REPUBLIC OF MONTENEGRO

CRIMINAL PROCEDURE CODE

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Part One

GENERAL PROVISIONS

Chapter I

GENERAL PRINCIPLES

Subject and purpose of the Code

Article 1

The present Code sets forth the rules, which are to guarantee that no innocent person be convicted and that a criminal sanction be imposed on a criminal offender under the conditions provided for in the Criminal Code and on the basis of the legally prescribed proceedings.

Principle of legality

Article 2

(1) A criminal sanction may be imposed on the perpetrator only by the competent Court in the proceedings initiated and conducted in compliance with the present Code.

(2) Freedom and other rights of the defendant can be limited prior to the rendering of the final Court verdict, only under the conditions set forth in the present Code.

Presumption of innocence and *in dubio pro reo*

Article 3

(1) A person shall be considered innocent of a crime until guilt has been established by the final verdict.

(2) State authorities, media, associations of citizens, public figures and other persons are obliged to respect the principle referred to in Paragraph 1 of the present Code and not to violate other procedural rules, rights of the defendant and the injured party and the principle of independence of judiciary by their public statements regarding the criminal proceedings that is in progress.

(3) A suspicion with respect to the existence of facts composing characteristics of a criminal offence or on which depends an application of certain provisions of criminal legislation shall be decided by the Court verdict and in a manner that is the most favourable for the accused.

Rights of a suspect i.e. defendant

Article 4

(1) The suspect, on his first questioning, must be informed about the criminal offence he is charged with and of the grounds for suspicion against him.

(2) The suspect must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him and to present all facts and evidence in his favour.

(3) The suspect i.e. defendant shall not be bound to present his defence or answer the questions posed to him.

Rights of a detained person

Article 5

(1) A person deprived of liberty must, in his native or any other language that he understands, be immediately informed about reasons for his apprehension and, on the same time, instructed on the fact that he is not bound to make a statement, on his right to a defence attorney of his own choice as well as on his right to demand that his family be informed about his deprivation of liberty.

(2) A person deprived of liberty without Court decision shall be brought immediately before the competent investigative judge unless otherwise prescribed by the present Code.

Ne bis in idem

Article 6

No person shall be tried again for the criminal offence he has already been convicted or acquitted of by a final Court verdict unless otherwise laid down by the present Code.

Language and alphabet

Article 7

(1) In criminal proceedings, the language in the official use shall be the one prescribed by the Constitution as the official language of Montenegro. Cyrillic and Latin alphabets shall be in equal official use.

(2) In the Courts having jurisdiction over the territory in which the majority or a substantial number of inhabitants consists of the members of national minorities, their respective languages and alphabets shall be in the official use in criminal proceedings in accordance with law.

Article 8

(1) The criminal proceedings shall be conducted in the language that is in the official use in the Court.

(2) The parties, witnesses and other participants in the proceedings shall have the right to use their own language. If the proceedings are conducted in the language those persons do not understand, provision shall be made for an interpretation of statements and the translation of documents and other written evidence.

(3) The person referred to in Paragraph 2 of this Article shall be instructed on his right to interpretation, and he may waive such right if he understands the language in which the proceedings are being conducted. A note shall be made in the record that the participant has been so informed, and his response thereto shall also be noted.

(4) Interpretation shall be performed by Court interpreter.

Article 9

(1) Law suit, appeals and other papers shall be submitted to the Court in the language that is in the official use in the Court.

(2) A foreigner deprived of liberty may submit papers to the Court in his language.

Article 10

(1) The Court shall issue summonses, decisions and other papers in the language that is in the official use in the Court.

(2) If the language of a national minority is also in the official use in the Court, the Court shall issue summons, decisions and other papers in that language to the persons belonging to respective national minority if they have used that language in the course of the proceedings. Those persons may request that summons, decisions and other papers are issued in the language in which the proceedings are conducted.

(3) A defendant in detention, a person serving a sentence or a person against whom a security measure in the medical institution is being applied, shall also receive a translation of the documents referred to in Paragraph 1 of this Article in the language used by this person during the proceedings.

Communication between Courts of law in the language that is in official use

Article 11

The correspondence and a legal assistance between Courts shall be carried out in a language that is in the official use in the respective Courts. If a document is in the language of a national minority, a translation into the official language shall be attached if the document is delivered to the Court in which that language is not in the official use.

Prohibition of use of force and extortion of a confession

Article 12

(1) The use of force against a person who has been detained or whose freedom has been limited and extortion of a confession or statement from the defendant or any other person participating in the proceedings shall be forbidden and punishable.

(2) No Court decision shall be based on any confession or other statement obtained by extortion, torture, humiliating and degrading treatment.

Right to defence

Article 13

(1) The defendant shall have the right to present his defence or defend himself with the professional aid of a defence attorney of his own choice from among the members of the Bar.

(2) On his questioning the defendant shall have the right to have a defence attorney present.

(3) Prior to first interrogation the defendant shall be instructed on his right to have a defence attorney and that a defence attorney may be present during his interrogation. The defendant shall be warned that everything he states may be used as evidence against him.

(4) If the defendant does not retain a defence attorney by himself, the Court shall appoint a defence attorney to the defendant according to the provisions of the present Code.

(5) The defendant must be given adequate time and facilities to prepare his defence.

6) The suspect shall have the right to defence attorney in accordance with the present Code.

Right to compensation of damage and rehabilitation

Article 14

A person who has been unjustifiably convicted of a criminal offence or deprived of freedom without grounds shall have the right to rehabilitation, compensation for damages from the State, as well as other rights as stipulated by the law.

Instruction on the rights of a defendant or other participant in the proceedings

Article 15

The Court and other state authorities participating in the proceedings shall instruct the suspect i.e. defendant or other participant in the proceedings, who is likely to omit to perform an action or fail to exercise his rights due to ignorance, on the rights he is entitled to pursuant to provisions of the present Code as well as of the consequences of the omission thereof.

Right to a trial without delay

Article 16

(1) The defendant shall have the right to be brought before the Court in the shortest possible time and to be tried without delay.

(2) The Court shall be bound to conduct the proceedings without delay and to prevent any abuse of any participant in the criminal proceedings.

(3) The duration of detention must be reduced to the shortest necessary time.

Principle of truth

Article 17

(1) The Court and state authorities participating in the criminal proceedings shall be bound to establish all facts relevant to render a lawful decision truthfully and completely.

(2) The Court and state authorities shall be bound to examine and determine with equal attention facts that incriminate the defendant, as well as those that are in his favour.

Free evaluation of evidence and legally invalid evidence

Article 18

(1) The right of the Court and state authorities participating in the criminal proceedings to evaluate the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules.

(2) The Court's decisions may not be founded on evidence that are either themselves or by the manner they have been obtained in contradiction with the provisions of the present Code, other law, the Constitution or international law.

Accusatory rule

Article 19

(1) Criminal proceedings shall be initiated upon the request of an authorised Prosecutor.

(2) In cases involving criminal offences that are prosecuted *ex officio*, the authorised Prosecutor shall be the State Prosecutor, and in cases involving criminal offences prosecuted upon a private complaint, the authorised Prosecutor shall be a private Prosecutor.

(3) If the State Prosecutor determines that there are no grounds for the institution or continuation of the criminal proceedings, the injured party acting as a subsidiary Prosecutor may assume his role, under the provisions of the present Code.

Rule of legality of criminal prosecution

Article 20

Unless otherwise prescribed by the present Code, the State Prosecutor shall be bound to initiate prosecution when there is a reasonable suspicion that a certain person has committed the criminal offence that is prosecuted *ex officio*.

Court Panel

Article 21

(1) In the criminal proceedings the Courts of law shall adjudicate in a Panel.

(2) An individual judge of the first instance Court shall try all the cases when provided for in the present Code.

Consequences of initiation of criminal proceedings

Article 22

When it is prescribed that the initiation of criminal proceedings entails the restriction of certain rights, such restrictions, unless the present Code specifies otherwise, shall commence when the indictment entered into force. And for the criminal offences for which the principal penalty prescribed is a fine or imprisonment up to three years, those consequences shall commence as of the day the guilty verdict is rendered, regardless of whether the verdict has become final.

Chapter II

JURISDICTION OF COURTS

1. JURISDICTION AS TO SUBJECT MATTER AND COMPOSITION OF THE COURT

Subject matter jurisdiction

Article 23

The Courts shall adjudicate within the limits of their subject matter jurisdiction prescribed by law.

Composition of the Courts

Article 24

(1) Unless otherwise prescribed by the present Code, the first instance Courts shall adjudicate in a Panel composed of two judges and three lay judges when considering criminal offences punishable by imprisonment for a term of fifteen years or more severe punishment, and in a Panel composed of one judge and two lay judges when considering criminal offences punishable by less severe punishment. A single judge shall adjudicate in the first instance Court when special provisions on summary proceedings are applicable.

(2) Unless otherwise prescribed by the present Code, the second instance Courts shall adjudicate in a Panel composed of five judges when considering criminal offences punishable by imprisonment for a term of fifteen years or more severe punishment and in a Panel composed of three judges when considering criminal offences punishable by a lenient punishment. When adjudicating at a trial at second instance, the Court shall sit in a Panel of two judges and three lay judges.

(3) The third instance Courts shall adjudicate in a Panel composed of five judges.

(4) The investigative judge of the first instance Court shall perform investigation.

(5) The President of the Court and the Chair of the Panel shall decide on cases prescribed by the present Code.

(6) The first instance Courts, adjudicating in a Panel composed of three judges shall decide on appeals against rulings of the investigative judge and other rulings if so prescribed by the present Code, render decisions in the first instance out of trial, conduct the proceedings and render a verdict on the request for execution of a verdict of a foreign Court, and make proposals in cases set forth in the present Code or other law.

(7) When deciding on a request for extraordinary mitigation of punishment, the Court shall adjudicate in a Panel composed of five judges when considering criminal offences for which the Criminal Code prescribes a punishment of imprisonment for a term of fifteen years or more severe punishment, and in a Panel composed of three judges when considering criminal offences punishable by less severe punishment and when it decides on a request for the review of legality of a final verdict.

(8) When deciding on a motion for protection of legality the Court shall adjudicate in a Panel composed of five judges.

(9) Unless otherwise prescribed by the present Code, higher Courts shall also adjudicate in a Panel composed of three judges when they decide on cases not specified in the preceding paragraphs of the present Article.

2. TERRITORIAL JURISDICTION

Article 25

(1) As a rule, the Court within whose territory criminal offence was committed or attempted shall be competent as to place to try the case.

(2) A private complaint can be filed with the Court within the territory of which the defendant has a permanent or a temporary residence.

(3) If the criminal offence is committed or attempted within the territory of several Courts or on their border, or if it is uncertain within which territory the offence has been committed or attempted, the Court which on the request of the authorised Prosecutor has first instituted the proceedings shall have jurisdiction, and if the proceedings has not yet been instituted - the Court to which the request for commencement of the proceedings were first submitted shall have jurisdiction.

Territorial Jurisdiction in the case of an offence committed on a national vessel or aircraft

Article 26

If the offence is committed on a national vessel or aircraft while it was in a home port or airport, the competent Court shall be the one whose territory includes that port or airport. In other cases where a criminal offence has been committed on a national vessel or aircraft, the competent Court shall be the court whose territory includes the home port of a vessel or home airport of the aircraft or domestic port or airport where the vessel or aircraft first time stops.

Territorial jurisdiction for an offence committed by means of media

Article 27

(1) If the criminal offence is committed by means of press, the competent Court shall be the one within whose territory the paper was printed. If this location is unknown or if the paper was printed abroad, the competent Court shall be the one within whose territory printed paper was distributed.

(2) If according to law the compiler of the paper is responsible, the competent Court shall be the one within whose territory the compiler has permanent residence or the Court within whose territory the event to which the paper refers to took place.

(3) The provisions of Paragraphs 1 and 2 of this Article shall also be applied accordingly to cases where the paper or statement was released by radio, television or other mass media.

Jurisdiction as to place in the case when the place of commission of a criminal offence is unknown

Article 28

(1) If the place of commission of a criminal offence is unknown or if this place is not located in the territory of the Republic of Montenegro, the competent Court shall be the one within whose territory the defendant has temporary or permanent residence.

(2) If the proceedings are already pending before the Court of the defendant's temporary or permanent residence, when the place of the commission has been determined, this Court shall retain its jurisdiction.

(3) If neither the place of the commission of the criminal offence nor the temporary or permanent residence of the defendant is known, or if both of them are outside the territory of the Republic of Montenegro, the competent Court shall be the one within whose territory the defendant is deprived of liberty or turned himself in.

Jurisdiction as to place in the case of criminal offences committed in the Republic of Montenegro and abroad

Article 29

(1) If a person has committed a criminal offence both in the Republic of Montenegro and abroad, the competent Court shall be the one that has jurisdiction over the criminal offence committed in the Republic of Montenegro.

(2) If a person has committed a criminal offence both in the Republic of Montenegro and the Republic of Serbia, jurisdiction as to place shall be determined pursuant to Article 25, Paragraph 3 of the present Code.

Forum ordinatum

Article 30

If under the provisions of the present Code it is not possible to ascertain which Court is competent as to place, the Supreme Court of the Republic of Montenegro shall designate one of the competent Courts as to subject matter jurisdiction to conduct the proceedings.

3. JOINDER AND SEPARATE PROCEEDINGS

Joinder of cases

Article 31

(1) Where an individual is accused of having committed several criminal offences some of which fall within jurisdiction of a lower, and some of a higher Court, the competent Court shall be the higher court. If the competent Courts are of the same level, the competent Court shall be the one that, upon the request of an authorised Prosecutor, first initiated the proceedings. If the proceedings have not yet been initiated - the competent Court shall be the one to which the request for commencement of the proceedings were first submitted.

(2) The provisions of Paragraph 1 of this Article shall also be applied to determine which Court has jurisdiction when the injured party at the time of commission of the criminal offence has simultaneously perpetrated a criminal offence against the defendant.

(3) As a rule, co-perpetrators shall fall within the jurisdiction of the Court which, being competent to try one of them, has first initiated the proceedings.

(4) The Court having jurisdiction over the perpetrator of the criminal offence shall, as a rule, also have jurisdiction over the accomplices, accessories by virtue of concealment, accessories after the fact who aided perpetrator and persons who failed to report the preparation of the criminal offence, the commission of the criminal offence or the identity of the perpetrator.

(5) All cases referred to in Paragraphs 1 to 4 of this article shall, as a rule, be considered in a single criminal proceedings and a single judgement shall be rendered.

(6) The Court may also decide to conduct single proceedings and to render a single judgement when several persons are charged with several offences, provided that the offences are interconnected and that the evidence pertaining to each of them is

the same. If some of these criminal offences fall within the jurisdiction of a higher Court and some to that of a lower Court, solely the higher Court shall have jurisdiction over the single proceedings.

(7) The Court may decide to conduct a single proceedings and to render a joint judgement if, before the same Court separate proceedings are being conducted against the same person for several criminal offences or against several persons for the same criminal offence.

(8) A decision on joinder of proceedings shall be ordered by the Court having jurisdiction to conduct the joint proceedings. A ruling ordering the joinder of proceedings or rejecting a motion for the joinder of proceedings shall not be subject to an appellate review.

Separation of cases

Article 32

(1) At any time before the trial is completed and upon the motion of the parties, injured party or virtue of an office, the Court having jurisdiction according to Article 31 of the present Code may, for important reasons or for reasons of expediency order the severance of joint proceedings conducted for some offences or against some defendants, and thereupon proceed separately, or refer separate cases to another competent Court.

(2) Rulings ordering the severance of procedure or rejecting a motion for severance shall not be subject to an appellate review.

4. CHANGE OF VENUE

Delegation of competence

Article 33

(1) If a competent Court is prevented from conducting a proceeding due to legal or factual reasons, it must notify immediately the superior Court, which shall designate another competent Court with subject matter jurisdiction that is located within its jurisdictional territory to conduct the proceedings.

(2) A ruling on transfer shall not be subject to an appellate review.

Transfer of competence from the reasons of efficiency

Article 34

(1) The Court designated by law may, within territory that falls under its jurisdiction, designate another Court having subject matter jurisdiction to conduct the proceedings if it is obvious that the proceedings will be facilitated or if there are other important reasons.

(2) The Court may render a ruling in accordance with of Paragraph 1 of this Article upon the motion of the investigative judge, single judge or the Chair of the Panel, or upon the motion of the competent State Prosecutor.

5. ASSESSEMENT AND CONFLICT OF JURISDICTION

General provisions

Article 35

(1) The Court shall be bound to examine its jurisdiction as to subject matter as well as to place, and as soon as it determines a lack of jurisdiction, it shall declare itself incompetent and, after the ruling becomes final, shall refer the case to the competent Court.

(2) If, after commencement of the trial, the Court determines that a lower Court has jurisdiction to conduct the proceedings, it shall not refer the case to the lower Court, but shall conduct the proceedings and render a judgement.

(3) Once the indictment becomes final, the Court may not declare itself incompetent as to place nor can the parties raise the objection regarding competence as to place.

(4) The Court lacking jurisdiction shall undertake such procedural actions with respect to which there is a delay that poses risk.

Initiation of resolving the conflict of jurisdiction

Article 36

(1) If the Court to which the case has been referred to as to the competent Court deems that the Court that referred the case or some other Court is competent, it shall initiate the proceedings for resolution of the conflict of jurisdiction.

(2) When a second instance Court renders a decision upon appeal filed against the decision of a first instance Court by which it declared itself incompetent, this decision shall also relates in terms of to jurisdiction to that Court to which the case has been referred, if the second instance Court is competent to resolve the conflict of jurisdiction between the Courts involved.

Court competent for resolving the conflict of jurisdiction

Article 37

(1) The Court immediately superior to the Courts involved shall decide on the conflict of jurisdiction between those Courts.

(2) Prior to rendering a ruling on a conflict of jurisdiction, the Court shall request the opinion of the competent State Prosecutor representing the prosecution before that Court when the criminal proceedings are conducted upon his request.

(3) The ruling on a conflict of jurisdiction shall not be subject to an appellate review.

(4) If the conditions referred to in Article 34 of the present Code are met, the Court may, at the same time when deciding on the conflict of jurisdiction, render by virtue of an office a decision on the change of venue.

(5) Until the conflict of jurisdiction between the Courts is resolved, each of the Courts involved shall be bound to undertake procedural actions with respect to which there is delay that poses risk.

Chapter III

DISQUALIFICATION

Reasons for disqualification

Article 38

A judge or a lay judge may not perform his judicial duties in the following cases:

1) he is personally injured by the offence;

2) if the defendant, his defence attorney, the Prosecutor, the injured party, their legal representative or power of counsel is his spouse or extramarital partner or direct blood relative to any degree whatsoever, and in a lateral line to the fourth degree, or in-law to the second degree;

3) if he is a legal guardian, ward, adopted child or adoptive parent, foster-parent or foster-child to the defendant, his defence attorney, the Prosecutor or the injured party;

4) if in the same criminal case he has carried out investigatory actions or has taken part in the proceedings as a Prosecutor, defence attorney, legal representative or power of counsel of the injured party or the Prosecutor, or if he has been heard as a witness or expert witness;

5) If in the same case he has taken part in rendering a decision of a lower Court or in rendering a decision of the same Court being contested by an appeal;

6) if there are circumstances that raise a reasonable suspicion as to his impartiality.

Proceedings for disqualification

Article 39

(1) The judge or a lay judge, as soon as he learns that there are grounds for disqualification referred to in Article 38, Items 1 to 5 of the present Code, he shall discontinue all the activity on the case and report it to the President of the Court who shall allocate his replacement. If a judge who is to be disqualified is the President of the Court, a judge of that Court who is doyen shall substitute him by the appointment, and if this is not possible, he shall ask the President of the immediate superior Court to appoint a substitute judge.

(2) If a judge or a lay judge holds that other circumstances exist which would justify his disqualification (Article 38, Item 6), he shall notify the President of the Court thereof.

Disqualification on request of a party and an injured party

Article 40

(1) The disqualification may be requested by the parties, defence attorney and injured party.

(2) The parties, defence attorney and injured party may submit a petition to challenge the judge or a lay judge at any time up until the commencement of the trial, and if they learn for the reason of the challenge later, they shall submit the petition immediately after they learnt of that reason.

(3) The parties, defence attorney and injured party may submit a petition to challenge an appellate judge in an appeal or in a response to an appeal.

(4) The parties, defence attorney and injured party may challenge only an individually designated judge or a lay judge who exercises his judicial power in that particular case or a judge of the higher Court.

(5) The parties, defence attorney and injured party shall be bound to cite in the petition the circumstances which they deem to represent legal grounds for disqualification. Reasons that were mentioned in a previous petition for disqualification that has been rejected may not be cited again in a petition.

Deciding on a petition for disqualification

Article 41

(1) The President of the Court shall decide on the petition for disqualification referred to in Article 40 of the present Code.

(2) The President of the immediately superior Court shall decide on the petition to challenge only the President of the Court, or the President of the Court and a judge or a lay judge, and if the petition challenges the President of the Supreme Court of the Republic of Montenegro, the decision shall be rendered by plenary session of that Court.

(3) Before rendering the ruling on disqualification, the challenged judge, lay judge or the President of the Court shall be heard and further inquires shall be carried out if necessary.

(4) The ruling that accepts the challenge shall not be subject to appeal. The ruling that rejects the challenge may be subject to review by an interlocutory appeal, but if such ruling is rendered after the charge was brought, than only by an appeal against the verdict.

(5) If the petition for disqualification is submitted against the provisions of Article 40, Paragraphs 4 and 5 of the present Code, the petition shall be dismissed entirely or partially. The ruling that dismisses the petition shall not be subject to appeal. The ruling that dismisses the petition shall be rendered by the President of the Court, and at the trial - by the Panel. At the trial, the judge who is challenged may participate in deciding on his disqualification.

Obligation of a judge or a lay judge upon submitting a petition

Article 42

When a judge or a lay judge learns that a petition challenging him has been submitted, he shall immediately discontinue all activity on the criminal case and in the case of disqualification referred to in Article 38, Item 6 of the present Code, he may, before the ruling on the petition is rendered, undertake only those actions whose delay poses a risk.

Challenge of the State Prosecutor and other participants in the proceedings

Article 43

(1) Provisions on the disqualification of judges and lay judges shall also be applied to State Prosecutors and persons who are authorised under the law to represent the State Prosecutor in the proceedings, to Court clerk, interpreters and experts, as well as expert witnesses unless otherwise provided (Article 119).

(2) The State Prosecutor shall decide on the disqualification of persons who are authorised under law to represent him in the criminal proceedings. The immediately superior Prosecutor shall decide on the disqualification of a State Prosecutor. The provisions of the respective laws shall be applied in the case of the disqualification of the State Prosecutor of the Republic of Montenegro.

(3) The Panel, the Chair of the Panel or the judge shall decide on the disqualification of Court clerk, interpreter, expert and expert witness.

(4) When authorised police officers undertake investigatory actions pursuant to the present Code, the investigative judge shall decide on their disqualification. The person acting in an official capacity who undertakes the action shall decide on the disqualification of Court clerk participating in these actions.

Chapter IV

THE STATE PROSECUTOR

Article 44

(1) The fundamental right and the main duty of the State Prosecutor shall be the prosecution of perpetrators of criminal offences.

(2) The State Prosecutor shall, regarding the criminal offences that are prosecuted *ex officio*, be competent to:

1) conduct pre-trial proceedings;

2) request that an investigation be carried out and direct the course of preliminary proceedings in accordance with the present Code;

3) issue and represent an indictment or indicting proposal before the competent Court;

4) file appeals against Court decisions that are not final and to seek extraordinary legal remedies against the final Court decisions;

5) undertake other actions determined by the present Code.

(3) In order to exercise powers referred to in Paragraph 2, Item 1 of the present Article, all authorities taking part in a pre-trial proceedings shall be bound to notify the competent State Prosecutor before taking any action, except in the case of emergency. Police officers and other state authorities in charge of discovering the commission of criminal offences shall be bound to proceed upon any request of the competent State Prosecutor.

(4) If a police authority or other state authority has failed to proceed upon the request of the State Prosecutor referred to in Paragraph 3 of this Article, the State Prosecutor shall inform the head of this authority and if necessary, a competent Minister or the Government.

Subject matter jurisdiction

Article 45

The subject matter jurisdiction of the State Prosecutor in the criminal proceedings shall be prescribed by the Law on the State Prosecutor.

Territorial Jurisdiction

Article 46

The territorial jurisdiction of the State Prosecutor shall be determined according to the provisions that prescribe the jurisdiction of the court within the jurisdictional territory to which the State Prosecutor is appointed.

Procedural actions undertaken by a State Prosecutor lacking jurisdiction

Article 47

The State Prosecutor lacking jurisdiction shall undertake only those actions whose delay poses a risk, and shall immediately notify the competent State Prosecutor thereof.

Undertaking of procedural actions

Article 48

The State Prosecutor shall take procedural actions he is authorised to by law, either by himself, or by persons authorised by law to represent him in the course of criminal proceedings.

Conflict of jurisdiction

Article 49

The conflict of jurisdiction between State Prosecutors shall be resolved by their immediate superior State Prosecutor.

Principle of mutability

Article 50

The State Prosecutor may withdraw petition for prosecution anytime before the end of the trial before a first instance Court and he may do so before a higher Court – in the cases envisaged by the present Code.

Chapter V

INJURED PARTY AND PRIVATE PROSECUTOR

Term for filing private complaint

Article 51

(1) As regards to criminal offences prosecuted upon a private complaint, the complaint shall be filed within three months from the day when the authorised person learned of the criminal offence and the perpetrator.

(2) If a private complaint is filed in a case involving the criminal offence of defamation, the defendant may until the completion of the trial file a counter-complaint (counter-charge) against the private Prosecutor, who has committed defamation in return on the same occasion, although the term referred to in Paragraph 1 of this Article has expired. In such a case, the Court shall render a single judgement.

Filing a private complaint

Article 52

(1) A private complaint shall be filed with the competent Court.

(2) When the injured party has filed a criminal charge and in the course of the proceedings it is ascertained that a criminal offence subject to private prosecution is involved, the report shall be taken as equivalent to the private complaint filed in good time if it is submitted within the term prescribed for submitting a private complaint.

Article 53

(1) A private complaint on behalf of minors and persons deprived of civil capacity acts shall be filed by their legal guardian.

(2) A minor who has reached sixteen years of age or more may also file a private complaint by himself.

Succession of a private Prosecutor

Article 54

If a private Prosecutor dies within the term prescribed for submitting a private complaint, or in the course of proceedings, his spouse, his cohabitant, children, parents, adopted child, adoptive parent, his brother and sister may file a private complaint or furnish a statement that they will continue the prosecution within three months after his death.

Article 55

If several persons are affected by the same criminal offence, prosecution shall be initiated or continued upon the private complaint from any of the injured persons.

Withdrawal of a private action and consequences thereof

Article 56

By virtue of his own statement to the Court before which proceedings are being conducted, a private Prosecutor may withdraw private complaint until the completion of the trial. In such a case, he shall lose the right to file the private complaint again.

Presumed withdrawal of a private complaint and return to *status quo ante*

Article 57

(1) If a private Prosecutor fails to appear at the trial although he was duly summoned, or if the summons could not have been served on him due to his failure to report to the Court changes of address or residence, it shall be assumed that he has withdrawn the private complaint, unless otherwise prescribed by the present Code (Article 453).

(2) The Chair of the panel shall grant return to *status quo ante* to the private Prosecutor who, for a good reasons, failed to appear at the trial or notify the Court in due time about changes of address or residence, provided he files a petition for reinstatement within eight days after the cessation of impediment to appearance.

(3) No return to *status quo ante* may be claimed after a lapse of three months from the day of failure to appear.

(4) The ruling granting reinstatement to the *status quo ante* shall not be subject to an appellate review. No appeal shall be permitted against a decision allowing return to the *status quo ante*.

(5) The ruling on discontinuation of the proceedings rendered pursuant to Paragraph 1 of this Article shall enter into force after the terms referred to in Paragraphs 2 and 3 of this Article have elapsed, if the private Prosecutor fails to submit the petition for return to *status quo ante* within these terms, or when the ruling by which the petition is rejected becomes valid.

Right to present the evidence

Article 58

(1) In the course of investigation, the injured party and the private Prosecutor shall be entitled to call attention to all facts and to present evidence important for the criminal case and for their claims under property law.

(2) At the trial, the injured party and the private Prosecutor shall be entitled to present evidence, to examine the accused, witnesses and expert witnesses and to comment and clarify on their statements as well as to give other statements and take other actions.

(3) The injured party, the subsidiary Prosecutor and the private Prosecutor shall be entitled to inspect files and objects that can serve as evidence. The inspection of the files may be denied to the injured party until he has been examined as a witness.

(4) The injured party who is the victim of sexual abuse shall have the right to be heard and to have the proceedings be conducted by a judge of the same sex, if so allowed by the existing staff composition of the Court.

(5) The investigative judge, single judge and the Chair of the panel shall inform the injured party and the private Prosecutor of the rights referred to in Paragraphs 1 to 3 of this Article.

Injured party as a Prosecutor (subsidiary Prosecutor)

Article 59

(1) Where the State Prosecutor finds that there are no grounds to undertake prosecution of a criminal offence that is automatically prosecuted or when he finds that there are no grounds to prosecute any of the accomplices reported to the authorities, he shall be bound within eight days to notify the injured party thereof and instruct him that he can assume prosecution except in cases referred to in Article 244, Item 6 and Article 245 of the present Code. The same proceedings shall be applied to the Court when it renders a ruling to halt the proceedings because the State Prosecutor has withdrawn from prosecution.

(2) The injured party shall be entitled to initiate or to resume prosecution within eight days following the receipt of the notice referred to in Paragraph 1 of this Article.

(3) If the State Prosecutor withdraws the indictment, the injured party may, when assuming the prosecution, abide by the indictment already proffered or file a new one.

(4) The injured party who has not been notified that the State Prosecutor did not undertake prosecution or has withdrawn from prosecution may within three months from the day the State Prosecutor rejected the charge or made the ruling to halt the proceedings make his statement that proceedings be resumed before the competent Court

(5) When the State Prosecutor or the Court notifies the injured party that he may assume prosecution, he shall also be delivered instructions as to which actions he may undertake in order to exercise that right.

(6) If the subsidiary Prosecutor dies pending the term for assuming prosecution or pending the proceedings, his spouse, his extramarital partner children, parents, adopted child, adoptive parent, or his brother and sister may within three months after his death assume prosecution i.e. make the statement that they shall continue the proceedings.

(7) The ruling on halting the proceedings rendered because the State Prosecutor has withdrawn from prosecution shall enter into force after the terms referred to in Paragraphs 2, 4 and 6 of this Article have expired and if the injured party or persons referred to in Paragraph 6 of this Article have failed to undertake prosecution.

Resumption of the prosecution during the trial and return to *status quo ante*

Article 60

(1) When the State Prosecutor drops the charges at the trial, the injured party shall be bound to declare immediately whether he intends to resume the prosecution.

(2) If a duly summoned injured party fails to appear at the trial Court or if the summons could not have been served on the injured party because he had not notify the Court about change of address or residence, it shall be taken that he does not want to assume the prosecution.

(3) The Chair of the panel of the first instance Court shall allow return to *status quo ante* to the injured party who was not duly summoned or to whom the summons was duly served but for a good reason could not appear at the trial during which the judgement rejecting the charge has been rendered on the ground that the State Prosecutor had withdrawn from prosecution, provided that the injured party submits the petition for return within eight days of the receipt of the judgement and if in this petition he states the intent to continue the prosecution. In such a case the trial shall be rescheduled and the previous judgement shall be annulled by the new one rendered in the course of the new trial. If the duly summoned injured party as a subsidiary Prosecutor fails to appear at the new trial, or before the beginning of the trial states that he is withdrawing the charge, the previous judgement shall remain in force. The provisions of Article 57, Paragraphs 3 and 4 of the present Code shall also be applied in this case.

(4) The verdict rejecting the charge rendered in the case referred to in Paragraph 1 of this Article shall become final after the terms for submitting a petition for return to *status quo ante* have expired.

Forfeiture of the right to subsidiary prosecution

Article 61

(1) If the injured party does not initiate or assume the prosecution within the term prescribed by law or if the subsidiary Prosecutor, having been duly summoned, fails to appear at the trial, or the summons could not have been served on him because he had not reported to the Court a change of address or residence, he shall be deemed to have withdrawn from prosecution.

(2) If the subsidiary Prosecutor, having been duly summoned, fails to appear at the trial, the provisions of Article 57, Paragraphs 3, 4 of the present Code shall apply.

Rights of the injured as a Prosecutor (subsidiary Prosecutor)

Article 62

(1) The subsidiary Prosecutor shall have the same rights as the State Prosecutor, except for those that are vested in the State Prosecutor as a state authority.

(2) In the proceedings conducted upon the request of the subsidiary Prosecutor, the State Prosecutor shall be entitled to assume and to represent the prosecution prior to completion of the trial.

Legal guardian of the injured party deprived of civil capacity

Article 63

(1) If the injured party is a minor or a person that is completely deprived of civil capacity, his legal guardian shall be authorised to make all statements and perform all actions to which, in conformity with the present Code, the injured party is entitled.

(2) An injured party who reached sixteen years of age or more may make statements and undertake procedural actions on his own.

Exercise of rights through legal representatives

Article 64

(1) The private Prosecutor, the injured party, and the subsidiary Prosecutor as well as their legal guardians may exercise their procedural rights through legal representatives.

(2) The Court shall be bound to instruct the persons referred to in Paragraph 1 of this Article as to their right to have a legal representative.

(3) When the proceedings are conducted upon the request of the subsidiary Prosecutor for a criminal offence punishable by imprisonment for a term exceeding five years, the Court may upon the request of the subsidiary Prosecutor appoint a legal representative to him if this is to the benefit of the proceedings and if the subsidiary Prosecutor is financially unable to meet the expenses of legal representation. The investigative judge, single judge or the Chair of the panel shall decide on this request, and the President of the Court shall appoint a legal representative among the members of the Bar.

Duty to report any change of address or residence

Article 65

The private Prosecutor, subsidiary Prosecutor and the injured party as well as their legal guardians and representatives shall be bound to report to the Court any change of address or residence. The Court shall dully inform them and warn them about the legal consequences of failing to comply as envisaged by the present Code.

Chapter VI

DEFENCE ATTORNEY

Right to a defence attorney

Article 66

(1) A defence attorney may represent the defendant at any stage of the proceedings even before the proceedings when prescribed by the present Code.

(2) The defendant's legal guardian, spouse, linear blood relative, adoptive parent or adopted child, brother and sister or foster-parent as well as his extramarital partner may engage a defence attorney on behalf of the defendant.

(3) Only a member of the Bar may be engaged as defence attorney, and in the proceedings for a criminal offence punishable by imprisonment for a term of less than five years he may be replaced by an counsel in training. Only a member of the Bar may be a defence attorney before the Supreme Court of the Republic of Montenegro.

(4) A defence attorney shall be bound to file his entry for appearance with the authorities before whom the proceedings are being conducted. The defendant may also submit power of counsel to the defence attorney orally before the authority conducting the proceedings, in which case it must be entered into the records.

Number of defence attorneys

Article 67

(1) Several defendants may retain a common defence attorney only if this is not contrary to the interests of their defence.

(2) One defendant may not retain more than three defence attorneys at the same time, and it is deemed that defence is provided for when one of the defence attorneys participates in the proceedings.

Persons who may not act as defence attorney

Article 68

(1) A defence attorney cannot be co-defendant, the injured party, spouse of the injured party or Prosecutor, or their linear blood relative to any degree or a collateral blood relative to the fourth degree or an in-law to the second degree.

(2) A defence attorney cannot be a person summoned as a witness at the trial, unless pursuant to the present Code he is exempted from the duty to testify and declares that he will not testify as a witness.

(3) A defence attorney cannot be the person who was in the same case a judge or the State Prosecutor or has undertaken actions in the pre-trial proceedings.

Cases in which the defendant must have a defence attorney

Article 69

(1) If the defendant is mute, deaf or otherwise unable to defend himself successfully or if the proceedings are conducted for a criminal offence punishable by the maximum term of imprisonment, the defendant must have a defence attorney as early as at his first interrogation.

(2) When the indictment is brought for the criminal offence punishable by the imprisonment of ten years, the defendant must have a defence attorney when the indictment is served on him.

(3) The defendant against whom detention is ordered must have a defence attorney as soon as the Court renders a ruling on detention.

(4) A defendant tried *in absentia* (Article 312) must have a defence attorney as soon as the Court renders the ruling on trial *in absentia*.

(5) When in the case of mandatory defence referred to in the preceding paragraphs of this Article the defendant fails to retain a defence attorney by himself, the President of the Court shall, by virtue of an office, appoint a defence attorney to represent the defendant in the further criminal proceedings up until the judgement becomes final, and in the case of most severe sentence of

imprisonment – than even in the proceedings following filing extraordinary judicial remedies. When a defence attorney is appointed to the defendant by virtue of an office after the indictment has been brought, the defendant shall be informed thereof at the time the indictment is served on him. If in the case of mandatory defence, the defendant is left without a defence attorney in the course of proceedings and he does not engage another defence attorney, the President of the Court before which the proceedings are being conducted shall appoint by virtue of an office a defence attorney to the defendant.

(6) A member of the Bar shall be appointed a defence attorney according to the order from the list which shall be submitted to the President of the first instance Court by the Bar Association of Montenegro (hereinafter referred to as: the Bar Association).

Appointment of Defence attorney for the Indigent Person

Article 70

(1) When conditions for mandatory defence are not met, and the proceedings are conducted for a criminal offence punishable by imprisonment for a term of more than three years, as well as in other cases when the interests of justice so require, the Court may upon defendant's request appoint a defence attorney to the defendant if, due to an adverse financial situation, he is not able to pay the expenses of the defence.

(2) The investigative judge, the Chair of the panel or a single judge shall decide on the request and the President of the Court shall appoint a defence attorney. A defence attorney shall be appointed according to the provision of Article 69, Paragraph 6, of the present Code.

Dismissal of the appointed defence attorney

Article 71

(1) In lieu of the appointed defence attorney (Articles 69 and 70) the defendant may retain another defence attorney by himself. In such a case the appointed defence attorney shall be released.

(2) The defence attorney appointed pursuant to the provisions of Article 69, Paragraph 3 of the present Code shall be released after a ruling on vacation of detention becomes final.

(3) The appointed defence attorney may request to be released only for a good cause.

(4) Before the trial the decision on release in the case referred to in Paragraphs 1 and 2 of this Article shall be made by the investigative judge or the Chair Panel, at the trial by the Panel, and in the appellate proceedings by the President of the first instance Panel or the Panel having jurisdiction to decide on appeal. The appeal on the ruling on release shall not be allowed.

(5) The President of the Court may release the appointed defence attorney who negligently carries out his duties. The President of the Court shall appoint another defence attorney in lieu of the dismissed defence attorney. The Bar Association shall be notified of the dismissal thereof.

Right of the defence attorney to inspect the files and objects which serve as evidence

Article 72

(1) After the ruling on the opening of the investigation has been rendered or after the indictment has been brought without investigation (Article 252) or even before that, provided the suspect has been interrogated pursuant to the provisions on interrogation of defendant, the defence attorney shall be entitled to inspect the files as well as objects which serve as evidence.

