

# 控訴原則之思辨

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## 摘要

審判程序源於案件之繫屬，因案件的起、承、轉、合所生之訴訟繫屬關係，皆為不告不理之「告」的範圍，須具備特定原因，經由法定程序，訴訟關係始能消滅。

當有複數犯罪事實存在之時，因固於實體法上有關罪數概念之應用，以審理情形，向前審視原起訴效力所及之範圍，並以此界定法院之審理範圍。然而在連續犯與牽連犯廢除之後，是否仍有維持刑事訴訟法第 267 條之必要，應為整合性之檢討。

建議將刑事訴訟法第 267 條規定予以刪除，並改以訴訟繫屬之形成關係，來界定審判之範圍。若無新增犯罪事證之情況，即不應與訴訟繫屬當時於訴狀所載事實，而為不同的認定，以回歸控訴原則之不告不理的本然意義。當因有新增事證，而為原審審理範圍所不能及時，因此所生評價不完足之關係，則應透過救濟制度加以補足、更正。

## A Reflection on the Principle of Accusation

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### Abstract

A criminal trial starts when someone is charged with a criminal offense. If it has specific reasons, the suit pending can only be dismissed through legal procedures.

Constrained to quantity of crimes in the substantive law, when there are one or several offenses with plural facts in the case, the quantity of offenses and effective scope of prosecution are determined by the trial. After the abolition of implicated offense and continuous offense, the necessity of Criminal Procedure Law Article 267 should be reviewed.

We suggest that the Criminal Procedure Law Article 267 should be deleted. The trial scope can be defined by the pending litigation. The trial scope should not be different from that of the complaint claim, if there are no new facts or no evidence found, or no law applied wrong in procedures. When there is a new fact found or new evidence existed in a crime case that the court cannot judge at once, the case should be corrected through the appeal system.