad/unit.

ARTICLE ONE HUNDRED FORTY-TWO

If the steps contained in this Code are not observed in the summons form, the form is returned by the court to the relevant authorities for completion, and the authorities issuing the summons are obligated to complete the steps of the form.

ARTICLE ONE HUNDRED FORTY-THREE

If the person summoned appears before the court and if his subsequent appearance in the following hearing sessions is also necessary, the date of the next hearing session for the purpose of appearance is announced to him and the proceeding recorded in the concerned office.

ARTICLE ONE HUNDRED FORTY-FOUR

If it is feared that a party to the claim withdraws or escapes, the court can force him to guaranty his/her presence.

ARTICLE ONE HUNDRED FORTY-FIVE

If the person summoned pursuant to the summons contained in the summons and appearance form issued by the authorities issuing summons and request for appearance refuses to reappear in the court, the court shall summon him for the second or third time.

ARTICLE ONE HUNDRED FORTY-SIX

If the person summoned despite implementation of the provisions of Article 145 of this Code still does not appear in the court, or according to Article 140 of this Code, he/she is considered an escapee, absentee or missing, the request for his presence during the time specified by the court is made for the last time through radio or a popular and widely-circulated newspaper.

ARTICLE ONE HUNDRED FORTY-SEVEN

If the person summoned refuses to appear in the court at the specified time without reasonable excuse, the court shall issue judgments in absentia regarding him/her.

ARTICLE ONE HUNDRED FORTY-EIGHT

The court summons and requires the appearance of the parties to the claim based on the date of the agenda. Expedited claims are exempt from this rule.

ARTICLE ONE HUNDRED FORTY-NINE

The time of presence of the person summoned is made by the court at its discretion based on the distance of his/her place of residence and the availability of transportation

ARTICLE ONE HUNDRED FIFTY

Any reluctance on the part of the places/offices of summons and appearance as contained in this Chapter shall be announced to the head offices of these offices by the court in order that the office/person in violation is subject to legal questioning.

ARTICLE ONE HUNDRED FIFTY-ONE

The court shall control the implementation of the rule of Article 150 of this Chapter every fifteen days.

ARTICLE ONE HUNDRED FIFTY-TWO

The office of the court documents is responsible to the president of the court for the implementation of the rules contained in this Chapter.

CHAPTER TWELVE: THE TRIAL PROCEEDING AND PRESENCE OF INDIVIDUALS INVOLVED IN THE CASE

ARTICLE TWO HUNDRED FOUR

It is obligatory that the plaintiff and the defendant or their proxy, guardian, executor or custodian appear before the court with the relevant documents.

ARTICLE TWO HUNDRED FIVE

In addition to the parties to the claim and the civil prosecutor, representatives of the governmental bureaus, organizations and third parties can participate in the judicial proceedings.

ARTICLE TWO HUNDRED SIX

The power of attorney is valid until the issuance of the decision by the court in which the claim is being heard. The following situations are exempt from this rule:

If it is clearly stated in the power of attorney document that the authority of making a demand, making an objection to the judgment and retrial, presenting and following up of the claim to the highest courts has been assigned to the representative.

ARTICLE TWO HUNDRED SEVEN

Judges and administrative workers of the courts cannot perform the duty of representation, except in cases where the claim in question concerns their husband, wife, father, grandfather, mother, grandmother, son and daughter.

ARTICLE TWO HUNDRED EIGHT

Judges and workers of the courts can act in their own claim in their own behalf and in the claim of the persons mentioned in Article 207 of this Code as representative, guardian, executor and custodian.

ARTICLE TWO HUNDRED NINE

The parties to the claim are guided to the court chamber in turn and their situations are examined in the following order:

- 1- The court makes a determination as to which one of them has appeared in the court as the principal, and which of them as proxy, guardian, executor and custodian.
- 2- The persons who appear in the court as deputies or representatives, the court workers shall file the document of their authority.
- 3- The request of the plaintiff and all the documents and papers of the parties are regulated by the office of court document.