(2) Just before the first interrogation of the suspect, the defence attorney has the right to look into the content of the request for investigation and into the content of the crime report if the request has not been submitted.

Communication between the detainee and his defence attorney

Article 73

(1) If the defendant is in detention and he has been interrogated, a defence attorney may communicate with him orally or in writing.

(2) Exceptionally, the investigative judge may order that the letters sent by the defendant while in detention to the defence attorney or the letters sent by the defence attorney to the defendant be delivered after the judge makes the inspection thereof, if there are reasonable grounds to believe that these means of communication are to be used for the attempted organization of an escape, or for exerting impact on witnesses, intimidation of witnesses or for any other disturbance of the investigation process. The investigative judge shall be bound to make a record on the inspection. It is for the same reasons that the investigative judge may order that a person acting in an official capacity be present during oral communication between the defendant and his defence attorney.

(3) When the investigation proceedings are concluded or when the indictment i.e. the indicting proposal is brought without conducting investigation, the defendant shall not be deprived of the right to communicate both orally and in writing with his defence attorney, freely and with no supervision.

Undertaking of actions by the defence attorney

Article 74

(1) A defence attorney shall be authorised to perform all actions in favour of the defendant that the defendant is entitled to.

(2) The rights and obligations of a defence attorney shall cease when the defendant revokes entry of appearance, when the defence attorney is released and upon the lapse of 15 days of revoking the power of counsel.

Chapter VII

EVIDENTIARY ACTIONS

1. SEARCH OF DWELLINGS, ARTICLES AND PERSONS

Search of dwellings, other premises, movable articles and persons

Article 75

(1) A search of dwellings and other premises of a defendant or other persons as well as their movable objects outside these premises may be carried out if it is likely that in the course of search the perpetrator, traces of the criminal offence or objects relevant to relevant to the criminal proceedings will be found.

(2) A search of movable objects referred to in Paragraph 1 of this Article includes search of a computer and similar electronic devices for automatic data processing to which the computer is connected. Upon order of the Court the person using a computer shall secure the access to the computer and media to which the information relative to the object of the search are stored (diskettes, tapes etc.), and give necessary information as to how to use the computer. A person who refuses to do so for reasons that are not envisaged in Article 99 of the present Code may be punished pursuant to Article 81, Paragraph 2 of the present Code.

(3) A search of person may be carried out if it is likely that in the course of search traces of the criminal offence or objects relevant to the criminal proceedings will be found.

Search upon search warrant

Article 76

(1) A search shall be ordered by a written warrant with a statement of reasons issued by the Court.

(2) Before the commencement of the search, the search warrant shall be given to the person to be searched or whose premises are to be searched. Before the commencement of the search, the person against whom a warrant has been issued shall be asked to voluntary hand over the wanted person or objects. That person shall be instructed that he is entitled to retain a lawyer i.e. a defence attorney who may be present during the search. If a person against whom a warrant has been issued demands a presence of the defence attorney, the commencement of the search shall be postponed until the arrival of the defence attorney, but no more than two hours.

(3) A search may commence without previously presenting a warrant or without an invitation to hand over the person or objects and without an instruction on the right to a defence attorney, if armed resistance or other kind of violence is expected, if there is a reasonable doubt that serious criminal offences committed by the group or criminal organisation are involved or perpetrators have connections abroad and unexpected search is necessary, or if it is obvious that the preparation to destroy the traces of the criminal offence or objects relevant to the criminal proceedings are going on or a destruction has began or if the search has to be carried out in the public premises.

(4) The search shall be carried out during the daylight. The search may be carried out at night if it commenced during the daylight and has not been completed or if the reasons referred to in Article 79, Paragraph 1 of the present Code exist.

Manner of conducting the search

Article 77

(1) The occupant of a dwelling or other premises shall be summoned to attend the search, and if he is absent, his representative, adult members of his family or neighbours shall be summoned to attend the search.

(2) Premises that are locked, furniture and other things shall be opened by force only if their occupant is absent or he is refusing voluntarily to open it. Unnecessary damage shall be avoided in the course of opening it.

(3) The search of a dwelling or person shall be witnessed by two adult persons. Only a person of the same gender shall carry out a search of a person, and only the same gender persons shall be summoned as witnesses. Before the beginning of the search the witnesses shall be instructed to observe how the search is carried as well as to their right to place their objections if they consider the content of the record is incorrect, before the record of the search is signed.

(4) When conducting a search of premises of state authorities, enterprises or other legal entities, a head of such authorities, enterprises or other legal entities shall be summoned to witness the search.

(5) A search and inspection of barracks or other military institution shall be carried out upon the permission of a competent military officer or a person designated by him.

(6) If a search needs to be carried out aboard the ship or aircraft the search warrant shall be communicated to the officer in charge of the ship or aircraft. The officer of the ship or aircraft, or a person designated by him shall witness the search.

(7) The search of a dwelling and a person shall be carried out carefully, respecting dignity of a person and the right to privacy, without unnecessary disturbance of the house rules and without causing anxiety among citizens.

(8) A record shall be made of every search of a dwelling or a person and shall be signed by the person whose premises have been searched or who has been searched and by persons whose attendance at the search is mandatory. Only objects and documents related to the purpose of the search shall be temporarily seized in the course of the search. The record shall specifically cite objects and documents that have been seized A receipt shall be immediately issued to the person who the objects or documents have been seized from.

Seizure of objects on the basis of a search warrant

Article 78

(1) If a search of a dwelling or a person reveals objects that are unrelated to the criminal offence for which the search was ordered, but indicate the commission of another criminal offence that is prosecuted *ex officio*, it shall be entered into the records and temporarily seized, and a receipt confirming seizure shall be issued immediately.

(2) The State Prosecutor shall be informed immediately about that for the purpose of initiating criminal proceedings. These objects shall be returned immediately if the State Prosecutor establishes that there are no grounds to initiate criminal proceedings and if no other legal grounds for the seizure of these objects exist.

(3) The objects used for search of a computer and similar devices for automatic data processing shall be returned to their users after the search if they are not needed for further proceedings. Personal information obtained during the search shall be used only for the purposes of criminal proceedings and shall be erased as soon as the need for them ceases.

Entering dwellings without a search warrant and searching

Article 79

(1) Without a search warrant police authorities may enter a person's dwelling or other premises and, if necessary, carry out a search, provided that the tenant so desires or somebody calls for help, or in order to execute a warrant of detention or apprehension of the defendant or other person, or to deprive of liberty the perpetrator of the crime that is prosecuted *ex officio* and punishable by more than three years of imprisonment who is on the run, or in order to remove serious threat to the life or health of the people or to property of significant value.

(2) The tenant, if present, shall have the right to object the proceedings carried out by the police authorities referred to in Paragraph 1 of the Article. The police officer in charge shall be bound to inform the tenant about this right and to include his objection in the receipt issued upon entering the dwelling or in the search record.

(3) A record on search shall not be made in the cases referred to in Paragraph 1 of this Article, but a receipt on entering shall be issued immediately to the tenant in which the reasons for entering and the tenant's objections shall be specified. If a search has also been carried out in a person's dwelling, it shall be carried out pursuant to Article 77, Paragraphs 3, 7 and 8 of the present Code.

(4) A search may be carried out without the presence of witnesses if it is not possible immediately to arrange their presence, and there is delay that poses a risk The reasons for a search without the presence of witnesses shall be specified in a record of search.

(5) The police authorities may without a search warrant and without witnesses carry out a search of a person when executing a warrant related to apprehension or to deprivation of liberty if there is a suspicion that person is in possession of offensive weapons or tools appropriate for an attack, or if there is suspicion that he will dispose of, conceal or destroy the objects which are to be take as evidence in the course of criminal proceedings.

(6) When conducting a search without warrant, the police authorities are bound to submit immediately a search record to the investigative judge, and if the proceedings have not been initiated yet – to the competent State Prosecutor.

Legally invalid evidence

Article 80

If the search was conducted without a warrant (Article 76, Paragraph 1) or not attended by persons who have to witness the search (Article 77, Paragraph 3) or in violation of Article 79 of the present Code, a search record and evidence collected during this search cannot be used as evidence in the course of criminal proceedings.

2. TEMPORARY SEIZURE OF OBJECTS

Seizure of objects under the Court order

Article 81

(1) Objects which, according to the Criminal Code, have to be seized or which may be used as evidence in the criminal proceedings, shall be temporarily seized and delivered for safekeeping to the Court or their safekeeping shall be secured in some other way.

(2) Anyone who is in possession of such objects shall be bound to hand them over upon the Court request. A person who refuses to hand them over may be fined in an amount not exceeding € 200, and in the case of further refusal a person may be imprisoned. Imprisonment shall last until the person hands over the objects or until completion of the criminal proceedings but not longer than two months. It shall be proceeded in the same way against a person acting in an official capacity or a responsible person in a state authority, enterprise or other legal entity.

(3) Provisions of Paragraphs 1 and 2 of this Article shall be applied to the data saved in devices for automatic or electronic data processing and media wherein such data are saved, which must, upon the request of the bodies conducting criminal proceedings , be handed over in a legible and comprehensible form. The body conducting the criminal proceedings shall abide by the regulations on maintaining confidentiality of certain data.

(4) Temporary seizure does not relate to the following:

1) documents and other papers of state authorities, publication of which would violate the obligation to keep professional, state and military secret, until the competent body decides otherwise;

2) defendant's letters to his defence attorney or the persons referred to in Article 97, Paragraph 1, Items 1 to 3 of the present Code unless the defendant decides to hand them over voluntarily;

3) recordings, extracts from the register and similar documents that are in possession of persons referred to in Article 96, Item 3 of the present Code and that are made by such persons in relation to the facts obtained from the defendant while performing their professional service, if publication thereof would constitute violation of the obligation to keep a professional secret.

(5) Prohibition referred to in Paragraph 4, Item 2 of this Article shall not apply to the defence attorney or persons exempted from the duty to testify pursuant to Article 97, Paragraph 1 of the present Code if there is a reasonable doubt that they aided the defendant in committing the criminal offence or they helped him after the criminal offence was committed or if they acted as accomplices by virtue of concealment.

(6) The panel (Article 24, Paragraph 6) shall decide on an appeal against a ruling imposing a fine or imprisonment.

(7) The police authorities may seize the objects stated in Paragraph 1 of this Article when proceeding pursuant to the provisions of Article 230 and 246 of the present Code or when executing the judicial warrant.

(8) When seizing objects it shall be noted where they were found they shall be described, and if necessary their characteristics shall be established in some other way. A receipt shall be issued for the seized objects.

Denial of disclosure or availability of files and other documents

Article 82

(1) The State authorities may refuse to disclose or hand over their files or other documents if they deem that disclosure of their contents would cause damage to the public interests. If disclosure or hand-over of files and other documents is denied, the final decision shall be made by the panel (Article 24, Paragraph 6).

(2) Enterprises or other legal entities may request that data related to their business be not publicly disclosed. The panel shall decide on the request (Article 24 Paragraph 6).

Inventory and sealing of Court files

Article 83

(1) When files that may be used as evidence are temporarily seized, an inventory of them shall be made. If this is not possible, the files shall be put in a cover and sealed. The owner of the files may put his own seal on the envelope.

(2) The person from whom the files have been seized shall be summoned to attend the opening of the envelope. If this person fails to appear or is absent the cover shall be opened, the files examined and a list of them made in his absence.

(3) During the examination of files, their content shall not be disclosed to unauthorised persons.

Temporary seizure of letters, telegrams and other shipments

Article 84

(1) The investigative judge may order by virtue of an office or upon the motion of the State Prosecutor that postal, telephone and other communication agencies retain and deliver to him, against a receipt, letters, telegrams and other shipments sent to the defendant or sent by him if circumstances indicate that it is likely that these shipments can be used as evidence in the course of the proceedings.

(2) The investigative judge in the presence of two witnesses shall open the shipments. When opening, care shall be taken not to damage the seals, while the covers and addresses shall be preserved. A record shall be made on the opening.

(3) If the interests of the proceedings allow so, the defendant or the addressee may be fully or partially informed of the contents of the shipment, which may be also delivered to him. If the defendant is absent, the shipment shall be returned to the sender unless it would run counter the interests of the proceedings.

Return of temporary seized objects

Article 85

The objects, which are temporarily seized in the course of the pre-trial and criminal proceedings, shall be returned to the owner or holder if the proceedings are halted provided that there are no reasons for the seizure (Article 537). The objects shall be returned to the owner or holder even before the completion of the proceedings if the reasons for seizure cease to exist.

3. PROCEDURE OF DEALING WITH SUSPICIOUS OBJECTS

Publishing suspicious objects

Article 86

(1) If an object belonging to another person is found in the possession of the suspect or defendant, and it is unknown who the object belongs to, the authority conducting the proceedings shall describe the object and post a notice containing a description in the daily paper with the notice that the owner shall be called to appear within one year from the posting date, otherwise the object shall be sold out. The proceeds obtained by the sale shall be put into the judicial budget.

(2) If the object is perishable or its safekeeping would entail significant costs, the object shall be sold pursuant to the provisions governing the judicial enforcement procedure and the proceeds shall be delivered for safekeeping to the Court.

(3) When object belongs to a fugitive or to an unknown perpetrator, the provision referred to in Paragraph 2 of this Article shall also be applied.

Decision on suspicious objects

Article 87

(1) If in the course of one year no one comes forward and requires the objects or the proceeds obtained by the sale, a decision shall be taken that the object becomes property of the State or that the proceeds shall be credited to the judicial budget.

(2) The owner of the object shall be entitled to request in civil proceedings to repossess the object or to possess the proceeds from the sale of the object. The statute of limitation with respect to this right shall star running from the date of the posting or publication, as appropriate.

4. INTERROGATION OF THE DEFENDANT

Instruction on the rights and the manner of interrogation

Article 88

(1) When the defendant is interrogated for the first time, he shall be asked for his first name and surname, personal identification number, nickname if he has one, the first name and surname of his parents, the maiden name of his mother, the place of his birth, address, the day, month and year of birth, his nationality, occupation, family situation, whether he is literate, his educational background, whether he has served in the army and if so where and when, whether he has the rank of a reserve non-commissioned officer, officer or military official, whether he is listed in the military records and if so where, whether he was decorated, what his financial situation is, whether he has ever been convicted and if so when and for which criminal offence, whether he has served the sentence and when, whether criminal proceedings against him for another criminal offence is in progress, and if he is a minor, who his legal guardian is.

(2) The defendant shall be instructed that he shall be bound to appear upon a summons and immediately to notify the Court of changes of his address or of intention to change his place of residence and shall be warned of the consequences if he does not act accordingly. Thereafter, the defendant shall be informed of the rights referred to in Article 13, Paragraph 3 of the present Code, of the offence he is being charged with and of the grounds for suspicion against him, and shall be instructed that he does not need to present his defence or answer any questions, and then he shall be called on to present his defence if he wishes.

(3) The defendant shall be interrogated orally. During interrogation he may be permitted to use his notes.

(4) During interrogation the defendant shall be given an opportunity to present without hindrance on all circumstances tending to incriminate him and to present all the facts in his favour.

(5) After completing his statement, the defendant shall be asked questions if it is necessary to fill the gaps or remove contradictions and ambiguities in his presentation.

(6) Defendant may not consult his defence attorney as to how to answer the questions which have been put to him.

(7) Interrogation shall be performed decently and in such a manner that personality of the defendant is fully respected.

(8) It is forbidden to use force, threat, deceit, promise, extort, wear out or other similar means (Article 134, Paragraph 4) in order to obtain a defendant's statement or confession or a particular action that may be used as evidence against him.

(9) The defendant may be interrogated in the absence of a defence attorney if he has expressly waived this right, provided that defence is not mandatory, if a defence attorney who has been informed on interrogation (Article 259) fails to appear and there is no possibility for the defendant to choose another defence attorney, or if the defendant fails to secure the presence of a defence attorney at the first interrogation within 24 hours from the time he has been instructed on this right (Article 13, Paragraph 3) except in the case of mandatory defence.

(10) In the case of failure to comply with the provisions of Paragraphs 8 and 9 of this Article or if the defendant has not been instructed on the rights referred to in Paragraph 2 of this Article, or if the defendant's statements regarding the right to a defence attorney from Paragraph 9 of this Article are not entered into the records, the decision of the Court may not be grounded on the statement of the defendant.

Manner of interrogation

Article 89

(1) Questions shall be put to the defendant in a clear, comprehensible and precise manner so that he can perfectly understand them. A question shall not be based on the assumption that the defendant has admitted to something that he has not, nor should leading questions be asked.

(2) If the subsequent statements of the defendant differ from previous ones, and especially if the defendant revokes his confession, the Court may summon him to give an explanation why he has given different statements or has revoked his confession.

Confrontation

Article 90

(1) The defendant may be confronted with a witness or another defendant if their statements regarding relevant facts do not correspond to each other.

(2) The confronted persons shall be placed one towards the other and shall be requested to repeat to each other their statements regarding each disputable fact and to argue whether their statements are true. The course of confrontation as well as the final statements of the confronted persons shall be entered in the record.

Identification

Article 91

The object connected to the criminal offence or those that serve as evidence shall be presented to the defendant for identification after he has previously described them. If such objects may not be brought to the defendant, he shall be taken to the pace where they are located.

Entering of defendant's statements into the records

Article 92

(1) The defendant's statement shall be entered into the records in a narrative form while the questions and answers shall be entered into the records only when they relate to the criminal case.

(2) The defendant may be permitted to dictate his statement into the record himself.

Confession of the defendant and further collection of evidence

Article 93

In the case of confession of the defendant, the authority which conducts the proceedings shall be bound to collect further evidence in regard with a criminal offence only if the confession is obviously false, incomplete, contradictory or unclear.

Interrogation of the defendant through interpreter

Article 94

(1) The defendant's interrogation shall be carried out through an interpreter in cases envisaged by the present Code.

(2) If the defendant is deaf, the questions shall be asked in writing, and if he is mute he shall be asked to answer in writing. If the interrogation cannot be performed in such a manner, a person with whom the defendant is able to communicate shall be summoned as an interpreter.

(3) If the interpreter has not previously taken an oath, he shall take the oath faithfully to communicate questions put to the defendant as well as statements given by the defendant.

(4) The provisions of the present Code related to expert witnesses shall be applied accordingly to interpreters as well.

5. THE WITNESS

Persons who can be examined as witness

Article 95

(1) Persons who are likely to provide information regarding the criminal offence, the perpetrator and other relevant circumstances shall be summoned as witness.

(2) The injured party, subsidiary Prosecutor and private Prosecutor may be examined as witnesses.

(3) Every person summoned as witness shall be bound to appear at the Court and, unless otherwise prescribed by the present Code, shall be bound to testify as well.

Persons who cannot be heard as witnesses

Article 96

The following person shall not be examined as a witness:

1) a person who would by giving testimony violate the duty of keeping a state, military or official secret until the competent authority releases him from this duty;

2) a defence attorney cannot testify with regard to information the defendant has confided to him in his capacity of the defence attorney;

3) a person who would by giving testimony violate the duty of keeping a professional secret (a religious confessor, counsel-at-law, physician, nurse etc.) unless he is released from this duty by a special regulation or statement of a person who benefits from the secret are being kept for.

Persons exempted from the duty to testify

Article 97

(1) Unless otherwise prescribed by the present Code the following persons shall be exempted from the duty to testify:

1) the defendant's spouse and his extra-marital partner;

2) the defendant's linear relatives by blood, collateral relatives by blood to the third degree and his in-laws to the second degree;

3) the defendant's adopted child or adoptive parent.

(2) The Court conducting the proceedings shall be bound to remind the persons referred to in Paragraph 1 of this Article that they are exempted from testifying prior to their testifying or as soon as the Court learns about their relation to the defendant. The caution and the answer shall be entered in the record.

(3) A minor who in view of his age and mental development is unable to comprehend the importance of his privilege not to testify may not be examined as a witness, unless so required by the defendant.

(4) A person entitled to refuse to testify with regard to one of the defendants shall be exempted from the duty to testify with regard to other defendants if his testimony cannot be, by nature of the matter, limited only to other defendants.

Testimonies on which the Court decision cannot be based

Article 98

If a person who may not testify as a witness (Article 96) has testified or if a person who is exempted from the duty of testifying as a witness (Article 97) has testified and was not cautioned thereof or has not expressly waived this right, or if the caution and the waiver were not entered into the records or if a minor with no capacity to understand the meaning of the right to be exempted from testifying has testified or if a witness's testimony was obtained by torture or other means of maltreatment (Article 134, Paragraph 4), the Court decision may not be based on such testimony.

Denial o answer to specific questions

Article 99

Unless otherwise prescribed by the present Code a witness is not under the duty to answer particular questions if it is likely that he would thus expose himself or persons referred to in Article 97, Paragraph 1 of the present Code to serious disgrace or criminal prosecution, whereas the Court shall be obliged to inform the witness about his right to deny the answer.

Summoning of witnesses

Article 100

(1) A witness shall be summoned by means of a written summons indicating the first name, surname and occupation of the person summoned as well as the time and place of appearance, the criminal case involved, the note that he is being summoned as a witness, and the instructions on the consequences of an unjustified failure to appear (Article 107).

(2) The summoning of a minor less than sixteen years of age as a witness shall be done through the parents or guardian, except for the cases where this is not possible due to a need to act urgently, or due to other circumstances.

(3) Witnesses who cannot answer the summons due to their old age, illness or serious physical disabilities may be questioned in their residence. If the interests of the proceedings require so, such witnesses may testify by means of technical devices for transmission of image and sound, so the parties can ask questions even though they are not present in the same premises as the witness. For the needs of such a testimony, an expert assistance referred to in Article 259, Paragraph 8 of the present Code may be ordered.

(4) A summon to appear may be done over the phone, if the witness agrees to comply with such summon.

Manner of examination of witnesses and instructions by the Court

Article 101

(1) Witnesses shall be examined individually and in the absence of other witnesses. The witness shall give his testimony orally.

(2) Before the examination, the witness shall be called upon to tell the truth and not to withhold anything, and then he shall be warned that giving false testimony is a criminal offence. The witness shall also be warned that he is not bound to answer the questions referred to in Article 99 of the present Code and such instruction shall be entered in the record.

(3) Subsequently the witness shall be asked about his first name and surname, his father's or mother's name, occupation, place of residence, place and year of birth, and his relation to the defendant and the injured party. The witness shall be instructed that he shall be bound to notify the Court of changes of his address or residence.

(4) When a minor is examined, especially if a minor is the injured party, a special care shall be taken in order not to have an adverse effect on the minor's mental condition. If necessary, the minor shall be heard with assistance of a pedagogue or other professional.

(5) An injured party who is the victim of sexual abuse and violence, as well as a child being examined as a witness, shall be entitled to testify in separate premises before the judge and the Court clerk, whereas the Prosecutor, defendant and defence attorney shall be given the possibility to view the course of the examination from other premises and to put questions to the witness, after having been duly instructed by the Court of that possibility. The instruction shall be entered into the records.

Examination and confrontation of witnesses

Article 102

(1) After general questions, the witness shall be called upon to state everything known to him about the case, whereupon questions shall be directed to him in order to check, complete or clarify his testimony. It shall be forbidden to deceive the witness or to ask leading questions.

(2) The witness shall be asked the origin of his knowledge about the facts he is testifying about.

(3) Witnesses may be confronted if their testimonies disagree regarding the important facts. Only two witnesses may be confronted at a time. The provisions referred to in Article 90, Paragraph 1 of the present Code shall be applied regarding confrontation of witnesses.

(4) The injured party being examined as the witness shall be asked about his desires with respect to satisfaction of a property claim in the criminal proceedings.

Identification of persons and objects

Article 103

(1) If it is necessary to establish whether a witness recognizes a particular person or object described by him, that person shall be shown to him together with other unknown persons with the similar characteristics to those he has described, or that object shall be shown to him together with other objects of the same or similar kind, and subsequently he shall be asked to state whether he can identify the person or the object precisely or with a certain degree of certainty, and in the case of affirmative answer, he shall be called on to point at the identified person or object.

(2) In the pre-trial and preliminary criminal proceedings identification shall be carried out in such a manner that a person who is to be identified cannot see a witness nor can the witness see this person before the identification begins.

(3) In the pre-trial proceedings identification of a person shall be carried out in the presence of the State Prosecutor.

Examination of witness through an interpreter

Article 104

If the witness testifies through an interpreter or if the witness is deaf or mute, he shall testify pursuant to Article 94 of the present Code.

Taking the oath

Article 105

(1) The witness may be required to take the oath before testifying.

(2) Before the trial, the witness may take the oath only if there is a fear that he will not appear at the trial due to illness or other reasons. The reasons why the oath was taken shall be entered into the records.

(3) The text of the oath is the following: "I do swear to tell the truth about everything I am asked before the Court and not to withhold anything which has come to my knowledge".

(4) A witness shall take an oath orally by reading its text or by affirmative answer after the contents of the oath has been read to him by a judge or person from the Court staff designated by the judge. Witnesses that are mute and literate shall sign the text of the oath, and those deaf and mute who are illiterate shall be sworn through an interpreter.

(5) The rejection of the witness to swear shall be entered into the records along with the reasons for the rejection.

Persons forbidden to take the oath

Article 106

It is forbidden to take the oath from:

1) persons who are minors at the time of examination;

2) persons for whom it has been proved that there is a grounded suspicion that they have committed or participated in commission of an offence for which they are being examined;

3) persons who due to their mental conditions are unable to comprehend the importance of the oath.

Measures to secure the appearance of witness and imposition of procedural penalties

Article 107

(1) If a duly summoned witness fails to appear and does not justify his absence, or if he leaves without authorisation or justifiable reason the place where he is to testify, the Court may issue a warrant for apprehension as well as impose a fine in an amount not exceeding € 1.000.

(2) If a witness appears and after being informed of the consequences, refuses to testify without legal grounds, the Court may impose a fine in an amount not exceeding € 1.000, and if thereafter he still refuses to testify, he may be imprisoned. Imprisonment will last until the witness agrees to testify or until his testimony becomes irrelevant or until the end of the trial but no longer than two months.

(3) If witness offends or threatens Court and other participants in the proceedings the Court shall warn him and may impose a fine in an amount not exceeding €1.000.

(4) The Panel of the Court (Article 24, Paragraph 6) shall decide on an appeal against a ruling ordering a fine or imprisonment. An appeal against the ruling ordering imprisonment shall not stay the execution of the ruling.

Protected witness

Article 108

(1) If there are grounds to fear that by giving a statement or answering certain questions a witness would put in danger his, his spouse's or close relative's life, health, body integrity, freedom or property of great value, he may withhold from giving the details referred to in Article 101, Paragraph 3 of the present Code, answering certain questions or giving the statement altogether until his protection is secured.

(2) Witness protection shall consist of special ways of participating and questioning witnesses in the criminal proceedings.

(3) Protection of witnesses and other persons referred to in Paragraph 1 can be secured outside the criminal proceedings as well, which is regulated and applied in accordance with special law.

(4) The Court shall be bound to inform the witness on the rights he is entitled to pursuant to the provisions of this Article.

Special ways of participating and questioning protected witness

Article 109

(1) Special ways of participating and questioning witnesses in the criminal proceedings are: questioning of witnesses under pseudonym, questioning with assistance of technical equipment (protective wall, voice simulators, devices for transmission of image and sound) etc.

(2) If special way of questioning witnesses consists only of withholding the details referred to in Article 101, Paragraph 3 of the present Code, questioning shall be done under pseudonym, while in other part of the proceedings questioning shall be done in accordance with general provisions of the present Code regulating the issue of questioning of witnesses.

(3) If special ways of participating and questioning witnesses in the criminal proceedings consists of withholding the details referred to in Article 101, Paragraph 3 of the present Code as well as of hiding the face of the witness, questioning shall be done with assistance of devices for transmission of image and sound. The specialist referred to in Article 259, Paragraph 8 of the present Code shall operate with the technical devices. During the questioning, face and voice of the witness shall be changed. During the questioning, witness shall be in the room other than the one where are the investigative judge and other persons present at the questioning. The investigative judge shall ban all the questions, answers that could lead to revealing the identity of witnesses.

(4) After the questioning has been completed, witness shall sign the record-using pseudonym in the presence of the investigative judge and Court clerk only.

(5) Persons who in whatever capacity, learn the details about the witness referred to in Paragraphs 2 and 3 of this Article shall be obliged to keep them as secret.

Deciding on special ways of participating and questioning witnesses and protection of data

Article 110

(1) The ruling on special ways of participating and questioning protected witnesses shall be rendered during the investigation by the investigative judge upon a motion of a witness or a State Prosecutor and during the trial by the Panel.

(2) The investigative judge shall, prior to rendering the ruling, ascertain as to whether the testimony of the witness is of such a relevance to be given the status of a protected witness. For the purpose of ascertaining these facts, the investigative judge may summon the State Prosecutor and the witness to appear in the Court.

(3) Details of the witness who is to participate in a special way in the proceedings shall be sealed in a special envelope and kept by the investigative judge. A note shall be put on the envelope saying "Protected Witness – Secret ". The envelope may be opened only by the second instance Court in the appellate proceedings, but the opening thereof shall be entered into the record together with the names of the members of the Panel who came to the knowledge of its content. After this the envelope shall be sealed again and returned to the investigative judge.

(4) Parties and the witness shall have the right to file an appeal against the ruling referred to in Paragraph 1 of this Article.

Probative value of the protected witness's statement

Article 111

(1) With regards to questioning of the protected witness during the trial, provisions of the Articles 109, 110 and 111 of the present Code shall be applied.

(2) A verdict may not be based solely on the statement given by the witness in the manner set forth in Articles 109, 110 and 111 of the present Code.

Protection of the injured party giving a statement

Article 112

Provisions of Articles 108 to 111 of the present Code shall be applied *mutatis mutandis* to participation and questioning of the injured party in the proceedings as well.

6. CRIME SCENE INVESTIGATION AND RECONSTRUCTION OF EVENTS

Conducting crime scene investigation

Article 113

A crime scene investigation shall be conducted when direct observation is needed to establish or clarify some relevant facts in the proceedings.

Reconstruction of events

Article 114

(1) In order to verify the evidence examined or to determine the facts relevant to the clarification of the matter, the authority conducting the proceedings may order a reconstruction of the event which shall be conducted in a manner to reproduce the acts or situations in the conditions as, according to the evidence examined, they existed at the time when the event took place. If the acts or situations were described differently in the testimony of certain witnesses or in the defendant's statements, the event shall, as a rule, be reconstructed in a manner to reproduce each version.

(2) A reconstruction may not be performed in such a manner to violate public peace and order or morality or endanger human life or health.

(3) Certain evidence may be presented again if necessary during the reconstruction.

Assistance by an expert and expert witness

Article 115

(1) The authority conducting a crime scene investigation or reconstruction may ask for the assistance of an expert in criminology, traffic science or other expert who shall, if necessary, undertake measures to discover, secure or describe traces, execute the necessary measurements and recordings, make sketches, or collect other data.

(2) An expert witness may also be summoned to be present at the crime scene investigation or reconstruction if his presence would be useful for an expert's findings and opinion.

7. EXPERT WITNESS' EVALUATION

Ordering expert witness' evaluation

Article 116

Expert witness evaluation shall be ordered when, with a view to establish or evaluate a relevant fact, it is necessary to obtain findings and the opinion of a person who possesses necessary expertise.

Written order

Article 117

(1) Expert witness evaluation shall be ordered by a written order of the authority conducting the proceedings. The order shall state the facts relevant to the expert witness testimony and the name of the expert witness. The order shall be delivered to the parties as well.

(2) If a specialised institution exists for a certain type for expert evaluation, or the expert evaluation may be given by a state authority, such expert witness evaluation, particularly a complex one, shall as a rule be assigned to such an institution or such an authority. The institution or the authority shall appoint one or more experts specialised in the appropriate field who shall deliver expert witness evaluation.

(3) When the authority conducting the proceedings appoints an expert witness, this authority shall, as a rule, appoint one expert witness, and if the expert evaluation is a complex one - two or more expert witnesses.

(4) If for certain expert witness evaluation, expert witnesses are appointed by the Court, other expert witnesses may be appointed only when there is a delay that poses risk, or when Court appointed witnesses are not available or if other circumstances so require.

Duty of an expert witness and procedural punishments

Article 118

(1) A person summoned as an expert witness shall be bound to appear in Court and to present his findings and opinion within a term determined in the Court order. Upon a motion of an expert witness the term determined in the order may be extended if justifiable reasons exist.

(2) If a duly summoned expert witness fails to appear and does not justify his absence, or if he refuses to give expert evaluation or offends the Court or other parties in the proceedings or if he refuses to present his findings and opinion within the term determined in the order, he may be fined in an amount not exceeding € 1.000 while the specialised institution may be fine in an amount not exceeding € 5..000. In the case of an unjustifiable absence the expert witness may be brought by force before the Court.

(3) The Panel of the Court (Article 24, Paragraph 6) shall decide on an appeal against a ruling imposing a fine.

Persons who may not be appointed the expert witness

Article 119

(1) A person who may not testify as a witness (Article 96) or is exempted from the duty to testify (Article 97) may not be appointed an expert witness, neither may a person against whom the criminal offence was committed. If such a person is appointed, the Court's decision may not be based on his findings or opinion.

(2) A reason for the disqualification of an expert witness (Article 43) applies also to the persons who are employed by the injured party or the defendant, or the injured party or the defendant are employed by them or is together with them or some of them employed by other employer.

(3) As a rule, a person examined as a witness shall not be appointed an expert witness.

(4) When an interlocutory appeal is allowed against a ruling rejecting the challenge of an expert witness (Article 41, Paragraph 4) this appeal shall stay the giving of the expert evaluation if there is no delay that poses risk.

Requirements by the Court in respect to expert witness and his oath

Article 120

(1) Before the commencement of the expert witness evaluation, the expert shall be asked to thoroughly examine the object of his evaluation, to indicate accurately everything he notices or discovers and to present his opinion without bias and in accordance with the rules of the science or skills. He shall be given a special instruction that giving a false expert witness evaluation is a criminal offence.

(2) The expert witness may be asked to take an oath before testifying. Before giving expert witness evaluation, Court expert witness shall only be reminded of the oath he has already taken.

(3) Before the trial, the expert witness may take an oath only before the Court if there is a danger that he may fail to appear at the trial due to illness or other reasons. The reason why the oath was taken shall be entered into the record.

(4) The text of the oath is the following: "I do swear to perform the evaluation conscientiously and impartially, according to my best knowledge and to present my findings and opinion precisely and completely."

(5) The authority conducting the proceedings shall make sure that through expert evaluation all the relevant facts are determined and made clear, and for that purpose shows to the expert witness the object to be examined, asks him questions and when necessary, requires clarification on the expert findings and opinion.

(6) The expert witness may receive explanations and may be permitted to inspect the files. The expert witness may propose that some evidence be examined or objects and information be obtained which are of relevance to his findings and opinion. If present at a crime scene investigation, reconstruction or other investigative action, the expert witness may propose the clarification of certain circumstances or that person who is testifying be asked certain questions.

Examination of objects of expert evaluation

Article 121

(1) The expert witness shall examine the objects of the expert evaluation in the presence of authority conducting the proceedings as well as the Court reporter, unless lengthy examinations are necessary for the expert evaluation or if the examinations are carried out in an institution or state authority, or this is required by moral considerations.

(2) If it is necessary for the purposes of giving expert witness evaluation to carry out analysis of some substance, if possible, only part of this substance shall be made available to the expert witness while the rest shall be secured in a necessary quantity in case that further analyses are needed.

Entering findings and opinion of the expert witness into the records

Article 122

The findings and opinion of the expert witness shall be immediately entered into the records. The expert witness may be permitted to submit subsequently the findings and opinion in writing within a term determined by the authority conducting the proceedings.

Expert witness evaluation by a specialised institution or state authority

Article 123

(1) If the expert witness evaluation is assigned to a specialised institution or state authority, it shall be warned by the authority conducting the proceedings that the person who is not specialised in the appropriate field or persons referred to in Article 119 of the present Code may not participate in performing expert witness evaluation nor person for whom reasons for disqualification from expert witness evaluation prescribed by the present Code exist and shall be subsequently warned about the consequences of giving false evaluation as well.

(2) The materials necessary for expert witness evaluation shall be made available to the special institution or state authority and if necessary it shall be further proceeded pursuant to the provisions of Article 120, Paragraph 6 of the present Code.

(3) The specialised institution or state authority shall deliver the written expert findings and opinion signed by the persons who made the expert witness evaluation.

(4) The parties may request from the head of specialised institution or state authority to give them the names of the experts who will provide the expert evaluation.

(5) The provisions of Article 120, Paragraphs 1 to 5 of the present Code shall not apply when performance of expert witness evaluation is assigned to a specialised institution or state authority. The authority conducting the proceedings may request explanations regarding the presented expert findings and opinion from the specialised institution or authority.

Findings and opinion of the expert witness

Article 124

(1) The record on the expert witness evaluation or the written expert findings and opinion shall state who presented the evaluation as well as the occupation, educational background and expertise of the expert witness.

(2) When the expert witness evaluation is given in the absence of the parties, they shall be notified that expert evaluation was given and that they may inspect the record on the expert witness evaluation and the written expert findings and opinion.

Providing new expert witness evaluation

Article 125

If data in the findings of experts do not correspond with each other on essential points, or if their findings are ambiguous, incomplete or contradictory among themselves or to the investigated circumstances, and if these anomalies cannot be removed by a re-examination of the experts, other expert witnesses shall provide new expert witness evaluation.

Additional expert witness evaluation

Article 126

If the opinion of the expert witness is contradictory or inconsistent, or if there is grounded suspicion exist that the opinion is inaccurate, and these deficiencies or suspicion may not be removed by a re-examination of the expert witness, the opinion of other expert witnesses shall be requested.

Post mortem examination, autopsy and exhumation of a corpse

Article 127

(1) A post mortem examination and autopsy shall be performed whenever there is suspicion, or if it is evident that death was caused by a criminal offence or that is related to the commission of a criminal offence. If the corpse has already been buried, an exhumation shall be ordered for the purpose of its post mortem examination and autopsy.

(2) While performing an autopsy, necessary measures shall be taken in order to establish the identity of the corpse. The external and internal physical characteristics of the corpse shall be described in detail for that purpose

Expert witness evaluation not assigned to a specialised institution

Article 128

(1) When the presentation of expert witness evaluation is not assigned to a specialised institution, the post mortem examination and autopsy of a corpse shall be carried out by one physician and if necessary by two or more physicians who, as a rule, are specialised in forensic medicine. The investigative judge shall, when necessary, direct presentation of expert witness evaluation and shall enter the findings and opinion of the expert witness into the records.

(2) A physician who treated the deceased person may not be appointed as an expert witness. He may testify as a witness at the autopsy in order to clarify the course and circumstances of a disease.

Contents of the expert witness's opinion

Article 129

(1) In their expert opinion the expert witnesses shall specifically present on immediate cause of death, what brought it about, and when the death occurred.

(2) If an injury is found on the corpse, it shall be determined whether it was inflicted by another person and if so, by what instrument, in which way, how long before the death occurred, as well as whether such an injury was the cause of death. If several injures are found on the corpse, it shall be established whether each particular injury was inflicted by the same instrument and which of them caused the death and if there is more than one lethal injury, which particular injury or which injuries in combination were the cause of death.

