

ISSUES RELATED WITH

DOMINICAN REPUBLIC

JUAN JOSE DIAZ GRANADOS © 2012

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I) DOMINICAN REPUBLIC'S CRIMINAL PROCEDURE

**AN OVERVIEW OF THE DOMINICAN
REPUBLIC'S CRIMINAL PROCESS**

A) Introduction

The Dominican Republic's Criminal Procedure is established in the New Criminal Procedure Code (Act 76-02), hereafter NCPC.

In Dominican Republic the beginning of the criminal process may arise of three different actions (articles 29 to 33 NCPC):

- 1) Public Action,
- 2) Private Action; or
- 3) Mixed Action

1) Public Action:

Public action is the obligatory action that the prosecutor has to execute in cases of notorious harmfulness of collective legal interests (or collective juridical goods). The corruption cases are typical offenses of public action in which the prosecutor can and should by legal obligation execute the criminal action.

2) Private Action

Private action is the action in which the prosecutor is not involved. It is based on the filing of a direct complaint by a particular when a personal interest is presumably affected. Under the NCPC the personal interests that could be affected are:

- ⦿ Violation of private property
- ⦿ Violation of Intellectual property
- ⦿ Violation of the Check Act
- ⦿ Libel and slander

3) Mixed Action

Mixed action is a public action that depends on a private instance in order to start the action. Therefore, the prosecutor is only entitled to exercise the action with the intervention of a particular. Proceeds in the following cases:

- ⦿ Patently unlawful conduct (de facto conduct or “vía de hecho”)
- ⦿ Battery not qualified as murder
- ⦿ Threat, except if it is made against public officials in their exercise
- ⦿ Robbery without violence
- ⦿ Scam
- ⦿ Breach of trust
- ⦿ Work done and unpaid or revelation of secrets
- ⦿ Forgery of private document

B) Stages of the Criminal Process

1) PREPARATORY PROCEDURE (Articles 259 to 261 NCPC):

It aims to determine the existence of grounds for the opening of trial by collecting the evidence that allows the Public Ministry (prosecutor) or the complainant to do the accusation.

2) PRELIMINARY HEARING (Articles 298 to 303 NCPC):

In this hearing will be discussed all matters relating to the relevance of the opening of trial by the discussion of the evidence presented and any other circumstances that could determine the existence of guiltiness.

The judge will issue an order for opening the trial alleging that the accusation has sufficient merits to justify the likelihood of a conviction.

3) TRIAL (Articles 305 to 353 NCPC):

The principles under which the trial is conducted are the following:



a) Freedom of the accused and restrictions on their mobility: The accused appear free but the court may order his custody to prevent evasion or the occurrence of violence (article 306).

b) Immediacy: the trial is held with the continued presence of the judges and the parties.

c) Public Trial: The trial is public unless the court, due to its own motion or due to a request of one of the parties, decides through resolution that the trial has to take place wholly or partially behind closed doors (article 308).

d) Participation of the Media: The media can install in the courtroom technical equipment for the purpose of informing the public about the trial (article 309).

e) Access restrictions: It is prohibited to enter the courtroom under the age of twelve years, unless an adult responsible for the minor accompanies them (article 310).

f) Oral Trial. The trial is oral. The practice of evidence and, in general, any intervention by those involved in it is done orally (article 311).

g) Direction of the Debate: Chief Justice will lead the debate (article 313).

h) Duties of the attendees. Those attending the hearing must keep the proper respect (article 314).

i) Continuity and suspension. The debate takes place continuously in a single day. In cases where this is not possible the debate continues in the consecutive days that may be necessary to the completion of the debate.

4) DELIBERATION AND JUDGEMENT (Articles 332 to 353 NCPC):

When the debate is closed the judges retire immediately and without interruption to deliberate in secret session. In this stage the judges finally decide the result of the process (the judgment).

