

# **Penal procedure and Revolutionary Courts of Komala**

Issued by Komala central committee

March 1985 [Persian: Farvardin 1364]

Internal, method of distribution

## **Chapter One - General**

Article 1 - Komala - Kurdistan communist party of Iran has set up the Komala Revolutionary courts in Kurdistan, in order to establish and administer jurisprudence in that land. In absence of democratically elected courts, Komala Revolutionary courts, carry out their duties.

Article 2- The judges and officers of these courts have been appointed by Komala central committee and are duty bound by the principles, standards, agreements and codes of practice issued by Komala central committee.

Note: At any point when and in whatever capacity that a possibility of a governing body has been realised, Komala [party] will make urgent attempt to form democratic courts, elected by the people in order to assign the duty of jurisprudence in Kurdistan to these authorities and to disband the Revolutionary courts.

Article 3: The only offences investigated for which an order is issued by Komala Revolutionary court would be those offences which have been identified as indictable by penal code issued by Komala Central Committee, for which a specified penalty has been considered.

Note: In cases where a person(s) is being prosecuted due to committing a crime or a social offence which does not fall under a specific penal code, the prosecution is obliged to inform Komala Central Committee and to ask for further advice with this regard.

## **Chapter Two – The Organisation of Komala Revolutionary Courts**

Article 4: Under present circumstances, Komala Revolutionary Courts will be set up under two levels:

a- Komala Regional Revolutionary Courts

b- Komala Central Revolutionary Court

## **Section One – Komala Regional Revolutionary Courts**

Article 5: In order to organise trials and sentencing of criminals in various parts of Kurdistan; courts are set up, called “Komala Regional Revolutionary Courts”.

Article 6: The Revolutionary Court in each region is responsible in dealing with and issuing orders with regards to crimes committed in that region.

Note: Where a region does not have a regional revolutionary court, Komala Central Committee will assign investigation and issuing of orders for offences committed, to another regional court.

Article 7: The main components of a Komala regional revolutionary court are as follows:

- a- Panel of judges [judicature]
- b- Chief justice [Chief Justice]
- c- Prosecutor
- d- Court Clerk

Article 8: Panel of judges which includes the chief justice and two judges is responsible for handling all cases brought before it and passing judgement on these cases.

Article 9: The duty of the Chief Justice in addition to his duties as a judge on the panel of judges includes managing and controlling the works of the court and liaising with higher judicial authorities.

Article 10: The prosecutor of Komala Regional Revolutionary Court is in effect the regional prosecutor. He is responsible for prosecuting and sentencing of criminals and monitoring the execution of the penal code issued by Komala Central Committee, within the jurisdiction of the court.

Note: Each Komala regional revolutionary court has two substitute judges and one substitute prosecutor who will undertake the duties of the judges and the prosecutor in their absence.

## **Section Two – Komala Central Revolutionary Court**

Article 11: Komala’s highest judicial authority is Komala Central Revolutionary Court which has been set up in order to monitor the works of the Komala Regional Revolutionary Courts and has overall control and coordinates justice administration in Kurdistan.

Article 12: Komala Central Revolutionary Court can only deal with cases which have already been dealt with in one of the Komala Regional revolutionary courts, for which a sentence has been passed.

Article 13: All verdicts and sentences passed by Komala Central Revolutionary Court is considered as judicial procedure and all judicial authorities and courts in subordinate levels are obliged to adhere to them.

Note: If a court believes that a verdict or a sentence issued by Komala Central Revolutionary Court has been contrary to the principles, standards and procedures of the Komala Central Committee, the court must report this to the Central Committee and ask for further advice.

Article 14: The main components of the Komala Central Revolutionary Court are as follows:

a- Panel of judges [judicature]

b- Chief justice [Chief Justice]

c- Prosecutor

d- Court Clerk

Article 15: Panel of judges which includes the chief justice and two judges is responsible to deal with issues brought before it which have been challenged by Komala Regional Revolutionary Courts.