(3) In the case referred to in Paragraph 2 of this Article it shall be specifically determined whether death was caused by the very sort and general nature of the injury or due to the peculiarity or the specific condition of organism of the injured person or due to accidental circumstances or circumstances under which the injury was inflicted. In addition, it shall be established whether assistance provided in time would have prevented death.

(4) The expert witness shall be bound to scrutinize a biological material that was found (blood, spittle, sperm, urine etc.) to describe it and keep it for a biological expert witness evaluation if one is ordered.

Examination and autopsy of a foetus and a new-born infant

Article 130

(1) When performing examination and autopsy of a foetus, its age in particular shall be established as well as his capability of independent existence outside the uterus and the cause of death.

(2) In an examination and autopsy of the corpse of a newborn infant a specific determination shall be made as to whether the infant was born alive or stillborn, were it capable to live, how long the infant lived, and the time and cause of death.

Toxicological examinations

Article 131

(1) If there is a suspicion of poisoning, the suspicious substances found in the corpse or elsewhere shall be sent for expert witness evaluation to an institution that performs toxicological tests.

(2) When examining suspicious substances, the expert witness shall specifically ascertain the type, the quantity and the effects of the poison discovered, and if the substances examined were take from the corpse, the quantity of poison used shall, if possible, also be established.

Expert witness evaluation on bodily injuries

Article 132

(1) Expert witness evaluation on bodily injuries shall in principle be based on an examination of the injured party and if this is neither possible nor necessary it shall be based on medical records or other information available in the files.

(2) After providing accurately describing the injures, the expert witness shall give his expert opinion particularly on the type and severity of each injury and their overall effect regarding the nature or particular circumstances of the case, as well as on what effect these injuries usually have and what effect they had in this specific case, and by what instrument they were inflicted and in which way.

(3) In the course of giving a testimony, the expert witness shall be bound to proceed pursuant to Article 129, Paragraph 4 of the present Code.

Psychiatric examination by an expert witness

Article 133

(1) If suspicion arises that defendant's accountability is excluded or diminished due to mental illness, mental deficiency or other mental disorder, the expert witness evaluation to be given on the basis of a psychiatric examination of the defendant shall be ordered.

(2) If, in the opinion of experts, a longer observation is needed, the defendant shall be committed for observation to a relevant medical institution. The investigative judge, single judge or the Panel shall render a ruling. The observation may be prolonged for more than two months only upon a substantiated motion from the head of the medical institution who has obtained the opinion of the expert witness beforehand, but under no circumstances can exceed the term of six months.

(3) If the expert witnesses establish that the defendant's mental condition is disordered, they shall determine the nature, type, degree and duration of the mental disorder and give their opinion on what effect such a mental condition had and still has on the defendant's cognition and behaviour and whether and to what degree the mental disorder existed at the time the criminal offence was committed.

(4) If a defendant who is in detention is sent to a medical institution, the investigative judge, single judge or the Chair of the Panel shall notify this institution of the grounds for detention in order to undertake the measures necessary for securing the purpose of the detention.

(5) The time spent in a medical institution shall be included in the term of detention or credited against his sentence, should a sentence be pronounced.

Physical examination and other medical procedures

Article 134

(1) A physical examination of the suspect or defendant shall be carried out without his consent if it is necessary to determine facts relevant to the criminal proceedings. A physical examination of other persons may be carried out without their consent only if it is necessary to determine whether there is a certain trace or consequence of a criminal offence on their body.

(2) Taking blood samples and other medical procedures performed according to the rules of medical science in order to analyze and determine other relevant facts for the criminal proceedings may be carried out even without the consent of the person under examination provided that no detrimental consequence for his health ensue therefrom.

(3) The actions referred to in paragraphs 1 and 2 of this Article shall be undertaken only upon the order of the Court having jurisdiction except in the case referred to in Article 246, Paragraph 3 of the present Code.

(4) It is not permitted to apply any medical intervention on the suspect, defendant or witness or to give them such medication that may influence their consciousness and will when giving their statement.

Expert witness audit of business books

Article 135

(1) When it is necessary to give expert witness evaluation on business books, the authority conducting the proceedings shall indicate to the expert witnesses the direction and the scope of the expert audit as well as the facts and circumstances to be established.

(2) If an expert audit of the business books of a commercial enterprise, other legal entity or an entrepreneur requires that they first put their book-keeping in order, than the expenses incurred in such operation shall be borne by the owner of the business records.

(3) The authority conducting the proceedings shall render a ruling on putting the book-keeping in order on the ground of a substantiated written report from the expert witnesses appointed to give expert witness evaluation on business books. The ruling shall state the amount of money the legal entity or the individual entrepreneur must deposit with that authority as an advance against the cost of putting its books in order. The appeal shall not be allowed against this ruling.

(4) After the book-keeping has been put in order, the authority conducting the criminal proceedings shall render a ruling, based on the report of the expert witness, determining the amount of expenses for putting the book-keeping in order and ordering that this amount be borne by the person whose book-keeping was put in order. This person may file an appeal regarding the grounds for the decision on expenses and regarding the amount of the expenses assessed. The first instance Court Panel (Article 24, Paragraph 6) shall decide on the appeal.

(5) The expenses and the fee, if their full amount was not paid in advance, shall be paid to the authority that paid the expenses and the fee to the expert witnesses.

Chapter VIII

MEASURES FOR ENSURING THE PRESENCE OF A DEFENDANT AND UNINTERRUPTED CONDUCTING OF THE CRIMINAL PROCEEDINGS

1. GENERAL PROVISIONS

Type of measures

Article 136

(1) The following measures for providing the presence of a defendant and uninterrupted conducting of the criminal proceedings shall be carried out: summons, apprehension, measures of supervision, bail and detention.

(2) When deciding on which of the mentioned measures to apply, the competent Court shall observe the conditions for application of each measure and shall take into account not to apply a more severe measure if the same effect can be achieved by application of a less severe measure.

(3) These measures shall also be cancelled by virtue of an office immediately after the reasons for their application cease to exist, or they shall be replaced with a less severe measure when the conditions for it are created.

(4) The provisions of Article 137, 138 and 139, Paragraph 2, Item 6 shall be applied accordingly to the suspect as well.

2. SUMMONS

Service, contents and delivery of summons

Article 137

(1) The presence of the defendant in criminal proceedings shall be provided by serving him with the summons. The summons shall be issued by the Court.

(2) The defendant shall be summoned by means of serving a sealed written summons containing: the indication and address of the summoning Court, the first name and surname of the defendant, the criminal offence he is charged with, the place, date and hour of appearance, information that the addressee is being summoned as a defendant, the caution that in the case of his failure to appear he shall be brought in by force, the official seal and the first name and surname of the judge who is serving the summons.

(3) Summons can be done over the phone as well, if the defendant agrees to comply with such summon.

(4) When summoned for the first time, the defendant shall be instructed of his right to engage a defence attorney and of the right to have the defence attorney present at his questioning.

(5) The defendant shall be bound immediately to notify the Court of changes of his address as well as of an intention to change his place of residence. The defendant shall be instructed thereon at his first interrogation, or at the time the indictment without investigation is served (Article 252, Paragraph 6) or when the indicting proposal or a private charge is served, and shall be warned of the consequences prescribed by the present Code.

(6) If the defendant is unable to appear due to illness or other impediment that can not be removed, he shall be interrogated at the place he is or shall be provided transportation to the Courthouse or any other place where the proceedings are to be conducted.

3. APPREHENSION

Warrant for apprehension

Article 138

(1) The Court may order the defendant to be apprehended if a detention warrant has been issued or if the defendant duly summoned has failed to appear without justification, or if the summons could not have been orderly serviced and the circumstances obviously indicate that the defendant is evading service of summons.

(2) The police authorities shall execute a warrant for apprehension.

(3) A warrant for apprehension shall be issued in a written form. A warrant shall contain: the first name and surname of the defendant who is to be brought in, the place and year of birth, the criminal offence he is charged with along with the indication of the respective provision of the Criminal Code, the grounds for the issuance of the warrant for apprehension, the official seal and the signature of the judge who issued the warrant.

(4) The person who the execution of the warrant is conferred to shall serve it to the defendant and shall be asked the defendant to accompany him. If the defendant refuses to comply he shall be apprehended by force.

(5) The warrant for apprehension issued against military personnel, members of the police authorities and penitentiary staff shall be executed by their headquarters or institution.

4. MEASURES OF SUPERVISION

Type of measures

Article 139

(1) If there are circumstances indicating that the defendant might flee, hide, go to an unknown place or abroad, or disrupt conducting of the criminal proceedings the Court may, by virtue of an office or upon motion of Prosecutor or injured party, impose a justified ruling with one or more measures of supervision:

(2) Measures of supervision are:

1) prohibition to leave place of residence,

2) prohibition to visit particular places and areas,

3) duty of the defendant to occasionally report to a certain state authority,

4) prohibition of meeting particular people,

5) temporary seizure of a travel document,

6) temporary seizure of a driving license.

(3) Measures of supervision may not entail the restriction of a defendant's right to live in his own apartment and to have unimpeded meetings with members of his family, close relatives and defence attorney, except in cases were criminal offence was committed against a member of a family or a close relative, nor they may restrict performance of his professional activity except if criminal offence was committed in connection with his professional activity.

(4) In the ruling ordering the measures referred to in Paragraph 2 of this Article, the defendant shall be warned that a detention may be ordered against him in the case of failure to comply with ordered measures.

(5) In the course of the investigation the measures referred to in Paragraph 2 of this Article shall be ordered and vacated by the investigative judge, and after the indictment has been brought by the Chair of the Panel. If the measure is not proposed by the State Prosecutor, and the proceedings are conducted for the criminal offence that is prosecuted *ex officio*, the Court shall, before rendering the ruling by which a measure is ordered or vacated, seek out for the opinion of the State Prosecutor.

(6) The measures referred to in the Paragraph 2 of this Article may last as long as they are necessary, and at the longest until the judgement becomes final. The investigative judge or the Chair of the Panel shall be bound to examine every two months whether the applied measure is still necessary.

(7) Against a ruling, ordering, prolonging or vacating measures referred to in Paragraph 2 of this Article, parties may file an appeal, and the State Prosecutor may file an appeal against the ruling rejecting his motion for application of the measure, as well. The Panel (Article 24, Paragraph 6) shall decide on the appeal within a term of three days from the day the appeal has been filed. The appeal does not stay the execution of the ruling.

Ruling ordering the measures of supervision

Article 140

(1) In the ruling on prohibition to leave a place of residence, the Court shall designate the place at which the defendant has to reside for duration of the measure, as well as the boundaries within which he has to stay.

(2) In the ruling on prohibition to visit particular places or areas the Court shall designate the places and the areas and minimum distance from them that the defendant has to stay away from.

(3) In the ruling imposing on the defendant duty to occasionally report to certain state authority, the Court shall designate the officer to whom the defendant has the duty to report, a term within which he has to report and the way the records of his reporting shall be kept.

(4) In the ruling on prohibition of meeting with certain people, the Court shall designate a minimum distance at which the defendant has to stay from that person.

(5) The ruling on temporary seizure of a travel document shall contain personal details, authority that issued the document as well as the date and number of the document.

(6) The ruling on temporary seizure of a driving license shall contain details of that license (personal details, authority that issued the license, number, date of issue and category).

Implementation of measures of supervision

Article 141

(1) The ruling pronouncing measure of supervision shall be furnished to the authority implementing the measure.

(2) Prohibition to leave a place of residence, prohibition to visit particular places and areas, prohibition of meeting particular people, temporary seizure of a travel document and temporary seizure of a driving license shall be implemented by the police authority.

(3) Duty of the defendant to report periodically to a certain state authority shall be implemented by the police authority or by other state authority to which the defendant has to report.

Inspection of measures of supervision and obligation to report

Article 142

(1) The Court may order the inspection to be carried out over measures of supervision at any time and request a report from the authority implementing measures, which is obliged to submit the report to the Court without a delay.

(2) If defendant fails to fulfil the obligations ordered by the imposed measure, the authority implementing the measure shall inform the Court thereon, and the Court may impose additional measure or order detention.

5. BAIL

Ordering bail

Article 143

The defendant who shall be detained or has already been detained only for a flight risk or on the grounds referred to in Article 148, Paragraph 1, Item 5 of the present Code, may be allowed to remain at large or may be released if he personally or someone else on his behalf furnishes a surety that he will not flee before the conclusion of the criminal proceedings and the defendant himself pledges that he will not conceal himself and will not leave his residence without permission.

Contents of bail

Article 144

(1) Bail shall always be expressed as an amount of money that is set on the basis of the seriousness of the criminal offence, the personal and family circumstances of the defendant, and the property situation of the person posting bail.

(2) Bail shall consist of depositions of cash, securities, valuables or other movable of more considerable value that can be easily cashed and kept, or of placing a mortgage for the amount of bail on real estate of the person posting bail.

(3) If the defendant flees, a decision shall be issued ordering that the amount posted as bail shall be credited to the judicial budget.

Vacating the bail

Article 145

(1) Notwithstanding the bail posted, detention shall be ordered if a duly summoned defendant fails to appear and fails to justify his absence, or if following a decision that he remains at large, some other legal ground for detention occurs against him.

(2) The defendant who gives bail on the grounds for detention referred to in Article 148, Paragraph 1, Item 5 of the present Code shall be detained if, although duly summoned he fails to appear at the trial and to justify his absence.

(3) In the case referred to in Paragraph 1 and 2 of this Article, bail shall be vacated. Cash, valuables, securities or other movables shall be returned and the mortgage shall be removed. The same proceedings shall be followed after the criminal proceedings have been terminated by a ruling discontinuing the proceedings or by a verdict.

(4) If verdict pronounces a sentence of imprisonment, bail shall be vacated when the convicted person begins to serve his sentence.

Ruling on bail

Article 146

(1) The investigative judge shall render the ruling on bail before and in the course of investigation. After the indictment has been brought the ruling on bail shall be rendered by the Chair of the Panel, and during the trial - by the Panel.

(2) If the proceedings are conducted upon the request of the State Prosecutor, the ruling on bail and on vacating the bail shall be rendered after the opinion of the State Prosecutor has been obtained.

6. DETENTION

Exceptional reasons for ordering detention and urgent proceeding on the issues of detention

Article 147

(1) Detention may be ordered only under the conditions set forth in the present Code and only if the same purpose cannot be achieved by another measure and it is necessary for undisturbed conducting of the criminal proceedings.

(2) The authorities taking part in the criminal proceedings and authorities providing the legal assistance therein shall be bound to proceed with exceptional urgency if the defendant is in detention.

(3) Throughout the proceedings, detention shall be terminated as soon as the grounds for which it was ordered cease to exist,

Reasons for ordering detention

Article 148

(1) If there is a reasonable suspicion that a person has committed a criminal offence, detention against this person may be ordered in the following cases:

1) if the person hides or his identity cannot be established, or if there are other circumstances indicating a risk of flight;

2) if there are circumstances indicating that he will destroy, conceal, alter or falsify evidence or clues of the criminal offence or if particular circumstances indicate that he hinder the inquiry by influencing witnesses, accessories or accomplices;

3) if particular circumstance indicate that he will repeat the criminal offence or complete the attempted one, or perpetrate the criminal offence he threatens to commit;

4) in the case of the criminal offences punishable by imprisonment of ten years or a more severe punishment, if that is necessary due to the exceptionally grave circumstances of the offence;

5) if a duly summoned defendant obviously evades appearance at the trial.

(2) Detention shall be ordered against the defendant sentenced by the first instance Court to a punishment of imprisonment of five years or more severe penalty, if the defendant is not already in detention, and if it deems justified because of the manner in which the criminal offence is committed or other special grave circumstances pertaining to the criminal offence.

(3) In the case referred to in Paragraph 1, Item 1 of this Article, detention ordered only because it was not possible to establish the identity of the person, shall last until this identity is established. In the case referred to in Paragraph 1, item 2 of this Article, detention shall be vacated as soon as evidences on the grounds of which detention was ordered are secured. Detention ordered pursuant to Paragraph 1, Item 5 of this Article may last until the pronunciation, but not more than one month.

Ruling ordering detention

Article 149

(1) Detention shall be ordered by a ruling issued by the competent Court.

(2) A ruling ordering detention shall contain: the first name and the surname, year and a place of birth of a person against whom a detention is ordered, the criminal offence he is charged with, the legal grounds for detention, the duration of detention, the time the person was deprived of liberty, instructions on the right to appeal, the statement of reasons with a separate statement on the grounds for ordering detention, the official seal and the signature of the judge who ordered detention.

(3) A ruling on detention shall be served on a person to whom it relates immediately after he has been detained. The day and the time the ruling was received shall be noted in the files. A person served with a ruling shall acknowledge a receipt with his signature.

(4) Against the ruling on detention a detainee may file an appeal with the Panel (Article 24, Paragraph 6) within a term of 24 hours from the moment of the receipt of the ruling. The appeal, the ruling on detention and other files shall immediately be submitted to the Panel. The appeal does shall not stay the execution of the ruling.

(5) If the investigative judge disagrees with the State Prosecutor's motion to order detention, he shall ask the Panel to decide on this (Article 24, Paragraph 6). Against the ruling on detention issued by the Panel, a detainee may file an appeal, which shall not stay the execution of the ruling. In regard with serving the ruling on detention and filing an appeal the provisions of the Paragraphs 3 and 4 of this Article shall be applicable.

(6) In the cases referred to in Paragraphs 4 and 5 of this Article, the Panel shall be bound to decide on appeal within 48 hours.

Ordering detention and duration of detention in the course of investigation

Article 150

(1) Detention ordered by the ruling of the investigative judge or the Panel referred to in Article 149, Paragraph 5 may last at the longest one month from the day the detainee was deprived of liberty. After this term has expired, the detainee may be detained only on the basis of a decision extending the custody.

(2) Detention may be extended by the ruling of the Panel (Article 24, Paragraph 6) for no longer than two months. The appeal shall be allowed against the ruling of the Panel and it shall not stay the execution of the ruling.

(3) If the proceedings are carried out for a criminal offence punishable by imprisonment for a term of five years or longer, the Panel of the Supreme Court may, upon a substantiated motion of the investigative judge or the State Prosecutor, if important reasons exist, extend the detention for no longer than another three months.

(4) The defendant shall be released if the indictment has not been brought until the expiry of the terms referred to in Paragraphs 2 and 3 of the present Code.

Termination of detention

Article 151

In the course of investigation, the investigative judge may terminate the detention if the State Prosecutor agrees. If the investigative judge and the competent Prosecutor disagree, the investigative judge shall request the Panel to decide thereof, which shall be bound to render a decision within a term of 48 hours.

Duration of detention after the indictment is brought

Article 152

(1) After the indictment has been submitted to the Court and up until the completion of a trial, detention may be ordered or terminated only by the ruling rendered by the Panel, provided that the opinion of the State Prosecutor is obtained if the proceedings are conducted upon his motion.

(2) The Panel shall be bound, upon the request of the parties or by virtue of an office, to review whether the grounds for detention still exist and to extend or terminate, performing check ups every 30 days before the indictment has become final, and every two months from the moment the indictment becomes final.

(3) After the indictment has been brought detention may last two years at the longest. If within this period a first instance verdict has not been delivered to the accused, detention shall be terminated and the accused released.

(4) After the first instance verdict has been delivered, detention may last one year at the longest. If within this period a second instance verdict, by which the first instance verdict is annulled or confirmed, has not been delivered, detention shall be terminated and the accused released. If within a term of one year a second instance Court verdict is delivered to the detainee and that verdict has annulled the first instance verdict, detention may last at the longest for one more year from the day the second instance verdict has been delivered.

(5) The appeal on the ruling referred to in Paragraphs 1 and 2 of this Article shall not stay the execution of the ruling.

(6) Appeal shall not be allowed against the ruling of the Panel by which the motion to order or terminate detention is rejected.

Obligation to inform on deprivation of liberty

Article 153

(1) The police authority or the Court shall be bound immediately after a person has been deprived of liberty and within a term of 24 hours at the latest, to inform thereof a person's family or his extra-marital partner, unless he expressly objects that.

(2) A competent body of social care shall be informed about deprivation of liberty if it is necessary to take measures for securing children and other family members to whom the person deprived of liberty is a guardian.

7. TREATMENT OF DETAINEES

Respect of human personality and dignity of detainees and their accommodation

Article 154

(1) Detention must be executed in such a manner as not to offend the personal integrity and dignity of the detainee.

(2) The restrictions may be imposed against the detainee only to the extent necessary to prevent his flight, instigation of third persons to destroy, conceal, alter and falsify evidence or clues of a criminal offence or to prevent direct or indirect contacts among detainees for the purpose of influencing witnesses, accomplices and fences.

(3) Persons of different sexes shall be detained separately. As a rule, detainees against whom reasonable suspicion exists that they have participated in the same criminal offence shall not be accommodated in the same room neither shall detainees be accommodated in the same room as persons who are serving a prison sentence. If possible, detainees against whom a reasonable suspicion exists that they are repetitive offenders shall not be detained with other detainees towards whom they might have and adverse influence.

Rights of detainees

Article 155

(1) A detainee shall be entitled to at least eight hours of an uninterrupted night rest for every 24-hour period.

(2) At least two hours of movement in the open air daily shall be provided to a detainee.

(3) Detainees are entitled to wear their own clothes, to use their own bedding, as well as to obtain at their own expense food, books, professional reviews and periodicals, newspapers, stationary and drawing supplies and other things related to their daily needs, except those suitable for infliction of injures, detrimental for health or preparation of flight.

(4) A detainee may be obliged to maintain the premises he is detained in clean. On his request, the investigative judge or the Chair of the Panel with the consent of a prison administration may allow the detainee to work within the prison in accordance with his mental and physical capacity, providing that this is not prejudicial for the course of the proceedings. For such a work the detainee shall be entitled to a fee ordered by the administrator of the prison.

Receiving visits and correspondence of detainees

Article 156

(1) Upon the approval of the investigative judge and when necessary and under his supervision or the supervision of a person designated by him, the detainee may, in accordance with internal regulation of the detention facility, receive visits from his close relatives and upon his requests from physician and other persons. Some visits may be prohibited if they could detrimentally affect the conduct of the proceedings.

(2) Subject to knowledge of the investigative judge, diplomatic and consular representatives of the foreign states which have signed relevant international conventions are entitled to visit and without supervision to communicate with detainees who are nationals of their state. The investigative judge shall inform the administrator of the detention facility about such visit.

(3) With the approval of the President of the Court, the detainee may receive visits from the representatives of domestic and foreign organizations for human rights protection.

(4) Subject to the knowledge and supervision of the investigative judge, a detainee may exchange letters with persons outside the prison. The investigative judge may forbid to the detainee the sending and receiving of letters and other shipments if this may detrimentally affect the conduct of the proceedings. The prohibition does not relate to the letters which the detainee sends to or receives from the international Courts and domestic parliamentary, judicial and executive authorities as well as to the letters which he sends or receives from his defence attorney, except when inspection of his correspondence with the defence attorney is proven to be justified (Article 73, Paragraph 4). The sending of a petition, complaint or appeal shall never be forbidden.

(5) After the indictment is brought and until the judgement becomes final, the responsibilities referred to in Paragraphs 1, 2 and 4 of this Article shall be performed by the Chair of the Panel.

Disciplinary offences and disciplinary punishments

Article 157

(1) In the case of a disciplinary offence the investigative judge or the Chair of the Panel may impose against the detainee a disciplinary penalty consisting of restrictions of visits. Such restriction shall not refer to the communications between the detainee and his defence attorney.

(2) An appeal may be filed against a ruling on the disciplinary measure referred to in Paragraph 1 of this Article with the Panel of the Competent Court (Article 24. Paragraph 6) within 24 hours from the moment the ruling was served on the detainee. The appeal shall not stay the execution of the ruling. The Panel shall decide on the appeal within a term of three days from the day the appeal was filed.

Supervision over the execution of detention

Article 158

(1) The President of the Competent Court shall carry out supervision over the execution of detention.

(2) The President of the Court or the judge designated by him shall be bound to visit the detainees at least once a week and, if he considers it necessary without the presence of the keepers and guards, and shall inquire how detainees are fed, how their other needs are satisfied and how they are treated. The President or the judge designated by him shall be bound to undertake measures necessary to remove improprieties spotted while touring the prison. The judge designated by the President of the Court may not be the investigative judge.

(3) The President of the Court and the investigative judge may at any time visit detainees, may talk to them and hear their complaints.

Rules regulating the execution of detention

Article 159

Having obtained approval of the President of the Supreme Court, the Minister of Justice shall issue detailed rules regulating the execution of detention in accordance with provisions of the present Code.

Chapter IX

RENDERING AND ANNOUNCING DECISIONS

Type of decisions

Article 160

(1) Decisions in the criminal proceedings shall be rendered in the form of a verdict, ruling and order.

(2) Only the Court shall render a verdict, while rulings and orders may also be rendered by other authorities taking part in the criminal proceedings.

Decisions on deliberations and voting

Article 161

(1) The Panel shall render a decision after deliberations and voting. A decision shall be rendered by a majority vote.

(2) The Chair of the Panel shall chair the deliberations and voting, and shall make sure that all the issues are thoroughly and fully considered, and shall cast his vote last.

(3) If the votes on specific issues are divided into more different opinions so that none of them reaches the necessary majority, the issues shall be separated and the voting repeated until a majority is reached. If in such a manner a majority is not reached, the decision shall be rendered by adding the votes most unfavourable to the defendant to the votes less favourable to him, until a required majority is reached.

(4) The members of the Panel may not abstain from voting on issues presented by the Chair of the Panel but the member of the Panel who voted for the acquittal of the defendant or for the annulment of the verdict and was outvoted shall not be required to vote on the issue of sanction. If he fails to vote, it shall be deemed that he assents to the vote most favourable to the defendant.

Manner of voting

Article 162

(1) When debating, the Court shall first vote on the issue of the Court's jurisdiction, on the issue whether the proceedings should be supplemented and on other preliminary issues. After deciding on preliminary issues the Court shall decide on the merits of the case.

(2) When deciding of the merits of the case, the Court shall first vote to determine whether the defendant committed the criminal offence and whether he is responsible for it, and subsequently it shall vote on punishment, other criminal sanctions, the costs of the criminal proceedings, claims under the property law and other issues on which a decision must be rendered.

(3) If the same person is charged with committing more than one criminal offence, the Court shall vote on the responsibility and punishment for each offence and thereafter on a cumulative punishment for all the offences.

Closed session

Article 163

(1) Deliberations and voting shall take place *in camera*.

(2) Only members of the Panel and the Court clerk may be present in the room where the deliberations and voting take place.

Announcement of decisions

Article 164

(1) Unless otherwise provided by the present Code, the decisions shall be conveyed to the interested persons by oral announcement if they are present and by the service of a certified copy if they are absent.

(2) If a decision is announced orally, this shall be entered into the records or in the files and certified by the signature of the person who is entitled to right to appeal. If this person states that he shall not file an appeal, the certified copy of the orally announced decision shall not be served on him, unless otherwise provided by the present Code.

(3) Copies of decisions subject to an appellate review shall be served along with an instruction on the right to appeal. The appeal filed to the benefit of the defendant shall be deemed as in due time if it is filed within a term determined in the instruction on the right to appeal, provided that the term determined in the instruction is longer than the statutory term.

Chapter X

DELIVERY OF COURT RELATED DOCUMENTS AND INSPECTION OF FILES

Manner of delivery

Article 165

(1) Serving of documents shall as a rule be effected by the official of the authority which renders the decision or directly to such authority or may be served by mail, local self-government authority or by assistance of other authority.

(2) The Court may serve a summons for trial or other summonses orally to the person present before the Court along with the instructions about the consequences of a failure to appear. The summons served in such a manner shall be entered into the records and signed by the summoned person, except if this summon is entered into the records of the trial. It shall be considered that valid delivery has thereby been made.

Personal delivery

Article 166

When the present Code prescribes that the document shall be served in person, it shall be delivered directly to the person it has to be delivered to. If the person to be delivered in person cannot be reached at the place where the delivery has to be effected, the writ server shall make inquiry as to when and where the person can be found and leave with one of the persons stated in Article 167 of the present Code a written notice directing the recipient of the document to be in his dwelling or work place on a specified date and hour for the purpose of receiving the document. If even after this, a person making the delivery cannot reach the person to be served, he shall act according to the provision of Article 167, Paragraph 1 of the present Code and it shall be considered that valid delivery has thereby been made.

Indirect delivery

Article 167

(1) Documents that under the present Code do not have to be delivered in person shall also be delivered in person, but if the recipient is not found at home or at work, these documents can be delivered to any of the adult members of the recipient's household who shall be bound to receive the document. If the said household members are not found in the apartment, the document shall be left with the janitor or a neighbour if they agree to accept it. If delivery is attempted at the recipient's work place and he cannot be reached, documents can be delivered to the person authorised to receive mail who shall be bound to receive the document or to the recipient's co-employee if he agrees to accept it.

(2) Should it be established that the recipient is absent and that the persons referred to in Paragraph 1 of this Article are not in a position to deliver the document to him in due time, the document shall be returned with an indication as to whereabouts of the absent person.

Mandatory serving in person

Article 168

(1) The summons for the first interrogation in the pre-trial criminal proceedings and the summons for the trial shall be served on the defendant in person.

(2) An indictment, indictment proposal or private complaint, a judgement and other decisions for which the term for appeal commences on the day when service is made, as well as an appeal by the adverse party that is served for reply, shall be served in person to the defendant who does not have a defence attorney. If the defendant requests that the summons referred to in Paragraph 1 and the documents referred to in this Paragraph are to be served on a person he designate, the serving shall be effected on this person and it shall be deemed by such acts that the summons and the documents are served on the defendant.

(3) If the defendant who does not have a defence attorney should be served with a verdict pronouncing a sentence of imprisonment and this verdict cannot be served at his present address, the Court shall by virtue of an office assign a defence attorney to the defendant who shall perform this duty until the new address of the defendant is determined. The appointed defence attorney shall be given necessary period of time to acquaint him with the case file, whereupon the verdict shall be served on the appointed defence attorney and procedure shall resume. If it concerns another decision whose date of delivery becomes the date of commencement of the period of time for an appeal or if it concerns an appeal of the opposing party that is being submitted for an answer, the decision or appeal shall be posted on the bulletin board of the Court, and after eight days from the date of posting it shall be assumed that valid delivery has been made.

(4) If the defendant has a defence attorney, the indictment, indictment proposal, private complaint and all decisions for which the period of time for filing an appeal or objection commences on the date of delivery, and also the appeal of the opposing party submitted for an answer, shall be served on the defence attorney and the defendant in accordance with the provisions referred to in Article 167 of the present Code. In such a case, the period shall commence on the date when the document is delivered to the defendant or defence attorney. If the decision or appeal cannot be served on the defendant because he has failed to report a change of address, the decision or appeal shall be posted on the bulletin board of the Court and at the end of eight days from the date of posting it shall be assumed that valid delivery has been made.

(5) If a document is to be delivered to the defence attorney of the defendant, and he has more than one defence attorney, it shall be sufficient to make delivery to one of them.

Delivery of documents to a private Prosecutor and a subsidiary Prosecutor

Article 169

(1) The notice to file private complaint or indictment to be submitted as well as a summons for trial shall be served on a private Prosecutor and subsidiary Prosecutor or to their legal guardian in person (Article 166), and to their legal representatives pursuant to Article 167 of the present Code. The decisions for which the term for appeal commence to run when service is made and the appeal by the adverse party that is served for reply shall be served in the same manner.

(2) If the service cannot be effected to the persons referred to in Paragraph 1 of the present Article or the injured party at their present address, the Court shall put the notice, decision or appeal on the bulletin board and after the lapse of eight days from the day of posting it shall be assumed that valid delivery has been made.

(3) If the injured party, subsidiary Prosecutor or private Prosecutor is represented by a legal guardian or legal representative, service shall be made on the later, and in the case where there are several of them, the only one of them shall be served.

Receipt confirming delivery

Article 170

(1) The documents shall be served in the sealed envelope.

(2) Proof of service (service receipt) shall be signed both by the recipient and a person making the delivery. The recipient shall himself make a note on the service receipt indicating the day of the service.

(3) If the recipient is illiterate or otherwise unable to sign the service receipt, a person making the delivery shall sign the recipient's name, indicate the day and hour of receipt and note the reasons why he signed on behalf of the recipient.

(4) If the recipient refuses to sign the service receipt, a person making the delivery shall make a note thereof on the service receipt indicating the day of service and by this it shall be assumed that valid delivery has been made.

Refusal of a served document

Article 171

When the recipient or an adult member of his household refuses to receive the document, a person making the delivery shall note on the service receipt the day, hour and reason for the refusal and he shall leave the document in the dwelling of the recipient or at his workplace, and by this it shall be deemed that the service was duly made.

Special cases of serving

Article 172

(1) Services of summons upon military personnel, penitentiary guards and employees of traffic companies (land, river, overseas and air transportation), shall be effected to their command or to the immediate commanding officer and if necessary other documents may also be served on them in such a manner.

(2) Summons shall be served on a person deprived of liberty through the Court or through the administration of the institution where he is an inmate.

(3) Service on persons enjoying immunity in the Serbia and Montenegro shall be made through the Ministry of Foreign Affairs of Serbia and Montenegro, unless otherwise provided by international treaties.

(4) Nationals of Serbia and Montenegro abroad shall be served documents, save for the petitions of the domestic Courts for legal assistance in criminal cases, through diplomatic or consular mission of Serbia and Montenegro in the foreign state, provided that the foreign state does not object such a manner of service and with the consent of the recipient of the document. If the document is served in the mission, the authorised person of the diplomatic or consular mission shall sign the service receipt as a person making the delivery, and if the service is made by mail he shall confirm this on the service receipt.

Serving upon the State Prosecutor

Article 173

(1) Service of decisions and other documents upon the State Prosecutor is effected by delivery to the writing office of the State Prosecutor's office.

(2) When delivering decisions for which the period of time commences to run on the date of delivery, the day of delivery of the document to the writing office of the State Prosecutor shall be taken as the date of delivery.

(3) The Court shall deliver the criminal files to the State Prosecutor for examination upon his request. If a term for filing an appeal is pending, or if other interests of the proceedings request so, the Court may order a term in which the State Prosecutor should return the files.

Application of provisions of other laws

Article 174

In cases not prescribed by the present Code the service shall be made in accordance with the provisions of civil proceedings.

Informing by telephone and telegram

Article 175

(1) Summons and decisions which are issued up until the completion of the trial for persons participating in the proceedings, except for the defendant, may be handed over to the participant to the proceedings who consents to deliver them to the addressee, if the authority conducting the proceedings holds that in this way their service is guaranteed.

(2) The persons referred to in Paragraph 1 of this Article may be informed about a summons for a trial or another summons as well as on a decision on the postponement of a trial or other scheduled actions by telegram or telephone if under the circumstances it can be assumed that the person to whom the information is sent will receive it in such a manner.

(3) An official note in the file shall be made about the summons and service of a decision effected in the manner prescribed in Paragraphs 1 and 2 of this Article.

(4) Detrimental consequences prescribed for omission by the present Code may not take effect against the person who was informed pursuant to Paragraphs 1 or 2 of this Article

Examining, transcribing, copying and recording of particular files

Article 176

(1) Anyone having a justified interest may be permitted to examine, transcribe, copy and record particular criminal files.

(2) Actions referred to in Paragraph 1 of this Article shall be permitted by the investigative judge, single judge or the Chair of the Panel before which the proceedings are being conducted when the proceedings are underway and by the President of the Court or an official designated by him upon completion of the proceedings.

(3) If the public is excluded from the trial or if the right to privacy would be violated by permitting the actions referred to in Paragraph 1 of this Article, these actions may be denied or conditioned by a prohibition of making public the names of parties participating in the proceedings. Against a ruling denying the actions an appeal, that shall not stay the execution of the ruling, may be filed.

(4) The provisions of Article 58 and 72 of the present Code shall be applied to actions referred to in Paragraph 1 of this Article if effected by a private Prosecutor, subsidiary Prosecutor, injured party and defence attorney.

(5) The defendant or the suspect, if interrogated according to the provisions on interrogation of the defendant, or after an indictment without investigation has been brought (Article 252), has the right to examine the files and observe the objects that will serve as evidence.

Chapter XI

WRITS AND RECORDS

Submission and correcting of briefs

Article 177

(1) Private charges, indictments and indictment proposals of the subsidiary Prosecutor, motions, judicial remedies and other declarations and releases shall be submitted in writing or shall be given orally and entered into the records.

(2) The briefs referred to in Paragraph 1 of this Article must be comprehensible and contain all matter that will be necessary to undertake procedural action upon them.

(3) If the submissions not comprehensible or does not contain all matters that will be necessary to proceed upon it, the Court shall, unless otherwise prescribed by the present Code, summon the person that submitted the brief to correct or supplement it, and if he fails to comply with the summons within a prescribed term, the Court shall dismiss the brief.

(4) In the summons to correct or to supplement the brief the person submitting the brief shall be warned of the consequences of failure.

Serving writs on the opposing party

Article 178

The writs that according to the present Code are to be served on the opposing party shall be submitted to the Court in a sufficient number of copies for the Court and the opposing party. If such writs are not submitted to the Court in sufficient number of copies, the Court shall make the necessary copies at the expense of the person that submitted the writ.

Imposing fines on persons who offend the Court or persons participating in the proceedings

Article 179

(1) The Courts shall impose a fine not exceeding € 1.000 on a defence attorney, legal representative, legal guardian, injured party, private Prosecutor or subsidiary Prosecutor who in a submission or orally offends the Court or a person participating in the proceedings. The investigative judge or the Panel before which an offensive statement has been made shall render the ruling on fine and, if it was made in writ, the Court that is to decide on the submission shall render the ruling. The appeal against this ruling shall be allowed. If the State Prosecutor or the person representing him offends another person, the Court shall inform the competent State Prosecutor thereof. The Bar Association shall be informed of the fine imposed on its member or a counsel in training.

(2) The punishment pursuant to Paragraph 1 of this Article shall have no effect on the prosecution or sentencing of the criminal offence committed by the offensive act.

Obligation of making records

Article 180

(1) Every procedural action performed in the course of criminal proceedings shall be entered into the records as it is being performed, and if this is not possible, then immediately afterwards.

(2) Records shall be made by Court clerk. Only records of searches of dwellings or persons and records of actions undertaken outside official premises may be made by the person undertaking the action if Court clerk cannot be provided.

(3) When the Court clerk makes records, the records shall be made in such a manner that the person performing the act dictates to the Court clerk what shall be entered into the records.

(4) The interrogated person shall be permitted to state answers directly into the records. In the case of abuse, he may be denied such right.

Contents of the records

Article 181

(1) The records shall contain the indication of the state authority before which the procedural action is performed, first and last name of the official who performs the action, the place where it is undertaken, the day and hour when it is commenced and completed, the names and surnames of persons present as well as their role in the proceedings, and the number of the Court file of the criminal case in which the action is undertaken.

(2) The records must contain essential data on the course and the contents of the action performed. Only the essentials of statements and declarations given shall be entered into records in narrative form records. Questions shall be entered into the records only if they are essential to the understanding of the answer. If necessary, or upon the request of the parties or a defence attorney, the question and the answer to that question shall be entered into the records verbatim. In the case of abuse, they may be denied such right. If objects or documents are seized while undertaking a procedural action, this shall be entered into the records and the seized objects shall either be attached to the records or their location shall be stated.