C) Devices of Review of the Decision

Any court decision can be reviewable under the Criminal Procedural of Dominican Republic. The code establishes several devices of review that are applicable under different conditions and before courts of different hierarchy. The devices are (Articles 393 to 435 NCPC):

a) OPPOSITION DEVICE ("RECURSO DE OPOSICIÓN"):

The opposition proceeds only against the decisions that resolve steps or parts of the process, so that the judge or court that made those decisions have to review again the issue and make one more time the pertinent decision, modifying, revoking or upholding the disputed decision.

b) APPEAL DEVICE (“RECURSO DE APELACIÓN”):

The decisions of the judge of peace (“juez de paz”) and the judge of the instruction (“juez de la instrucción”) that are expressly stated by the NCPC are appealable before the Court of Appeal. The NCPC provides that the appeal device is allowed against the judgment of acquittal or conviction and it can only be based in:

- 1) The violation of rules concerning orality, immediacy, contradiction, concentration and publicity of the trial.
- 2) The lack, self-contradiction or illogicality in the motivation of the judgment, or when it is based on evidence obtained illegally or incorporated in violation of the principles of trial.
- 3) The breach or omission of substantial forms of the acts that cause helplessness.
- 4) The violation of the law for non-compliance or incorrect application of that law.

c) “CASACIÓN” DEVICE

Is an appeal of the appeal. The “casación” device is allowed against the decisions of the Court of Appeal, the decisions that put end the proceeding, and the decisions that deny the extinction or suspension of the punishment. The “casación” device proceeds exclusively by the failure or incorrect application of legal provisions, constitutional provisions, or those provisions contained in international treaties on human rights in the following cases:

1) When in the judgment of conviction is imposed a punishment of imprisonment exceeding ten years.

2) When the judgment of the Court of Appeal is inconsistent with an earlier judgment of that court or the Supreme Court of Justice.

3) When the judgment is manifestly unfounded.

4) When there are present the reasons of the Revision Device.

d) REVIEW DEVICE (“RECURSO DE REVISIÓN”):

Review device may be sought against the final judgment of any jurisdiction, as long as it favors the condemned, in the following cases:

- 1) When, after a conviction for the murder of a person and after the time of its presumed death, the existence of this person is proven by evidence.
- 2) When two or more persons are suffering punishment by the same felony by reason of conflicting judgments when that felony could not be committed for more than one person.

3) When the testimonial or documentary evidence with base in which the judgment was based is declared false in a subsequent judgment.

4) When, after a conviction occurs or is revealed any fact or any document which was not know in the debates, as long as by its own nature proves the inexistence of the fact.

5) When the conviction was issued as a result of malfeasance or corruption of one or more judges, which existence is declared by final judgment.

6) When a criminal act is enacted to remove the character of punishable to the conduct or correspond to apply a more lenient criminal law.

7) When there is a reversal of precedent in the decisions of the Supreme Court favoring the condemned.

D) Courts before which
these devices can be used
(Articles 69 to 77 NCPC):

1) The Supreme Court of Justice (“Suprema Corte de Justicia”):

This is the highest court of the judiciary in the Dominican Republic. It is responsible for hearing:

- a) The “casación” device.
- b) The review device.

c) Of the procedure related to conflicts of jurisdiction between courts of appeal or between judges or courts of different judicial departments.

d) Of the disqualification of judges of the court of appeal.

e) Of the complaints of procedural delay or denial of justice against the courts of appeal.

f) Of the request procedure of extradition.

2) Courts of Appeal (“Cortes de Apelación”)

These courts are responsible for hearing:

- a) Of the appeal device.
- b) Conflicts of competence within their jurisdiction except those belonging to the Supreme Court.
- c) Of the disqualifications of the judges.

d) Of the complaints of procedural delay or denial of justice.

e) Of the criminal proceedings against trial judges (“jueces de primera instancia”), judges of investigation (“jueces de la instrucción”), criminal enforcement judges (“jueces de ejecución penal”), judges of the court of original jurisdiction of land (“jueces de jurisdicción original del tribunal de tierras), prosecutors (“procuradores fiscales”) and provincial governors (“gobernadores provinciales”).

3) Trial Judges (“Jueces de Primera Instancia”)

The trial judges known in an unipersonal way the trials for offenses involving monetary penalties or imprisonment with a maximum of two years of punishment. They also have jurisdiction in an unipersonal way under habeas corpus actions and private action offenses. For cases whose maximum term of imprisonment is provided for more than two years the court is composed of three trial judges.

4) Judges of Investigation ("Jueces de la Instrucción")

Judges of investigation have to resolve all issues in which the law requires the intervention of a judge during the preparatory process, to direct the preliminary hearing, to issue the relevant resolutions and to give judgment pursuant to the rules of summary procedure ("procedimiento abreviado").

5) Criminal Enforcement Judges (“Jueces de Ejecución Penal”)

Criminal enforcement judges are responsible for controlling the execution of the judgments, of the conditional suspension of proceeding, of the argumentation and resolution of all issues arising on the execution of the judgment.