ARTICLE TWO HUNDRED TEN

The plaintiff shall present its petition in two copies. In case of inaccuracy of the claim, the plaintiff is obligated to correct the claim.

ARTICLE TWO HUNDRED ELEVEN

If the claim is accurate and the provisions of Article 26 of this Code are complied with, the defendant is obligated to present its written response to the court within specified time period.

ARTICLE TWO HUNDRED TWELVE

The court after the presentation of the written response by the defendant shall convey the date of the trial proceedings to the parties to the claim.

ARTICLE TWO HUNDRED THIRTEEN

If the parties to the claim appear in the judicial proceedings on the specified date, the proceedings shall be officially announced and the following steps shall be taken:

1- Following the claim of the plaintiff, the written defense by the defendant is recorded in a special form (a pleading form) and then the claim of the plaintiff and the defense of the defendant are read in the presence of the parties in the judicial session and the contents of the claim and defense are conveyed to the parties.

2- After the reading of the claim of the plaintiff and defense of the defendant, first the plaintiff is given time to explain the claim and the relevant documents, secondly, the defendant is given time to explain its response to the plaintiff's claim with presentation of documents.

3- The president of the session and members of the judicial panel shall question the parties about the lack of clarity and conflict.

4- The secretary of the session is obligated, following an order by the president of the court, to record the proceedings and explanations of the manner of removal of vagueness and conflict in the claim of the plaintiff and the defense of the defendant, and at the end of the trial, to get the record signed by the parties to the claim and by the judicial panel.

ARTICLE TWO HUNDRED FOURTEEN

The full presence of the judicial panel during the judicial negotiations and sessions is necessary. In the absence of the president of the session or one of the members of the judicial panel the session cannot be held.

ARTICLE TWO HUNDRED FIFTEEN

The presentation of a witness to the possession of the immovable subject matter of the claim is obligatory after the (proof of) accuracy of the claim.

ARTICLE TWO HUNDRED SIXTEEN

If during the trial one of the parties to the claim present as proof documents which are not part of the previously studied court papers, the court cannot accept those papers except in the following situations:

- 1- The court is satisfied that delivery of the mentioned papers was not possible at that time.
- 2- Existence of another reasonable excuse based on non-presentation of the mentioned papers at that time.

ARTICLE TWO HUNDRED SEVENTEEN

If any of the situations stated under Article 216 of this Code is applicable, the court shall assign another judicial session for the purpose of consideration of the issue.

ARTICLE TWO HUNDRED EIGHTEEN

The parties to the claim can resort to amending, changing, reducing, or increasing the claim and responses that they have submitted to the court separately within the copies only one time, on the condition that the said amendment does not change the merits of the claim and the defense in terms of quality or quantity.

ARTICLE TWO HUNDRED NINETEEN

The parties to the claim cannot demand from the court separate decisions regarding each part of their claims, defenses and objections that have been contained in one claim.

ARTICLE TWO HUNDRED TWENTY

If the proceedings and the trial and the issuance of the judgment do not occur in one session, another date is assigned for the subsequent session and the parties are informed of this.

ARTICLE TWO HUNDRED TWENTY-ONE

If one of the parties to the claim dies during the trial, the heirs of the deceased is summoned to the court pursuant to the demand by the opposite side and the court restarts from the point it had stopped.

ARTICLE TWO HUNDRED TWENTY-TWO

If the plaintiff requests an additional time to prove its case, the court shall give it the necessary time.

ARTICLE TWO HUNDRED TWENTY-THREE

If a need arises during the trial for the papers and documents related to the claim of the plaintiff and the defense of the defendant and such documents exist in the mixed and confidential government offices and organizations, the court shall allow time for the purpose of obtaining such documents and papers.

ARTICLE TWO HUNDRED TWENTY-FOUR

1- If the arrival of papers by the parties to the claim is not possible, the court can officially demand the needed papers from relevant authorities.