(3) The course of the criminal proceedings may also be recorded by stenographer. Stenographic notes shall be translated, examined, signed by a person who took them and attached to the files within a term of 48 hours.

(4) When undertaking procedural actions such as a crime scene investigation, search of dwellings or persons, or the identification of persons or objects (Article 103), data which are of importance regarding the significance of such a procedural action or for the determination of the identity of certain objects (description, measurements and size of objects or traces, labelling of objects, etc) shall also be entered into the records, and if sketches, drawings, blueprints, photographs, film or similar recordings are made - this shall also be entered into the records and attached to the records.

Keeping the records

Article 182

(1) The records shall be kept neatly. No parts shall be deleted, added or altered. Parts that have been crossed out must remain legible.

(2) All alterations, corrections and additions shall be entered at the end of the records and shall be certified by the signatures of the persons who sign the records.

Reading and signing records

Article 183

(1) The interrogated person, persons whose presence is mandatory during the procedural action, as well as the parties, defence attorney and the injured party if they are present shall have the right to read the records or to request that it be read to them. The person undertaking the procedural action shall inform them of this right and in shall be entered into the records whether this information was given to them and whether the records was read. The records shall always be read if no Court clerk is present and the note thereof shall be entered into the records.

(2) The interrogated person shall sign the records. If the records contain several pages, the interrogated person shall sign each page. A refusal by the interrogated person to sign the records or leave a fingerprint on it shall be entered into the records as well as the reason for the refusal.

(3) The interpreter, if there is one, the witnesses whose presence during the conduct of an investigatory action is mandatory, and in the case of a search, the person who is searched or whose dwelling is searched shall put his signature at the end of the records. If the records is not written by Court clerk (Article 180, Paragraph 2), it shall be signed by the persons present while the action is being undertaken. If there are no such persons or if they cannot understand the contents of the records, the records shall be signed by two witnesses save in case it is not possible to provide for their presence.

(4) In lieu of his signature an illiterate person shall leave the print of the right hand index finger, and the Court clerk shall note in writing his name and surname below the fingerprint. If the print of the right hand index finger cannot be taken, the print of some other finger or the print of left hand finger shall be taken and shall be entered into the records of which finger and hand the print was taken.

(5) If the interrogated person has no arms he shall read the records and if he is illiterate, the records shall be read to him and this shall be entered into the records.

(6) If the procedural action cannot be undertaken without interruption, the date and hour of the interruption as well as the date and hour of the resumption of the procedural action shall be entered into the records.

(7) If objections are raised regarding the contents of the records, they shall be entered into the records as well.

(8) The person undertaking procedural action and the Court clerk shall sign the records at the end of it.

Exclusion of records

Article 184

(1) Where the present Code provides that the judicial decision cannot be based on the statement of the defendant, witness or expert witness, the investigative judge shall by virtue of an office or upon the motion of parties render a ruling on the exclusion of the records on these statements from the file immediately, or until the completion of the investigation or before he express his consent upon the indictment to be brought without investigation (Article 252, Paragraph 1) at the latest. This ruling shall be subject to an appellate review.

(2) After the ruling becomes final, the excluded records shall be sealed in a separate cover, the investigative judge shall keep them separately from other files, and they may not be examined or used in the proceedings.

(3) After the completion of the investigation and after consent is given to prefer the indictment without investigation (Article 252, Paragraph 1) the investigative judge shall proceed according to the provisions of Paragraphs 1 and 2 of this Article also regarding all the information which pursuant to Article 243, Paragraph 2 and Article 231, Paragraph 1 of the present Code is given to the State Prosecutor and to police authorities by citizens, except in regard with the record referred to in Article 231, Paragraph 9 of the present Code. When the State Prosecutor prefers the indictment without investigation (Article 252, Paragraph 6), he shall submit to the investigative judge the files containing such information and the investigative judge shall proceed pursuant to provisions of this Article.

Audio and video recording

Article 185

(1) The investigative judge, single judge or the Chair of the Panel may order that an investigatory action be recorded by audio or video recording devices. Before the interrogation begins, the investigative judge shall inform the person being interrogated thereof.

(2) The recording shall contain information referred to in Article 181, Paragraph 1 of the present Code, information necessary to establish the identity of the person whose statement is being recorded and information regarding the procedural role of that person. When statements from more persons are recorded, it must be clearly recognisable from the recording who gives which statement.

(3) Upon the request of the interrogated person the recording shall be reproduced immediately and the corrections and explanations made by this person shall be recorded.

(4) The records of the investigatory action shall contain the information that a recording was made, who did the recording, that the interrogated person was previously informed that the recording would take place, that the recording was reproduced and where the recording is kept if it is not attached to the Court files.

(5) The investigative judge, single judge or the Chair of the Panel may order the recording to be fully or partially copied. In that case the investigative judge or the Chair of the Panel shall examine the copy, certify it and attach it to the records on the undertaking of the investigatory action.

(6) The recording shall be kept in Court as long as the criminal file is kept.

(7) The investigative judge may allow persons participating in the proceedings who have a justified interest to record the investigatory action by audio recording device.

(8) The recordings referred to in Paragraphs 1 to 7 of this Article cannot be publicly presented without a permission of the Court. The Court shall render such a decision only with prior consent of the parties and participants to the proceedings at the moment the recording was made.

Application of the provisions of the present Code

Article 186

The provisions of Articles 320 to 323 of the present Code shall also be applied to the trial records.

Records on deliberation and voting

Article 187

(1) A separate records concerning debate and voting shall be made.

(2) The records on deliberation and voting shall contain the course of the voting and the decision made.

(3) All members of the Panel and the Court clerk shall sign these records. Dissenting opinions shall be attached to the records on deliberation and voting if they are not entered into the records.

(4) The records on debate and voting shall be sealed in a separate cover. Only a higher Court when deciding upon a judicial remedy can examine these records. In that case the Court shall be bound to reseal the records in a separate cover and make a note on the cover thereon.

Chapter XII

TERMS

Terms for submitting writs

Article 188

(1) Terms prescribed by the present Code cannot be extended, unless explicitly allowed by the present Code. If the purpose of a term prescribed by the present Code is the protection of the right to a defence and other procedural rights of a defendant, this term may be shortened if the defendant so requests in writing or verbally for the records.

(2) When a statement must be made within a specified period of time, it shall be assumed that it has been made within the specified period of time if it has been given to the person authorised to receive it before the expiration of that period.

(3) When a statement has been sent by registered mail or telegraph, the date of mailing or sending shall be taken as the date of delivery to the person to whom it has been sent. A delivery made to the Military Post Office in the places where the regular Post Office does not exist shall be deemed as a delivery to the Post Office by registered mail.

(4) A defendant who is in detention may make a statement limited by a term also verbally for the records before the Court conducting the proceedings or in writing to the prison administration, and a person serving a sentence or an inmate of an institution for the implementation of security or corrective measures may deliver such a statement to the administration of the institution where he is placed. The day on which the records are made or the day on which a written statement is delivered to the administration of an institution shall be taken as the day of delivery to the authority competent to receive such a statement. The administration of the prison or institution shall issue a person deprived of liberty a receipt on delivery of the statement.

(5) If the submission that is subject to a time limit, due to ignorance or an obvious mistake on the part of the sender, has been sent or delivered to an incompetent Court before the lapse of the term and therefore delivered to the Competent Court after the lapse of the term, it shall be deemed that it was submitted in due time.

Computing terms

Article 189

(1) Terms shall be counted in hours, days, months and years.

(2) The hour or day when the delivery or release is effected when the event from which the duration of the terms is computed occurred shall not be computed into the term but the next following hour or day shall be taken as the point of commencement of the term. One day shall be counted as 24 hours and a month shall be computed according to calendar time.

(3) The terms stated in months or years shall expire with the lapse of the day of the last month or year, which by its number corresponds to the day when the term began. If such a day does not exist in the last month, the term shall expire with the lapse of the last day of that month.

(4) If the last day of the term falls on a state holiday or on a Saturday or Sunday, or on some other day when the state authority does not work, the term shall expire with the lapse of the first following working day.

Return to the *status quo ante*

Article 190

(1) If the accused shows good reasons for failing to meet the deadline for making an appeal against a verdict or a decision pronouncing a security measure or corrective measure or a decision to forfeiture property gain, the Court shall allow return to the *status quo ante* for purposes of submitting the appeal if, within eight days following termination of the reasons for failing to meet the deadline, the accused submits a request for return to the *status quo ante* and files his appeal simultaneously with the request.

(2) Return to the *status quo ante* may not be requested if three months have passed from the date of failure to meet the deadline.

Decision on Return to *Status Quo Ante*

Article 191

(1) The single judge and the Chair of the Panel who renders the verdict or ruling challenged by an appeal shall decide on return to the *status quo ante.*

(2) The ruling granting reinstatement to the prior state of affairs is not subject to an appellate review.

(3) If the defendant files an appeal against the ruling rejecting the return to the *status quo ante*, the Court shall be bound to forward it together with the appeal to the judgement or to the ruling on security or corrective measures or on forfeiture of property gain as well as the reply to the appeal and the entire file to the higher Court for a decision.

Consequences of Filing a Request for Return to *Status Quo Ante*

Article 192

As a rule, a request for return to the *status quo ante* shall not stay execution of a verdict or execution of a decision instituting a security measure or corrective measure or a decision to forfeit property gain, but the Court may decide to halt the execution until a decision is made on the request.

Chapter XIII

ENFORCEMENT OF DECISIONS

Irrevocability and enforceability of verdicts

Article 193

(1) The judgement shall become final after it can no longer be contested by an appeal or when no appeal is admissible.

(2) The final verdict shall become enforceable after it is duly served provided that there are no legal obstacles to its execution. If an appeal is not filed or the parties waive their right to an appeal or they withdraw the appeal, the verdict shall be enforceable after the expiry of the term for the appeal or from the day when the parties waive their right to appeal or withdraw the appeal.

(3) If the Court that rendered the verdict at the first instance was not competent for enforcement, it shall serve a certified copy of the judgement with an attestation of its enforceability to the Court that is competent for execution.

(4) If a punishment is inflicted upon a reserve officer or non-commissioned officer, the Court shall serve a certified copy of the final verdict to the competent military authority where the military registry of the convicted person is kept.

Execution of an Order Concerning the Costs of Proceedings and Forfeiture of Items

Article 194

(1) The verdict regarding the costs of the criminal proceedings, forfeiture of property gain and claims under property law shall be executed by the Competent Court pursuant to the rules on the enforcement proceedings.

(2) The Court shall, by virtue of an office, carry out exaction of the costs of the criminal proceedings that shall be credited to the budget funds. The costs of forcible collection shall be credited from the Court budgetary appropriations.

(3) If the security measure of forfeiture of item is pronounced by the verdict, the Court that rendered the verdict at the first instance shall decide whether these items shall be sold pursuant to the provisions of the enforcement proceedings, or shall be given to a museum of criminology or other institution or destroyed. The proceeds obtained from a sale shall be credited to the Court budget.

(4) The provision of Paragraph 3 of this Article shall be applied accordingly when the decision on forfeiture of an object pursuant to Article 537 of the present Code is rendered.

(5) Except for cases of the retrial request for the protection of legality or the request for the review of legality of the final verdict, a final decision on forfeiture of items may be amended in the civil proceedings if a conflict arises regarding the ownership of the items forfeited.

Enforceability of other decisions

Article 195

(1) Unless otherwise prescribed by the present Code, rulings shall be executed when they become final. Warrants and orders shall be executed immediately if the authority issuing them does not decide otherwise.

(2) Rulings shall become final after they cannot be contested by an appeal or when no appeal is admissible.

(3) Unless otherwise prescribed, rulings, warrants and orders shall be executed by the authorities that rendered them. If the Court decides by a ruling on the costs of the criminal proceedings, these costs shall be collected according to the provisions of Article 194, Paragraphs 1 and 2 of the present Code.

Doubts as to whether the execution is permissible

Article 196

(1) If doubts arise as to whether execution of the Court decision is permissible or as to the computation of a sentence, or if a final verdict fails to make a decision to credit pre-trial custody or a previously served sentence, or the computing has not been done correctly the Chair of the Panel at first instance shall decide on these issues by a separate ruling. The appeal shall stay the execution of the ruling, provided the Court does not decide otherwise.

(2) If doubts arise regarding the interpretation of the Court decision, the Chair of the Panel that rendered the final decision shall made a ruling thereof.

Validity of a verdict on a claim under property law

Article 197

After the decision on a claim under property law becomes final, the injured party may request that the Court that rendered the decision at first instance issue him a certified copy of the decision with a note that the decision is enforceable.

Regulations on criminal records

Article 198

The Government of the Republic of Montenegro shall issue regulations on the manner of keeping the criminal records (hereinafter referred to as: the Government).

Chapter XIV

COSTS OF THE CRIMINAL PROCEEDINGS

Type of costs

Article 199

(1) Costs of the criminal proceedings are expenses incurred in connection with criminal proceedings from its institution to its completion, including costs for undertaking investigatory actions that have been undertaken before an investigation.

(2) Costs of the criminal proceedings shall include the following:

1) costs for witnesses, expert witnesses, interpreters and specialists and the cost of a crime scene investigation and expenses of stenographic and technical recording and copies of records;

2) costs of transportation of the defendant;

3) expenses of bringing the suspect, defendant, witness, expert witness;

4) travel expenses of officials;

5) expenses of medical treatment of the defendant in detention as well as expenses of childbirth, except expenses which are collected from the medical insurance funds;

6) expenses of technical examination of a vehicle, blood analysis and transportation of corpse to the place of autopsy;

7) fees and necessary expenses of the defence attorney, necessary expenses of the private Prosecutor and subsidiary Prosecutor and their legal guardians, as well as fees and necessary expenses of their legal representatives;

8) necessary expenses of the injured party and his legal guardian, as well as fees and necessary expenses of his legal representative;

9) a lump sum for the expenses not mentioned in previous items.

(3) The lump sum shall be determined according to the duration and complexity of the criminal proceedings and according to the financial situation of the person required paying the sum.

(4) The expenses referred to in Paragraph, Items 1 through 6 of this Article, as well as fees and necessary expenses of the appointed defence attorney and appointed legal representative of the subsidiary Prosecutor (Articles 64, Paragraph 3, Articles 70 and 204) in the proceedings for criminal offences that are prosecuted *ex officio* shall be paid in advance from the budget of the authority carrying out the criminal proceedings and shall be later collected from the persons required to pay them pursuant to the provisions of the present Code. The authority conducting criminal proceedings shall be bound to list all advanced expenses which are paid as well as to attach the list to the files.

(5) The expenses of translation into languages which are not in the official use in the Court, and which are incurred in enforcing the provisions of the present Code related to the rights of parties, witnesses and other persons participating in the proceedings to use their own language, shall not be collected from the persons who are pursuant to the provisions of the present Code required to compensate the costs of the criminal proceedings.

Decision on costs

Article 200

(1) Every verdict and every ruling discontinuing the criminal proceedings shall contain a decision as to who will cover the costs of the proceedings as well as to their amount.

(2) If data on the amount of costs is lacking, the investigative judge, single judge or Chair of the Panel shall render a separate ruling on the amount of costs when these data are obtained. Data on the amount of costs and a request for their compensation may be submitted not later than three months from the day when the judgement or ruling on discontinuation of the criminal proceedings becomes final.

(3) When a decision on the costs of the criminal proceedings is made in a separate ruling, the Panel (Article 24, Paragraph 6) shall decide on an appeal against that ruling.

Costs caused by fault

Article 201

(1) The defendant, injured party, subsidiary Prosecutor, private Prosecutor, defence attorney, legal guardian, legal representative, witness, expert witness, interpreter and expert (Article 259), regardless of the outcome of the criminal proceedings, shall cover expenses for bringing them before the Court, for postponing the investigatory action or trial and other expenses in the proceedings caused by their fault as well as a proportional amount of the lump sum.

(2) A separate ruling shall be rendered on expenses referred to in Paragraph 1 of this Article, except when expenses that are covered by a private Prosecutor and defendant are decided upon in a decision on the merits of the case.

(3) The Panel referred to in Article 24, Paragraph 6 of the present Code shall decide on an appeal against the separate ruling referred to in Paragraph 2 of this Article.

Costs of the proceedings when defendant is found guilty

Article 202

(1) When the Court finds the defendant guilty, it shall state in the verdict that he must cover the costs of the criminal proceedings paid in advance from the budget funds (Article 199, Paragraph 4, as well as the costs of a private Prosecutor, subsidiary Prosecutor and their legal guardians and fees and necessary expenses of their legal representatives.

(2) A person charged with several criminal offences shall not bear the costs regarding the offences for which he was acquitted if these costs can be separated from the overall costs.

(3) In a verdict declaring several defendants guilty, the Court shall order what proportion of the costs each of the defendants shall pay, and if this is not possible, the Court shall order that the defendants shall be jointly liable for the costs. The payment of the lump sum shall be determined separately for each defendant.

(4) The Court may, in a decision on costs, decide that the defendant shall not cover the entire or partial amount of costs of the criminal proceedings referred to in Article 199, Paragraph 2, Items 1 to 6 and 9 of the present Code if payment of these costs could imperil the support of the defendant or persons he shall be bound to support. If these circumstances are determined after

the decision on costs is rendered, the Chair of the Panel may, in a separate ruling, relieve the defendant from the duty to reimburse the costs of the criminal proceedings.

Costs of the proceedings in case of discontinuation of proceedings, verdict of acquittal or verdict rejecting the charge

Article 203

(1) When the criminal proceedings are discontinued or when a verdict of acquittal or a verdict rejecting the charge is rendered, the Court shall state in its ruling or verdict that the costs of the criminal proceedings referred to in Article 199, Paragraph 2, Items1 to 6 of the present Code as well as the necessary expenses of the defendant and the necessary expenses and fees of the defence attorney shall be paid from budget appropriations, except in the cases referred to in the following paragraphs.

(2) A person who has been found guilty of false reporting shall reimburse the costs of the criminal proceedings that he prompted by false reporting.

(3) The private Prosecutor shall reimburse the costs of the criminal proceedings referred to in Article 199, Paragraph 2, Items 1 to 6 and 8 of the present Code, the necessary expenses of the defendant and the necessary expenses and fees of his defence attorney if the proceedings are terminated by a verdict of acquittal or a verdict rejecting the charge or a ruling discontinuing the proceedings unless the proceedings are discontinued or if a verdict rejecting the charge is rendered because of the death of the defendant or his permanent mental illness or because the statute of limitation for the institution of prosecution applies due to delay of the proceedings for which the blame can not be put on the private Prosecutor. If the proceedings are discontinued because the Prosecutor withdraws the charge, the defendant and the private Prosecutor may settle their mutual claims. If there is more than one private Prosecutor, they shall be jointly liable for costs.

(4) When the Courts reject a charge because it was not, the decision on costs shall be made by the competent Court.

(5) If the request for compensation of necessary expenses and fees referred to in Paragraph 1 of this Article is not approved, or if the Court does not decide thereon within a term of three months from the day the request was submitted, the defendant and defence attorney are entitled to settle their claims in a civil proceedings against the Republic of Montenegro (hereinafter referred to as: the Republic).

Fees and necessary expenses of defence attorney

Article 204

(1) Fees and necessary expenses of the defence attorney and the legal representative of the private Prosecutor or the injured party shall be covered by the person who retains them regardless of who, according to the judicial decision, shall reimburse the costs of the criminal proceedings, except when pursuant to the provisions of the present Code the fees and necessary expenses of the defence attorney shall be paid from the budget appropriations. If the Court appoints a defence attorney to the defendant, and the payment of fees and necessary expenses would put at risk the support of the defendant or persons he shall be bound to support, the fees and necessary expenses of the defence attorney shall be paid from the budget appropriations. This shall also apply when a legal representative to the subsidiary Prosecutor has been appointed.

(2) The legal representative who is not a member of the Bar or counsel in training shall not be entitled to fees but only to the reimbursement of necessary expenses.

Costs of the proceedings before superior Court

Article 205

Superior Court shall decide on whom shall cover the costs of the proceedings held before that Court pursuant to the provisions of Articles 199 to 204 of the present Code.

Special regulations on payment of costs

Article 206

The Government shall issue more detailed regulations regarding the payment of the costs of criminal proceedings and the amount of a lump sum.

Chapter XV

CLAIMS UNDER PROPERTY LAW

Subject matter of claim under property law

Article 207

(1) A claim under property law arising out of the commission of a criminal offence shall be considered in the criminal proceedings upon the motion of authorised persons, provided that this does not considerably delay the proceedings.

(2) The claim under property laws may consist of a request for the compensation of damages, return of an object or the annulment of a certain legal transaction.

Submitting petition to assert claim under property law

Article 208

(1) Motion to assert a claim under property law in the criminal proceedings can be made by a person who is entitled to litigate an issue in a civil action.

(2) If a damage arising out of the commission of a criminal offence is made to a state property, the authority entitled by law to protect such a property may participate in the criminal proceedings on the basis of powers provided by that law.

Proceedings for asserting claim under property law

Article 209

(1) Motion to assert the claim under property law in the criminal proceedings shall be submitted to the Court conducting the proceedings.

(2) Motion may be submitted prior to the conclusion of the trial before the Court at the first instance, at the latest.

(3) The person entitled to submit a motion must specify his claim and offer supporting evidence.

(4) If the authorised person fails to submit a motion under property law in the criminal proceedings until the charge is brought, he shall be informed of his right to make the motion until the completion of the trial. If a damage arising out of the commission of a criminal offence is made to a state property and a motion is not submitted, the Court shall inform the authority referred to in Article 208, Paragraph 2 of the present Code thereof.

Withdrawal of petition

Article 210

Persons entitled to assert a claim under property law (Article 208) may withdraw their petition until the completion of the trial and submit it as a civil action. In the case that the motion has been withdrawn it cannot be submitted again.

Collection of evidence

Article 211

(1) The Court conducting the proceedings shall hear the defendant with respect to the facts set out in the petition and explore the circumstances which are of relevance for the decision on the claim under property law. Even before such a petition is submitted, the Court shall be bound to collect evidence and carry out inquires into the circumstances necessary for the adjudication of the claim.

(2) If an inquiry into a claim under property law would considerably delays the criminal proceedings, the Court shall limit its actions to collecting only the information determination of that would be impossible or considerably impeded at later stage.

Decision on claim under property law

Article 212

(1) The Court shall decide on claims under property law.

(2) In a verdict the Court may award the entire claim to the authorised person, or it may award partially and refer the authorised person to a civil action for reminder. If data established in the criminal proceedings furnish no reliable basis for either full or partial award, the Court shall refer the authorised person to a civil action to pursue the entire claim under property law.

(3) When rendering a verdict of acquittal, a verdict rejecting the charge, or a ruling discontinuing the criminal proceedings, the Court shall direct the authorised person to assert his claim under property law in civil proceedings.

(4) When the Court declares it incompetent to conduct the criminal proceedings, it shall instruct the authorised person that he may assert his claim under property law in the criminal proceedings which shall be instituted or continued by a Competent Court.

Decision on handing over objects to injured party

Article 213

When the claim under property law pertains to recovery an object, the Court shall order in its verdict that the objects be delivered to the injured party if it establishes that the objects belongs to the injured party and that it is in the possession of the defendant or accomplices or a person to whom they gave the object for safekeeping.

Annulment of a legal transaction

Article 214

When the claim under property law pertains to annulment of a particular legal transaction and the Court finds it justified, it shall adjudicate the full or partial annulment of that legal transaction, with all the consequences deriving therefrom, without having effects upon rights of third parties.

Alteration of decision on claim under property law

Article 215

(1) In the criminal proceedings the Court may alter a final verdict which decides on a claim under property law only upon a request for retrial, for the protection of legality or request for the review of legality of the final verdict.

(2) Except in the cases referred to in Paragraph 1 of this Article, a final verdict which decides on a claim under property law may be revised only in the civil proceedings on the request of the convicted person or his heirs, as long as grounds exist for retrial under the provisions of the civil proceedings.

Ordering provisional measures

Article 216

(1) Provisional measures securing a claim under property law arising out of the commission of a criminal offence may be ordered upon the motion of authorised persons (Article 208) and in conformity with the rules of the enforcement proceedings.

(2) In the course of the investigation, the ruling referred to in Paragraph 1 of this Article shall be rendered by the investigative judge. After the indictment has been brought, the ruling shall be rendered outside the trial by the Chair of the Panel, and during the trial by the Panel.

(3) A ruling rendered by the Panel on provisional measures securing the claim is not subject to an appellate review. In other cases, the Panel referred to in Article 24, Paragraph 6 shall decide on an appeal. An appeal shall not stay the execution of the ruling.

Returning of objects in the course of the proceedings

Article 217

(1) If the objects involved undoubtedly belong to the injured party and they do not serve as evidence in the criminal proceedings, these objects shall be handed over to the injured party even prior to the completion of the proceedings.

(2) If several injured parties claim ownership over an object, they shall be directed to institute a civil action and the Court shall in the criminal proceedings order only the safekeeping of objects as a temporary security measure. .

(3) Objects serving as evidence shall be seized temporarily from the owner and returned to him after the completion of the proceedings. If such an object is indispensable to the owner it may be returned to him even before the completion of the proceedings but he shall be obliged to bring it upon request.

Measures securing the claim against a third party

Article 218

(1) If the injured party has a claim against a third party because he is in possession of objects gained by the commission of a criminal offence, or because a third party gained property gain in consequence of the commission of a criminal offence, the Court may, in the criminal proceedings upon the motion of authorised persons (Article 208) order, in conformity with the rules on the enforcement proceedings, order a provisional measure securing the claim against that third party as well. In this case, the provisions of Article 216, Paragraphs 2 and 3 of the present Code shall also apply.

(2) In a verdict of conviction the Court shall either annul the measures referred to in Paragraph 1 of this Article if these have not already been annulled, or instruct the injured party to institute the civil proceedings, with the proviso that these measures shall be vacated if the civil proceedings are not instituted within a term ordered by the Court.

Chapter XVI

PREJUDICIAL ISSUES

Article 219

(1) If the application of Criminal Code depends on a prior decision concerning a judicial issue that falls within the jurisdiction of the Court in some other proceedings or within the jurisdiction of some other state authority, the Court adjudicating on the criminal case may also decide on this issue, pursuant to the rules of evidence in the criminal proceedings. The decision of this judicial issue rendered by a criminal Court shall affect only the criminal case that is being tried before this Court.

(2) If such a prejudicial issue has already been decided by the Court in some other proceedings or by other state authority, such a decision shall not be binding on the criminal Court in deciding on whether a particular criminal offence has been committed.

Chapter XVII

MEANING OF LEGAL TERMS AND OTHER PROVISIONS

Approval for criminal prosecution

Article 220

(1) Where law provides that prosecution of certain persons and certain criminal offences requires the previous approval of a competent state authority, the State Prosecutor may not request the opening of the investigation or bring an indictment without investigation or bring charge directly i.e. indictment proposal without submitting an evidence that such approval has been granted, unless otherwise prescribed by ratified international treaties.

(2) When prosecution is based upon a private complaint or upon a request of subsidiary Prosecutor, the approval shall be obtained by the Court.

Notification on detention, on entering of indictment into force and on guilty verdict

Article 221

Within a term of three days, the Court shall inform the defendant's employer that a detention has been ordered, that indictment has entered into force or that a guilty verdict for a criminal offence subject to prosecution upon the indictment proposal has been rendered.

Termination of criminal proceedings due to the defendant's death or permanent mental illness

Article 222

When in the course of the criminal proceedings it is established that the defendant has died, or has suffered of a certain permanent mental illness after the commission of the offence, the investigative judge, single judge or the Chair of the Panel shall discontinue the criminal proceedings by a ruling.

Sanctioning the delay of the proceedings

Article 223

(1) In the course of the proceedings, the Court may impose a fine in the amount not exceeding € 1.000 upon the defence attorney, legal representative or legal guardian, the injured party, subsidiary Prosecutor or private Prosecutor if their actions are clearly aimed at postponement of the criminal proceedings.

(2) The Bar Association shall be notified of the punishment imposed on its member or counsel in training.

(3) If the State Prosecutor does not submit motions in due time to the Court or if he undertakes other actions in the course of proceedings with considerable delay and therewith causes the postponement of the proceedings, the Court shall notify the higher State Prosecutor thereof.

Applying the Rules of international law

Article 224

(1) The rules of international law shall apply with respect to exemption from criminal prosecution of aliens who enjoy the right of immunity in Serbia and Montenegro.

(2) Should there be any doubt as to the identity of persons referred to in Paragraph 1 of this Article, the Court shall seek clarification from the Ministry of Foreign Affairs of Serbia and Montenegro.

Obligations of state authorities, Courts of law and other authorities in discovering criminal offences

Article 225

All state authorities shall be bound to render necessary assistance to the Courts and other authorities participating in the criminal proceedings, especially in the matter of discovering criminal offences and their perpetrators.

Meaning of terms

Article 226

Certain terms used in the present Code shall have the following meaning:

1) The term *suspect* refers to a person with respect to whom a competent state authority undertakes a certain action prior to institution the criminal proceedings because there are grounds for suspicion that he has committed a criminal offence;

2) The term *accused refers to* a person against whom an investigation is conducted or against whom and indictment, indictment proposal or private complaint has been brought or a person against whom a special proceedings to apply security measure referred to in Articles 69 and 70 of the Criminal Code have been instituted;

3) The term *accused* refers to person against whom the indictment has entered into force;

4) The term *convicted person* refers to a person who is declared guilty of commission of a particular criminal offence by a final verdict or a final decision on sanction;

5) The term *defendant* is used as a common term referring to a defendant, the accused and the convicted person;

6) The term *injured party* refers to a person whose personal or property right have been infringed or jeopardised by the criminal offence;

7) The term *Prosecutor* refers to a State Prosecutor, private Prosecutor and subsidiary Prosecutor;

8) The term *party* refers to a Prosecutor and a defendant.

Part Two

COURSE OF THE PROCEEDINGS

A. PRE-TRIAL PROCEEDINGS

Chapter XVIII

CRIME REPORT AND POWERS OF AUTHORITIES IN PRE-TRIAL PROCEEDINGS

Obligation to report a criminal offence

Article 227

(1) All state authorities, local government authorities, public companies and institutions shall be bound to report criminal offences that are prosecuted *ex officio* of which they have knowledge or have learned about in some other way.

(2) Submitters of the crime report referred to in Paragraph 1 of this Article shall indicate evidence known to them and undertake measures to preserve traces of the criminal offence, the objects upon which or by means of which the criminal offence was committed as well as other evidence.

Reporting criminal offences by citizens

Article 228

(1) Everyone shall report the criminal offence subject to prosecution *ex officio*.

(2) Situation where failure to report criminal offences represents the criminal offence is prescribed by the Criminal Code.

Filing a report

Article 229

(1) The report shall be filed with the competent State Prosecutor in writing or orally.

(2) If the report is filed orally, the person who filed it shall be warned about the consequences of providing a false report. An oral report shall be entered into the records and if the report was communicated by telephone or by some other telecommunication means, an official note shall be made thereof.

(3) If the report was filed with the Court, the police authority or a State Prosecutor lacking jurisdiction, they shall receive it and immediately forward it to the State Prosecutor having jurisdiction.

Powers and duties of the police

Article 230

(1) If there are grounds for suspicion that a criminal offence that is prosecuted *ex officio* has been committed, the police authorities shall be bound to take necessary measures aimed at discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and objects which may serve as evidence as well as gathering all information which could be useful for successfully conducting the criminal proceedings.

(2) In order to fulfil the duties referred to in Paragraph 1 of this Article, the police authorities may seek information from citizens, apply polygraph testing, conduct voice analysis, perform anti-terrorist inspection, carry out permanent recording of public places at which criminal offences have been frequently committed, restrict movement of certain persons in a certain area for an absolutely necessary time, publicly offer a reward with the view of collecting information, request from a legal person delivering telecommunication services to establish identity of telecommunication addresses which were online at the certain moment, carry out the necessary inspection of the means of transportation, passengers and luggage; undertake necessary measures regarding the establishing of the identities of persons or objects; issue a warrant for a person or warrant for seizure of objects; carry out in the presence of the authorised person an inspection of objects and premises of state authorities, enterprises, firms and other legal entities, review their documentation and seize it if necessary, as well as undertake other necessary measures and actions. A records or an official note shall be made on facts and circumstances established in the course of carrying out particular actions, which may be of importance for the criminal proceedings, as well as on discovered or seized objects.

(3) When conducting a crime scene investigation for the criminal offence against traffic safety for which there are grounds for suspicion that it has caused severe consequences or has been committed with the intent, the police authorities may temporarily, and for to the time not exceeding three days, seize the driving license from the suspect.

(4) A person against whom some of the actions or measures referred to in Paragraphs 2 and 3 of this Article have been undertaken shall be entitled to file a petition to the competent state.

Collection of information from citizens

Article 231

(1) In order to collect information the police authorities may also summon citizens. The reason for the summoning must be noted in the summons. A person who fails to appear may be brought in by force only if he was warned of it in the summons.

(2) In the course of application of the provisions of this Article the police authorities may not examine citizens in the capacity of a defendant, witness or expert witness, except in the case referred to in Paragraph 9 of this Article.

(3) Collection of information from the person may last as long as needed to get necessary information, but not more than four hours.

(4) Information from citizens must not be collected by use of force.

(5) An official note or a records made on information obtained shall be read to the person who gave the information. This person may raise objections and the police authorities shall be bound to make the official note thereof or to enter it into the records. A copy of the official note or records on given information shall be issued to the citizen if he requested so.

(6) The citizen may be summoned again for collecting information on circumstances related to other criminal offence or perpetrator, but for collecting information related to the same criminal offence he cannot be brought in by force again.

(7) When the police authority is collecting information from a person for whom there are grounds for suspicion that he is the perpetrator of the criminal offence, or if against that person the police authority undertakes actions in the pre-trial procedure prescribed by the present Code, it may summon that person in the capacity of a suspect. The summons shall contain information that the suspect is entitled to retain a defence attorney.

(8) If the police authority in the course of collecting information assesses that a summoned citizen may be deemed as a suspect, it shall be bound immediately to inform him on the criminal offence he is charged with and the grounds for suspicion, on his right to retain a defence attorney who shall be present in the course of his further interrogation, that he is not bound to provide answers to the questions posed to him, and to instruct him, in the case of provisional confinement (Article 234), on the rights referred to in Article 5 of the present Code and allow him to invoke the rights referred to in Article 233, Paragraph 1 of the present Code.

(9) If the suspect agrees to give a statement in the presence of the defence attorney, the police authority shall interrogate him pursuant to the provisions of the present Code which relate to interrogation of defendant. The competent State Prosecutor shall be informed about interrogation of the suspect by the police authority, and may be present during interrogation. The records made on this interrogation shall not be separated from the files and may be used as evidence in the criminal proceedings.

(10) With the approval of investigative judge or the Chair of the Panel, the police authorities may collect information from persons in detention, if that is necessary for discovering other criminal offences and perpetrators. This information shall be collected in the institution where the defendant is detained, at the time ordered by the investigative judge or the Chair of the Panel. If so requested by the detainee, a defence attorney shall be present in the course of collecting information.

(11) On the basis of information collected, the police authority shall complete a crime report stating the evidence discovered. The contents of the statements given by certain citizens in the course of collecting information shall not be included in the crime report, except the statements given pursuant to Paragraph 9 of this Article. The objects, sketches, photographs, reports, records on measures and actions undertaken, official notes, statements and other material which may be useful for successfully conducting the proceedings shall be attached to the crime report. If the police authorities after filing the crime report discover new facts, evidence or traces of the criminal offence, they shall be bound to collect necessary information and to deliver the report on this to the State Prosecutor as a supplement to the crime report.

Deprivation of liberty and instructions on the rights of a person deprived of liberty

Article 232

(1) Authorised police officials may deprive a person of liberty if any of the grounds for ordering a detention referred to in Article 148 of the present Code exist, and they shall be bound to bring that person before the competent investigative judge without delay and together with the crime report, except in the case referred to in Article 234 of the present Code. When the person deprived of liberty is brought before the investigative judge, the authorised police official shall inform the investigative judge on the reasons and time of deprivation of liberty.

(2) The person deprived of liberty must be instructed on the rights referred to in Article 5 of the present Code.

(3) If the escort of the person deprived of liberty takes longer than eight hours due to unavoidable obstacles, the authorised police official shall be bound to give a statement of reasons to the investigative judge and the investigative judge shall make a note or records thereof. The investigative judge shall enter into the record a statement of the person deprived of liberty about the time and place of his deprivation of liberty.

Proceeding by the investigative judge upon bringing a person deprived of liberty

Article 233

(1) The investigative judge shall be bound immediately to inform a person deprived of liberty and brought before him of his right to retain a defence attorney, to make possible for him that by telephone, cable or electronic mail inform a defence attorney on his detention, either directly or with a help of his family members or third person whose identity must be relieved to the investigative judge, and if it is necessary to assist him to retain a defence attorney.

(2) If the person deprived of liberty fails to retain a defence attorney within 24 hours from the moment this was made available to him pursuant to Paragraph 1 of this Article, or declares that he shall not retain a defence attorney, the investigative judge shall interrogate him without delay, and not later than 12 hours From the moment he was brought before the investigative judge.

(3) If in the case of mandatory defence (Article 69, Paragraph 1) the person deprived of liberty fails to retain a defence attorney within 24 hours from the moment he was instructed of that right, or declares that he shall not retain a defence attorney, a defence attorney shall be appointed to him by virtue of an office and he will be interrogated without delay.

(4) Immediately after interrogation, the investigative judge shall decide whether to release a person deprived of liberty or to order a detention against him. Should the investigative judge order detention against a person deprived of liberty, he shall notify the State Prosecutor thereon and forward him the files within two hours.

(5) If the State Prosecutor in the course of interrogation did not submit a request for investigation, nor he does so within 48 hours from the moment the detention was ordered, the investigative judge shall release a detainee.

(6) The investigative judge shall be bound to release a detainee if he does not render a ruling on conducting the investigation within 48 hours from the moment a request for investigation was submitted.

(7) When a person deprived of liberty is brought before the investigative judge, he or his defence attorney, his family member or his extramarital partner, may request from the investigative judge to order a medical examination. The State Prosecutor may submit such a request, as well. The investigative judge shall attach a decision on ordering a physician to perform medical examination along with the records on his interrogation to the investigation files.

Provisional confinement

Article 234

(1) Exceptionally, the person deprived of liberty pursuant to Article 232, Paragraph 1 of the present Code, as well as the suspect referred to in Article 231, Paragraphs 7 and 8 may be provisionally confined by a police authority for the purpose of collecting information (Article 231, Paragraph 1) or interrogation for up to 48 hours from the moment of deprivation of liberty or his appearance upon summons.

(2) The police authority shall immediately, and at the latest within a term of two hours, render a ruling on provisional confinement and serve it on the confined person and the defence attorney. The ruling shall contain a criminal offence the suspect is charged with, grounds for suspicion, day and hour of deprivation of liberty or appearance upon summons as well as the time of the commencement of confinement.

(3) The suspect and defence attorney may file an appeal against the ruling on confinement, which shall immediately be submitted to the investigative judge. The investigative judge shall be bound to decide on the appeal within a term of four hours upon reception of the appeal. The appeal shall not stay the execution of the ruling.