6) Judges of Peace (“Jueces de Paz”)

The judges of peace have jurisdiction to hear and determine:

- a) The trial for minor offenses.
- b) The trial for offenses relating to the transit of motor vehicles.
- c) The trial for offenses relating to municipal affairs.
- d) The control of the investigation in cases that cannot be delayed and it is not possible to achieve the immediate intervention of the competent judge of investigation.
- e) In the request of coercive measures in cases that cannot be delayed and it is not possible to achieve the immediate intervention of the judge of investigation.
- f) Of other offenses whose knowledge and judgment are attributed to the judges of peace by special laws.

II) DOMINICAN REPUBLIC'S CIVIL PROCEDURE

The settlement of civil and commercial disputes is in charge of the ordinary courts or, by joint decision of the litigants may be subjected to alternative mechanisms of conflict resolution such as arbitration and mediation. The civil code, civil procedure code and complementary legislation is the applicable law in this regard in the Dominican Republic.

In the majority of cases, the conflict begins with the notification of the claim, by act of the officer, summoning the defendant to appear in court. At trial the parties appear through their lawyers. Usually held two or three hearings to produce documentary evidence and deposition, or expert witness. Later the lawyers present written to the judge supporting their respective claims. The statement of the case and the judgment might take between 8 and 10 months.

The above procedure is repeated in another judgment before the appeal in court, during which normally are suspended the effects of the trial. The parties may seek a second appeal, called “recurso de casación” (another device of review), of the court decisions before the Supreme Court of Justice of Dominican Republic.

In the Dominican Republic, the solution of a civil case through final judgment, including all the possible devices of review, may take between 2 and 4 years. The losing party bears the cost of the procedure.

III) CARICOM AND DOMINICAN REPUBLIC

The “Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy” (2001) does not establish the Dominican Republic as a member of the community (article 3).

However, (1) the Dominican Republic has applied for CARICOM membership; and (2) there is a Free Trade Agreement dated on August 22, 1998 between CARICOM and the Dominican Republic. This agreement entered into force provisionally on December 1st, 2001.

**IV) CARIBBEAN COURT OF
JUSTICE (CCJ) AND
DOMINICAN REPUBLIC**

Currently, the CCJ does not have any impact in the Dominican Republic's court system. However, to have the CCJ as part of the court system is an important issue to accept Dominican Republic as a member state of the CARICOM.

**V) ALTERNATIVE DISPUTE
RESOLUTION**

The methods of alternative dispute resolution comprise a set of procedures to administer justice, focusing on the settlement of disputes by means other than the judicial or ordinary. It is also known as a system of private justice, founded on the consent of the parties. In the Dominican Republic, these methods have experienced a real boom in the last decade, especially in the forum that is managed by the Chambers of Commerce and Production (“Cámaras de Comercio y Producción”) of the major cities.

There are three different methods of alternative dispute resolution in Dominican Republic:

a) Mediation

For the Dominican doctrine, mediation is the process through which a third party intervenes as a facilitator to encourage settlement of disagreements between parties, providing information exchange and communication scenario between them, in order to explore possible solutions that could lead to an acceptable compromise, but without proposing a decision for himself.

b) Conciliation (“Conciliación)

Conciliation is defined as a method by which a neutral and impartial third party facilitates communication between parties involved in a dispute, proposing ways of solving them, which may or may not be accepted.

The conciliation can be a preliminary requirement established as a condition of admissibility for claims in certain matters, prior to access to the courts. Such is the case of the Act 173, about protection of agents importers of goods and products, and the Labor Code, which establishes a entire process of conciliation in the first degree.

c) Arbitration

Arbitration is the method of alternative dispute resolution in which two or more persons agree to submit any dispute arising out of a relationship between them to a third party that could be an arbitrator or an arbitral tribunal, whose decision will be made under law or in equity, outside of the ordinary courts.

The law that governs this matter is the following: (1) Articles 332 and 631 of the Commercial Code; (2) Articles 15, 16 and 17 of the Act 50-87 on Chambers of Commerce and Production; and (3) the new commercial arbitration act (Act 489-08).

New Commercial Arbitration Act:

The Commercial Arbitration Act applies to both domestic and international arbitrations regarding subjects of free disposition. Therefore, this arbitration does not apply to the civil status of persons, alimony, shelter and clothing, separation between husband and wife, guardianships, minors and interdicted persons or absent.