1-2- If a party who has presented reasonable evidence supporting his claims identifies evidence relevant to proving his claims which lies in the control of the opposing party, the court may officially demand that this evidence be produced by the opposing party, subject to appropriate protections for any confidential information contained therein. If the arrival of papers by the parties to the claim is not possible, the court can officially demand the needed papers from relevant authorities.

ARTICLE TWO HUNDRED TWENTY-FIVE

If a party to the claim denies the contents of the papers and documents that are presented to the court for the purpose of proof of the claim or claims that they are forged, the issue shall be dealt with and the proceedings shall take place according to the provisions of Chapter 15 of this Part.

ARTICLE TWO HUNDRED TWENTY-SIX

A claim arising from the actual/original claim that is presented by the plaintiff or the defendant during the proceedings of the claim, the court shall deal with the incidental claim during the actual/original claim and make a decision regarding it.

ARTICLE TWO HUNDRED TWENTY-SEVEN

1- The court may order provisional measures regarding an emerging claim that requires urgent hearing, in particular to prevent the violation of a legal right, or to preserve evidence relevant to an alleged violation.

1-2- In special cases, where any delay is likely to cause irreparable harm to a party, or where there is a demonstrable risk of evidence being destroyed, the court may order provisional measures without notice and hearing to the defendant. Where a court orders such measures, the affected parties shall be notified immediately after the execution of the measures. A full and prompt judicial review to determine whether the

provisional measures will be modified, revoked or confirmed shall take place upon request of the defendant. The court shall issue a judicial ruling regarding an emerging claim that requires urgent hearing.

ARTICLE TWO HUNDRED TWENTY-EIGHT

If the emerging claim resulting from the actual claim is raised in the superior courts, it shall be returned to the initial court.

ARTICLE TWO HUNDRED TWENTY-NINE

- 1- Provisional measures on an emerging claim do not require passage through the preliminary steps. However, the court may require a party requesting provisional measures to provide reasonable evidence that a legal right of his is being violated, or that such violation is imminent. Where the provisional measures requested would require executing authorities to seize, detain, or otherwise administer goods involved in the claim, the requesting party may also be required to provide information necessary for the authorities' identification of such goods.

- 2- The court may order any party requesting provisional measures to provide a security sufficient to protect other parties and to prevent abuse of procedures for provisional measures.

- 3- Provisional measures shall, upon request by the defendant, cease to have effect if proceedings on the merits of the case are not initiated within ten working days of the taking of provisional measures.

- 4- Where the provisional measures are revoked or where they lapse due to any act or omission by the party who requested them, or where it is later found that there was no actual or threatened violation of rights, the court may order the requesting party to compensate the defendant for any injury caused by the provisional measures. The emerging claim does not require passage through the preliminary steps.

ARTICLE TWO HUNDRED THIRTY

The court shall recommend the assignment of conciliators in cases where the court senses willingness on the part of the parties for settlement.

ARTICLE TWO HUNDRED THIRTY-ONE

1- If the parties to the claim settle their differences prior to the commencement of the claim and the proceedings, their settlement is put in writing and their dispute is brought to an end.

2- If the settlement takes effect during the proceedings and the trial, the settlement is recorded in the decision and a judgment is issued allowing the settlement and an end to the dispute between the parties.

ARTICLE TWO HUNDRED THIRTY-TWO

If the parties do not agree to settle (their dispute), the court shall proceed with the matter and shall issue a decision accordingly.

ARTICLE TWO HUNDRED THIRTY-THREE

During the proceedings the office of court documents is obligated to observe the following steps and record them in the presence (of the court):

1- Name of the presiding judge and judicial panel, identity of the parties to the claim and name of the interpreter, if one exists.

2- Statements of the parties.

3- Name of the witnesses with their full identities.

4- Summary of the contents of the documents that the parties present.

5- Scrutinies that are performed by the court.

6- The decision that is taken by the court.

ARTICLE TWO HUNDRED THIRTY-FOUR

If the trial is not ended and the proceedings are postponed to next day, the judicial proceedings during the followings days are recorded and performed in the order provided for under Article 233.