(4) The police authority shall be bound immediately to inform the investigative judge about the confinement ordered. The investigative judge may request that the confined person be immediately brought before him by the police authority.

(5) If police authority within 48 hours fails to file a crime report and bring the confined person to the investigative judge, it shall be bound to release the confined person. The same person may not be confined again for the same criminal offence.

(6) The suspect shall be entitled to the rights referred to in Article 231, Paragraph 8 of the present Code.

(7) The suspect must have a defence attorney as early as the police authority renders a ruling on provisional confinement. If the suspect does not retain the defence attorney by himself, the police authority shall made one available to him virtue of an office, following the order of the list submitted by a respective Bar Association.

Deprivation of liberty of a person caught in the act of committing a criminal offence

Article 235

Anyone may deprive of liberty a person caught in the act of committing a criminal offence that is prosecuted *ex officio*. The person deprived of liberty must be immediately brought before the investigative judge or police authority and if this is not possible, one of these authorities must be immediately informed thereof. The police authority shall proceed pursuant to Article 232 of the present Code.

Holding at the place of commission of a criminal offence and other actions

Article 236

(1) The authorised police officials are entitled to send persons found at the crime scene to the investigative judge or to hold them until his arrival if these persons may disclose important facts for the criminal proceedings and if it is likely that their interrogation at later stage might be impossible or might entail considerable delays or other difficulties. Such persons shall not be held at the place of the commission of a criminal offence for more than six hours.

(2) When it is necessary to establish the identity or in other cases of interest for successfully conducting the proceedings and subject to a prior approval of the investigative judge, the police authorities may take photo of the as well as his fingerprints, publish his photography and undertake other actions necessary to establish the identity of the suspect.

(3) If it is necessary to establish the identity of fingerprints left on certain objects, the police authorities may take the fingerprints of persons likely to have touched such object, subject to a prior approval of the State Prosecutor.

(4) A person against whom some of the actions referred to in this Article have been undertaken shall be entitled to file a petition to the competent State Prosecutor or an immediate superior police authority.

Measures of secret surveillance

Article 237

(1) If evidence cannot be obtained in another way or its containing would be accompanied by disproportional risk and endangering of the lives of people, the investigative judge may, upon the written motion containing a statement of reasons submitted by the State Prosecutor delivered in a closed envelope and bearing the designation MSS (measures of secret surveillance) order against persons for whom there are grounds for suspicion that they have committed or have along with other persons taken part in committing criminal offences referred to in Articles 238 of the present Code :

1) secret surveillance and technical recording of telephone conversations i.e. means for distance technical communication and private conversations held in private or public premises or at open;

2) secret photographing and video recording in private premises;

3) secret photographing and video recording at public places and at open;

4) simulated purchase of objects and persons and simulated giving and taking of bribe;

5) supervision over the transportation and delivery of objects of crime offence;

6) conveying information from banking and other financial institutions related to deposits, personal and business accounts and transactions;

7) use of electronic devices for detecting locations and positioning of persons and objects;

8) recording conversations upon informing and obtaining a prior consent of one of them;

9) use of undercover investigators and witness.

(2) The measures referred to in Paragraph 1, Item 1 of this Article may be ordered against persons for whom there are grounds for suspicion that they have been conveying to the perpetrator or from the perpetrator of the criminal offences referred to in Article 238 of the present Code messages in connection to the criminal offence, or that the perpetrator has been using their telephone lines or other telecommunication device.

(3) Enforcement of measures referred to in Paragraph 1, Items 4, 8 and 9 of this Article must not constitute an incitement to commit a criminal offence.

Criminal offences for which MSS may be ordered

Article 238

The measures referred to in Article 237 of the present Code may be ordered for the following criminal offences:

1) for which a prison sentence of ten years or a more severe penalty may be imposed;

2) criminal offences with elements of organised crime.

Ordering MSS

Article 239

(1) Measures referred to in Article 237 of the present Code shall be ordered by the investigative judge in a written order containing a statement of reasons. The order shall contain all the available data on the person against whom the measure is to be applied, circumstances necessitating the application of the measures, duration of the measure which must be in coherence with the aim to be achieved by the measure, as well as the reference to the method, the extent and the place of its implementation. The measures undertaken may last up to three months, and on account of particularly important reasons the duration of such measures may be extended for additional three months.

(2) In addition to the order for the enforcement of a measure referred to in Article 237, Paragraph 1, Item 1 of the present Code, the investigative judge shall render a separate order containing solely a telephone number or e-mail address and duration of the measure in question, and this order shall be delivered to enterprises referred to in Paragraph 3 of this Article in the proceedings of enforcement of the measure.

(3) Postal, telegraphic and other enterprises, companies and persons registered for transmission of information shall be bound to extend necessary assistance to the police authorities enabling the execution of the measure referred to in Article 237, Paragraph 1 of the present Code. Persons acting in an official capacity and responsible persons involved in the process of passing the order and execution of the measures referred to in Article 237 of the present Code shall be bound to keep as an official secret all the data and information they have learned in the course of this process.

(4) If, during the course of surveillance and secret recording, information and data referring to some other criminal offence are recorded, that part of the recording shall be copied and forwarded to the State Prosecutor, provided that the criminal offence in question is one of those referred to in Article 238 of the present Code.

(5) The State Prosecutor or the investigative judge shall, in an appropriate way (by coping records or official notes without personal data, removal of an official note from the files etc.) prevent unauthorised persons, the suspect or his defence attorney to learn about the identities of the persons who have executed the measures referred to in Article 237 of the present Code. If

such persons are to be questioned as witnesses, the Court shall act in a manner prescribed by the provisions of Article 101 of the present Code.

Execution of MSS

Article 240

(1) The measures referred to in Article 237 of the present Code shall be executed by the police authorities in such a manner that privacy of persons not subject to these measures be not disturbed.

(2) The authorised police officer in charge of the execution of the measures shall keep records on each action undertaken and report periodically to the State Prosecutor and investigative judge on execution of the measures. If the investigative judge ascertains that the need for implementation of the ordered measures does not exist any more, he shall order cessation of the measure in question.

(3) Upon execution of measures referred to in Article 237 of the present Code the police authorities shall submit to the State Prosecutor a final report and all other material obtained by the application of the measures.

(4) If the State Prosecutor decides that he shall not request a criminal proceedings to be instituted against the suspect, he shall convey to the investigative judge the material obtained by the application of the measures referred to in Article 237 of the present Code, in a closed envelope bearing the title MSS, and the investigative judge shall order that the collected material be destroyed in the presence of the State Prosecutor and investigative judge. The investigative judge shall make records thereof.

(5) The investigative judge shall proceed in the manner referred to in Paragraph 4 of this Article if the State Prosecutor requests that investigation be conducted against the suspect upon whom the measures of secret surveillance have been imposed, when the results obtained or parts of the results are not indispensable for the conduct of the criminal proceedings.

(6) In the case referred to in Paragraphs 4 and 5 of this Article, the data shall be considered a professional secret.

Legally invalid evidence

Article 241

If the measures referred to in Article 237 of the present Code have been undertaken in contravention with the provisions of the present Code or in contravention with order of the investigative judge, the Court decision shall not be founded on the collected data. Regarding the obtained data and information the provisions of Article 98 of the present Code shall be applied *accordingly.* The provisions of Article 184, Paragraph 1, Article 281, Paragraph 4, Article 345, Paragraph 3 and Article 382, Paragraph 4 of the present Code shall be applied accordingly in regard to the recordings made in breach of the provisions of this Article and Article 237 of the present Code.

Rendering information to a person upon whom the surveillance measures have been imposed

Article 242

(1) Before the material obtained by the application of measures of secret surveillance pursuant to the provisions of Article 240, Paragraphs 4 and 5 of the present Code is destroyed, the investigative judge shall inform the person upon whom the measure has been imposed, and that person shall have the right to examine the collected material.

(2) If there is a reasonable suspicion that rendering information to the person referred to in Paragraph 1 of this Article or examination of the collected material by such a person could constitute a serious threat to life and health of people or would engender any investigation underway or if there are any other justifiable reasons, the investigative judge may, based on an opinion of the State Prosecutor, decide that the person upon whom the measure has been imposed be not informed and allowed to examine the collected material.

Dismissing and supplementing a criminal report

Article 243

(1) The State Counsel shall, by means of justified decision, dismiss a crime report if it follows from the report that the reported act is not a criminal offence that is prosecuted *ex officio*, that statute of limitation for the institution of prosecution shall be, that the offence is amnestied or pardoned, or that other circumstances exclude prosecution. The State Prosecutor shall notify the injured party within a term of eight days of the dismissal and of the grounds thereof (Article 59), and if the crime report was filed by the police authority he shall notify them as well.

(2) If the State Counsel is unable to establish on the basis of the content of the crime report whether allegations in the report are credible, or if the facts stated in the report do not suffice for a decision on whether the opening of an investigation should be requested, or if only rumours reach the State Prosecutor that a criminal offence has been committed, and particularly if the offender is unknown, the State Prosecutor shall, either by himself or through other authorities, collect necessary information. For that purpose the State Prosecutor may summon the person who filed the report, the reported person and any other person who, according to his judgement, can provide information relevant to passing a decision on the crime report. If the State Prosecutor cannot do it himself, he shall request the police authorities to obtain necessary information and undertake other measures in order to discover the criminal offence and the perpetrator (Articles 230, 231 and 236).

(3) Aiming clarification of specific issues subject to an expert opinion, arising on the occasion of deciding on a criminal report, the State Prosecutor may ask for relevant explanations from the competent experts.

(4) The State Prosecutor may at any time require information on the measures undertaken from the police authorities. The police authorities shall be bound to act in response to the State Prosecutor's request without delay.

(5) If, even after undertaking actions referred to in paragraphs 2, 3 and 4 of this Article, circumstances referred to in Paragraph 1 of this Article still exist or there is no reasonable suspicion that the suspect has committed the criminal offence prosecuted *ex officio,* the State Prosecutor shall dismiss the report.

(6) When collection or giving information, the State Prosecutor and other state authorities, enterprises and other legal entities shall be bound to proceed cautiously, making sure not to harm the honour and reputation of the person the information relates to.

Postponement of criminal prosecution

Article 244

(1) The State Prosecutor may decide to postpone prosecution for criminal offences punishable by a fine or imprisonment for a term not exceeding three years, when he establishes that it would not be opportune to conduct the criminal proceedings due to the nature of the criminal offence and the circumstances under which the offence has been committed, previous life of the perpetrator and his personal characteristics, if the suspect accepts to fulfil one or several of the following obligations:

1) to remove detrimental consequence or to compensate the damage caused by the criminal offence;

2) to pay a certain amount for the benefit of a humanitarian organisation, fund or public institution;

3) to perform a certain community service or humanitarian work;

4) to fulfil a mature obligation related to maintenance.

(2) The suspect shall be bound to fulfil the accepted obligation within a term which cannot be longer than six months.

(3) The obligations referred to in Paragraph 1 of this Article shall be imposed upon the suspect by a decision of the State Prosecutor. The decision shall be furnished to the suspect, injured party, if any, or to the humanitarian organisation or public institution in favour of which the enforcement is being ordered. Against the decision of the State Prosecutor an objection may be filed with the immediate superior public Prosecutor within eight days from the day the decision has been delivered.

(4) Before taking the decision referred to in Paragraph 3 of this Article, the State Prosecutor shall carry out the settlement proceedings between the injured party and the suspect regarding the obligations referred to in Items 1 and 4 of this Article, respectively for purpose of obtaining the consent of the suspect for the measures referred to in Items 2 and 3 of this Article.

(5) The Chief State Prosecutor shall, by means of a directive, regulate in a more detailed manner the settlement proceedings, implementation of other actions in the application of the provisions of this Article, and the content of the decision ordering the measures and implementation thereof.

(6) If the suspect fulfils the obligation referred to in Paragraph 1, Items 1 and 4 of this Article determined with the consent of the injured party or obligations referred to in Paragraph 1, Items 2 and 3 of this Article in the term referred to in Paragraph 2 of this Article, the State Prosecutor shall dismiss the crime report and the provisions of Article 59 of the present Code shall not be applicable, of which the public Prosecutor shall inform the injured party before acceptance of the settlement.

Dismissal of a criminal report for reasons of fairness (rule of opportunity of criminal prosecution)

Article 245

In the case of the criminal offences referred to in Article 244 of the present Code, the State Prosecutor may dismiss a crime report if the suspect, expressing his real repent, prevented a damage that was to occur or has already compensated for the entire damage, providing that the State Prosecutor establishes that imposing a criminal sentence would not be fair taking into account circumstances of the case. In this case, the provisions of Article 59 of the present Code shall not be applicable.

Temporary seizure of objects, crime scene investigation and expert witness evaluation

Article 246

(1) If there is a danger in delay, the police authorities may even before the commencement of the investigation temporarily seize objects pursuant to the provisions of Article 81 of the present Code and carry out a search of dwelling and persons subject to the conditions stated in Article 79 of the present Code.

(2) The police authorities shall be bound immediately to return the temporarily seized objects to the owner or holder if the criminal proceedings are not instituted or if they fail to submit a crime report to the competent State Prosecutor within a term of three months.

(3) If the investigative judge is not in the position to come immediately at the scene, police authorities may carry out crime scene investigation and order necessary expert witness examination, except for autopsy and exhumation. If the investigative judge arrives at the crime scene while crime scene investigation is being conducted, he may take over execution of those activities.

(4) The police authorities or the investigative judge shall notify the State Prosecutor on actions referred to in Paragraphs 1 to 3 of this Article without delay.

Undertaking certain investigatory actions when the perpetrator is unknown

Article 247

(1) When the perpetrator of a criminal offence is unknown or where there are grounds for suspicion that a criminal offence has been committed, the State Prosecutor may suggest that the investigative judge undertakes certain investigatory actions if, regarding the circumstances of the case, it would be necessary or opportune to undertake such actions before the commencement of the investigation. If the investigative judge disagrees with this motion he shall refer it to the Panel to decide (Article 24, Paragraph 6).

(2) The records on the investigatory actions undertaken shall be submitted to the State Prosecutor.

Undertaking urgent investigatory actions before investigation

Article 248

(1) The investigative judge of the Competent Court and the investigative judge of the lower Court within the jurisdictional territory, where the criminal offence was committed, may before rendering a ruling on the opening of an investigation, by virtue of an office or on motion of the State Prosecutor, undertake certain investigatory actions, the execution of which at a later stage is likely to be impossible or accompanied with the significant delay and other difficulties, but he must inform the competent State Prosecutor of every action undertaken.

(2) In the course of undertaking of the investigatory actions pursuant to the provisions of Paragraph 1 of this Article, the competent State Prosecutor may be present.

(3) Regarding the summoning, defence and interrogation of the suspect, the provisions on the summoning, defence and interrogation of defendant shall apply.

B. PRELIMINARY PROCEEDINGS

Chapter XIX

INVESTIGATION

Purpose of investigation

Article 249

(1) An investigation shall be instituted against a particular person when there is a reasonable suspicion that he has committed a criminal offence.

(2) In the course of the investigation, evidence and information shall be collected that are necessary to make a decision as to whether to bring an indictment or to discontinue the proceedings, evidence which may not be possible to present at the trial or if its examination may involve some difficulties, as well as other evidence which may be of use in the course of the proceedings and which presentation is opportune taking into consideration the circumstances of the case.

Request for investigation

Article 250

(1) The investigation shall be conducted upon the request of the State Prosecutor.

(2) A request for conducting an investigation shall be submitted to the investigative judge of the Competent Court.

(3) The request shall contain: the personal data of the suspect, the description of the act which constitute the elements of the definition of the criminal offence, the statutory title of the criminal offence, the circumstances on which the reasonable suspicion is founded, and the existing evidence.

(4) The request for investigation may contain a proposal to investigate certain circumstances, to undertake specific actions and to interrogate certain persons on certain issues, as well as a proposal to detain the suspect.

(5) The State Prosecutor shall deliver to the investigative judge the crime report and all files and records concerning the actions undertaken. At the same time the State Prosecutor shall deliver to the investigative judge objects that may serve as evidence, or shall indicate their location.

Ruling on investigation

Article 251

(1) Upon receiving the request to conduct investigation, the investigative judge shall examine the files and if he concurs with the request, he shall render the ruling ordering conduct of investigation, which shall contain the information stated in Article 250, Paragraph 3 of the present Code. The ruling shall be delivered to the State Prosecutor, the defendant and the defence attorney.

(2) Before rendering the ruling, the investigative judge shall interrogate the suspect, except if delay poses a risk.

(3) Before deciding upon the request of the State Prosecutor, the investigative judge may summon the State Prosecutor and the suspect for interrogation in the Court if clarification is needed as to circumstances relevant to the decision on the request for investigation or if the investigative judge finds that the interrogation would be opportune because of other reasons. During the

interrogation the parties may make their proposals orally, and the State Prosecutor may alter or supplement his request to conduct investigation or may propose the proceedings to be conducted upon an indictment brought without investigation (Article 252).

(4) Regarding the summoning, defence and interrogation of the suspect against whom the investigation is requested, the provisions on the summoning, defence and interrogation of the defendant of the present Code shall be applied. The suspect summoned pursuant to Paragraph 3 of this Article shall be instructed by the investigative judge on his obligations and rights pursuant to Article 88, Paragraph 2 of the present Code.

(5) The investigative judge's ruling on conducting the investigation may be appealed by the parties. An orally announced ruling is subject to an immediate oral appeal which shall be entered into the records.

(6) The investigative judge shall be bound immediately to refer the appeal to the Panel (Article 24, Paragraph 6). The appeal shall not stay the execution of the ruling.

(7) If the investigative judge does not concur with the State Prosecutor's request to conduct the investigation, he shall, upon the interrogation of the suspect, request the Panel (Article 24, Paragraph 6) to decide thereon. The Panel shall dismiss the request for investigation if there are circumstances which temporarily prevent the prosecution and shall reject the request for investigation if there is no sufficient evidence and information supporting the reasonable suspicion. In reverse the Panel shall pass a decision on conducting the investigation. The defendant, the State Prosecutor and the injured party may file an appeal against the ruling of the Panel, which shall not stay its execution.

(8) If the appeal against the decision of the Panel, by means of which the request for investigation has been dismissed or rejected, is file only by the injured party and the appeal is satisfied it shall be deemed that the injured party has assumed the prosecution by filing the appeal.

(9) In the cases referred to in Paragraphs 6 and 7 of this Article, the Panel shall be bound to render a ruling within a term of 48 hours.

(10) When deciding on a request to conduct the investigation, the Panel shall not be bound by the State Prosecutor's legal qualification of the criminal offence.

Direct Indictment

Article 252

(1) The investigative judge may agree with a motion of the State Prosecutor not to conduct an investigation if information obtained as to the criminal offence and the perpetrator provide sufficient grounds to bring an indictment.

(2) The investigative judge may express consent referred to in Paragraph 1 of this Article only after he has interrogated the suspect or the defendant against whom the indictment is to be brought. Regarding the summoning, defence and interrogation of the suspect, the provisions regarding the summoning, defence and interrogation of the defendant shall be applied. The investigative judge shall deliver notice of consent to the State Prosecutor and the suspect i.e. defendant.

(3) The term for bringing the indictment shall be eight days.

(4) The motion referred to in Paragraph 1 of this Article may be submitted by the State Prosecutor even after the request to conduct the investigation has been submitted but only until the ruling deciding on the request to conduct the investigation is rendered.

(5) If the investigative judge finds that the requirements for bringing an indictment without investigation are not met, he shall proceed as if the request to conduct the investigation was submitted.

(6) If the criminal offence involved is punishable by imprisonment for a term not exceeding five years, the State Prosecutor may without meeting the conditions set forth in Paragraphs 1 through 5 of this Article bring an indictment without conducting investigation if information collected regarding the criminal offence and the perpetrator provide sufficient grounds for accusation.

(7) The provisions of Paragraphs 1 through 6 of this Article shall also be applicable when a prosecution for a criminal offence is carried out upon a request of the subsidiary Prosecutor or the private Prosecutor, unless the present Code require a summary proceedings.

(8) In addition to the motion referred to in Paragraph 1 of this Article and to the indictment brought pursuant to Paragraph 6 of this Article, the State Prosecutor shall deliver the crime report and all files and records on actions undertaken as well as objects which may serve as evidence or he shall indicate their location.

Competent Court to conduct the investigation

Article 253

(1) The investigative judge of the Competent Court shall conduct the investigation.

(2) The law may assign a particular Court to conduct the investigation within the jurisdictional territory of several Courts (the investigating centre).

(3) As a rule, the investigative judge shall carry out the investigatory actions only within the jurisdictional territory of his Court. If the interest of the investigation so requires, he may conduct certain investigatory actions outside the territory of his Court, but he shall be bound to inform thereof the Court within whose territory he conducts the investigatory actions.

Entrusting performance of particular investigatory actions

Article 254

(1) In the course of the investigation, the investigative judge may entrust the performance of particular investigatory actions to the investigative judge of the Court within whose jurisdiction those actions need to be undertaken, and in the case that a particular Court is designated to provide legal assistance within the jurisdictional territory of several Courts, it may be entrusted to that Court.

(2) The State Prosecutor undertaking prosecution before the Court to which the performance of particular investigatory action is entrusted may be present when this action is undertaken unless the competent State Prosecutor does not declare that he will be present.

(3) In the manner prescribed by the present Code, the investigative judge may entrust to the police authorities the execution of an order for a search of a dwelling or a person or an order for the temporary seizure of objects.

(4) Upon the request or approval of the investigative judge, the police authorities shall take a photograph or fingerprints of the defendant, if that is necessary for the purposes of the criminal proceedings.

Undertaking other investigatory actions besides those entrusted

Article 255

(1) The investigative judge entrusted with the performance of certain investigatory actions shall, if necessary, undertake other investigatory actions that are related to or deriving from those conferred to him.

(2) If the investigative judge entrusted with the performance of certain investigatory actions has no jurisdiction over the matter, he shall submit the case to the Competent Court and inform thereof the investigative judge who entrusted the case to him.

Scope of investigation

Article 256

(1) The investigation shall only be conducted in respect to the criminal offence and the defendant specified in the ruling on the conduct of investigation.

(2) If in the course of investigation it becomes obvious that the proceedings should be expanded to another criminal offence or against another person, the investigative judge shall inform the State Prosecutor thereof. In such a case, urgent investigatory actions may be undertaken, but the State Prosecutor shall be notified of all the actions undertaken.

(3) The provisions of Articles 250 and 251 of the present Code shall be applied with respect to the expansion of investigation.

Undertaking actions necessary for the successful conduct of the proceedings

Article 257

After a ruling on the conduct of investigation is rendered, the investigative judge shall on his own initiative, without a motion of the parties, undertake actions which he considers necessary for the successful conducting of the proceedings.

Motions of parties and injured party in respect to undertaking particular investigatory actions

Article 258

(1) In the course of investigation, the parties and the injured party may make proposals to the investigative judge to undertake certain investigatory actions. If the investigative judge disagrees with the proposal of the State Prosecutor to undertake a particular investigatory action, he shall request that the Panel (Article 24, Paragraph 6) decide on it.

(2) The parties and the injured party may submit proposals referred to in Paragraph 1 of this Article to the investigative judge who the performance of certain investigatory actions have been entrusted to. If the investigative judge disagrees with the proposal, he shall notify the person who submitted the proposal thereof and this person may repeat the proposal to the investigative judge of the Competent Court.

Transparency of investigation

Article 259

(1) The defendant shall be interrogated in the presence of the State Prosecutor. The subsidiary Prosecutor, the private Prosecutor and the defence attorney may be present at the interrogation of the defendant.

(2) The Prosecutor, the injured party, the defendant and the defence attorney may attend the crime scene investigation, reconstruction and the questioning of an expert witness.

(3) The Prosecutor and defence attorney may be present at the search of a dwelling.

(4) The Prosecutor, the defendant and the defence attorney may be present at the interrogation of a witness, when it is likely that the witness will not appear at the trial, when the investigative judge ascertains that it is opportune or when one of the parties has requested to be present at the hearing. The injured party may be present only when it is likely that the witness will not appear at the trial.

(5) The investigative judge shall be bound to notify in appropriate manner the Prosecutor, the defence attorney, the injured party and the defendant of the time and place set for the carrying investigatory actions they are entitled to attend, unless delay poses a risk. If the defendant retains a defence attorney, the investigative judge shall, as a rule, notify only the defence attorney. If the defendant is in detention, the investigative judge shall decide whether his presence is necessary if the investigatory action is to be performed outside the Court seat.

(6) The investigatory action may be carried out in the absence of the summoned person if the summoned person fails to appear. If the State Prosecutor or the person authorised to represent him fails to appear at the interrogation of the defendant, and has been informed, the interrogation shall be performed in his absence.

(7) Persons attending the carrying out of investigatory actions may suggest that the investigative judge poses certain questions to defendant, witness or expert witness for the purpose of clarification, and may with the permit of the investigative judge pose questions personally. These persons are entitled to request that their objections to the performance of certain actions are entered in the records and may propose that certain evidence be examined.

(8) In order to clarify certain technical or other expert issues which arise in relation to collected evidence or at the interrogation of the defendant or in the course of undertaking other investigatory actions, the investigative judge may require that expert gives necessary explanations in regard to these issues. If the parties are present when the explanation is conveyed, they may request that the expert provide a more detailed explanation. When it is necessary, the investigative judge may require a specialised institution to provide an explanation.

(9) The provisions of Paragraphs 1 to 8 of this Article shall also be applied if the investigatory action is undertaken before the ruling on the conducting of the investigation is rendered.

Recess of investigation

Article 260

(1) The investigative judge shall recess the investigation by a ruling if the defendant is stricken by a temporary mental illness or temporary mental disorder.

(2) The investigation may be recessed if the residence of the defendant is unknown, but if the defendant has fled or is otherwise not approachable to state agencies, the investigation shall be recessed only upon a motion of the State Prosecutor if the proceedings are conducted upon his request.

(3) Before recessing an investigation, all evidence which can be obtained as to the criminal offence and the guilt of the defendant shall be collected.

(4) The investigative judge shall continue an investigation when obstacles that have led to recess cease to exist.

Discontinuance of investigation by a ruling of the investigative judge

Article 261

The investigative judge shall discontinue an investigation by a ruling when the State Prosecutor in the course of investigation or after its completion declares that he is desisting from the prosecution. The investigative judge shall within the term of eight days notify the injured party of the discontinuance of the investigation (Article 59).

Discontinuance of investigation by a ruling of the Panel

Article 262

(1) In the course of investigation, the Panel (Article 24, Paragraph 6) shall discontinue an investigation by a ruling when deciding on any issue in the following cases:

1) if the act that defendant is charged with does not constitute a criminal offence that is prosecuted *ex officio;*

2) if there are circumstances that exclude defendant's guilt and there is no ground for the application of security measures;

3) if the statute of limitation of criminal prosecution applies or the offence is amnestied or pardoned or if there are other circumstances that permanently exclude prosecution;

4) if there is no evidence that the defendant committed the criminal offence.

(2) If the investigative judge establishes that there are reasons for the discontinuance of the investigation referred to in Paragraph 1 of this Article, he shall notify the State Prosecutor thereof. If the State Prosecutor does not notify the investigative judge that he has desisted from prosecution within the term of eight days, the investigative judge shall request that the Panel decide on the discontinuance of the investigation.

(3) The ruling on discontinuance of the investigation shall be submitted to the State Prosecutor, the injured party and the defendant who shall be immediately released if he is in detention. The State Prosecutor and the injured party may file an appeal against this ruling.

(4) If only the injured party files an appeal gains the ruling on discontinuance of the investigation, and the appeal is satisfied, it shall be deemed that the injured party assumed prosecution by filing the appeal.

(5) The Panel shall recess the investigation by a ruling if it establishes that there are just temporarily obstacles to prosecution of the defendant (Article 260, Paragraph 1).

(6) The investigative judge shall continue an investigation when reasons leading to recess cease to exist.

Obtaining information on defendant

Article 263

(1) Before the conclusion of the investigation, the investigative judge shall obtain information on the defendant referred to in Article 88, Paragraph 1 of the present Code if they are missing or require a review, as well as information on the defendant's previous convictions and, if he is still serving a sentence or another sanction which is connected to deprivation of liberty - information on his behaviour while serving the sentence or other sanction. If necessary, the investigative judge shall obtain information on the defendant's previous life, his living conditions as well as on other circumstances concerning his personality. The investigative judge may order a medical or psychological examination of the defendant when it is necessary to supplement information on the defendant's personality.

(2) If it is possible to impose a cumulative sentence comprising the sentence from previous verdicts as well, the investigative judge shall require certified copies of the final verdicts.

Informing parties of relevant evidence

Article 264

(1) If the investigative judge before the conclusion of the investigation ascertains that it is in the interest of the proceedings for the parties and defence attorney to become familiar with the important evidence collected in the course of the investigation, he shall inform them that they may, within a given term, inspect the files and objects related to evidence and make their motions for new evidence to be examined.

(2) After the given term has expired or if the motion for evidence to be examined is not satisfied, the investigative judge shall proceed pursuant to Article 265 of the present Code.

Completion of investigation

Article 265

(1) The investigative judge shall complete the investigation when he finds that the case has been sufficiently clarified.

(2) After the conclusion of the investigation, the investigative judge shall deliver the case files to the State Prosecutor who shall be bound within a term of fifteen days to file a motion to supplement the investigation or to bring an indictment or to declare that he is desisting from prosecution. Upon a motion of the State Prosecutor, the Panel (Article 24, Paragraph 6) may extend this term for another fifteen days at the longest.

(3) If the investigative judge does not accept the State Prosecutor's motion to supplement the investigation, he shall request that the Panel (Article 24, Paragraph 6) decide on it. If the Panel rejects the State Prosecutor's motion, the term referred to in Paragraph 2 of this Article begins to run from the day the State Prosecutor was furnished the Panel's decision.

(4) If the State Prosecutor does not proceed within the term stated in Paragraphs 2 and 3 of this Article, he shall be bound to notify the higher State Prosecutor of the reasons.

(5) The Court may inform the higher State Prosecutor on failure to proceed within the term referred to in Paragraphs 2 and 3 of this Article.

Consequences of failure to proceed within the terms specified for conclusion of investigation

Article 266

(1) If the investigation is not completed within a term of six months, the investigative judge shall be bound to notify the President of the Court of the why the investigation has not been concluded.

(2) The President of the Court shall undertake measures in order to conclude the investigation as the need arises.

Request to conduct the investigation submitted by subsidiary Prosecutor and private Prosecutor

Article 267

(1) The subsidiary Prosecutor and the private Prosecutor may submit to the investigative judge of the Competent Court a request for investigation or a motion to supplement an investigation. In the course of the investigation they are entitled to submit other motions to the investigative judge.

(2) With respect to the initiation, conduct, recess and discontinuance of an investigation, the provisions of the present Code administering initiation and conduct of an investigation upon the request of the State Prosecutor shall be applied accordingly.

(3) When the investigative judge finds that the investigation is concluded, he shall inform the subsidiary Prosecutor or private Prosecutor thereof and instruct them that they should bring an indictment or private charge within a term of fifteen days, and that if they fail to do so, it shall be deemed that they have desisted from the prosecution and the proceedings shall be discontinued by a ruling. The investigative judge shall also be bound to give such an instruction when the Panel (Article 24, Paragraph 6) rejects the motion of the subsidiary Prosecutor or private Prosecutor to supplement the investigation, if the Panel ascertains that the case has been sufficiently clarified.

Obligation to provide assistance to the investigative judge

Article 268

If, in conducting the investigation, the investigative judge needs assistance from the side of police authorities (referring to the techniques of police science, etc.) or from other state authorities, they shall be bound to provide this assistance upon his request. When the judge estimates that the investigatory action must be performed without a delay he may request assistance from an enterprise or other legal entity.

Obligation of keeping a secret

Article 269

If interests of the criminal proceedings, keeping information confidential, reasons of public order, moral considerations or protection of personal or family life of the injured party or the defendant require so, the person acting in an official capacity who is undertaking an investigatory action shall order the persons who are being interrogated or who are present while investigatory actions are being carried out or who inspect the files of the investigation, to keep confidential certain facts or information they have learned in the course of proceedings and shall instruct them that the disclosure of the secret constitutes a criminal offence. This order shall be entered into the records on investigatory action or shall be noted in the files inspected, along with the signature of the person instructed.

Request of the Panel for necessary explanations

Article 270

When deciding in the course of the investigation, the Panel may request necessary explanations from the investigative judge, the parties and the defence attorney and may summon them to a Panel session in order to present their positions orally.

Maintaining order in the course of investigation

Article 271

(1) During the course of conducting the investigatory actions, the investigative judge shall maintain order and protect the Court and other participants in the proceedings from insult, threat and any other form of an assault.

(2) The investigative judge may impose a fine in the amount not exceeding € 1.000 on the participant in the proceedings or other person who in the course of investigatory action and after being warned, disturbs order, insults Court and other participants in the proceedings, threatens them or endangers their security. If the participation of such a person is not necessary, that person may be removed from the place where the investigatory action is being performed.

(3) Should the actions referred to in Paragraph 2 of this Article amount to criminal offence that is prosecuted *ex officio*, the investigative judge shall notify the State Prosecutor with the view of undertaking prosecution.

(4) The defendant may not be fined.

(5) If the State Prosecutor disturbs the order, the investigative judge shall proceed pursuant to the provision of Article 307, Paragraph 5 of the present Code.

Complaints about the work of investigative judge

Article 272

(1) The parties and the injured party may always submit complaints to the President of the Court before which the proceedings are being conducted regarding the delay of the proceedings and other irregularities that occur in the course of the investigation.

(2) The President of the Court shall check on the allegations in the complaint and if the person who submitted the complaint requires so, shall inform him of any action undertaken in that regard.

Chapter XX

INDICTMENT AND OBJECTION TO THE INDICTMENT

Indictment

Article 273

(1) After the investigation is completed, or when pursuant to the present Code an indictment without investigation may be brought (Article 252), the proceedings before the Court may be conducted only on the basis of the indictment brought by the State Prosecutor or the subsidiary Prosecutor.

(2) The provisions administering the indictment and an objection to the indictment shall accordingly be applied to a private complaint, unless the indictment is brought for a criminal offence dealt with in summary proceedings.

Contents of indictment

Article 274

(1) The indictment shall contain:

1) the name and surname of the defendant with his personal data (Article 88) as well as data about whether and since when he has been in detention or whether he is at large, and if he was released before the indictment was brought, for how long he had been detained;

2) a description of the act pointing out the legal elements which make it a criminal offence, the time and the place of the commission of criminal offence, the object upon which and instrument by means of which the criminal offence was committed as well as other circumstances necessary for the precise description of the criminal offence;

3) the statutory title of the criminal offence accompanied by the relevant provisions of the statute which according to the Prosecutor's motion are to be applied;

4) an indication of the Court before which the trial shall be held;

5) proposal of evidence to be presented, including the list of the names of witnesses and experts, documents to be read and objects serving as evidence;

6) a statement of reasons describing the state of affairs according to the results of the investigation, indicating the evidence necessary to establish the relevant facts, presenting the defendant's defence and the Prosecutor's position on the defendant's defence.

(2) If the defendant is not detained, it may be proposed in the indictment that he be detained, and if the defendant is already detained, it may be proposed that he be released.

(3) Several criminal offences or several defendants may be joined in one indictment only if, pursuant to the provisions of Article 31 of the present Code, a joinder is possible and if a single verdict may be rendered.

Submission of indictment

Article 275

(1) The indictment shall be submitted to the Competent Court in as many copies as there are defendants and defence attorneys (Article 67, Paragraph 2) including one copy for the Court.

(2) Immediately upon receiving the indictment, the Chair of the Panel before which the trial is to be held shall examine whether the indictment is properly composed (Article 274), and if he finds that it is not, he shall return it to the Prosecutor to correct the errors within a term of three days. For justifiable reasons, upon the Prosecutor's motion, the Panel may extend this term. If the subsidiary Prosecutor or private Prosecutor fails to comply with the mentioned term, it shall be deemed that he desists from prosecution and the proceedings shall be discontinued.

Proceeding upon the subsidiary Prosecutor submitted a direct indictment

Article 276

(1) If the subsidiary Prosecutor brings an indictment without investigation (Article 252, Paragraph 6) or if a private complaint is submitted and no investigation has been conducted, unless a private complaint is submitted for a criminal offence dealt with in a summary proceedings, the Chair of the first instance Panel shall, if he finds no grounds for prosecution due to the circumstances referred to in Article 282, Paragraph 1, Items 1 to 3 of the present Code, refer the case to the Panel (Article 24, Paragraph 6) for decision.

(2) If the subsidiary Prosecutor in breach of the provisions of Article 252, Paragraphs 1 and 2 of the present Code brings an indictment without investigation for a criminal offence punishable by imprisonment for a term over five years, it shall be deemed that he has submitted a request to conduct the investigation.

(3) The subsidiary Prosecutor and the private Prosecutor shall be entitled to file an appeal against the ruling of the Panel.

Bringing an indictment and detention

Article 277

(1) If an indictment contains a motion to order detention against the defendant or a motion to release him, the Panel (Article 24, Paragraph 6) shall decide immediately or within 48 hours at the latest.

(2) If the defendant is in detention and the indictment does not contain the motion to release him, the Panel referred to in Paragraph 1 of this Article shall, by a virtue of an office and within a term of three days from the day of the receipt of the

indictment, examine whether the grounds for detention still exist and render a ruling by which a detention shall be extended or vacated. An appeal against this ruling does not stay its execution.

Serving an indictment

Article 278

(1) An indictment shall be served without delay to a defendant who is at large, and to a defendant who is in detention within a term of 24 hours upon receipt.

(2) If detention is ordered against a defendant by a ruling of the Panel (Article 277), the indictment shall be served on the defendant at the moment of his deprivation of liberty, together with the ruling ordering detention.

(3) If a defendant who is deprived of liberty is not kept in the prison of the Court before which the trial is to be held, the Chair of the Panel shall order the immediate transfer of the defendant to that prison, where the indictment shall be served on him.

Objection to an indictment

Article 279

(1) A defendant shall be entitled to submit an objection to an indictment within a term of eight days from the day it is served. At the time the indictment is served the defendant shall be instructed of such a right.

(2) An objection to an indictment may be submitted by a defence attorney, but not against the defendant's will.

(3) The defendant may waive the right to submit an objection to an indictment.

Dismissal of objection

Article 280

(1) A belated objection and an objection submitted by an unauthorised person shall be dismissed by a ruling of the Chair of the Panel before which the trial is to be held. The Panel (Article 24, Paragraph 6) shall decide on the appeal from this ruling.

(2) If the Chair of the Panel does not dismiss the objection pursuant to the provision of Paragraph 1 of this Article, he shall refer it with the files to the Panel (Article 24, Paragraph 6), which shall decide on the objection at the session.

(3) The Panel may summon the parties and defence attorney to the Panel session in order to state their positions orally.

Review of the indictment

Article 281

(1) If the Panel does not dismiss the objection as belated or inadmissible, it shall assume a review of the indictment.