Article 16: The duties of Chief Justice for Komala Central Revolutionary Court are the same as those of the Chief Justice from lower level courts in addition to the duty of controlling and coordinating the works of Komala Regional Revolutionary Courts.

Article 17: The prosecutor for Komala Central Revolutionary Court (Komala overall prosecutor) in addition to the prosecution duties within the Central Revolutionary Court is also responsible for controlling and coordinating the regional prosecution work and overseeing the work carried out in Komala prisons and detention centres.

### **Section Three-Legal Representation in Komala Revolutionary Courts**

Article 18: Anyone who has been charged with committing a crime(s), who is on trial in one of the Komala Revolutionary Courts, has the right to seek legal representation in order to present his defence. The person(s) who has/have the responsibility of defence of the defendant is called the attorney or barrister.

Article 19: The requirement for legal representation in Komala Revolutionary Courts does not necessarily have to be provided by specialised professionals and is not compulsory.

Anyone can volunteer to represent an accused and defend him in trials held in Komala Revolutionary Courts.

Article 20: Chief justice is required to serve a notice to the accused, ten [translator's note: the word ten is partially covered by next page] days prior to the start of

the trial, requesting him to introduce his attorney(s) to the court. If an attorney has not been selected and introduced to the court, it will not hinder the court from initiating legal proceedings at the specified time.

Article 21: If the accused or his attorney(s) wish to examine the file prior to the start of the trial, they can submit their request to the court in writing. Chief justice is required to allow them access to the file.

Note: When trials are convened under extra-ordinary circumstances during war, the appointment of attorneys will be on the basis of Article 58.

Article 22: The attorney and barristers in Komala Revolutionary Courts have the freedom to voice their opinions and present their defence and any evidence even if his defence may dismiss the claim of the prosecutor. No one has the right to deprive the attorney or the barrister from this privilege.

### **Chapter Three – Penal procedure and methods of dealing with crime in Komala Regional Revolutionary Courts**

Article 23 - The procedure for dealing with criminal cases in Komala Regional Revolutionary Courts are divided into two types:

a- Legal proceedings under normal circumstances

b- Legal proceedings under extra-ordinary circumstances

Article 24 - The trials held at the Komala revolutionary courts are open court and will be heard in the presence of public spectators.

Article 25- All discussions and court hearing will be minutes by the court clerk and will be recorded in the court minutes register and if possible may be recorded on tape.

C - Legal proceedings under normal circumstances

Article 26 - All criminal cases will be dealt with under normal manner in Komala Regional Revolutionary Courts, except those crimes listed in Article 54 of the same law which will be dealt with according to the standards described in Articles 27 to 52.

## **Section one – Preliminary proceedings and case completion**

Article 27- Any unit or Komala committee which serves the sentence to arrest someone who has committed a crime (s), is required to notify the defendant at least within 24 hours and to report the matter to the prosecution as soon as possible.

Note: The defendant can challenge the arrest warrant, in which case the issuing authority must report the challenged posed by the defendant, to the prosecution.

Article 28- If the prosecutor believes the evidence presented to be sufficient and conclusive to arrest the defendant, he will confirm the arrest warrant and will appoint the authority responsible to complete the investigation and to forward the case for final review. If not, he will withdraw the arrest warrant and will issue the order confirming the release of the defendant.

Note: The prosecutor has the authority to amend the decision of the court to arrest to a bail order or any other appropriate sentence.

Article 29- The investigating authority is required to complete the file within one month of the date when the arrest order was issued and to forward it together with a full report to the regional prosecutor, in order for final review to be carried out.

Article 30- If the investigating authority is unable to complete the investigation and to submit the file to the prosecution, they can extend the time, after obtaining the view of the prosecutor and as a result to continue his investigations. However, this period of time cannot be longer than two months.

Article 31- The prosecutor of the regional revolutionary court is required to submit his final decision within 15 days of receiving the case and the report from the investigation authority, as follows:

a- If it has been proven that the defendant is not guilty of the crime, or if there is insufficient evidence to charge him; to issue an order to his prosecution.

b- If it has been proven that the defendant is guilty of the crime, his charge should be issued and the case should be forwarded to the court to proceed to trial.