ARTICLE TWO HUNDRED THIRTY-FIVE

Minutes (of the proceedings) and other papers and documents to be kept in the court together with the background materials of the case.

ARTICLE TWO HUNDRED THIRTY-SIX

After the investigation and scrutiny of the case and proceedings regarding the reasons, the presiding judge shall demand additional explanations from the parties. In case the parties do not

have (further) explanations, the president of the court shall announce the end of the investigation of the case and shall proceed with judicial discussions.

ARTICLE TWO HUNDRED THIRTY-SEVEN

The judicial discussions contain statements involved in the case that take place in the following order:

- 1- Statements of the plaintiff or his/her legal representative.
- 2- Statements of the defendant or his/her legal representative.
- 3- Statements of a third person who presents a separate request during the proceedings of the case.
- 4- The opinion of the prosecutor involved.
- 5- Other issues that assists the speedy trial.

ARTICLE TWO HUNDRED THIRTY-EIGHT

The participants in the judicial discussions as provided for in Article 237 of this Code cannot bring as proof in their statements the situations and reasons that have not been explained to the court and have not been investigated in the judicial proceedings.

ARTICLE TWO HUNDRED THIRTY-NINE

If the claim has reached at the stage of issuance of judgment after following procedures, a change in the essence or in the attributes of the parties cannot prevent the issuance of a ruling.

A change in essence or substance means death and a change in attributes means the occurrence of insanity and bankruptcy.

ARTICLE TWO HUNDRED FORTY

The court shall accept the request of a third person for a right of demand, authority to intervene in the claim and presence in the trial.

If the legal stages of the judgment have come to an end, the announcement of the court's judgment to the parties cannot be postponed as a result of this request.

ARTICLE TWO HUNDRED FORTY-ONE

At the conclusion of the investigation and scrutiny, and after judicial discussions and statements by the parties to the effect that they have nothing else to say, the presiding judge shall announce the end of the trial to the parties.

ARTICLE TWO HUNDRED FORTY-TWO

After the announcement and the end of the trial the right of the parties to give statements ends.

ARTICLE TWO HUNDRED FORTY-THREE

After the end of the trial, the judicial panel enters the chamber of the judicial consultations for the purpose of making a decision and arrangement of the text of the judgment, and before that the issue is announced to those attending the judicial proceedings by the president of the session.

ARTICLE TWO HUNDRED FORTY-FOUR

After a decision has been taken and the text of the judicial panel has been arranged, a reference is made to the chamber of the, the president of the session shall announce the court's judgment, explain the time period for complaints and appeals.

ARTICLE TWO HUNDRED FORTY-FIVE

If the session has been held in the office of the judicial panel, those present in the session shall step out of the session simultaneously with the announcement of the end of the trial, and after the decision is taken the parties to the claim are allowed to enter the session so that the judgment is announced to them.

CHAPTER THIRTEEN: DECISION AND JUDGMENT OF THE COURT

ARTICLE TWO HUNDRED FORTY-SIX

The decisions of the judicial panel on merits or substance of the claim are issued in the form of a judgment.

ARTICLE TWO HUNDRED FORTY-SEVEN

The decision of the court shall be legal and documented.

ARTICLE TWO HUNDRED FORTY-EIGHT

The court issues its decision only on the basis of the evidence that have been gathered, investigated and made available to all parties with an opportunity to be heard during the judicial proceedings. ~~The court issues its decision only on the basis of the evidence that have been gathered and investigated during the judicial proceedings.~~

ARTICLE TWO HUNDRED FORTY-NINE

While issuing the judgment in the consultations chamber only the relevant judicial panel can be present and the presence of others is not allowed.

ARTICLE TWO HUNDRED FIFTY

The judgment of the court shall be issued with the majority opinion of the judicial panel in such order that first the members and then the president shall express their opinions. No member of the judicial panel has the right to decline from giving an opinion.

ARTICLE TWO HUNDRED FIFTY-ONE

If one of the members of the judicial panel does not agree with the opinion of the majority, he/she shall write his/her specific opinion in a separate paper and after the signature and seal attach it to the decision. This opinion is not read in the judicial proceedings.