(2) When, upon an objection, the Panel determines that there are errors or discrepancies in the indictment (Article 274) or in the proceedings itself or that a better clarification of the facts of the case is necessary in order to examine the grounds for the indictment, it shall return the indictment ordering the errors to be corrected or that the investigation be supplemented or conducted. The Prosecutor shall be bound within a term of three days from the day the decision of the Panel is conveyed to him to submit a properly composed indictment or to submit a request to supplement or to conduct an investigation. For justifiable reasons, upon a Prosecutor's request, the Panel may extend this term. If the subsidiary Prosecutor or private Prosecutor fails to comply with this term it shall be deemed that he desists from prosecution and the proceedings shall be discontinued. If the State Prosecutor fails to comply with this term, he shall be bound to notify the higher State Prosecutor of the reasons of the failure.

(3) If the Panel determines that some other Court has jurisdiction over the criminal offence that charges have been brought for, it shall declare that the Court to whom the indictment was submitted incompetent and after the ruling becomes final it shall refer the case to the Competent Court.

(4) If the Panel determines that the files contain records or information referred to in Article 184 of the present Code it shall render a ruling that they be excluded from the files. This ruling shall be subject to separate appeal. After the ruling becomes final and before the case is referred to the Chair of the Panel in order to schedule the trial, the Chair of the Panel referred to in Article 24, Paragraph 6 of the present Code shall make sure that the excluded records and information be sealed in a separate cover and be handed over to the investigative judge for the purpose of keeping them apart from other files. The excluded records and information shall not be examined or used in the proceedings.

Decisions on objections to an indictment

Article 282

(1) When deciding on an objection to an indictment, the Panel shall decide that there are no grounds for a charge and shall discontinue the proceedings if it establishes that:

1) the act the defendant is charged with is not a criminal offence;

2) there are circumstances that permanently exclude the defendant's culpability and there is no ground for application of security measures;

3) the statute of limitation for the initiation of criminal prosecution applies or the offence is amnestied or pardoned or if there are other circumstances that permanently exclude prosecution;

4) there is no sufficient evidence supporting reasonable suspicion that the defendant has committed the offence he has been charged with.

(2) If the Panel ascertains that the request or the motion of the authorised Prosecutor or the approval for prosecution is lacking, or that there is other circumstances that temporarily bar prosecution, he shall dismiss the indictment by a ruling.

Dismissal of an indictment without investigation and a private complaint

Article 283

(1) When deciding on an objection to an indictment brought by the State Prosecutor pursuant to Article 252, Paragraph 6 of the present Code, or upon the request of the Chair of the Panel regarding this indictment (Article 289), or when deciding on disagreement between the Chair of the first instance Panel with the indictment of the subsidiary Prosecutor or with the private complaint in the cases referred to in Article 276, Paragraphs 1 of the present Code, the Panel shall, by a ruling, dismiss the indictment or private charge if it establishes that the reasons referred to in Article 282, Paragraph 1, Items 1 to 3 of the present Code exist, and if the investigatory actions are completed - for the reason stated in Article 282, Paragraph 1, Item 4 of the present Code, as well.

(2) If upon an objection to an indictment brought by the State Prosecutor referred to in Paragraph 1 of this Article or upon the request of the Chair of the Panel regarding this indictment (Article 289) an investigation was conducted (Article 281, Paragraph 2), and the Panel thereafter ascertains that the reasons referred to in Article 282, Paragraph 1 of the present Code exist, it shall decide by a ruling that there are no grounds for a charge and the criminal proceedings are to be discontinued.

Panel shall not be bound by the legal qualification of the offence

Article 284

When rendering a ruling referred to in Article 281, Paragraph 3 and Articles 282 and 283 of the present Code, the Panel shall not be bound by the legal qualification of the offence as stated by the Prosecutor in the indictment.

Rejection of an objection

Article 285

(1) If the Panel does not render any of the rulings referred to in Articles 281, 282 and 283 of the present Code, it shall reject the objection as unfounded.

(2) By the same ruling the Panel shall decide on motions for a joinder or severance of the proceedings.

Beneficium cohaesionis

Article 286

If only few of several defendants submit an objection to an indictment and if the reasons on which the Court adjudicates that the charge is unfounded are beneficial to some of the defendants who failed to submit the objection, the Panel shall proceed as if they also submitted such an objection.

Substantiation of decisions concerning an objection

Article 287

All the decisions of the Panel rendered regarding an objection to an indictment must be substantiated, but in such a manner as not to predetermine the decision on issues which shall be decided at the trial.

Appeal against the decision upon an objection

Article 288

(1) The appeal may be filed against a Panel decision referred to in Article 281, Paragraph 3 of the present Code and an appeal may be filed by the Prosecutor and the injured party against the decisions referred to in Articles 282 and 283 of the present Code. The appeal shall not be allowed against other decisions of the Panel concerning the objection to an indictment.

(2) If only the injured party filed an appeal against the ruling of the Panel and if this appeal is satisfied, it shall be deemed that he assumes prosecution by filing the appeal.

Examination of indictment upon initiative of the Chair of the Panel

Article 289

(1) If an objection to an indictment is not submitted or if it is dismissed, the Panel (Article 24, Paragraph 6) may, upon the request of the Chair of the Panel before which the trial is to be held, decide on every issue which under the present Code is to be decided upon an objection.

(2) The Chair of the Panel may make the request referred to in Paragraph 1 of this Article until the trial is scheduled, and not later than 30 days from the day when the indictment is received by the Court.

(3) The provisions of Article 280, Paragraph 2 and Articles 281 to 284, 287 and 288 of the present Code shall be applied accordingly when deciding upon the request referred to in Paragraph 1 of this Article.

Entering into force of indictment

Article 290

An indictment shall enter into force when an objection is rejected, and if an objection is not submitted or is dismissed, on the day when the Panel, deciding on the request from the Chair of the Panel (Article 289), concurs with the indictment, and if such a request has not been made, on the day when the Chair of the Panel scheduled the trial, or after the lapse of the term referred to in Article 289, Paragraph 2 of the present Code.

V. TRIAL AND THE VERDICT

Chapter XXI

PREPARATIONS FOR THE TRIAL

Scheduling of the trial

Article 291

(1) The Chair of the Panel shall schedule the day, hour and place of the trial by an order.

(2) The Chair of the Panel shall schedule the trial at the latest within a term of two months from the day the indictment was received in the Court, and if the request referred to in Article 289 of the present Code is submitted, the trial may be scheduled as soon as possible taking into account decision of the Panel. If within this term no trial is scheduled, the Chair of the Panel shall inform the President of the Court of the reasons thereof. The President of the Court shall undertake the measures to schedule the trial as appropriate.

(3) If the Chair of the Panel establishes that the files contain records or information referred to in Article 184 of the present Code, he shall render a ruling on their exclusion from the files before the scheduling of the trial and when the ruling becomes final he shall seal those information and records in a separate cover and hand them over to the investigative judge for the purpose of keeping them apart from other files.

Place of holding the trial

Article 292

(1) The trial shall be held in the seat of the Court and in the Courthouse.

(2) If in a certain cases the premises of the Courthouse are considered inappropriate for the trial, the President of the Court may order the trial to be held in another building.

(3) The trial may also be held in another location within the jurisdictional territory of the Competent Court, provided that the President of the higher Court expresses his consent following a substantiated motion from the President of the Court.

Summoning to a trial

Article 293

(1) The accused and his defence attorney, the Prosecutor and the injured party and their legal guardians and representatives as well as the interpreter shall be summoned to a trial. The witnesses and the expert witnesses proposed by the Prosecutor in the indictment and by the defendant in the objection to the indictment shall also be summoned to the trial, except those whose examination at the trial is considered to be unnecessary according to Chair of Panel's opinion.

(2) With regards to the contents of the summons for the accused and the witnesses, the provisions of Articles 137 and 100 of the present Code shall be applied. When defence is not mandatory, the defendant shall be instructed in a summons on his right to retain a defence attorney, as well as that the trial will not be deferred if the defence attorney fails to appear at the trial or if the accused engages a defence attorney at the trial.

(3) A summons shall be served on the accused in such a manner that between the moment it was served and the day of the trial there is a sufficient time to prepare a defence, but not less than eight days. Upon the request of the accused or the Prosecutor, and with the consent of the accused, this term may be shortened.

(4) The injured party who is not summoned to appear as a witness shall be informed in the summons that the trial shall be held in his absence and that his statement on a claim under property law shall be read. The injured party shall be warned that his failure to appear shall be considered as unwillingness to assume prosecution in the case where the State Prosecutor withdraws the charge.

(5) The subsidiary Prosecutor and the private Prosecutor shall be warned in the summons that if they fail to appear at the trial or fail to send their legal representatives they shall be deemed to have desisted from prosecution.

(6) The accused, the witness and expert witness shall be warned in the summons about the consequences of failure to appear at the trial (Articles 312 and 315).

Obtaining new evidence

Article 294

(1) Even after the scheduling of the trial, the parties and the injured party may request that new witnesses or expert witnesses be summoned to the trial and that other new evidence be obtained. The parties must state in their substantiated request which facts are to be established and by which specific evidence.

(2) The Chair of the Panel may order the obtaining of additional evidence for the trial even if there is no motion by the parties.

(3) The parties shall be informed of the decision ordering additional evidence to be obtained before the commencement of the trial.

Assignment of alternate judges

Article 295

If the trial is expected to last for a longer period of time, the Chair of the Panel may request the President of the Court to assign one or two judges or lay judges to attend the trial in order to replace members of the Panel in the case of their inability to perform their duties.

Examination of witnesses and expert witnesses outside the place of the trial

Article 296

(1) If it is known that a witness or expert witness summoned to the trial but not yet examined will not be able to appear at the trial due to a long-term illness or some other impediments, he may be examined in the place where he resides.

(2) A witness or expert witness shall give testimony and, when necessary, be sworn in by the Chair of the Panel or a judge who sits as a member of the Panel, or his testimony shall be given to the investigative judge of the Court in whose jurisdictional territory the witness or expert witness resides.

(3) The parties and the injured party shall be notified about the time and place of the hearing if this is possible due to urgency of the proceedings. If the accused has been put in detention, the Chair of the Panel shall decide on the need for his presence at the hearing. When the parties and the injured party are present at the hearing they shall have the rights guaranteed in Article259, Paragraph 7 of the present Code.

Postponement of the trial

Article 297

The Chair of the Panel may postpone the trial by an order, for important reasons and upon the motion of the parties or by virtue of an office.

Desisting from indictment before commencement of the trial

Article 298

(1) If the Prosecutor desists from indictment before the commencement of the trial, the Chair of the Panel shall notify thereof all persons who were summoned to the trial. The injured party shall particularly be instructed of his right to assume the prosecution (Articles 59 and 61).

(2) If the injured party does not assume the prosecution, the Chair of the Panel shall discontinue the criminal proceedings by a ruling and shall serve it to the parties and the injured party.

Chapter XXII

THE TRIAL

1. PUBLIC NATURE OF THE TRIAL

General publicity

Article 299

(1) The trial shall be open to the public.

(2) Only adults may attend the trial.

(3) Persons attending the trial must not carry arms or dangerous tools, except the guards of the defendant who may be armed.

Exclusion of public

Article 300

From the opening of the session to the conclusion of the trial the Panel may at any time, by virtue of an office or on the motion of the parties but always after hearing their statements, exclude the public for the entire trial or any part of it, if that is necessary for keeping the confidentiality of information, to protect public order, to preserve morality, to protect the interests of a minor or to protect the personal or intimate life of the defendant or the injured party.

Limited exclusion of public

Article 301

(1) Exclusion of the public shall not include parties, the injured party, their representatives and the defence attorney.

(2) The Panel may grant permission that certain officials and scholars, and upon the request of the accused, his spouse or close relatives or his extra-marital partner, attend the trial *in camera.*

(3) The Chair of the Panel shall instruct the persons attending a trial *in camera* that they are bound to keep information learned at the trial confidential, and that failure to do so constitutes a criminal offence.

Ruling on the exclusion of public

Article 302

(1) The Panel shall decide on the exclusion of the public by a ruling which shall be substantiated and publicly announced.

(2) The ruling on the exclusion of the public may be contested only in the appeal against the verdict.

2. DIRECTION OF THE TRIAL

Mandatory presence at the trial

Article 303

(1) The President, members of the Panel, the Court clerk and alternate judges shall sit continuously during the trial.

(2) It is the duty of Chair of the Panel to ensure that the Panel is composed according to law and whether reasons exist for the disqualification of members of the Panel and the Court clerk (Article 38, Items 1 to 5).

Direction of the trial

Article 304

(1) The Chair of the Panel shall direct the trial, interrogate the accused, examine the witnesses and expert witnesses and shall give the floor to the members of the Panel, the parties, the injured party, the legal guardians, the legal representatives, the defence attorney and the expert witnesses.

(2) It shall be the duty of the Chair of the Panel to take care that the case is thoroughly examined, that the true is established and that everything is eliminated that prolongs the proceedings but does not serve to clarify the matter.

(3) The Chair of the Panel shall decide on the motions of the parties if the Panel does not decide it.

(4) The Panel shall decide on a motion over which the parties dissent and about concurring motions of the parties, which are not accepted by the Chair of the Panel. The Panel shall also decide on an objection to measures undertaken by the Chair of the Panel in directing the trial.

(5) The rulings of the Panel shall always be announced and entered into the records of the trial along with a short statement of reasons.

Alteration of the regular course of the trial

Article 305

The trial shall be carried out in the order prescribed in the present Code, but the Panel may order that the regular course of the trial be altered due to special circumstances and particularly due to the number of defendants, the number of criminal offences and the range of evidence.

Protection of honour of the Court and participants in the proceedings

Article 306

(1) The Court shall be bound to protect its honour, the honour of the parties and other participants in the proceedings from an insult, threat and any other assault.

(2) It shall be the duty of the Chair of the Panel to take care of maintenance of order in the Courtroom. He may order a search of persons attending the trial, and immediately after the opening of the session he may remind the present persons to behave properly and not to disturb the functioning of the Court.

(3)The Panel may order that all those attending trial as an audience be removed from the Courtroom if the measures for maintaining order prescribed by the present Code have proven to be ineffective in ensuring that the main trial is not disrupted.

(4) Visual and radio recording shall not be allowed at the trial unless approved so by the President of the Supreme Court for particular trial. If recordings at the trial are approved, the Panel may for justified reasons order that certain parts of the trial not be recorded.

Maintenance of order and imposition of punishment due to disruption of order and procedural discipline

Article 307

(1) If the accused, defence attorney, the injured party, legal guardian, legal representative, witness, expert witness, interpreter or other person attending the trial disrupts order, insults the Court, parties and other participants to the proceedings or fails to comply with the directions of the Chair of the Panel concerning the maintenance of order, the Chair of the Panel shall warn him. If such a warning fails to be successful, the Panel may order the accused to be removed from the Courtroom, while other persons may not only be removed but also punished by a fine in the amount not exceeding € 1.000.

(2) By decision of a Panel, the accused may be removed from the Courtroom for a certain period of time, and if he has already been interrogated at the trial, than for the whole presentation of evidence. Before the presentation of evidence is completed, the Chair of the Panel shall call in the accused and inform him about the course of the trial. If the accused continues to disrupt order and offend the dignity of the Court the Panel may remove him again from the Courtroom. In such a case, the trial shall be concluded in the absence of the accused, and the verdict shall be communicated to him by the Chair of the Panel or by a judge, who is the member of the Panel, in the presence of the Court clerk.

(3) The Panel may deny further defence or representation at the trial to a defence attorney or legal representative who after being punished continues to disrupt order, and in such a case the party shall be called on to retain another defence attorney or legal representative. If it is impossible for the accused who has not been interrogated at the trial to do so, or if in the case of mandatory defence it is impossible for the Court to assign a new defence attorney without prejudicing the defence, the trial shall be recessed or a continuance of the trial shall be ordered, and the defence attorney shall be ordered to pay expenses incurred due to the interruption or postponement of the trial. If the private Prosecutor or subsidiary Prosecutor does not retain another legal representative, the Panel may decide to continue the trial in the absence of a legal representative, if it establishes that this would not prejudice the interests of the person whom he represents. A ruling thereof shall be entered into the records along with the statement of reasons. An interlocutory appeal may not be filed against this ruling.

(4) Should the Court removes the subsidiary Prosecutor or the private Prosecutor or their legal guardian from the Courtroom, the trial shall continue in their absence, but the Court shall inform them that they may retain a legal representative.

(5) Should the State Prosecutor or a person acting on his behalf disrupts order, the Chair of the Panel shall notify the competent State Prosecutor thereof, and he may recess the trial and request the competent State Prosecutor to appoint other person to represent the prosecution.

(6) After punishing an counsel or counsel in training who disrupts order, the Court shall notify about that the Bar Association of which he is a member.

Appeal against a ruling imposing punishment as an exception

Article 308

(1) A ruling imposing punishment shall be subject to an appellate review, but the Panel may revoke such a ruling.

(2) Other decisions concerning the maintenance of order and the direction of the trial shall not subject to an appellate review.

Charges for a criminal offence committed at the trial

Article 309

(1) If the accused commits a criminal offence at the trial, the Court shall proceed pursuant to the provision of Article 350 of the present Code.

(2) If someone else commits a criminal offence while the trial Court is in session, the Panel may recess the trial and upon Prosecutor's oral charge proceed to try this criminal offence immediately, or it may try this offence after the completion of the pending trial.

(3) If there are grounds for suspicion that a witness or expert witness has given a false testimony at the trial, he shall not be immediately tried for that offence. In such a case, the Chair of the Panel may order that a separate records be made of the witness's or the expert witness' testimony that shall be delivered to the Prosecutor. These records shall be signed by the examined witness or expert witness.

(4) If it is not conceivable the perpetrator of a criminal offence that is prosecuted *ex officio* to be tried immediately or if a higher Court has jurisdiction over the case, the competent State Prosecutor shall be notified thereof reference further action.

3. PREREQUISITES FOR HOLDING A TRIAL

Opening of the session

Article 310

The Chair of the Panel shall open the session and announce the case and the composition of the Panel. Thereafter, he shall determine whether all summoned persons have appeared, and if not, shall check whether the summons were duly served and whether those absent have justified their absence.

Failure of the Prosecutor to appear at the trial

Article 311

(1) If the State Prosecutor or person acting on his behalf fails to appear at a trial scheduled upon an indictment brought by the State Prosecutor, the Court shall postpone the trial. The Chair of the Panel shall inform the competent State Prosecutor thereof.

(2) If a subsidiary Prosecutor or a private Prosecutor fails to appear at the trial although duly summoned, and their legal representative also fails to appear, the Panel shall discontinue the proceedings by a ruling.

Failure of the defendant to appear at the trial and trying in absence

Article 312

(1) If a duly summoned accused fails to appear at a trial without justifying his absence, the Panel shall issue warrant to bring him before the Court by force. If bringing him cannot be effected immediately, the Court shall decide not to hold the trial and that the accused be brought to the Court by force for the next session. If the accused justifies his absence before being brought to the Court, the Chair of the Panel shall revoke the warrant for apprehension.

(2) The accused may be tried in his absence only if he has fled or is otherwise not approachable to justice, provided that particularly important reasons exist to try him although he is absent.

(3) Upon a motion of the Prosecutor, the Panel shall render a ruling to hold the trial in the absence of the accused. An appeal shall not stay the execution of the ruling.

Failure of a defence attorney to appear

Article 313

(1) If a duly summoned defence attorney fails to appear at the trial without informing the Court of the reason for his absence as soon as he learns about it, or if the defence attorney leaves the session without authorization, the accused shall be called on to immediately retain other defence attorney. If the accused fails to do so, the Panel may decide to hold the trial without defence attorney if the accused agrees with that. If in the case of mandatory defence the defendant cannot immediately retain another defence attorney, or if the Court cannot appoint a defence attorney without prejudicing the defence, the Court shall order a continuance of the trial.

(2) The Panel shall punish by a fine in the amount not exceeding € 500 a duly summoned defence attorney whose failure to appear causes a postponement of the trial and shall order him to bear the costs incurred by the postponement of the trial. A ruling thereof accompanied by a brief statement of reasons shall be entered into the trial records.

Holding of the trial while expecting rendering of verdict rejecting the charge

Article 314

If, pursuant to the provisions of Articles 307, 312 and 313 of this Act, conditions for a postponement of the trial exist due to the absence of the accused or the defence attorney, the Panel may nevertheless decide to hold the trial if, according to the evidence in the file, it is obvious that a verdict rejecting the charge or a ruling referred to in Article 357 of the present Code shall be rendered.

Failure of a witness and an expert witness to appear

Article 315

(1) If a duly summoned witness or expert witness fails to appear without justified reasons, the Panel may issue a warrant to apprehend him and bring him immediately to the Court by force.

(2) The trial may commence even in the absence of a summoned witness or expert witness, and in such a case, the Panel shall decide in the course of the trial whether the trial should be recessed or deferred due to the absence of the witness or expert witness.

(3) The Panel may punish by a fine in the amount not exceeding € 1.000 a duly summoned witness or expert witness who fails to justify his absence and it may order that he be apprehended and brought in by force for the next session. The Panel may revoke its decision on punishment for a justifiable reason.

4. DEFERRAL AND RECESS OF THE TRIAL

Deferral

Article 316

(1) Except for cases envisaged by the present Code, the Panel shall render a ruling ordering a deferral of a trial if it is necessary to obtain new evidence or if the Court determines in the course of the trial that the accused, after committing the criminal offence, was inflicted with a temporary mental illness or temporary mental disorder or if other obstacles to the successful completion of the trial exist.

(2) A ruling on the deferral of a trial shall as a rule state the date and hour of the resumption of the trial. In the same ruling the Panel may order evidence to be obtained which is likely to disappear over a lapse of time.

(3) The ruling referred to in Paragraph 2 of this Article is not subject to an appellate review.

Holding the trial that has been deferred

Article 317

(1) When a deferral of trial is ordered, the trial must be resumed if the composition of the Panel has changed, but upon hearing the parties, the Panel may decide that in such a case the witness or expert witness shall not repeat his testimony and that the crime scene investigation shall not be conducted anew, but rather the statements of witnesses and expert witnesses given at the previous trial be read or that the records on the crime scene investigation be read.

(2) If the trial for which a deferral is ordered is held before the same Panel, it shall be resumed and the President of the Panel shall summarize the course of the previous trial, but even in such a case the Panel may order that the trial recommence.

(3) If the postponement lasted more than three months, or if the trial is held before other Chair of the Panel, it must be recommenced and all evidence must be presented anew.

Recess of the trial

Article 318

(1) Except for cases envisaged by the present Code, the Chair of the Panel may order a recess of the trial for purposes of rest or at the end of the working day or to obtain certain evidence within of short period of time or for preparation of prosecution or defence.

(2) A recessed trial shall always continue before the same Panel.

(3) If the trial may not be resumed before the same Panel, or if a recess lasts for more than eight days, it shall be proceeded pursuant to the provisions of Article 317 of the present Code.

Enlargement of the Panel

Article 319

If, in the course of a trial held before a Panel composed of one judge and two lay judges, the facts upon which the charge is founded indicate that a criminal offence is involved for which a Panel composed of two judges and three lay judges has competence over the case, the Panel shall be enlarged and the trial shall recommence.

5. RECORDS OF THE TRIAL

Manner of keeping the records

Article 320

(1) A records shall be kept of the trial and it shall contain an essential summary of the entire contents and course of the trial.

(2) The Chair of the Panel may order for the entire course of the trial to be recorded by stenography. The stenographic records shall be translated, reviewed and appended to the records within 48 hours.

(3) Regarding audio and other technical recording of the course of the trial, the provisions of Article 185 of the present Code shall be applied accordingly. The Chair of the Panel shall give authorization for such recording.

(4) The Chair of the Panel may, upon a motion of the party or by virtue of an office, order that statements he considers particularly important be entered into the records verbatim.

(5) If necessary, and especially if a statement is entered in the records verbatim, the Chair of the Panel may order that this part of the records be read aloud immediately, and it shall always be read if the party, defence attorney or the person whose statement is entered into the records so requires.

Corrections and look into the records

Article 321

(1) The records must be completed simultaneously with the closing of the session. The records shall be signed by the Chair of the Panel and the Court clerk.

(2) The parties are entitled to review the completed records and its appendices, to make remarks regarding the contents of it as well as to request a correction of the records. After the closing of the session, the parties are entitled to be delivered a copy of the records, if they require so.

(3) Corrections of incorrectly written names, numbers and other obvious errors in writing may be ordered by the Chair of the Panel upon a motion of the parties or the person examined or by virtue of an office. Other corrections and supplements of the records may be ordered only by the Panel.

(4) Remarks and motions of the parties regarding the records, as well as corrections and supplements made to the records, must be noted in the supplement to the records. The reasons for not sustaining certain motions and remarks shall also be noted in the supplement to the records. The Chair of the Panel and the Court clerk shall sign the supplement to the records, as well.

Contents of the records

Article 322

(1) The introduction to the records shall indicate the Court before which the trial is being held, the time and place of the session, the name and surname of the Chair of the Panel, members of the Panel, Court clerk, Prosecutor, accused and defence attorney, injured party and his legal guardian or legal representative, interpreter, the criminal offence in consideration, and whether the trial is being held in public or *in camera*.

(2) The records shall contain in particular the data on the indictment which was read or orally presented at the trial and on whether the Prosecutor amended or extended the charge, what motions were filed by the parties, and what decisions were rendered by the Chair of the Panel or the Panel, the evidence presented, whether records or other briefs were read, whether audio or other recordings were reproduced and what remarks the parties made regarding the records or briefs read or the recordings reproduced. If the trial was held *in camera*, the records must indicate that the Chair of the Panel reminded those present of the consequences of unauthorised disclosure of the confidential information they learned about at the trial.

(3) The statements of the accused, witness and expert witness shall be entered into the records in such a manner as to present their substantive content. These statements shall be entered in the records only if they contain changes or supplements to their previous statements. Upon a motion of a party and after the questioning of these persons, the Chair of the Panel shall order the records of their previous statement to be read in part or in whole.

(4) Upon a motion of a party, the Court shall enter in the records a question and answer which the Panel rejected as impermissible.

The pronouncement of the verdict

Article 323

(1) The records shall state the entire pronouncement of the verdict (Article 369, Paragraphs 3 to 5), along with a note on whether the verdict was announced in public. The pronouncement entered in the records of the trial is considered to be the original one.

(2) If the Court renders a ruling on detention (Article 358), it also must be entered into the records.

6. COMMENCEMENT OF THE TRIAL AND INTERROGATION OF THE ACCUSED

Entering of a judge and a Panel in the Courtroom

Article 324

(1) All present shall rise while a judge or a Panel is entering or leaving the Courtroom.

(2) The parties and other participants in the proceedings shall stand up when addressing the Court, except if this is not possible for justifiable reasons or if the interrogation is differently arranged.

Verifying the identity of the accused and giving directions

Article 325

(1) When the Chair of the Panel establishes that all summoned persons have appeared, or when the Panel decides to hold the trial in the absence of some of the summoned persons or when the Panel decides to postpone a decision on such issues, the Chair of the Panel shall call on the accused to give his personal data (Article 88) in order to determine his identity.

(2) After the identity of the accused is verified, the Chair of the Panel shall direct the witnesses and the expert witnesses to designated places outside the Courtroom where they shall wait until called upon to testify. If necessary, the Chair of the Panel may allow the expert witnesses to remain in the Courtroom to observe the course of the trial.

(3) If the injured party is present and has not submitted his claim under property law yet, the Chair of the Panel shall instruct him that he may file such a claim in the criminal proceedings and shall instruct him of the rights laid down in Article 58 of the present Code.

(4) If the subsidiary Prosecutor or private Prosecutor has to testify as a witness they shall not be removed from the Courtroom.

(5) The Chair of the Panel may undertake measures necessary to prevent communication of the witnesses, expert witnesses, defendant, subsidiary Prosecutor or private Prosecutor with each other.

Instructions to the accused

Article 326

The Chair of the Panel shall warn the accused to follow the trial carefully and shall instruct him that he may present the facts and propose evidence in his favour, that pay question to co-defendants, witnesses and expert witnesses make remarks and give explanations regarding their statements.

Commencement of the trial and reading of an indictment

Article 327

(1) The trial begins with the reading of an indictment (Article 274, Paragraph 1, and Items 1 to 3) or private complaint.

(2) As a rule, the Prosecutor shall read the indictment and the private complaint, but the Chair of the Panel may instead orally present the contents of the indictment brought by the subsidiary Prosecutor or the private complaint. The Prosecutor shall be allowed to add his statement to the presentation of the Chair of the Panel.

(3) If the injured party is present, he may give reasons for his claim under property law and if he is absent, his motion shall be read by the Chair of the Panel.

Clarification of the indictment and the guilt plea

Article 328

(1) After the indictment or the private complaint is read or its contents are orally presented, the Chair of the Panel shall ask the accused if he understands the charge. If the Chair of the Panel is convinced that the accused has not understood the charge, he shall present its contents to him once again in a manner that it is the easiest for the accused to understand.

(2) Thereafter, the Chair of the Panel shall call on the accused to, if he wish, enter his plea on each account of the charge, to state whether he admits that he has committed the crime he is being charged with and whether he pleads guilty, and if he pleads guilty to present all facts and if he pleads not guilty to present his defence.

(3) The accused is not bound to enter his plea or to present his defence.

(4) Co-accused who has not been interrogated prior to the accused cannot be present during the interrogation of the accused.

Interrogation of the accused and reading of a previous statement

Article 329

(1) With regards to the interrogation of the defendant at the trial, the general provisions regulating interrogation of the accused (Articles 88 to 94) shall apply accordingly.

(2) If the accused does not answer the questions at all or does not answer to a particular question, his previous statement or a part of it shall be read.

(3) After the interrogation is completed, the Chair of the Panel shall be bound to ask the accused whether he has anything else to add to his defence.

Putting questions to the accused

Article 330

(1) After the accused had presented his defence, questions may be put to him. The Prosecutor shall put the questions first and then the defence attorney shall put his questions. After them the Chair of the Panel and the members of the Panel may put their questions to the accused with view to eliminating voids, contradictions and incoherence in his statement. The injured party, his legal guardian or legal representative, co-accused and expert witness may directly put questions to the accused subject to prior approval of the Chair of the Panel. The questions to the accused, in the same consecutive order referred to in Paragraph 1 of this Article may be put several times.

(2) The Chair of the Panel shall forbid a question or an answer to a question already asked if it is considered impermissible (Article 89) or if it is not related to the case. If the Chair of the Panel forbids that a certain question be asked or an answer be given, the parties may request the Panel to decide thereof.

Interrogation of the other accused and their confrontation

Article 331

(1) When the interrogation of the first accused is completed, the Court shall begin to interrogate subsequently the others, if any. After each interrogation, the Chair of the Panel shall inform the interrogated person of the statements given by the previously interrogated co-accused and ask him whether he has anything to comment. The accused who was previously interrogated shall be asked by the Chair of the Panel whether he has any comment regarding the statements of the accused subsequently interrogated. Each accused shall be entitled to pose questions to other interrogated co-accused.

(2) If the statements of some of the co-accused differ regarding the same event, the Chair of the Panel may confront the co-accused.

Temporary removal of the accused due to refusal of co-accused and witnesses to make their statements

Article 332

Exceptionally, the Panel may decide that the accused be temporarily removed from the Courtroom if the co-accused or witness refuses to give a statement in his presence or if the circumstances indicate that they would not tell the truth in the presence of the accused. Upon return of the accused to the Courtroom, the statement of the co-accused or witness shall be read to him. The accused has the right to pose the questions to the co-accused or witness and the Chair of the Panel shall ask him whether he has anything to comment regarding their statements.

Consultation of the accused with defence attorney

Article 333

In the course of the trial the accused may consult with his defence attorney, but he may not consult with his defence attorney or anybody else about how he shall respond to the question asked.

7. EVIDENCE PROCEDURE

Presentation of evidence

Article 334

(1) After the interrogation of the accused, the proceedings shall be continued with the presentation of evidence.

(2) Presentation of evidence comprises all facts deemed by the Court to be important for a correct adjudication.

(3) The evidence shall be examined in the order determined by the Chair of the Panel. As a rule, the evidence proposed by the Prosecutor shall be presented first, and thereafter the evidence proposed by the defence and at the end the evidence for which the Court by virtue of an office ordered to be presented. If the injured party who is present should testify in the capacity of a witness, his examination shall be carried out immediately after the interrogation of the accused.

(4) Until the conclusion of the trial the parties and the injured party may propose that new facts be investigated and new evidence be obtained and they may repeat motions already rejected by the Chair of the Panel or the Panel.

(5) The Panel may decide to present the evidence that has not been proposed by a motion or if such a motion has been withdrawn.

Confession of the accused

Article 335

The confession of the accused at the trial shall release the Court of the obligation to examine other evidence, except in the case referred to in Article 93 of the present Code and in regard with evidence on which depend the type and extent of criminal sanctions.

Examination of witnesses and expert witnesses

Article 336

(1) With regard to the examination of witnesses and expert witnesses at the trial, the general provisions regulating their examination shall apply accordingly.

(2) A witness, who has not yet testified, shall not, as a rule, be present when evidence is presented.

(3) If a witness who is to testify happens to be a person less than fourteen years of age, the Panel may decide to exclude the public during his examination.

(4) If a minor is present at the trial in a capacity of witness or injured party, he shall be removed from the Courtroom as soon as his presence is no longer needed.

Duties of a witness

Article 337

(1) Before a witness testifies, the Chair of the Panel shall remind him of the duty to present to the Court everything he knows relating to the case and shall warn persons above fourteen years of age that giving false testimony constitutes a criminal offence.

(2) The Chair of the Panel may call on the witness to take an oath if he has not taken an oath during the investigation, and if he has already taken such an oath during the investigation, the Chair of the Panel may remind him of this oath.

Presentation of findings and opinion of expert witnesses

Article 338

(1) Before an expert witness testifies, the Chair of the Panel shall remind him to give his expert findings and opinion to the best of his knowledge and warn him that giving false expert findings and opinion constitutes a criminal offence.

(2) The Chair of the Panel may call on the expert witness to take an oath before his expert evaluation if he has not already given an oath, and if he has already taken such an oath, the Chair of the Panel may remind him of this oath.

(3) The expert witness shall present orally at the trial his expert findings and opinion. If before the trial the exert witness has put his expert findings and opinion in writing, he may be allowed to read them aloud, in which case his written report shall be enclosed to the records.

(4) Instead of summoning the expert of the institution assigned to provide an expert evaluation, the Panel may decide that findings and opinion shall only be read if, because of the nature of testimony a more complete elaboration of their written findings and opinion is not likely to be given. If it is deemed that this is necessary due to other evidence that has been presented as well as to objections of the parties (Article 347), the Panel may subsequently decide to directly examine experts whose testimony has been submitted in writing.

Putting questions to witnesses and expert witnesses

Article 339

(1) After the witness or expert witness has been heard, the parties, Chair of the Panel and members of the Panel may put questions to him directly, in the consecutive order as determined in Article 330, Paragraph 1 of the present Code. Injured party, legal guardian, legal representative and expert witnesses may ask questions directly, subject to the approval of the Chair of the Panel.

(2) The Chair of the Panel shall forbid a question or reject the answer to question that has already been asked if the question is impermissible (Article 89), or if it does not relate to the case. If the Chair of the Panel forbids a certain question or an answer, the parties may request that a decision is taken by the Panel.

Alteration of statements of witnesses and expert witnesses and presentation of previously given statements

Article 340

If during a previous hearing the witness or expert witness stated the facts which he is not able to recall, or if he changes his statement, the previous statement shall be presented to him or he shall be warned of the variance and asked to explain why he is not making the same statement as previously and if necessary, his previous statement or part of it shall be read.

Releasing, temporary removing and calling on of witnesses and expert witnesses

Article 341

(1) Witnesses or expert witnesses who have testified shall remain in the Courtroom unless the Chair of the Panel, upon hearing the parties, releases them or order that they be temporarily removed from the Courtroom.

(2) Upon a motion of the parties or by virtue of an office, the Chair of the Panel may order that the witnesses or expert witnesses who have testified be removed from the Courtroom and be called on later to testify again in the presence or absence of other witnesses or expert witnesses.

Interrogation of witnesses and expert witnesses outside the Courtroom

Article 342

(1) If it becomes known at the trial that a summoned witness or expert witness is unable to appear before the Court or that his appearance involves considerable difficulties, the Panel may, if it deems his statement to be important, order that he gives his testimony to the Chair of the Panel or judge of the Panel out-of-trial, or that the testimony be given to an investigative judge if the Court within whose jurisdictional territory the witness or expert witness resides.

(2) If it is necessary to carry out a crime scene investigation or reconstruction out-of-trial, it shall be carried out by the Chair of the Panel or judge of the Panel.

(3) The parties, defence attorney and the injured party shall always be informed when and where the witness shall testify and the crime scene investigation or reconstruction be performed, and they shall be instructed of their right to attend these actions. If the accused is in detention, the Panel shall decide whether his presence at these actions is needed. The parties and the injured party who are present at the performance of these actions shall be entitled to rights set forth in Article 259, Paragraph 7 of the present Code.

Investigative judge at the stage of the trial

Article 343

In the course of the trial and after the interrogation of the parties, the Panel may decide to request from an investigative judge to undertake specific actions necessary to clarify certain facts, if undertaking of these actions at the trial would be connected with a considerable delay of the proceedings or other considerable difficulties. When the investigative judge performs upon such a request, the provisions related to investigatory actions shall apply.

Records of evidence and material evidence

Article 344

(1) The records of a crime scene investigation, of a search of a dwelling and a person and of seizure of objects, as well as documents, books, files and other briefs of evidentiary value shall be read at the trial in order to establish their contents, and if so decided by the Panel, their contents may be orally summarized. If possible, documents of evidentiary value shall be submitted in their original form.

(2) Objects which may serve to clarify the subject matter shall be shown to the accused in the course of the trial and if needed to the witnesses and expert witnesses. If identification of objects is to be carried out at the trial, it shall be proceeded pursuant to Article 103 of the present Code.

Exceptions to the immediate presentation of evidence

Article 345

(1) Except in cases specified in the present Code, records containing the statements of witnesses, the co-accused or already convicted participants in the criminal offence as well as records and other documents regarding expert witness findings and opinion may be read if ordered so by decision of the Panel only in the following cases:

1) if the persons who made the statements have died, become afflicted with mental illness or cannot be found, or if their appearance before the Court is impossible or it involves considerable difficulties due to age, illness or other important reasons;

2) if the witnesses or expert witnesses refuse to testify at the trial without legal grounds.

(2) With the consent of the parties, the Panel may decide that the records of the previous testimony of the witness or expert witness or his written findings and opinion be read, although the witness or expert witness is not present, regardless of whether he has been summoned to the trial or not. Exceptionally, after the interrogation of the parties, the Panel may decide that even without the consent of the parties, the records of testimony of the witness or expert witness given at the previous trial before the same Chair of the Panel be read, although the term referred to in Article 317, Paragraph 3 has expired, or that the written findings and opinion of the specialised institution or state authority whose expert fails to appear at the trial be read, provided that the Panel finds that in connection with other examined evidence it is necessary to be informed on the contents of the records or written findings and opinion. After the records or written findings and opinion have been read and parties' objections have been heard (Article 347), the Panel shall, taking into account other examined evidence, decide whether to examine the witness or expert witness directly.