Note: If the investigations undertaken have not been conclusive to issue a final order, the prosecutor having identified the weakness in the file, will return the file to be reinvestigated, in order for the weaknesses to be substantiated. The investigation

authority is required to resolve the issues in the case and to return the case to the prosecutor.

Article 32- Regional revolutionary court having received the file will deal with the case during a preliminary hearing. If the investigation undertaken is believed to be sufficient for the

formal hearing and the start of the trial, having arranged the hearing, they also arrange to summon the accused and to serve notice to him and to instruct an attorney and in this case the file will be returned to the prosecution in order for the investigation to be completed.

## **Section Two – Method of delivering justice and court hearings**

Article 33- At the start of the trial, the chief justice will announce that court is in session and will give brief explanations to those present in the court room and familiarise them with the regulations and code of conduct. He will then introduce the panel of judges, the prosecutor, the clerk to the court, the defendant, barrister, private complainants and the witnesses to those present in the hearing.

Article 34- The chief justice will ask the barrister and the defendant whether they accept the competence of the court? If the defendant and his attorney have any objections to the competence of the court, the following will be observed:

a- Before the court deals with the case, it will hear the case against the defence and after that consultation will begin and will make decisions about its competence.

b- If the objections are sustained by the court, the hearing will be suspended and adjourned to a time after the objections have been resolved.

c- If the court overrules the objections, will confirm its competence according to an order and will begin dealing with the details of the case.

Article 35- The chief justice will summon the defendant(s) and will ask them to introduce themselves, he then explains the charge brought against them and will ask whether they accept these charges?

Article 36- The chief justice will allow the prosecutor to call the defendant or defendants to the stand and interrogate them.

Article 37- The defendant or defendants are required to answer to all the questions from the prosecutor. If the attorney or the barrister believes one of the questions or the prosecutor's manner of questioning is not in line with codes

and standards of Komala Revolutionary Courts, they are allowed to object. The chief justice has the authority to decide whether the objection is upheld or not.

Note: This objection is upheld if the prosecutor has stated misleading questions and indirectly and in disguise speaks in a way as though the crime of the defendant(s) have already been established.

Article 38- Following the completion of the prosecutor's questions, the chief justice will allow the attorney or the barrister to cross-examine their clients.

Article 39- During the cross-examination, the prosecutor or the barrister, having obtained permission from the chief justice, are allowed to call on witnesses and to cross-examine them.

Article 40- The chief justice is permitted to call any of the defendants or the witnesses present in court to be cross examined so that matters can become clarified for the court.

Article 41- Any persons present in court having obtained permission from the chief justice can take the witness stand and give his testimony either for or against the defendant or defendants.

Note: A person, who appears in court as a defendant, can only give testimony for or against another defendant in the same hearing, if the other defendant's conviction or innocence has no influence on his own conviction or innocence.

Article 42- During cross examination those present in court can submit written questions and to request the chief justice to ask these from the defendant(s). The chief justice at the end of the cross examination will read out the non-duplicated questions and will ask the defendants to answer to these questions.

Article 43- When cross examination finishes, the chief justice will announce to the prosecutor to submit his indictment against the defendant or defendants to the court. The prosecutor having stated the indictment, will list the charges brought against the defendant and will show its conformity with the penal codes and practices and will request that he is convicted of the offences mentioned.

Article 44- When the prosecutor has completed his speech, the chief justice will ask the defendant or the defendants and later from their barrister whether they wish to present their defence to the court.

Article 45- At the end of the defence of the defendant and the barrister, the chief justice will allow the prosecutor to defend his indictment; he then also allows some of the spectators to speak out as well.

Article 46- At the end the chief justice will allow the defendant or defendants to present their final defence for the court.

Note: The defendant may ask his barrister to present his final defence on his behalf.