ARTICLE TWO HUNDRED FIFTY-TWO

It is not allowed to disclose opinions that are expressed by the judges in the consultations room.

ARTICLE TWO HUNDRED FIFTY-THREE

The decision is written by the presiding judge or one of the judges participating in the issuance of the judgment and is then sealed and signed by the judicial panel.

ARTICLE TWO HUNDRED FIFTY-FOUR

The decision consists of the introduction, description, reasoning, conclusion and the text of the judgment.

ARTICLE TWO HUNDRED FIFTY-FIVE

The introductory part of the decision consists of the following issues:

- 1- The name of the setting court, name of the president of the session, judicial members, secretary of the session and the prosecutor, if he is a participant in the session.
- 2- The full introduction of the plaintiff and defendant with the explanation of residence, occupation, duty, place of occupation and work, the citizenship document's number and its place of issue, the introduction of other individuals involved in the case, their attorneys and legal representatives.
- 3- The identification of the type of subject matter of the claim.
- 4- Number, date and place of issue of the decision, date of announcement, number of sheets of the decision and its annexes.

ARTICLE TWO HUNDRED FIFTY-SIX

The descriptive part of the decision consists of the following:

- 1- The facts of the plaintiff's case, the defenses of the defendant and other demands by the parties to the claim.
- 2- Confession or denial.
- 3- Testimony of witnesses, its acceptance or rejection.
- 4- Documents, absolute evidence and circumstantial evidence.
- 5- Oath or retraction.
- 6- A summary of the trial proceedings.

ARTICLE TWO HUNDRED FIFTY-SEVEN

The reasoning part of the decision consists of the following:

- 1- The investigative part of the case in the court.
- 2- The means of proof or rejection and explanation of reasons.
- 3- The reasoning that the court accepts or rejects based on the reasons presented.

ARTICLE TWO HUNDRED FIFTY-EIGHT

The conclusion part of the decision consists of the following:

- 1- Non-existence of proof for the claim
- 2- of the defendant.
- 3- The size of restitution or damages related to the subject of the judgment.
- 4- The expense of the court.

ARTICLE TWO HUNDRED FIFTY-NINE

The text of the judgment (ratio decidendi) consists of the following:

- 1- Mention of the date of the judicial session and the issuance of the judgment with a majority of opinion or with a consensus.

- 2- Reliance on specific reasons with the mention of the article of law.
- 3- Mention of the parties to the claim.
- 4- Determination of the subject of the judgment.
- 5- Dismissal of the claim.
- 6- Abandoning of the claim.
- 7- Non-existence of proof of the claim.
- 8- Obligation of the defendant.

ARTICLE TWO HUNDRED SIXTY

The text of the judgment must be clear and clear of any type of verbal and mental limitation.

ARTICLE TWO HUNDRED SIXTY-ONE

- 1- The court's judgment shall be announced to the parties to the claim without delay after the conclusion of the trial.
- 2- The decision of the court shall be organized, prepared and issued within ten days.

ARTICLE TWO HUNDRED SIXTY-TWO

The judicial panel cannot amend or cancel its decision after the announcement of the judgment in the case.

ARTICLE TWO HUNDRED SIXTY-THREE

The court can in any case correct the typing errors, grammatical errors and numerical errors in the decision. The judicial panel shall correct the mistakes and errors in the decision and sign underneath it.

ARTICLE TWO HUNDRED SIXTY-FOUR

If there is vagueness in the judgment or decision, the court shall, pursuant to the request by the individuals involved in the case, get the judicial panel to explain the vagueness in the judicial session on the condition that the decision has not yet been implemented.

ARTICLE TWO HUNDRED SIXTY-FIVE

1- The court may order the payment of appropriate compensatory damages, litigation expenses including attorney's fees, recovery of profits, and/or payment of pre-established damages as merited.