In compliance with the rules of procedure, arbitration can be Ad-Hoc or Institutional, i.e. the parties may agree on the rules of procedure applicable to the solution of their dispute or rely in the rules of a institution

Act 50-87:

The Act 50-87 on Chambers of Commerce and Production includes a special title for alternative dispute resolution within the respective jurisdictions of the Chambers of Commerce and Production, with the creation of a forum dedicated to the management of processes of disputes resolution that arising between two or more natural or legal persons, members of the Chambers, which have agreed to submit the resolution of those disputes to the methods and regulations of the Chamber concerned.

To submit to the jurisdiction of this forum, it is necessary an arbitration provision. The forum can also host international disputes, whether the parties have so agreed or as an institution delegated to Dominican Republic from international disputes resolution. The awards made under this Act are enforceable by themselves, are final and not subject to appeal, except the main action for annulment (“acción principal de nulidad”) admissible in cases restrictively provided for by law.

VI) LEGAL AID

The Legal Aid in Dominican Republic is provided by the National Office of Public Defense (“Oficina Nacional de Defensa Pública”).

The article 176 of the Dominican Republic Constitution establish that the Public Defense Service is an agency of the justice system endowed with administrative and functional autonomy, which is designed to ensure the effective protection of the fundamental right of defense in the different areas of competence. The Public Defense Service will be offered throughout the country according to the criteria of free, easy access, equity, efficiency and quality for those persons that by any reason are not assisted by counsel. The Public Defender Act will govern the operation of this institution.

That Act is the Act 277-04 (Act of the National Service of Public Defense).

The article 5 of this Act says: “The public defense service is free for all those who have no means to hire a lawyer. The National Council of Public Defense will determine through regulations the mechanisms, criteria and fees applicable to the solvent people who require the service.”

VII) EDUCATION

The normal educative process in Dominican Republic is the following:

School:

a) Elementary School (“Escuela Primaria”): This stage goes from first (1st) grade through sixth (6th) grade.

b) Intermediate School (“Escuela Intermedia”): This stage goes from seventh (7th) grade through eight (8th) grade.

c) High School (“Bachillerato” o “Escuela Secundaria”): This stage start again from first (1st) year through fourth (4th) year. In order to graduate of high school the student has to pass the National Tests (“Pruebas Nacionales”). Once the student has approved this tests can be admitted to the university.

University: The entire career of law lasts four (4) years.

There are not special citizenship requirements or limitations to study in Dominican Republic mainly because it would violate the Dominican Republic Constitution, which establishes (1) in its article 25, that foreigners have the same rights and duties as nationals, and (2) in its article 62, that everyone has the right to a comprehensive, quality and permanent education, with equal opportunities, without other limitations than those derived from their aptitudes, vocation and aspirations.

In order to practice any career in the Dominican Republic by a non-citizen is necessary the revalidation of the university title (“revalidación del título”). This process is made by the “Universidad Autónoma de Santo Domingo”. The article 33’s paragraph of the Act 139-01 of Superior Education, Science and Technology gives this power (“Ley 139-01 de Educación Superior, Ciencia y Tecnología). This paragraph establishes: “The process of revalidation of qualifications awarded by foreign universities, is a prerogative of the Dominican State through its public education institution (...).”

Therefore, the “Universidad Autónoma de Santo Domingo” has a department within the Faculty Vice Presidency (“Vicerrectoría Docente”) in charge of the recognition and revalidation of professional titles to graduates of national and international universities of higher education, and validation of subjects of previous studies or careers in universities or higher education institutions nationally and internationally.

All the requirements and general aspects of this process are set in the Resolution No. 2005-250, d/f 25/08/05, of the University Council.

SOURCES

- ⦿ Dominican Republic New Criminal Procedure Code (Act 76-02)
- ⦿ Commercial Code
- ⦿ Act 50-87
- ⦿ Act 489-08
- ⦿ Dominican Republic Constitution
- ⦿ Act 277-04
- ⦿ Act 139-01

- Article: “The new Criminal Procedure Code and its implications in the process of prosecution of corruption in public administration in the Dominican Republic” (“El Nuevo Código Procesal Penal y sus implicaciones en el proceso de persecución judicial de los casos de corrupción en la Administración Pública en República Dominicana”) written by Sigilfrido Alberto Caamaño García
- http://www.pciudadana.org/documentos/publicaciones/13/42_Nuevo_Codigo_Procesal_Penal.pdf
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