Article 47- Following the final defence of the defendant, the chief justice will announce the end of proceedings and the court enters the stage of consultation in order to issue a verdict.

Article 48- During the consultation period, none of the panel of judges must discuss the case with anyone else.

Article 49- The panel of judges must base their verdict on all of the charges brought against the defendant and to give their view on every single charge stated in the indictment.

Article 50- The order of the court must be concise, clear and written. If order has convicted the defendant, then reasons for conviction, its level and type of sentence and its conformity with penal code must be stated. Also the notice and the appeal procedure should be clearly explained.

Article 51- At the end of the consultation hearing and trial, the court reconvenes again and the court verdict is read out by the court clerk.

Article 52- During the hearing [trial] no one is permitted to insult the defendant(s) or to be offensive to him or his barrister. None of those present in court has the permission to interfere in the proceeding, unless otherwise permitted by the chief justice. If anyone causes disruption in the proceedings, the chief justice has the authority to ask them to leave the court. He may even suspend the hearing and announce a recess.

#### **b- Legal proceedings in extra-ordinary manner**

Article 53- Under extreme and extra-ordinary circumstances during a war, when there is no chance for court hearing to convene in the normal manner; Komala Regional Revolutionary Courts can begin legal proceedings by observing procedures listed in Articles 54 through to 60.

Article 54- The offences which can be dealt with under extra-ordinary circumstances are:

- a- Use of weapons in suppression of Kurdistan Revolutionary Movement
- b- Espionage in the interest of Regime of the Islamic Republic.
- c- Assassination and killing of revolutionaries and the communists
- d- Bandit activities and armed robbery
- e- Hoarding of basic food and essential supplies

Article 55- Any Komala unit or organisational body which has arrested someone under extra ordinary and urgent circumstances in a war, for committing offences listed in Article 54, must inform the regional prosecutor and ask what to do next.

Article 56- As soon as regional prosecutor receives such a report, if he believes that the evidence provided has been sufficient to arrest and prosecute the defendant, he will approve the arrest warrant and will inform the regional revolutionary court and asks the court to begin trial and sentencing of the defendant in an extra-ordinary manner.



Article 57- The court, having received the report of the prosecutor will summon the defendant to court, within 48 hours and will arrange legal proceedings as appropriate.

Article 58- Although due to extra ordinary circumstances of war, there is no opportunity to observe the regulations in Articles 21 and 22 with regards to appointing and instructing a barrister (attorney), but nevertheless if the defendant requests and wishes, he may ask one of those present in court to act as his advocate and defend him.

Article 59- Legal proceedings will begin by announcing that court is in session and introducing the panel of judges, prosecutor, the clerk, defendant, attorney, private complainants and the witnesses and will proceed as follows:

1- The chief justice will summon the defendant(s) and having explained their charge will ask them whether they accept the charges brought against them?

2- The prosecutor will submit his indictment to the court and asks the court to issue the order for the conviction of the defendant(s).

3- The chief justice will ask the defendant(s) and his barrister if they wish to present their defence before the court.

4- The chief justice will allow the prosecutor to defend his indictment

5- The chief justice will allow the defendant(s) to present their final defence before the court.

6- The chief justice will announce the end of proceedings and the court will begin consultation to issue a verdict.

Note 1:During the proceedings the chief justice and the panel of judges are permitted to cross examine the defendants and the witnesses present in the hearing as appropriate.

Note 2:During the proceedings if the prosecutor, the defendant or his attorney, introduce witnesses before the court, the chief justice must cross examine these witnesses.

Note 3:All regulations listed in Articles 48, 49, 50, 51, 52 must be observed when dealing with extra ordinary hearings.

Article 60- The sentences passed according to extra ordinary circumstances by Komala regional revolutionary courts is only enforceable after it has been approved by the regional committee and by observing Article 82 to [Translator's note: number obscured by next page].

## **Chapter Four – Appeal against a sentence**

### **Section one – Complain against ordinary sentences**

Article 61- All ordinary sentences passed by Komala Regional Revolutionary Courts may be contested within ten days from when they have been served.