2- Where a claim involves infringement of an intellectual property right, the court may order the destruction or disposal outside the channels of commerce of infringing goods, or materials used to create them, without compensation to any party. In considering the imposition of such remedies, the court must weigh the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of affected third parties.

3- In case the implementation of final decision requires monetary payment, the court can pursuant to the request of individuals involved in the case and by taking into consideration the determination of the state of wealth of the convicted person or other conditions, prescribe in the text of the judgment that payment be made in installments.

~~4- The court may issue a permanent injunction ordering a party to desist from a violation of a legal right. In case the implementation of final decision requires monetary payment, the court can pursuant to the request of individuals involved in the case and by taking into consideration the determination of the state of wealth of the convicted person or other conditions, prescribe in the text of the judgment that payment be made in installments.~~

ARTICLE TWO HUNDRED SIXTY-SIX

The decision of the court becomes absolute in the following situations:

- 1- The expiry of the time period allowed for complaints without legal excuse.
- 2- Presentation of complaints or objection to the higher court, in case in the proceedings of the case in the higher court a decision of cancellation is not made.

CHAPTER FOURTEEN: RULING OF THE COURT

ARTICLE TWO HUNDRED SIXTY-SEVEN

The ruling of the court is a judicial decision that is not issued on the merits of the claim but rather in relation to the procedures.

Rulings may include decisions ordering that a party wrongfully enjoined or restrained due to abuse of enforcement procedures be paid compensation and expenses by the party who requested such measures. The ruling of the court is a judicial decision that is not issued on the merits of the claim but rather in relation to the procedures.

ARTICLE TWO HUNDRED SIXTY-EIGHT

The ruling of the court is issued by the judicial panel in the consultation room according to the provisions of Article 243 of this Code.

ARTICLE TWO HUNDRED SIXTY-NINE

The court can after consultation with the judicial panel issue a ruling regarding ordinary matters without compliance with the provisions of Article 268 of this Code and record the ruling in the minutes of the court.

ARTICLE TWO HUNDRED SEVENTY

The ruling of the court is announced upon issuance.

ARTICLE TWO HUNDRED SEVENTY-ONE

The ruling of the court consists of the following:

- 1- The date and place of the ruling's issuance.
- 2- The name of the court issuing the ruling, composition of the court and the secretary of the judicial session.
- 3- Individuals involved in the claim of an issue at dispute.
- 4- The issue about which a ruling is issued.
- 5- Reasons and grounds upon which the court has issued its ruling.
- 6- Legal reliance by the court.
- 7- Coming to a conclusion and taking a decision by the judicial panel.
- 8- Specifying the time period for complaints against a ruling that is not legally absolute.

9- Mention of the ruling being absolute in situations where the ruling has been considered final according to the provisions of the law.

PART SIX: MISCILANEOUS RULES

ARTICLE FOUR HUNDRED NINETY

The decisions and rulings of the non-judicial gatherings in civil matters and public rights are not valid.

ARTICLE FOUR HUNDRED NINETY-ONE

Judgment in matters of the Civil Code takes place after the submission of request of the claim.

ARTICLE FOUR HUNDRED NINETY-TWO

The judge cannot transfer to another judge the authority of judgment, unless otherwise provided in the law.

ARTICLE FOUR HUNDRED NINETY-THREE

The judge cannot postpone and delay without legal reason the resolution of cases within his/her authority.

ARTICLE FOUR HUNDRED NINETY-FOUR

The judge is obligated to seriously object to the speech and actions that are judicial probity.

ARTICLE FOUR HUNDRED NINETY-FIVE

The judgment of the judge can be limited, specified and analyzed by taking into account the time, place, issue and event.

ARTICLE FOUR HUNDRED NINETY-SIX

If the subject matter of the claim is a debt or purchase of moveable and immoveable properties, and the defendant has died without leaving any legal heir, the tribunal of the government cases is recognized as the legal successor of the deceased and the court shall adjudicate the issue.

ARTICLE FOUR HUNDRED NINETY-SEVEN

The judge cannot dictate to the plaintiff, defendant and witnesses in any manner.