(3) Records of the previous testimony given by persons granted exemption from the duty to testify (Article 97) may not be read if those persons have not been summoned to the trial at all or if, before the first interrogation at the trial, they have availed themselves of their right to refuse to testify. After the presentation of evidence, the Panel shall decide that such records be excluded from the files and be kept separately (Article 184). The Panel shall proceed in the same way with respect to other records and information referred to in Article 184 of the present Code if a decision on their exclusion has not been previously rendered. An interlocutory appeal may be filed against the ruling of the exclusion of the records. After the ruling becomes final, the excluded records and information shall be sealed in a separate cover and handed over to the investigative judge to keep them apart from other files and they may not be examined or used in the course of the proceedings. The exclusion of records and information must be performed before the file is submitted to the higher Court upon an appeal filed against the verdict.

(4) The reasons for reading the records shall be stated in the records of the trial, and in the course of reading, it shall be stated whether the witness or expert witness had taken an oath.

Reproduction and tape recorded hearing

Article 346

In the cases referred to in Articles 329, 340 and 345 of the present Code as well as in other cases when necessary, the Panel may decide that besides reading the records at the trial, a tape recorded hearing be reproduced (Article 185) as well.

Comments of the parties and the injured party

Article 347

After having heard the testimony of each of the witnesses or expert witnesses and after having read each of the records or other documents, the Chair of the Panel shall ask the parties and the injured party if they have any comments to make.

Motions to supplement the evidentiary proceedings

Article 348

(1) After the examination of evidence is completed, the Chair of the Panel shall ask the parties and the injured party whether they have additional evidentiary motions.

(2) If nobody has additional evidentiary motions or if the motion is rejected and the Panel finds that the subject matter is examined, the Chair of the Panel shall announce that the presentation of evidence is completed.

8. AMENDMENTS AND EXTENSION OF THE CHARGE

Amendments of the charge

Article 349

(1) If in the course of the trial the Prosecutor finds that the evidence examined indicates that the factual situation as described in the indictment is different, he may orally amend the indictment at the trial or may propose a recess of the trial for the purpose of the preparation of a new indictment.

(2) In the case he brings a new indictment, the Court shall be bound to ensure that the defendant and defence attorney have enough time to prepare the defence, and if necessary, upon their request in the case of amended charge, as well.

(3) If the Panel allows a recess of the trial for the purpose of the preparation of a new indictment, it shall set the deadline within which the Prosecutor must bring a new indictment. A copy of the new indictment shall be served on the accused, but no objection against this indictment is allowed. If the Prosecutor fails to submit the indictment within the term that is set, the Panel shall continue to conduct the trial on the grounds of the previous one.

Extension of the charge for a criminal offence committed at the trial

Article 350

(1) If the accused commits a criminal offence while the trial is in progress or if in the course of the trial a criminal offence committed by the accused is discovered, the Panel shall upon the charges brought by the competent Prosecutor, which may be orally presented, extend the proceedings to that offence as well, or decide that the accused be tried separately for that criminal offence. No complaint shall be allowed against that charge.

(2) If the Panel accepts an extension of the charge it shall recess the trial and ensure enough time for the preparation of a defence.

(3) If a higher Court has jurisdiction over the offence referred to in Paragraph 1 of this Article, the Panel shall decide whether to refer also the case presently being tried to the competent higher Court.

9. CLOSING ARGUMENTS

Sequence of closing arguments

Article 351

After the presentation of evidence is completed, the Chair of the Panel shall call on parties, the injured party and defence attorney to present their closing arguments. The Prosecutor presents his closing arguments first, followed by the injured party, the defence attorney and eventually the accused.

Closing argument of the Prosecutor

Article 352

In the closing argument, the Prosecutor shall present his assessment of the evidence presented at the trial and thereafter shall present his conclusions about the facts relevant to the decision and his substantiated motion as to culpability of the accused, the provisions of the Criminal Code and other statutes that should be applied, as well as the aggravating and mitigating circumstances which should be taken into account in sentencing. The Prosecutor shall not bet entitled to propose the quantum of punishment, but he may propose that the Court order a judicial admonition or suspended sentence.

Closing argument of the injured party

Article 353

The injured party or his legal representative may in his closing arguments make a statement of reasons to support a claim under property law and point out the evidence regarding the culpability of the accused.

Closing argument of the defence attorney

Article 354

(1) In their closing arguments, the defence attorney or the accused personally shall present the defence and they may comment on the statements made by the Prosecutor and the injured party.

(2) Following the defence attorney, the accused shall be entitled to present his closing argument himself, to state whether he concur with the defence presented by his defence attorney as well as to supplement it.

(3) The Prosecutor and the injured party are entitled to respond to the defence while the defence attorney or the accused are entitled to comment on these responses.

(4) The accused shall always have the last word.

Closing arguments and procedural discipline

Article 355

(1) There shall be no time limits of the closing arguments of the parties, the defence attorney and the injured party.

(2) The Chair of the Panel may, upon previously issued warning, interrupt a person who in his closing argument offends public order and moral, or offends another person, repeats arguments, or elaborates on obviously irrelevant matters. The records of the trial must give information on the interruption of the closing argument and the reasons for it.

(3) When more than one person represents the prosecution or more than one defence attorney represents the defence, closing arguments may not be repeated. The representative of the prosecution or defence shall by mutual agreement select the issues about which each shall speak.

(4) After all the closing arguments are completed, the Chair of the Panel shall be bound to ask whether anyone wishes to make any further statement.

Closing of the trial

Article 356

(1) If after having heard closing arguments from the parties, the defence attorney and the injured party, the Panel finds that no additional evidence need to be presented, the Chair of the Panel shall declare that the trial is closed.

(2) If the Panel decides that additional evidence is to be presented, the Panel shall continue the presentation of evidence and after it is completed it shall again proceed pursuant to Article 351 of the present Code. The Prosecutor, the injured party, the defence attorney and the accused may only supplement their closing arguments in regard with the evidence subsequently presented.

(3) After having declared the trial closed, the Panel shall retire for deliberation and voting for the purpose of reaching a verdict.

10. DISMISSAL OF THE CHARGE

Article 357

In the course of the trial or after the closing of the trial the Panel shall dismiss a charge by a ruling if it establishes:

1) that the Court lacks subject matter jurisdiction;

2) that the proceedings are conducted without the request of the competent Prosecutor, or the approval of the competent state authority or that the competent state authority has withdrawn the approval given;

3) that there is other circumstances that temporarily bar prosecution.

Chapter XXIII

THE VERDICT

1. PRONOUNCEMENT OF A VERDICT

Pronouncement and announcement of the verdict

Article 358

(1) Unless the Court in the course of deliberation decides that the trial should be reopened in order to supplement the proceedings or to clarify specific issues, it shall render a verdict.

(2) The verdict shall be pronounced and announced in the name of the people.

Identity of the verdict and charges

Article 359

(1) The verdict shall refer only to the accused and to the offence the accused is charged with as specified in the indictment that has been brought, amended or extended at the trial.

(2) The Court shall not be bound by the Prosecutor's legal qualification of the offence.

Grounds of a verdict

Article 360

(1) The Court shall ground its verdict only on facts and evidence presented at the trial.

(2) The Court shall be bound to conscientiously evaluate every item of evidence individually and its correspondence to the rest of evidence and, based on such evaluation, to reach a conclusion on whether a certain fact has been proved.

2. TYPES OF VERDICTS

Article 361

(1) The Court shall render a verdict by which the charge shall be rejected or the accused acquitted of the charge or the guilty verdict.

(2) If the charge contains more than one criminal offence, the verdict shall specify whether and for which offence the charge is rejected or whether and for which offence the accused is acquitted or whether and for which offence the accused is declared guilty.

Verdict rejecting the charges

Article 362

The Court shall render a verdict rejecting the charges:

1) if the Prosecutor withdrew the charges in the course of the trial;

2) if the accused for the same offence has already been convicted or acquitted by a final verdict, or the charge was rejected by a final verdict or if the proceedings against him was discontinued by a final ruling, provided that it is not the ruling on the discontinuance of the proceedings referred to in the Article 412 of the present Code;

3) if the accused has been exempted from prosecution by an amnesty or pardon, or if the statute of limitation for the institution of prosecution applies, or if there are other circumstances that permanently bar prosecution.

Verdict acquitting the accused

Article 363

The Court shall render a verdict of acquittal:

1) if the offence for which the accused is charged with is not a criminal offence according to law;

2) if circumstances excluding the quilt exist;

3) if it has not been proven that the accused committed the offence he is charged with.

Guilty verdict

Article 364

(1) In a guilty verdict the Court shall state:

1) along with a citation of the facts and circumstances that constitute the elements of the criminal offence and those on which the application of a particular provision of the Criminal Code depends;

2) the statutory title of the criminal offence and the provisions of the Criminal Code that were applied;

3) the punishment to which the accused is sentenced or released from punishment under the provisions of the Criminal Code;

4) the decision on a suspended sentence;

5) the decision on security measures and forfeiture of property gain;

6) the decision crediting detention or time already served under an earlier sentence;

7) the decision on costs of the criminal proceedings, on the claim under property law and on a public announcement of the final verdict.

(2) If the accused has been fined, the verdict shall indicate the deadline for payment, or way to substitute the fine in case that the accused is not able to pay.

3. ANNOUNCEMENT OF VERDICT

Time, place and manner of announcement of the verdict

Article 365

(1) After the Court renders a verdict, the Chair of the Panel shall announce it immediately. If the Court is unable to render a verdict on the same day the trial has been completed, it shall postpone the announcement of the verdict for not more than three days and shall set the time and place of the announcement. If the verdict is not announced within the term of three days from completion of the trial, the Chair of the Panel shall be bound immediately after the term has expired to inform the President of the Court and to state reasons thereof.

(2) The Chair of the Panel shall, in the presence of the parties, their legal guardians, legal representatives and defence attorney, read out the ordering part of the verdict in open Court and briefly state the reasons for such a verdict.

(3) The verdict shall be announced even if the party, legal guardian, legal representative or defence attorney is absent. If the accused is absent, the Panel may order that he be orally informed of the verdict by the Chair of the Panel or that verdict only be served on him.

(4) If the trial was held *in camera*, the verdict shall always be read out in a public session. The Panel shall decide on whether the announcement of reasons of the verdict shall be closed to the public.

(5) All those present shall raise to hear the pronouncement of the verdict

Detention after announcement of the verdict

Article 366

(1) When the Court imposes a punishment of imprisonment for a term of less than five years, the Panel shall order detention to the accused who is at large if the reasons referred to in Article 148, Paragraph 1, Items 1, 3 and 4 of the present Code exist, and shall vacate detention of the accused who is in detention if the reasons for which detention was ordered do not exist any longer.

(2) The Panel shall always vacate detention and order that the accused be released if he is acquitted, or the charge is rejected, or if he is pronounced guilty but released from punishment or if he is sentenced only to a fine or a judicial admonition or suspended sentence is imposed or he has already served a sentence due to inclusion of the time spent in detention, or the charge has been dismissed (Article 357), save in the case of lack of the subject-matter jurisdiction.

(3) After the announcement of a verdict and until it becomes final, the detention shall be ordered or vacated pursuant to the provision of paragraph 1 of this Article. The decision thereon shall be made by the Panel of the first instance Court (Article 24, Paragraph 6).

(4) In the cases referred to in Paragraphs 1 and 3 of this Article, before rendering a ruling by which a detention is ordered or vacated, the opinion of the State Prosecutor shall be obtained if the proceedings are conducted upon his request.

(5) If the accused is already in detention and the Panel establishes that the grounds for which detention was ordered still exist, or that the grounds referred to in Article 148, Paragraphs 1 and 2 of the present Code exist, it shall render a separate ruling on extension of detention. The Panel shall render the separate ruling when it is necessary to order or vacate detention, as well. An appeal against the ruling shall not stay its execution, and the Court shall decide on the appeal within a term of three days.

(6) Detention ordered or extended pursuant to the provisions of the previous Paragraphs may last until a verdict becomes final, or until the terms specified in Article 152, Paragraphs 3 and 4 of the present Code expire, but at the longest until the term of the sentence pronounced by the verdict at first instance expires.

(7) Upon the request of the accused who is in detention after being sentenced to imprisonment, the Chair of the Panel may render a ruling on his transfer to the penitentiary institution even before the verdict becomes final.

Instructions on the right to appeal and other warnings

Article 367

(1) After the verdict is pronounced, the Chair of the Panel shall inform the parties of their right to appeal and of their right to respond to an appeal.

(2) If the accused has been given a suspended sentence, the Chair of the Panel shall inform him of the meaning of a suspended sentence and on the conditions he has to adhere to.

(3) The Chair of the Panel shall warn the parties that they have to report to the Court any change of address until the proceedings are concluded.

4. WRITTEN PRODUCTION AND DELIVERY OF THE VERDICT

Written production of the verdict

Article 368

(1) The pronounced verdict must be issued in writing and sent out within a month as of its announcement, and in complicated matters and as an exception, within 30 days. If the verdict is not prepared within these terms, the Chair of the Panel shall be bound to inform in writing the President of the Court as to why this has not been done. The President of the Court shall undertake measures in order to have a verdict produced as soon as possible.

(2) The verdict shall be signed by the Chair of the Panel and the Court clerk.

(3) A certified copy of the verdict shall be delivered to the Prosecutor and pursuant to Article 168 of the present Code to the accused and defence attorney. If the accused is in detention, certified copies of the verdict must be sent within terms specified in Paragraph 1 of this Article.

(4) An instruction regarding the right to appeal shall be sent to the accused, private Prosecutor and subsidiary Prosecutor.

(5) The Court shall send a certified copy of the verdict along with an instruction on the right to appeal to the injured party if he is entitled to appeal, to the person who owns an article forfeited under the verdict (Article 75, Paragraph 2 of the Criminal Code) and to the legal entity against the forfeiture of property gain was pronounced. A copy of the verdict shall be sent to the injured party who is not entitled to appeal in the case referred to in Article 60, Paragraph 2 of the present Code with an instruction on his right to petition for reinstatement to the *status quo ante*. The final verdict shall be sent to the injured party if so requested by him.

(6) If, by application of the provisions for imposing aggregate sentence for criminal offences committed in concurrence, the Court imposes a sentence taking into account the verdicts rendered by other Courts, a certified copy of the final verdict shall be sent to these Courts.

Contents of the verdict

Article 369

(1) A written copy of the verdict must correspond fully to the verdict which is announced. The verdict must be composed of the introduction, pronouncement and the statement of reasons.

(2) The introduction of the verdict shall contain: the statement that the verdict is pronounced in the name of the people, the indication of the Court, the first name and surname of the Chair and the members of the Panel as well as the name of the Court clerk, the first name and surname of the accused, the criminal offence he is charged with, whether he was present at the trial, the date of the trial, whether the trial was open to the public, the first name and surname of the Prosecutor, defence attorney, legal guardian and legal representative present at the trial and the date on which the pronounced verdict was announced.

(3) The pronouncement of the verdict shall contain the personal data of the accused (Article 88, Paragraph 1) and the decision declaring the accused guilty of the offence he is charged with or acquitting him of the charge, or rejecting the charge against him.

(4) If the accused is found guilty, the pronouncement of the verdict must contain the necessary information referred to in Article 364 of the present Code, and if he is acquitted or the charge is rejected, it must contain a description of the offence he was charged with and the decision on the costs of the criminal proceedings as well as the decision on the claim under property law if such a claim was submitted.

(5) In the case of concurrence of criminal offences, the Court shall indicate in the pronouncement the punishments imposed for each individual offence and after that the aggregate punishment imposed for all the offences committed in concurrence.

(6) The statement of the reasons of the verdict shall present the reasons for each count of the verdict.

(7) The Court shall clearly and thoroughly indicate which facts and for what reasons are considered to be proven, with special emphasis on the credibility of contradictory evidence, the reasons for which the motions of the parties were rejected, the reasons for its decision not to examine directly a witness or expert witness but to read the written testimony or expert witness findings without the agreement of parties (Article 345, Paragraph 2), the reasons for its decision on questions of law, especially in ascertaining whether the criminal offence was committed and whether the accused was criminally responsible and in applying specific provisions of the Criminal Code to the accused and to his act, and the reasons for referring the injured party to the civil proceedings.

(8) If the accused has been sentenced to punishment, the statement of reasons shall indicate the circumstances the Court considered in fashioning the punishment. With special emphasise the Court shall indicate the reasons for its decision to impose more severe punishment than the punishment prescribed (Article 44 of the Criminal Code), or for the decision that the punishment be reduced or the accused be released from punishment, or for the decision that suspended sentence, security measure or forfeiture of property gain be imposed or parole be revoked.

(9) If the accused is acquitted, the statement of reasons shall particularly indicate the reasons for such a decision referred to in Article 363 of the present Code.

(10) In the statement of reasons for a verdict rejecting the charge and in the statement of reasons for the verdict dismissing the charge, the Court shall not assess the main issue, but shall restrict itself solely to the grounds for rejecting the charge or dismissing the charge.

Corrections in the verdict

Article 370

(1) Errors in names and numbers and other obvious errors in writing and arithmetic, formal defects and disagreements between the written copy of the verdict and the original verdict shall be corrected through a special decision by the Chair of the Panel, on the motion of the parties or by virtue of an office.

(2) If there is a discrepancy between the written copy of the verdict and the original of the verdict with respect to in Article 364, Paragraph, and Items 1 to 5 and Item 7 of the present Code, the decision on the correction shall be delivered to the persons referred to in Article 368 of the present Code. In that case, the period allowed for appeal shall commence on the date of delivery of the decision against which no interlocutory appeal is allowed.

G. PROCEEDINGS UPON LEGAL REMEDIES

Chapter XXIV

REGULAR LEGAL REMEDIES

1. APPEAL AGAINST THE FIRST INSTANCE VERDICT

1) Right to appeal

Right to appeal and deadline for appeal

Article 371

(1) An authorised person may file an appeal against the first instance verdict within 15 days from the date when the copy of the verdict was delivered.

(2) An appeal filed in due time by an authorised person shall stay the execution of the verdict.

Subjects of the appeal

Article 372

(1) An appeal may be filed by the parties, the defence attorney, the legal guardian of the accused and the injured party.

(2) The spouse of the accused, direct relative in blood, adoptive parent, adopted child, brother, sister, foster parent and his extra marital partner may file an appeal to the benefit of the accused. In this case, the period allowed for the appeal shall run from the day when the accused or his defence attorney was delivered a copy of the verdict

(3) The State Prosecutor may file an appeal to the benefit or to the prejudice of the accused.

(4) The injured party may contest a verdict only regarding the Court's decision on the costs of the criminal proceedings, but if the State Prosecutor assumed the prosecution from the subsidiary Prosecutor (Article 62, Paragraph 2), as well as against the verdict acquitting the accused, the injured party may file an appeal for all the reasons for which the verdict may be appealed (Article 375).

(5) An appeal may be filed by a person whose item was forfeited (Article 75, Paragraph 2 of the Criminal Code) from whom the property gain obtained by a criminal offence was forfeited (Article 113, Paragraph 2 of the Criminal Code).

(6) The defence attorney and persons referred to in Paragraph 2 of this Article may file an appeal without the special authorisation of the accused, but not against his will, except when the most severe punishment of imprisonment is imposed on the accused.

Waiving and abandoning an appeal

Article 373

(1) The accused may waive the right to appeal only after the verdict was delivered to him. The accused may waive his right to appeal even before that if the Prosecutor and the injured party who is entitled to appeal for all the reasons for which the verdict may be appealed (Article 372, Paragraph 4) waive their right to appeal, unless the accused must serve a prison sentence. The accused may abandon an appeal already filed until the decision of the appellate Court is rendered. The accused may also abandon an appeal filed by his defence attorney or the persons referred to in Article 372, Paragraph 2 of the present Code.

(2) The Prosecutor and the injured party may waive the right to appeal from the moment the verdict is announced until the expiry of the term for filing an appeal and they may abandon an appeal that has already been filed until the decision of the appellate Court is rendered.

(3) A waiver and abandonment of an appeal may not be revoked.

(4) The accused may not waive his right to appeal or abandon an appeal that has already filed if the most severe prison sentence was pronounced on him.

2) Contents of an appeal

Contents of an appeal and removing shortcomings of an appeal

Article 374

(1) An appeal should contain:

1) the indication of the verdict the appeal has been filed against,

2) the grounds for contesting the verdict (Article 375),

3) the reasons for the appeal,

4) the motion to vacate or revise the challenged verdict in whole or in part

5) the signature of the appellant.

(2) If the accused or other person referred to in Article 372, Paragraph 2 of the present Code files an appeal and the accused does not have a defence attorney or if the appeal is filed by the injured party, subsidiary Prosecutor and private Prosecutor without a legal representative, or the legal representative is not from among the members of the Bar, and if the appeal is not composed pursuant to the provisions of Paragraph 1 of this Article, the first instance Court shall call on the appellant to supplement it within a specified term the appeal with a written brief or orally on the records at that Court. If the appellant fails to comply with such a summons, the Court shall dismiss the appeal if it does not contain the data referred to in Paragraph 1, Items 3 and 5 of this Article, and if the appeal does not contain the data referred to in Paragraph, Item 1 of this Article it shall be dismissed only if it cannot be established to which verdict it relates. If the appeal is filed to the benefit of the accused, the Court shall submit it to the second instance Court provided that it can be established to which verdict it relates, and if it cannot be established, the Court shall dismiss the appeal.

(3) If the appeal is filed by the injured party, subsidiary Prosecutor or private Prosecutor who has a legal representative from among the members of the Bar or by the State Prosecutor, and if the appeal does not contain the data referred to in Paragraph 1, Items 2, 3 and 5 of this Article, or if the appeal does not contain the data referred to in Paragraph 1, item 1 of this Article and if it cannot be established to which verdict it relates, the Court shall dismiss the appeal. An appeal in favour of the accused who has a defence attorney shall be submitted to the appellate Court despite the shortcomings stated if it can be established to which verdict it relates, and if this cannot be established, the Court shall dismiss the appeal.

(4) New facts and new evidence may be presented in the appeal but appellant shall be bound to cite the reasons for failing to present them earlier. The accused who has admitted the grounds for charge in whole (Article 335) may present in the appeal only the new facts and evidence that are relevant to the decision on the punishment. When pointing to new facts, the appellant shall be bound to present evidence supporting these facts, and when proposing new evidence, he shall be bound to state the facts to be proven by this evidence.

3) Grounds for contesting the verdict

Article 375

A verdict may be contested on the grounds of:

1) substantive violation of the criminal proceedings provisions,

2) violation of the Criminal Code,

3) the state of the facts being erroneously or incompletely established,

4) in regard to the decision on criminal sanctions, forfeiture of property gain, cost of criminal proceedings, claims under property law as well as the decision on a public announcement of the verdict in the media;

Substantive violation of the criminal proceedings

Article 376

(1) The following constitute a substantive violation of the provisions of criminal proceedings:

1) if the Court was improperly composed or if a judge or lay judge who did not participate in the trial or who was disqualified by a final decision participated in rendering of a verdict;

2) if the judge or lay judge who participated in the trial should have been disqualified (Article 38, Items 1 to 5);

3) if the trial was held in the absence of a person whose presence at the trial was mandatory under law or if the accused, defence attorney, subsidiary Prosecutor or private Prosecutor was, contrary to their request, denied the right to use their language at the trial and to follow the course of the trial in their language (Article 9);

4) if the public was excluded from the trial in violation of the present Code;

5) if the Court violated the provisions of the criminal proceedings related as to whether a charge of an authorised Prosecutor or the approval of competent authority existed;

6) if the verdict was rendered by the Court that, due to a lack of subject matter jurisdiction, could not render the verdict in this case or if the Court incorrectly rejected the charge on the ground of lack of subject matter jurisdiction;

7) if, in its verdict, the Court did not entirely resolve the contents of the charge;

8) if the charge has been exceeded (Article 359, Paragraph 1);

9) if the verdict violates the provision of Article 390 of the present Code;

10) if the verdict is grounded on evidence on which according to the present Code it cannot be grounded;

11) if the pronouncement of the verdict is incomprehensible, internally contradictory or contradicting the statement of reasons of the verdict, if the verdict failed to state any reasons or failed to state reasons relating to the relevant facts or if these reasons are entirely unclear or contradictory to a considerable degree or if there is a significant factual contradiction between what has been stated in the statement of reasons of the verdict on the contents of certain documents or records on statements made in the proceedings and the documents or records themselves.

(2) There is also a substantive violation of the provisions of the criminal proceedings if the Court, in the course of the preparation for the trial, or in the course of the trial, or when rendering the verdict, fails to apply or incorrectly applies any of the provisions of the present Code or violates a right of the defence at the trial, provided that affected or could have affected a lawful and proper rendering of the verdict.

Violation of the Criminal Code

Article 377

The following points shall constitute a violation of the Criminal Code:

1) as to whether there are circumstances excluding responsibility;

2) as to whether the act for which the accused is being prosecuted constitutes a criminal offence;

3) as to whether the circumstances exist that preclude criminal prosecution, and especially as to whether the statute of limitation of criminal prosecution applies, or as to whether prosecution is precluded because of amnesty or pardon, or as to whether the cause has already been decided by a final verdict;

4) if a law that could not be applied has been applied to the criminal that is the subject matter of the charge;

5) if the decision pronouncing the sentence, suspended sentence, judicial admonition or decision pronouncing a security measure or forfeiture of property gain has exceeded the authority the Court has under the law;

6) if provisions have been violated concerning the crediting of detention and time served.

Erroneously or incomplete established facts

Article 378

(1) The verdict may be contested on the ground of erroneous or incomplete establishment of facts when the Court has established a relevant fact erroneously or has failed to establish such a fact at all.

(2) It shall be taken that the state of facts has been incompletely established when new facts or new evidence so indicates.

Challenging a verdict in regard to decision on the sentence, the costs of the proceeding, the claim under property law and the announcement of the verdict

Article 379

(1) The verdict or the ruling on judicial admonition may be challenged in regard to a decision on a punishment, suspended sentence or judicial admonition when the Court, in rendering this decision, does not exceed its statutory power (Article 377, Item 5), but has improperly fashioned the punishment in view of the circumstances that had a bearing on greater or lesser punishment, or when the Court has applied or failed to apply provisions relating to the mitigation of punishment, release from punishment, suspended sentence, or to a judicial admonition although grounds for it existed.

(2) A decision on a security measure or forfeiture of property gain may be contested even though there is no violation of law referred to in Article 377, Item 5 of the present Code, if the Court rendered this decision incorrectly or did not order a security measure or the forfeiture of property gain although legal conditions for it existed.

(3) A decision on costs of the proceedings may be challenged when it is rendered incorrectly or in breach of statutory provisions.

(4) A decision on the claim under property law and a decision on the public announcement of the verdict through the press, radio or television may be contested if they have been rendered in breach of statutory provisions.

4) Appellate Proceedings

Filing an appeal

Article 380

(1) An appeal shall be filed with the Court that rendered the verdict at first instance in a sufficient number of copies for the Court, the opposing party and the defence attorney.

(2) A belated (Article 394) and inadmissible (Article 395) appeal shall be dismissed by a ruling of the Chair of the first instance Panel at first instance.

Response to an appeal

Article 381

The first instance Court shall deliver a copy of the appeal to the opposing party (Articles 168 and 169) who may within a term of eight days from receiving the copy submit a response to the Court. The appeal and the response, together with all the files, shall be delivered by the first instance Court to the second instance Court.

Proceeding before a second instance Court

Article 382

(1) When the file and an appeal reach the appellate Court, the judge rapporteur is assigned immediately in the prescribed manner. If a criminal offence that is prosecuted *ex officio* is involved, the judge rapporteur shall deliver the file to the competent State Prosecutor, who shall be bound to review it, submit his motion or declare that he shall submit the motion at the Panel session and return the file to the Court without delay.

(2) When the State Prosecutor returns the file, the Chair of the Panel shall schedule the session of the Panel and notify the State Prosecutor thereof.

(3) The judge rapporteur may, as appropriate, obtain a report on the violations of the criminal proceedings provisions from the first instance Court, and may also, through the same Court or through the investigative judge of the Court in whose jurisdictional territory the action is to be undertaken, or in other way, check on the allegations stated in the appeal regarding new evidence and new facts or obtain necessary reports or files from other authorities or organizations.

(4) If the judge rapporteur establishes that the files contain records and information referred to in Article 184 of the present Code, he shall deliver the files to the first instance Court before the session of the appellate Panel is held in order that Chair of the first instance Panel render a ruling on their exclusion from the file, and when the ruling becomes final he shall seal them in a separate cover and hand them over to the investigative judge for the purpose of keeping them separated from other files.

Session of the Panel

Article 383

(1) The accused and his defence attorney, subsidiary Prosecutor, private Prosecutor or their legal representative who, within the term for appeal or for a reply to an appeal, requested that they be notified of the session or proposed that a trial be held before the appellate Court (Articles 385 to 387), shall be notified of the Panel session. The Chair of the Panel or the Panel may decide

that the parties be notified of the Panel session, even if they have not so requested, or that a party who has not requested so, be notified of the Panel session if their presence would be beneficial to the clarification of the case.

(2) If the accused who is in detention or serving a sentence is notified of the Panel session, the Chair of the Panel shall order that his presence be ensured.

(3) The session of the Panel shall begin with the report of the judge rapporteur on the facts of the case. The Panel may request from the parties present at the session necessary explanations as to allegations of the appeal. The parties may propose that certain files be read in order to supplement the report and may, subject to the approval of the Chair of the Panel, give necessary explanations of their positions stated in the appeal or the response to the appeal, without repeating contents of the report.

(4) The session may be held in the absence of the parties who were duly summoned. If the accused did not report to the Court changes of his temporary or permanent residence, the Panel session may be held although he was not informed of the session.

(6) The Court may exclude the public from the session at which the parties are present only in accordance with the conditions set forth in the present Code (Articles 300 to 302).

(7) The records of the Panel session shall be enclosed to the files from the first and second instance Court.

(8) The rulings referred to in Articles 394 and 395 of the present Code may be rendered even without the notification of the parties of the Panel session.

Deciding at the Panel session or at a trial

Article 384

(1) The appellate Court shall render a decision either at the session of the Panel or at a trial.

(2) The appellate Court shall decide at the session of the Panel whether to hold a trial, unless otherwise regulated by the present Code.

Reasons for holding a trial

Article 385

(1) A trial before an appellate Court shall be held only if it deems necessary to present new evidence or to repeat already presented evidence due to erroneous or incomplete establishment of the facts, and if there are justifiable reasons not to refer the case to the first instance Court for a retrial. A trial before an appellate Court shall always be held if the Court is deciding for the second time on the same case on the basis of an appeal, and in the process of rendering the decision the Court finds that there are reasons to vacate the decision of the first instance Court.

(2) The following persons shall be summoned for the trial before a Second instance Court: the accused and his defence attorney, the Prosecutor, the injured party, the legal guardians and legal representatives of the injured party, the subsidiary Prosecutor and private Prosecutor, as well as those witnesses and expert witnesses the Court decided to examine.

(3) If the accused is in detention, the Chair of the appellate Court Panel shall take necessary steps to ensure the accused is present at the trial.

(4) If the subsidiary Prosecutor or the private Prosecutor fails to appear at the trial before the appellate Court, the provision of Article 311, Paragraph 2 of the present Code shall not be applied.

Sequence of actions at a trial before an appellate Court

Article 386

(1) A trial before an appellate Court shall begin with the report of the judge rapporteur, who shall present the facts of the case without expressing his opinion as to whether the appeal is founded.

(2) Upon a motion or by virtue of an office, the verdict or part of the verdict which the appeal pertains to shall be read out and, if appropriate, the records of the trial shall be read out as well.

(3) After that, the appellant shall be called on to substantiate his appeal and then the opposing party shall be called on to reply to him. The accused and his defence attorney shall always have the last word.

(4) The parties may present new evidence and facts at the trial.

(5) A Prosecutor may, in regard with the result of the trial, withdraw the charge completely or partially or amend the charge to the benefit of the accused. If the State Prosecutor completely withdraws the charge, the injured party shall be entitled to the rights set forth in Article 60 of the present Code.

Appropriate application of the provisions on a trial before a First instance Court

Article 387

Unless otherwise provided by the previous articles, the provisions regulating the trial before a First instance Court shall be applied accordingly to the proceedings before an appellate Court.

5) Scope of appellate review of the first instance verdict

Scope of reviewing the verdict

Article 388

(1) A Second instance Court shall review the verdict insofar as it is contested by the appeal, but it must always review by virtue of an office the following points:

1) as to whether there has been violation of provisions of the criminal proceedings set forth in Article 376, Paragraph 1, Items 1, 5, 6, 8 to 11 of the present Code, and as to whether the trial was, held in the absence of the accused, in violation of the provisions of the present Code or in the absence of his defence attorney in the case of mandatory defence;

2) as to whether the Criminal Code has been violated to the detriment of the accused (Article 377).

(2) If an appeal filed in favour of the accused does not contain the data referred to in Article 374, Paragraph 1, Items 2 and 3 of the present Code, the Second instance Court shall limit its review to the violations stated in Paragraph 1, Items 1 and 2 of this Article, and to the review of the decision on punishment, security measures and the forfeiture of property gain (Article 379).

Article 389

The violation referred to in Article 376, Paragraph 1, Item 2 of the present Code may be called upon in the appeal only if the appellant was not able to indicate such in the course of the trial or if he presented it but the First instance Court did not take it into consideration.

Prohibition of modification of the verdict to the detriment of the accused

Article 390

If an appeal has been filed only to in favour of the accused the verdict may not be modified to the detriment of the accused in regard with a legal qualification of the criminal offence and criminal sanction.

Extended effect of an appeal

Article 391

An appeal filed in favour of the accused due to the state of the facts being erroneously or incompletely established or due to the violation of the Criminal Code shall be deemed to contain an appeal against the decision concerning the punishment and forfeiture of the property gain (Article 379).

Benefit of coherence (*Beneficium cohaesionis)*

Article 392

If the Second instance Court, upon anybody's appeal, finds that the grounds on which the decision was rendered in favour of the accused is also of benefit to any of the co-defendants who did not file an appeal or did not file an appeal along the same lines, it shall proceed by virtue of an office as if such an appeal has been filed.

6) Decisions of a Second instance Court on the appeal

Article 393

(1) A Second instance Court may, at the session of the Panel or upon a trial, dismiss an appeal as belated or inadmissible, or reject an appeal as unfounded and confirm the first instance verdict, or vacate this verdict and remand the case to the First instance Court for retrial, or modify the first instance verdict.

(2) The Second instance Court shall decide a single decision on all the appeals that have been filed against the same verdict.

Dismissal of a belated appeal

Article 394

A decision shall be rendered to reject the appeal for being late if it is found that it was filed after the lawful date.

Dismissal of an inadmissible appeal

Article 395

A decision shall be rendered to reject the appeal as inadmissible if it is found that the appeal was filed by a person not authorised to file an appeal or a person who waived the right to appeal, or if it is found that the appeal was abandoned or if after the abandonment the appeal was filed again or the appeal is not allowed under the law.

Rejection of an appeal

Article 396

When it establishes that the grounds for an appeal and that the violations of law referred to in Article 388, Paragraph 1 of the present Code do not exist, the Second instance Court shall by a verdict reject the appeal as unfounded and confirm the first instance verdict.

Vacating the first instance verdict and remanding the case for retrial

Article 397

(1) The Second instance Court shall, when honouring an appeal or by virtue of an office, vacate the first instance verdict by a ruling and remand the case for retrial if it establishes a substantial violation of provisions of the criminal proceedings, save in cases referred to in Article 399, Paragraph 1 of the present Code or if it considers that, for reasons of the state of the facts being erroneously or incompletely established, a new trial should be held before the First instance Court, except in the case foreseen by the present Code (Article 385).

(2) The Second instance Court may order that a new trial before the First instance Court be held before a completely different Panel.

(3) The Second instance Court may also partially revoke the first instance verdict if the certain parts of the verdict can be severed out without causing a detriment to a rightful verdict.

(4) If the accused is in detention, a Second instance Court shall review whether the reasons for detention still exist and render a ruling on the extension or termination of detention. This ruling is not subject to an appellate review.

Other decisions of the Second instance Court

Article 398

(1) If a Second instance Court establishes that some of the reasons referred to in Article 357 of the present Code exist, it shall vacate the first instance verdict by a ruling and dismiss the charge.

(2) If, while reviewing an appeal, the Second instance Court establishes that it has subject matter jurisdiction over the case as a first instance Court, it shall vacate the first instance verdict, remand the case to its Panel and notify the first instance Court thereof.

(3) If only an appeal in favour of the accused has been filed, and if it is established that a higher Court has jurisdiction over the case as a first instance Court, the verdict may not be vacated only for this reason.

Revision of the first instance verdict

Article 399

(1) A second instance Court shall, when honouring an appeal or by virtue of an office, revise the first instance verdict by a verdict if it establishes that the decisive facts have been correctly ascertained in the first instance, and that in view of the state of the facts established, a different verdict must be rendered when the law is properly applied, and, according to the state of the facts, also in the case of violations referred to in Article 376, Paragraph 1, Items 5, 8 and 9 of the present Code.

(2) If a second instance Court establishes that legal conditions for imposing a judicial admonition are met, it shall revise the first verdict by a ruling and impose a judicial admonition.

(3) If, due to the revision of the first instance verdict, conditions are met for ordering or termination detention pursuant to Article 148, Paragraph 2 and Article 366 Paragraph 2 of the present Code, the second instance Court shall render a separate ruling thereof against which the appeal shall not be allowed.

Statement of reasons in a second instance verdict

Article 400

(1) In the statement of reasons in its verdict or in its ruling, the second instance Court shall assess the allegations in the appeal and cite the violations of law which it took into account by virtue of an office.

(2) When the first instance verdict is vacated due to substantial violations of provisions of the criminal proceedings, the statement of reasons shall indicate which provisions have been violated and what these violations consist of (Article 376).

(3) When the first instance verdict is vacated for the reasons of the state of the facts being erroneously or incompletely established, the failures in establishing the state of the facts shall be stated as well as why new evidence and facts are important for rendering a correct decision, and omissions of the parties that influenced the first instance verdict may also be indicated.

Returning the files to the first instance Court

Article 401

(1) The second instance Court shall return all files to the first instance Court, together with sufficient number of copies of its decision required for delivery to the parties and other persons concerned.

(2) The second instance Court shall be bound to deliver its decision together with the files to the first instance Court within a term of four months at the latest, and if the accused is in detention, at the latest within a term of three months from the day it received the files from that Court.

Retrial before the first instance Court

Article 402

(1) The first instance Court to which the case was remanded for trial shall proceed on the basis of the previous indictment. If the first instance verdict was partially vacated, the first instance Court shall proceed on the basis of the part of the indictment to which the vacated part of the verdict relates to.

(2) At the retrial the parties may present new facts and new evidence.

(3) The first instance Court shall be bound to undertake all procedural actions and consider all disputed issues which were specified by the decision of the second instance Court.

(4) When rendering a new verdict, the first instance Court shall be bound by the prohibition referred to in Article 390 of the present Code.

(5) If the accused is in detention, the Panel of the first instance Court shall be bound to proceed pursuant to the provision of Article 152, Paragraph 2 of the present Code.

