

**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 a court is otherwise ordered by the court.

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 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

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 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 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 will be modified, revoked or confirmed shall take place upon request of the defendant. The court shall issue a judicial ruling regarding an emerging

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 disp

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

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.

- 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

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~~

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

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

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.