ARTICLE FOUR HUNDRED NINETY-EIGHT

The judge must, in addition to having complete grasp and understanding of the effective laws of the country and of the rules of the Islamic law, have complete awareness of the general culture, manners and customs of the society.

ARTICLE FOUR HUNDRED NINETY-NINE

The judgment of the court based on the sources of evidence for and against one or some of the heirs is tantamount to a judgment for and against all of the heirs.

ARTICLE FIVE HUNDRED

The court is a venue and not a proving party. The subject matter of a judgment is in fact a fixed matter and the judge expresses it based on the legal and legitimate reasons.

ARTICLE FIVE HUNDRED ONE

In the absence of the clear rules of law, the judgment of the judge are issued according to the fundamental principles of the Islamic law and shall possess the force and strength with regard to the subject matter of the ruling.

ARTICLE FIVE HUNDRED TWO

A minor, insane, idiot, interdicted and absentee cannot directly be a legal adversary.

ARTICLE FIVE HUNDRED THREE

The decisions of the city, municipal, district and sub-district courts that are based on the confession of the plaintiff or defendant or are based on a credible instrument of a ruling issued pursuant to the confession of the plaintiff, defendant and their heirs or a legal waiver cannot be appealed against. The higher court shall decide against the grant of leave for appeal in such cases. Doubtful instruments are exempt from this rule.

ARTICLE FIVE HUNDRED FOUR

The Supreme Court is obligated to enact for the purpose of effective implementation of the rules of this Code special rules and regulations that have been approved by the high council of the Supreme Court regarding conditions for accuracy of the claim.

ARTICLE FIVE HUNDRED FIVE

Decisions of the district and sub-district courts in which the taking of oath or waiver of dropping of oath are the grounds for judgment are subject to the following actions:

1- In case the said decision is overruled in the superior court, the procedures and rules contained in Chapter Four of Part Three of this Code shall be observed.

2- In case the said decision is not overruled in the higher court and the plaintiff demands (the right) to bring witnesses, the tribunal of the provincial court and a court equivalent to it shall refer the case in pursuant to a judicial ruling to the relevant court for proceedings related to the testimony of witnesses.

3- In a court to which a case has been assigned, only the question of presentation of witnesses is recorded in the new claim form (pleading) and the defendant is asked to bring witnesses. The new proceedings of the case for this purpose do not require a new action.

4- The time period allowed for bringing witnesses after the commencement of the new proceedings in the court shall be one month.

5- If the plaintiff brings witnesses and the said witnesses are accepted or rejected, the case must pass through the higher courts in either case.

6- If the plaintiff fails to bring witnesses within one month, the original decision becomes absolute.

7- The legal action in the original court for the purpose of presenting witnesses is considered to be completely the same as the initial decision which cannot be appealed against in the appellate or supreme courts.

ARTICLE FIVE HUNDRED SIX

1. In civil proceedings involving a claim of infringement of exclusive rights in a patented process for obtaining a new product, a product which is identical to the product obtained by the patented process and produced without the patent holder's consent shall, in the absence of proof to the contrary, be presumed to have been obtained by the patented process. The defendant shall bear the burden of proving that the process to obtain the identical product is different from the patented process.

2. The legitimate interests of the defendant in protecting his manufacturing and business secrets shall be respected in implementing this Article.

ARTICLE FIVE HUNDRED SEVEN SIX

This law shall come into force one month after it is published in the official gazette and upon entry into effect of this law, the Code of Administrative Rules of Judicial Courts, dated October 10, 1959, with its attachments, the Rules of Procedure for Legal and Judicial Courts, dated December 2, 1960, Code of Rules for Determination of Time Period for Preliminary Claims and the Hearing of Appeal in the Appellate and Supreme Courts, dated September 17, 1955 with all its appropriate attachments and amendments and the single article of the Procedure for

Administrative Trials, effective as of January 14, 1952 and the rules of other laws of legislative documents that are contrary to the rules contained in this Code are considered overruled.