Note: Sentences which have not been contested within ten days of being served are conclusive and enforceable.

Article 62- Ordinary sentences passed Komala Regional Revolutionary Courts may be contested in the following methods:

a- Request for review

b- Request for appeal

c- Retrial

#### **a- Review of ordinary sentences**

Article 63- Ordinary sentences passed by Komala Regional Revolutionary Courts, whereby the penalty involves a maximum of three years imprisonment, according to the regulations of Komala Central Committee, may be reviewed in the Komala Central Revolutionary court.

Article 64- The defendant, his attorney, the prosecutor or the private complainant may object to the sentence within 10 days from sentence being passed, whether directly through the court which issued the sentence, or to present his objection to the Komala Central Revolutionary Court and to request a review of the sentence.

Article 65- Upon receiving the request for review of a case, the court serving a sentence is required to forward the case to the Komala Central Revolutionary Court within one week. Upon receipt of case by Komala Central Revolutionary Court, the court clerk is required to request that their reply bills from the objecting party (prosecutor or the defendant), is submitted to the court within ten days.

Article 66- Following exchange of replies, the court clerk will submit the case to the court for handling. The court will convene an extra ordinary meeting and will deal with the case and will come to a decision in the following manner:

a- Having examined the contents of the case and considered both parties responses, if the evidence in the case is substantiated and a decision can be reached, the court will issue an appropriate sentence.

b- If the evidence in the case is not substantiated in order for a sentence to be issued, or if it has been decided that the defendant, attorney, prosecutor or the witnesses must be

summoned to court to give evidence, an order would be issued to summon the relevant persons and a hearing date will be set.

Note: Sentences contested by the prosecutor, can only be dealt with at the Komala Central Revolutionary Court if Komala's chief prosecutor has approved the request for review of the case.

Article 67- Sentences reviewed by Komala Central Revolutionary Court should clearly show whether accepts or rejects the reasons presented by the person objecting and either approves or disapproves the challenged sentence.

Article 68- Sentences reviewed by Komala Central Revolutionary Court are final and may not be challenged.

### **b- Dealing with appeals**

Article 69- Ordinary sentences issued by Komala Regional Courts where offences have a maximum penalty of more than three years, according to the penal regulation passed by Komala Central Committee, may be appealed in the Komala Central Revolutionary Court.

Article 70- The defendant, his attorney, the prosecutor or the private complainant may object to the sentence issued within ten days after notification and can submit their appeal request directly or through the court which issued the sentence, to the Komala Central Revolutionary Court.

Article 71- Following exchange of reply bills according to Article 65, the case will be forwarded to Komala Central Revolutionary Court for decision making. Upon receipt of the case, the court will assign an officer to deal with the case and to prepare a report.

Article 72- The court will consider the report prepared in a preliminary hearing and will issue an order as to accepting or rejecting the appeal. If the request for appeal has been accepted, a time for hearing will be arranged and the prosecutor of the Komala Central Revolutionary Court will also be invited to attend this hearing.

Note 1:It is not essential for the defendant and his attorney to be present at this session, but if necessary the court can summon the defendant or his attorney to be present at this hearing.

Note 2:If an appeal request has been lodged by the regional prosecutor, the appeal request will only be accepted if it has been approved by the Komala Central Revolutionary Court.

Article 73- In a public court hearing in the presence of chief prosecutor or his representative, initially the chief justice will ask the clerk to read out the sentence which has been appealed against and the appeal request, then the prosecutor is permitted to present his views about the appeal request and its compliance or non-compliance to the published penal standards and codes. If the defendant and / or his attorney are present, they are also given a chance to

present their views to the court. If chief judge or one of the judges believes it to be necessary, they can ask questions from the prosecutor, defendant and his barrister. Then, chief justice will announce the end of the hearing and the court begins consulting in order to issue a sentence.

Article 74- The court in the consultation hearing, in addition to dealing with the reasons for appeal, will also look at the manner the proceedings were carried out and if the legal standards and principles were observed according to the published rules and regulations issued by Komala Central Committee, they will approve it, otherwise according to Articles 75 and 76 of the same law they will decide about it.

Article 75- If there is discrepancy between the sentence and the principles and standards, but this does not create a change in the nature of the offence or in

the penalty for the defendant, or if the discrepancy is due to a wrong and incorrect conclusion reached by the magistrates with regards to the principles and regulations, however, it is possible to amend the sentence without a need for a retrial, Komala Central Revolutionary Court may issue an amendment to the sentence and to reject the incorrect points and to approve the correct points of the sentence.

Article 76- If there is discrepancy between the sentence and the principles and standards, but this changed the nature of the offence or the penalty for the defendant, or that it has facilitated the conviction of innocent person(s) or that it has wrongly acquitted a criminal(s), the court can reverse the sentence and the case can be forwarded to another court for reinvestigation which can be referred to the initial court.

Note: The court responsible for retrial, must observe all principles and regulations with regards to legal proceedings and convening court hearings.

Article 77- The sentences issued in the second tier, may be appealed against in the Komala Central Revolutionary Court. If the sentence is rejected in the second tier court proceedings, Komala Central Revolutionary Court will clarify the specific points and actions which must be followed in the retrial and will require the third tier proceeding to be undertaken.

### **c- Retrial**

Article 78- The final orders issued by Komala Revolutionary Courts can be submitted for retrial under the following circumstances:

a- If after finality and before or during the execution of the order, Komala Central revolutionary Court has access to new evidence which will adversely affect the fate of the accused.

b- If the defendant or his attorney having presented new evidence and as a result has requested a retrial from Komala Central revolutionary Court and the request has been accepted.

Article 79- In cases where the request for retrial is with regards to a sentence which can only be enforced by Komala Central Committee, Komala Central revolutionary Court, can approve the retrial and can also ask the Komala Central Committee to issue an order to suspend the sentence and then the case can be referred to the court which issued the order, for further investigation.

## **Section Two – Complaining against extra ordinary sentences**

Article 80- Extra ordinary orders issued by Komala Regional Revolutionary Courts can be contested in the regional committees where the offence was committed:

1- If the prosecutor or the defendant objects to the issued order, the court must report the complaint of the defendant together with a summary of the order which has been the subject of protest, to the regional committee.

2- The regional committee, upon receiving the report will deal with the order which has been subject of protest in an extra ordinary meeting and will reach a decision in the following manner:

a- If the order complies with published principles and standards, having rejected the complaint of the complainant, the order which has been subject of protest will be approved.

b- Otherwise, action will be taken to reverse the order and arrange for the case to be reinvestigated.

Article 81- The extra ordinary orders from Komala Regional Revolutionary Courts which have been reversed by the Regional Committee, will be reconsidered according to regulations and standards of ordinary proceedings.

## **Chapter Five – Execution of orders**

Article 82- the penalties issued by Komala Revolutionary Courts (except for execution), after they are conclusively proven by the issuing court or following approval by the Komala Central Revolutionary Court is enforceable.

Note 1: The approval authority for extra ordinary orders passed by Komala Revolutionary Courts and their enforcement (except for execution), is the regional committee where the offence was committed.

Note2: Penalty of execution is only enforceable by Komala Central Committee.

Note 3: the prosecutor for the court issuing the order is responsible for the execution of the order.

Article 83- If a person has been sentenced to several counts, the highest penalty will be enforceable.

Article 84- Komala judicial authorities are required to inform the public about the orders issued by Komala Revolutionary Courts.

### **Chapter Six – Remittal, Reduction of sentence and suspended sentences**

Article 85- Remittal, Reduction of sentence and suspended sentences which have been conclusively issued in Komala Revolutionary Courts can only be given at the discretion of the Komala Central Committee.

Komala Central Committee - March 1985 [Persian: Farvardin 1364]