2. APPEAL AGAINST THE SECOND INSTANCE VERDICT

Appeal filed with a Third instance Court

Article 403

(1) An appeal may be filed against the verdict of a second instance Court with a Third instance Court only in the following cases:

1) if the instance Courts has imposed a most severe punishment of imprisonment or if it has confirmed the first instance verdict that imposed such a punishment;

2) if the second instance Court, upon conducting a trial, has established the state of facts differently from the first instance Court and has based its verdict on the newly established state of the facts;

3) if the second instance Court has revised the verdict of acquittal rendered by the first instance Court and rendered a verdict of conviction.

(2) A third instance Court at third instance shall decide on an appeal filed against the second instance verdict at a session of the Panel pursuant to the provisions regulating the appellate proceedings. A trial may not be held before this Court.

(3) The provisions of Article 392 of the present Code shall be applied to the co-accused who was not entitled to file an appeal against the second instance verdict.

3. APPEAL AGAINST A RULING

Admissibility of the appeal against a ruling

Article 404

(1) Parties and persons whose rights have been violated may file an appeal against a ruling of the investigative judge and against other rulings of the first instance Court, unless the appeal is not explicitly declared to be inadmissible by the present Code.

(2) Unless otherwise prescribed by the present Code, rulings rendered by the Panel prior to and in the course of the investigation shall not subject to an appellate review.

(3) Rulings rendered for the purpose of preparing the trial and the verdict may be contested solely in an appeal against the verdict.

(4) Rulings rendered by the Supreme Court shall not subject to an appellate review.

General deadline for filing an appeal

Article 405

(1) An appeal shall be filed with the Court that rendered the ruling.

(2) Unless the present Code stipulates otherwise, an appeal filed against the decision shall be filed within three days from the day the decision was delivered.

Stay of execution of a ruling

Article 406

Unless otherwise prescribed by the present Code, an appeal filed against a ruling shall stay the execution of the ruling.

Deciding on an appeal against a ruling

Article 407

(1) Unless otherwise prescribed by the present Code, the second instance Court shall decide at a session of the Panel on an appeal against a ruling of the first instance Court.

(2) Unless otherwise prescribed by the present Code, an appeal against the ruling of an investigative judge shall be decided by the Panel of the same Court (Article 24, Paragraph 6).

(3) When deciding on an appeal, the Court may by a ruling dismiss the appeal as belated or inadmissible or reject the appeal as unfounded or may honour the appeal and revise or vacate the ruling and, if necessary, remand the case for retrial.

(4) When reviewing an appeal, the Court shall by virtue of an office establish whether the first instance Court had subject matter jurisdiction or whether the ruling was rendered by an authorised authority.

Term for delivering the decision on an appeal with the files to the first instance Court

Article 408

(1) The provisions of Articles 372, 374, 380 and 382, Paragraphs 1, 3 and 4 and Articles 390 and 392 of the present Code shall apply accordingly to the proceedings on an appeal against a ruling.

(2) If an appeal is filed against the ruling referred to in Article 531 of the present Code, the State Prosecutor shall be notified of the Panel's session while other persons shall be notified under the conditions referred to in Article 383 of the present Code.

(3) Unless otherwise prescribed by the present Code, the Court shall be bound to deliver its decision on an appeal together with the files to the Court that rendered the ruling within a term of thirty days from the day it received the files from that Court at the latest.

Appropriate application of the provisions of the present Code

Article 409

Unless otherwise prescribed by the present Code, the provisions of Articles 404 and 408 of the present Code shall be applied accordingly to all other rulings rendered pursuant to the present Code.

Chapter XXV

EXTRAORDINARY LEGAL REMEDIES

1. REOPENING OF CRIMINAL PROCEEDINGS

Article 410

A criminal proceeding that was completed by the final decision or verdict may be repeated on the petition of an authorised person only in cases and under the conditions set forth in the present Code.

Revision of verdict without reopening of criminal proceedings

Article 411

(1) A final verdict may be revised even without the reopening of criminal proceedings in the following cases:

1) if in two or more verdicts relating to the same convicted person several punishments were pronounced in final verdict without application of provisions related to fixing of an aggregate sentence for offences committed in concurrence;

2) if, when pronouncing an aggregate sentence by the application of provisions on concurrence, a punishment that has already been included by the punishment pronounced according to the provisions on concurrence by a previous verdict has been taken as established (Article 48 of the Criminal Code);

3) if a final verdict imposing an aggregate sentence for several offences is partially unenforceable due to an act of amnesty, pardon, or for other reasons.

(2) In the case referred to in Paragraph, Item 1 of this Article, the Court shall by a new verdict revise previous verdicts regarding the decisions on sentences and pronounce an aggregate sentence. The first instance Court that imposed the most severe punishment shall have jurisdiction for rendering a new verdict, and if the punishments are of the same type – the jurisdiction shall have the Court that fixed the highest quantum of punishment, and if the punishments are equal – the jurisdiction shall have the Court that imposed the punishment last.

(3) In the case referred to in Paragraph 1, Item 2 of this Article, the Court shall revise its verdict which, in imposing an aggregate sentence, wrongly took into account a sentence which had already been included in some previous verdict.

(4) In the case referred to in Paragraph, Item 3 of this Article, a first instance Court shall revise a previous verdict with regard to the sentence, and shall either pronounce a new sentence or establish what part of the sentence pronounce by a previous verdict should be executed.

(5) The new verdict shall be rendered by the Court at a session of the Panel upon the motion of the State Prosecutor or the convicted person, after the opposing party has been heard.

(6) If in the case referred to in Paragraph, Items 1 and 2 of this Article, verdicts of other Courts were taken into account in pronouncing the sentence, a certified copy of a new final verdict shall be delivered to those Courts as well.

Resuming a proceedings

Article 412

(1) If a request to conduct an investigation was dismissed by a final ruling, because there was no such request submitted by an authorised Prosecutor, or no necessary approval of a state authority for prosecution, or there were other circumstances temporarily barring the prosecution, or the charge was dismissed for the same reasons, the proceedings shall be resumed upon the motion of the authorised Prosecutor as soon as the causes of the above mentioned decisions cease to exist.

(2) If the charge was dismissed by a final ruling (Article 357) because the Court lacked subject mater jurisdiction, the proceedings shall be resumed before the competent Court upon the request of the authorised Prosecutor.

Reopening of proceedings terminated by a ruling

Article 413

(1) If, besides the cases defined in Article 412 of the present Code, the request for investigation was dismissed by final ruling or the criminal proceedings were suspended by final ruling during the investigation or prior to the commencement of the trial, or the charge was dismissed upon request by the authorised Prosecutor, the reopening of the criminal proceedings may be granted (Article 418, Paragraph 3) if new evidence is submitted on the basis of which the Court may establish that the conditions are met for the reopening of the criminal proceedings.

(2) The criminal proceedings suspended by final ruling prior to commencement of the trial may be reopened when the State Prosecutor waives the prosecution, and the injured party has not assumed prosecution, if it is proven that the waiver resulted from the criminal offence of misuse of power by the State Prosecutor. With regards to proving the criminal offence by the State Prosecutor provisions of Article 414, Paragraph 2 of the present Code shall be applied.

(3) If the proceedings are suspended because the subsidiary Prosecutor waived the prosecution, or it is considered pursuant to the present Code that the subsidiary Prosecutor has waived the prosecution, the injured party as a subsidiary Prosecutor cannot request the reopening of the proceedings.

Reopening of proceedings in favour of the defendant

Article 414

(1) The criminal proceedings terminated by a final verdict may be reopened only in favour of the defendant and only in the following cases:

1) if the verdict is based on a false document or false testimony of a witness, expert witness or interpreter;

2) if the verdict resulted from a criminal offence committed by the judge, lay judge or person who undertook investigatory actions;

3) if new facts or new evidence are presented that on their own or in relation to previous evidence appear likely to bring about the acquittal of the person who was convicted or to his conviction on the basis of a less severe criminal law;

4) if a person was tried more than once for the same criminal offence or if more than one person was convicted for the criminal offence which could have been committed only by one person or by some of them;

5) if in the case of conviction for an continuing criminal offence or any other offence which under the law includes several acts of the same kind or several acts of a different kind, new facts or new evidence are presented indicating that the convicted person did not commit an act covered by the adjudicated offence, provided that these facts are likely to lead to the application of a less severe law or are likely to affect substantially the fixing of punishment.

(2) In the cases referred to in Paragraph 1, Items 1 and 2 of this Article, it must be proven by a final verdict that the above mentioned persons were found guilty of the cited criminal offences. If the proceedings against these persons cannot be conducted due to their death or circumstances barring prosecution, the facts under Paragraph 1, Items 1 and 2 of this Article may be established by presenting other evidence as well.

Reopening of proceedings to the detriment of the defendant

Article 415

(1) The criminal proceedings completed by a final verdict may be reopened to the detriment of the defendant in the following cases:

1) if it is proven that the verdict resulted from the criminal offence committed by the judge, lay judge or person who undertook investigatory actions;

2) if the verdict dismissing the charge was rendered because the State Prosecutor waived the prosecution, and it is proven that this waiver resulted from the criminal offence of misuse of power by the State Prosecutor;

3) if new facts are presented or evidence submitted, which alone, or in relation to the previous evidence, can bring about the conviction of the acquitted person or the punishment of the convicted person under more severe criminal law.

(2) Reopening of the criminal proceedings to the detriment of the acquitted or convicted person shall not be allowed if more than six months have passed from the day when the Prosecutor learned about the new facts or new evidence.

Request for reopening of criminal proceedings and persons authorised to submit the request

Article 416

(1) A request for the reopening of criminal proceedings may be submitted by the parties and defence attorney and, after the death of the convicted person, in his favour, by the State Prosecutor and the persons referred to in Article 372, Paragraph 2 of the present Code.

(2) The request for the reopening of the criminal proceedings to the benefit of the convicted person may also be submitted after the convicted person has served a sentence, notwithstanding the statute of limitation, amnesty or pardon.

(3) If the Court that would have jurisdiction to decide on the reopening of the criminal proceedings (Article 417) learns that reason for the reopening of the criminal proceedings exists, it shall notify the convicted person or person entitled to submit a request in favour of the convicted person thereon.

Contents of request and Competent Court for deciding on the request

Article 417

(1) The Panel (Article 24, Paragraph 6) of the Court that tried the case at first instance in the previous proceedings shall decide on the request for the reopening of the criminal proceedings.

(2) The request shall state the legal grounds on which the reopening of the trial is sought and what evidence substantiate the facts on which the request is grounded. If the request fails to contain this information, the Court shall call on the person who submitted the request to supplement his request within a specified term.

(3) If possible, a judge who participated in rendering the verdict in the previous proceedings shall not sit as a member of the Panel that decides on the request.

Deciding on request

Article 418

(1) The Court shall dismiss a request by a ruling if it determines on the basis of the request itself and the file of the previous proceedings that the request was submitted by an unauthorised person, or that there are no legal grounds for reopening of the proceedings , or that the facts and evidence on which the request is founded have already been presented in a previous request for retrial which was rejected by a final Court's ruling, or that the facts and evidence presented are clearly inadequate to allow for the reopening, or that the person submitting the request did not proceed in pursuant to Article 417, Paragraph 2 of the present Code.

(2) If the Court does not dismiss the request, it shall serve a copy of the request to the opposing party who shall be entitled to reply to the request within a term of eight days. Upon receipt of the reply or when the term for the reply expires, the Chair of the Panel shall order that inquires be made into the facts and acquiring of evidence that were called upon in the request and the reply thereto.

(3) Upon completion of inquires, the Court will decide immediately by a ruling on the request to reopen the proceedings. In other cases, in regard with the criminal offences that are prosecuted *ex officio*, the Chair of the Panel shall order that the file be delivered to the State Prosecutor, who shall return the file with his opinion without delay or within a term of one month at the latest.

Permission to reopen the proceedings

Article 419

(1) After having received the files from the State Prosecutor, the Court shall on the basis of the results of inquires, unless it orders that they be supplemented, either honour the request and allow the reopening of the criminal proceedings or reject the request.

(2) If the Court establishes that the reasons for which it allowed the reopening of the proceedings also exist for other co-accused who did not submit the request, it shall proceed by virtue of an office as if such a request exists.

(3) In the ruling granting the reopening of the criminal proceedings, the Court shall decide that a new trial be scheduled immediately, or that the case be referred back for investigation, or it shall order that an investigation be conducted if there was no investigation before.

(4) If the petition to reopen a criminal proceeding has been filed on behalf of a convicted person, and the Court deems in view of the evidence submitted that in the reopened proceeding the convicted person may receive such a punishment that would call for his release once time already served had been credited, or that he might be acquitted of the charge, or that the charge might be rejected, it shall order that execution of the verdict be postponed or terminated..

(5) When a ruling granting retrial becomes final, the execution of the punishment shall be stayed, but the Court shall, upon the motion of the State Prosecutor, order detention if the conditions referred to in Article 148 of the present Code exist.

Rules of the reopened proceedings

Article 420

(1) The new proceedings based on a ruling granting the reopening of the criminal proceedings shall be conducted in accordance with the same provisions that have been applied in the original proceedings. In the course of the new proceedings, the Court shall not be bound by rulings rendered in the previous proceedings.

(2) If the new proceedings are discontinued before the beginning of the trial, the Court shall vacate a previous verdict by a ruling discontinuing the proceedings.

(3) When the Court renders a verdict in the new proceedings, it shall pronounce that the previous verdict is partially or entirely put out of force or that it remains in force. When fixing the punishment pronounced in the new verdict, the Court shall make allowance for time served under the earlier sentence and if the reopening was permitted only for some of the offences for which the accused person was convicted, the Court shall pronounce a new aggregate sentence pursuant to the provisions of the Criminal Code.

(4) If the request for the reopening of the proceedings is submitted in favour of the convicted person, in the new proceedings, the Court shall be bound by the prohibition referred to in Article 390 of the present Code.

Reopening of proceedings when trial was conducted in the absence of the accused

Article 421

(1) The criminal proceedings in which a person was convicted *in absentia* (Article 312) shall be reopened even beyond the conditions referred to in Articles 414 of the present Code, provided that the convicted person and his defence attorney submit a request for the reopening of the proceedings within a term of six months from the day it becomes possible to conduct a trial in the presence of the convicted person.

(2) After the lapse of the term referred to in Paragraph 1 of this Article, the reopening of the proceedings shall only be permitted subject to the conditions set forth in Articles 414 and 416 of the present Code.

(3) The criminal proceedings in which a person was convicted *in absentia* shall be reopened even beyond the conditions referred to in Article 414 of the present Code, provided that a foreign state allowed his extradition under the condition that the proceedings be reopened.

(4) In the ruling permitting the reopening of the criminal proceedings, pursuant to the provisions of Paragraphs 1 and 3 of this Article, the Court shall order an indictment to be served on the convicted person if it was not served on him earlier and may order that the case be referred back for investigation, or that an investigation be conducted if it was not conducted before.

(5) When rendering a verdict in the proceedings conducted pursuant to the provisions of Paragraphs 1 and 3 of this Article, the Court shall be bound by the prohibition referred to in Article 390 of the present Code.

Appropriate application

Article 422

The provisions of this Chapter shall be applied accordingly in the case where a request to alter a final Court's decision is submitted on the grounds of a decision of the Constitutional Court that annulled or vacated the law on the basis of which the final guilty verdict was rendered.

2. EXTRAORDINARY MITIGATION OF PUNISHMENT

Permissibility of request

Article 423

Mitigation of a punishment pronounced by a final verdict which has not been executed or served, shall be permitted when, after the verdict becomes final, circumstances appear which did not exist at the time the verdict was rendered or did exist but were unknown to the Court, provided that they would clearly lead to a less severe sentence.

Persons authorised to submit a request

Article 424

(1) A request for extraordinary mitigation of punishment may be submitted by the State Prosecutor, the convicted person and his defence attorney, as well as by the persons authorised to file an appeal against the verdict in favour of the accused (Article 372).

(2) A request for extraordinary mitigation of punishment shall not stay the execution of punishment.

Deciding on request

Article 425

(1) The Court designated by law shall decide on a request for extraordinary mitigation of punishment.

(2) A request for extraordinary mitigation of punishment shall be submitted to the Court which rendered the first instance verdict.

(3) The Chair of the Panel of the first instance Court shall dismiss by a ruling a request submitted by an unauthorised person.

(4) The first instance Court shall inquire whether grounds for mitigation exist and, after having obtained the opinion of the State Prosecutor if the proceedings were conducted upon his request, it shall deliver the files along with its substantiated motion to the Competent Court to decide on the request for extraordinary mitigation of punishment.

(5) If a criminal offence for which the proceedings was conducted upon the request of the State Prosecutor is involved, the Court that decides on a request for extraordinary mitigation of punishment, before rendering a ruling, shall deliver the files to the competent State Prosecutor. The State Prosecutor may submit a written motion to the Court.

(6) The Court shall reject a request by a ruling if it establishes that legal conditions for extraordinary mitigation of punishment are not met. If the request is honoured, the Court shall by a verdict revise the final verdict regarding the decision on punishment.

Revocation of verdict

Article 426

The Court shall revoke a verdict by which it honoured the request for extraordinary mitigation of punishment if it is proven (Article 414, Paragraph 2) that the verdict was based on a false document or the false testimony of a witness or expert witness.

3. REQUEST FOR PROTECTION OF LEGALITY

Admissibility of a request

Article 427

The competent State Prosecutor may submit a request for the protection of legality against final Court's decisions and against the judicial proceedings which preceded such final decisions, if there was a violation of law.

Jurisdiction

Article 428

The Court designated by law shall decide on a request for the protection of legality.

Deciding on request

Article 429

The request for the protection of legality shall be submitted by the State Prosecutor designated by law.

Jurisdiction to decide on request

Article 430

(1) The Court shall decide on a request for the protection of legality at a Panel session.

(2) Before the case is presented for a deciding, the judge rapporteur shall deliver a copy of the request to the defendant and his defence attorney, and if necessary, he may obtain information on the violation of law alleged in the request.

(3) The State Prosecutor shall always be notified of the session, while the defendant and his defence attorney shall be notified if the request is submitted to the detriment of the defendant, and the presence of the convicted person shall be secured (Article 383, Paragraph 2).

(4) The Competent Court to decide on a request for the protection of legality, may, taking into account the contents of the request, order the execution of a final verdict be postponed or stayed.

(5) The Competent Court to decide on a request for the protection of legality shall be bound to deliver decision along with the files to the first instance Court or the higher Court within a term of four months from the day the request was submitted at the latest.

Article 431

(1) When deciding on a request for the protection of legality, the Court shall review violations insofar as that the State Prosecutor calls upon in his request.

(2) If the Court establishes that the grounds on which it rendered a decision in favour of the convicted person also exist for any co-accused regarding whom a request for the protection of legality was not submitted, it shall proceed by virtue of an office as if such a request has not been committed.

(3) When rendering a decision, the Court shall be bound by the prohibition referred to in Article 390 of the present Code.

Rejection of request

Article 432

The Court shall by its verdict reject as unfounded a request for the protection of legality if it establishes that the violation of law which the State Prosecutor stated in his request does not exist.

Decisions of the Court on a request

Article 433

(1) If the Court establishes that a request for the protection of legality is well-founded, it shall render a verdict whereby it shall, according to the nature of the violation of law, either revise the final decision or vacate in whole or in part both the decisions of the first instance Court and the higher Court or only the decision of the higher Court and remand the case for a new decision or retrial to the first instance Court or the higher Court, or it shall limit its action only to establish the violation of law.

(2) If a request for the protection of legality was submitted to the detriment of the defendant and the Court establishes that it was well founded, it shall only determine that the violation of law existed, without effecting the final decision.

(3) If, pursuant to the provisions of the present Code, the second instance Court was not authorised to remove violation of law made by the first instance verdict or in the Court proceedings that preceded it, and the Court deciding on the request for the protection of legality which was submitted in favour of the defendant establishes that the request was well founded and that, in order to remove the violation of law that occurred the first instance decision should be vacated or revised, it shall vacate or revise the decision at second instance as well, although the latter did not violate the law.

Reopening of criminal proceedings on a request for the protection of legality

Article 434

If, while the Court decides on a request for the protection of legality, submitted in favour of the defendant, a grounded suspicion arises as to the accurateness of the relevant facts established in the decision against which the request was submitted, so that it is not possible to decide on the request for the protection of legality, the Court shall by rendering the verdict in which it decides on the request for the protection of legality vacate such a decision and order that a new trial be held before the same Court or another first instance Court having subject matter jurisdiction.

Retrial

Article 435

(1) If the final verdict is vacated and the case is remanded for retrial, the previous indictment or the part of it which relates to the vacated part of the verdict shall be taken as the basis for trial.

(2) The Court shall be bound to undertake all procedural actions and discuss all issues pointed out by the Court which decided on the request.

(3) The parties may present new facts and new evidence before the first instance Court as well as before the second instance Court.

(4) When rendering a new decision, the Court shall be bound by the prohibition set forth in Article 390 of the present Code.

(5) If, in addition to the decision of the lower Court, the decision of the higher Court is also vacated, the case shall be remanded to the lower Court through the higher Court.

4. REQUEST FOR REVIEW OF LEGALITY OF THE FINAL VERDICT

Authorization and conditions for submitting the request

Article 436

(1) In cases prescribed by the present Code, a defendant unconditionally sentenced by a final verdict to imprisonment or juvenile imprisonment may submit a request for the review of legality of the final verdict due to a violation of law.

(2) A request for the review of legality of a final verdict shall be submitted within a term of one month from the day the defendant received the final verdict of a domestic Court or the decision of an international Court by which a violation of his right or fundamental freedom in the criminal proceedings conducted before a domestic Court is established.

(3) A defendant who did not exhaust the right to file an appeal against the verdict shall not be entitled to submit a request for the review of legality of the final verdict, unless the second instance verdict pronounced punishment of imprisonment instead of a remission of punishment, judicial admonition, suspended sentence or fine, or a sentence of juvenile imprisonment instead of an corrective measure.

(4) A request for the review of legality of a final verdict may not be submitted against a verdict of the Supreme Court.

Deciding on request

Article 437

The Court designated by law shall decide on a request for the review of legality of a final verdict.

Grounds for submitting a request

Article 438

A request for the review of legality of the final verdict may be submitted in the following cases:

1) as to the violation of the Criminal Code to the detriment of the convicted person referred to in Article 377, Items 1 to 4 and Item 6 of the present Code, or for the violation referred to in Item 5 of that Article if the Court exceeded its statutory power while deciding on punishment, security measure or forfeiture of property gain;

2) as to the violation of the criminal procedural provisions referred to in Article 376, Paragraph 1, Items 1, 5, 8, 9 and 10 of the present Code, or participation in the rendering of a decision at second or third instance of a judge or lay judge who should have been disqualified (Article 38, Items 1 to 5) or if the defendant was, contrary to his request, denied the right to use his language at the trial or at the trial before the second instance Court (Article 9);

3) as to the violation of the convicted person's right to defence at the trial or the violation of the criminal procedural provisions in the appellate proceedings if this violation could have influenced rendering of lawful verdict.

Persons authorised to submit a request

Article 439

(1) A convicted person and defence attorney may submit a request for the review of legality of the final verdict.

(2) A request for the review of legality of the final verdict shall be submitted to the Court which rendered a first instance verdict.

(3) A request submitted belatedly or by an authorised person or submitted in the case of a conviction to a criminal sanction regarding which the request may not be submitted (Article 436, Paragraphs 3 and 4), shall be dismissed by a ruling of the Chair of the Panel of the first instance Court or by the Competent Court to decide on the request.

(4) If the proceedings were conducted upon a request of the State Prosecutor, the Competent Court to decide on the request for the review of legality of the final verdict shall deliver a copy of the request along with the files to the competent State Prosecutor representing the prosecution before that Court, and who may within a term of fifteen days from the day of receipt of the request, submit a reply thereto.

(5) The defendant and his defence attorney shall be notified of the Panel session.

(6) The first instance Court or the Competent Court to decide on the request may, regarding the contents of the request, order to postpone or stay the execution of the final verdict.

Appropriate application

Article 440

Regarding a request for the review of legality of the final verdict, the provisions of Article 430, Paragraphs 1, 2 and 5, Articles 431, 432, 433, Paragraphs 1 and 2 and Articles 434 and 435 of the present Code shall be applied accordingly. When applying Article 433, Paragraph 1 of the present Code the Court may not limit its action only to the establishment of the violation of law.

D. SPECIAL PROVISIONS ON SUMMARY PROCEEDINGS, PROCEEDINGS ON THE IMPOSITION OF CRIMINAL SANCTIONS WITHOUT HOLDING A TRIAL, PROCEEDINGS ON THE IMPOSITION OF JUDICIAL ADMONITION, PROCEEDINGS AGAINST JUVENILES AND SPECIAL PROVISIONS ON PROCEEDINGS FOR THE CRIMINAL OFFENCES OF ORGANIZED CRIME

Chapter XXVI

SUMMARY PROCEEDINGS

Cases when summary proceedings are conducted

Article 441

(1) In the proceedings for criminal offences punishable by fine or imprisonment for a term not exceeding three years as a principal punishment, the provisions of Articles 442 to 456 of the present Code shall be applied, and unless these provisions provide otherwise, other provisions of the present Code shall apply accordingly.

(2) Upon a motion of an authorised Prosecutor and with a defendant's explicit consent, the President of the Court Panel may approve the application of the provisions on the summary proceedings regarding a trial, verdict and appellate proceedings also for criminal offences punishable by imprisonment for a term not exceeding five years.

(3) The motion of the Prosecutor referred to in Paragraph 2 of this Article may be contained in the indictment, regardless of whether an investigation has been conducted prior to indictment or it was left out pursuant to Article 252, Paragraph 6 of the present Code.

(4) The defendant may give his consent in a separate document or orally for the Court records within a term of eight days from the day the indictment has been served. If the defendant submits an objection to indictment it shall be deemed that he refuses to express his consent. If, within a term of eight days, the defendant fails to express his consent or submit an objection to indictment, he may enter his plea on the Prosecutor's motion at the first appearance for the trial.

(5) After the defendant expresses his consent, the indictment shall be deemed as an indicting proposal.

(6) In the case referred to in Paragraph 2 of this Article a more severe punishment than a punishment of imprisonment of three years cannot be pronounced on the defendant who must be informed thereof at the time the indictment has been served.

Motions to indict in the summary proceedings

Article 442

(1) The criminal proceedings shall be instituted upon the indicting proposal of the State Prosecutor, a subsidiary Prosecutor or upon a private complaint.

(2) The State Prosecutor may submit an indictment proposal upon a mere crime report.

(3) An indictment proposal and a private charge shall be submitted in the number of copies as needed for the Court and for the defendant.

Investigatory actions preceding an indictment proposal

Article 443

(1) Prior to bringing an indictment proposal, the State Prosecutor may recommend that the investigative judge undertake certain investigatory actions. If the investigative judge concurs with such a motion, he shall undertake the investigatory actions and thereafter deliver the files to the State Prosecutor. Investigatory actions shall be undertaken as expeditiously as possible.

(2) If the investigative judge does not concur with the motion to undertake investigatory actions, he shall request a decision of the Panel (Article 24, Paragraph 6) within three days. The appeal against the decision of the Panel shall not be allowed.

(3) In the cases referred to in Paragraphs 1 and 2 of this Article, when the State Prosecutor receives the files from the investigative judge, he may decide to submit an indictment proposal or to dismiss the crime report by a ruling.

Detention in the course of the summary proceedings

Article 444

(1) For the purpose of an uninterrupted conduct of the criminal proceedings a detention may be ordered against a person against whom there is a grounded suspicion of having committed an offence if:

1) he is in hiding or his identity cannot be established or if there are other circumstances indicating a risk of flight;

2) a criminal offence involved is punishable by imprisonment for a term of three years and special circumstances indicate that he shall complete the attempted criminal offence or perpetrate the criminal offence he threatens to commit.

(2) Before an indictment proposal is submitted, a detention may last only for the time necessary to conduct investigatory actions, but no longer than eight days. The Panel (Article 24, Paragraph 6) shall decide on an appeal against a ruling on detention.

(3) From the moment an indictment proposal is submitted until the conclusion of the trial, the provisions of Article 152 of the present Code shall be applied accordingly in respect with detention, and the Panel shall be bound every month to review whether the grounds for detention still exist.

(4) When the defendant is in detention, the Court shall be bound to proceed as expeditiously as possible.

Institution of prosecution

Article 445

(1) If a crime report was submitted by an injured party and the State Prosecutor fails within a term of one month to prefer a motion to undertake investigatory actions or motion to indict, or to notify the injured party of the dismissal of the crime report, the injured party shall be entitled to institute a prosecution in the capacity of a Prosecutor by submitting an indictment proposal to the Court.

(2) If in the case defined in Paragraph 1 of this Article, the injured party waives the prosecution, or it is considered according to law that the injured party has waived the prosecution, the State Prosecutor may, irrespective of the conditions prescribed for the reopening of the proceedings, reopen the proceedings, if the crime report of the injured party has not been dismissed.

Contents of an indictment proposal

Article 446

(1) An indictment proposal or a private complain shall state: the name and surname of the defendant along with his personal data if known, a brief description of the criminal offence, an indication of the Court before which the trial shall be held, a motion on the evidence to be presented at the trial and the motion that the defendant be pronounced guilty and convicted under the law.

(2) An indictment proposal may contain a motion to order detention against the defendant. If the defendant is in detention or was in detention while investigatory actions were undertaken, the indictment proposal shall state for how long he was in detention.

Preliminary examination

Article 447

(1) When the Court receives an indictment proposal or a private complaint, the judge shall first examine whether the Court has jurisdiction to try the case, whether certain investigatory actions should be undertaken or supplemented if they have already been undertaken, and whether there are grounds for the dismissal of the indictment proposal or the private complaint.

(2) If the judge does not render any of the rulings referred to in Paragraph 1 of this Article, he shall deliver the charges to the defendant and immediately schedule the trial. If the trial is not scheduled within a term of one month from the day of receipt of the indictment proposal or the private complaint, the judge shall be bound to inform the President of the Court on the reasons thereof, who will undertake measures for the trial be held as soon as possible.

(3) If the judge considers that certain investigatory actions should be undertaken, he shall request that they be undertaken by the investigative judge.

Referring a case to a Competent Court

Article 448

(1) If the judge establishes that another Court has jurisdiction over the case, he shall declare himself incompetent and refer the case to the competent Court after the ruling becomes final, and if he establishes that a higher Court has jurisdiction over the case, he shall refer the case to the competent State Prosecutor representing the prosecution before the higher Court for further action. If the State Prosecutor considers that the Court which referred the case to him has jurisdiction to try the case, he shall request disposition from the Panel of the Court before which he represents the prosecution.

(2) After the trial is scheduled, the Court cannot by virtue of an office declare the lack of territorial jurisdiction.

Dismissal of an indictment proposal

Article 449

(1) The judge shall dismiss an indictment proposal or a private complaint if it establishes that reasons for the discontinuance of proceedings referred to in Article 282, Paragraph 1, Items 1 to 3 of the present Code exist, and if investigatory actions have been undertaken – for the reason prescribed by Item 4 of that Article.

(2) A ruling with a concise statement of reasons shall be delivered to the State Prosecutor, the subsidiary Prosecutor or private Prosecutor as well as to the defendant.

Summons for the trial

Article 450

(1) The judge shall summon to the trial the defendant and his defence attorney, the Prosecutor, the injured party and their legal guardians and legal representatives, witnesses, expert witnesses and an interpreter, and if necessary he shall obtain objects that should serve as evidence at the trial.

(2) The summons served on the defendant shall state that he may appear at the trial with evidence in his favour, or that he should in time propose presentation of evidence to the Court so that it can be obtained for the purposes of the trial. The defendant shall be reminded in the summons that the trial will be held even in his absence if legal conditions for such trial are met (Article 453, Paragraph 3). Along with the summons the defendant shall also be served a copy of the indictment proposal or the private complaint, and he shall be instructed that he is entitled to retain the defence attorney, but in the case of a non-mandatory defence, a continuance of the trial need not be granted due to absence of the defence attorney from the trial or due to the fact that a defence attorney has been engaged at the trial.

(3) A summons shall be served on the defendant in such a way as to leave him an adequate time between the serving of the summons and the day of the trial for the preparation of the defence, but not less than eight days. Upon the defendant's consent, this term may be shortened.

Place of holding the trial

Article 451

The trial shall be held in the seat of the Court. In urgent cases, particularly when a crime scene investigation should be carried out, or when this is necessary to facilitate the presentation of evidence, the trial may, with approval of the President of the Court, also be held at the place of the commission of the criminal offence, or at the place where the crime scene investigation should be carried out if these places fall within the jurisdictional territory of the Court in question.

Objection regarding jurisdiction as to place

Article 452

(1) An regarding jurisdiction as to place may be raised until the commencement of the trial at the latest.

(2) The judge who has undertaken the investigatory actions shall not be disqualified from participation in the trial.

Absence of the State Prosecutor, injured party and defendant

Article 453

(1) The trial shall be held even if the duly summoned State Prosecutor fails to appear. In such a case the injured party shall be entitled to represent the prosecution at the trial within the limits of the indictment proposal.

(2) The trial may also be held in the absence of a subsidiary Prosecutor or private Prosecutor provided that he submitted a motion that the trial be held in his absence.

(3) If a duly summoned defendant fails to appear at the trial or the summons could not be served on him because he did not report to the Court changes of address or residence, the Court may decide to hold the trial in his absence, provided that his presence is not necessary and provided that he has already been interrogated.

The course of a trial

Article 454

(1) The trial shall commence with the announcement of the main contents of the indictment proposal or private complaint. If conceivable, the trial shall proceed in an uninterrupted sequence.

(2) In the case of the defendant's complete confession made in the course of the trial, the Court shall, along with the mutual motion of the parties, recess the presentation of evidence and impose a criminal sanction unless there is a suspicion as to truthfulness of the confession.

(3) Subject to the conditions referred to in Paragraph 2 of this Article, the Court may impose the following criminal sanctions: judicial admonition, suspended sentence, fine and imprisonment for a term not exceeding one year, and along with those - one or several of the following measures: seizure of objects, prohibition to drive a motor vehicle and forfeiture of property gain. For criminal offences referred to in Article 441, Paragraph 2 of the present Code a punishment of imprisonment may not exceed three years.

(4) If in the course of the trial or after its conclusion the judge establishes that a higher Court has subject matter jurisdiction to try the case, he shall refer the case to the competent State Prosecutor, and if he establishes that a Panel has subject matter jurisdiction to try the case – a Panel shall be established and the trial shall commence anew. If the judge establishes that some other reason referred to in Article 357 of the present Code exists, he shall dismiss the charge by a ruling.

(5) After the conclusion of the trial, the Court shall pronounce a verdict immediately and announce it followed by substantial reasons thereof. A written copy of the verdict shall be issued within a term of eight days from the day of its announcement.

(6) An appeal may be filed against the verdict within a term of eight days from the day the copy of the verdict is served.

(7) Immediately upon the announcement of the verdict, the parties and injured party may waive the right to appeal. In such a case a copy of the verdict shall be delivered to the party and injured party only if they so require. If, after the announcement of the verdict, both parties and the injured party waive their right to appeal and if none of them has required that the verdict be served on them, the written copy of the verdict need not contain a statement of reasons.

(8) After the verdict is pronounced, provisions of Article 366 of the present Code shall be applied accordingly also in regard with vacation of detention.

(9) When the Court pronounces a punishment of imprisonment, it may decide the defendant be detained or remain in detention, provided that the grounds referred to in Article 444, Paragraph 1 of the present Code exist. In such a case detention may last until the judgement becomes final, but at the longest until a term of the sentence pronounced on the defendant by the first instance Court expires, or until terms referred to in Article 152, Paragraph 4 of the present Code expire.

(10) If the State Prosecutor has not been present at the trial (Article 453, Paragraph 1), the injured party shall be entitled to file, in the capacity of a Prosecutor, an appeal against the verdict, regardless of whether an appeal has also been filed by the State Prosecutor.

Reconciliation hearing

Article 455

(1) Before scheduling a trial for criminal offences subject to private prosecution, the judge may summon only the private Prosecutor and the defendant to a hearing for the preliminary clarification of the matter if he considers it expedient for the prompt termination of the proceedings. Along with the summons, the defendant shall be served a written copy of the private complaint.

(2) If a reconciliation of the parties and the withdrawal of the private complaint do not take place, the judge shall take statements from the parties and call on them to submit their motions regarding the evidence to be obtained.

(3) If the judge does not establish that conditions exist for the dismissal of the charge, he shall render a decision with regard to the evidence to be examined at the trial and shall, as a rule, immediately schedule the trial and notify the parties thereof.

(4) If the judge considers that obtaining evidence is not necessary and no other reasons exist for the explicitly scheduling of the trial, he may immediately open the trial and after presenting the available evidence, render a decision on the private complaint. The private Prosecutor and the defendant shall explicitly be reminded of this possibility in the summons.

(5) If the private Prosecutor fails to appear upon summoning pursuant to Paragraph 1 of this Article, the provision of Article 57 of the present Code shall be applied.

(6) If the defendant fails to appear, the provision of Article 453, Paragraph 3 of the present Code shall be applied, provided that the judge decided to open the trial.

Presence of the parties

Article 456

(1) When a second instance Court decides on an appeal against a verdict of the first instance Court rendered in the summary proceedings, both parties shall be notified of the session of the Panel of the second instance Court only if the Chair of the Panel or the Panel considers that the presence of the parties or one of the parties would be advantageous for the clarification of the matter.

(2) Before the session of the Panel the Chair of the Panel shall submit the files to the State Prosecutor if a criminal offence is involved for which the proceedings are carried out upon his request and the State Prosecutor may submit his written motion.

Chapter XXVII

PROCEEDINGS FOR ISSUANCE OF A WARRANT PRONOUNCING SENTENCE WITHOUT HOLDING A TRIAL

Warrant pronouncing sentence

Article 457

(1) For criminal offences punishable by a fine or the sentence of imprisonment for a maximum term not exceeding one year as a principal punishment, upon a motion of the State Prosecutor, and with the consent of the defendant, the judge may issue a warrant pronouncing sentence without holding a trial.

(2) The motion for the issuance of a warrant referred to in Paragraph 1 of this Article, the State Prosecutor shall submit in an indictment proposal if he finds that it is not necessary to hold a trial.

(3) If a claim under property law is submitted, an authorised person shall be directed to the civil proceedings.

Pronouncement of sanctions and measures

Article 458

(1) By a warrant pronouncing sentence, the judge may along with a fine impose one or more of the following measures: seizure of objects, prohibition to drive a motor vehicle and forfeiture of property gain.

(2) A fine may be pronounced in the amount not exceeding € 1.000, and prohibition to drive a motor vehicle may be pronounced for a maximum term not exceeding two years.

Prerequisites for issuance and contents of the warrant pronouncing

Article 459

(1) Prior to determining whether the prerequisites are met for the issuance of the warrant pronouncing sentence, the judge shall proceed pursuant to Article 447, Paragraph 1 and Articles 448 and 449 of the present Code. If the judge considers that grounds for the issuance of a warrant pronouncing sentence are not met, he shall submit the charge report to the defendant and schedule the trial immediately.

(2) If the judge concurs with the motion of the State Prosecutor, he shall obtain information on previous convictions and, if necessary, on the defendant's personality, and thereafter he shall, subsequent to the interrogation of the defendant, and with his consent, issue a warrant pronouncing sentence.

(3) The warrant pronouncing sentence shall state the following: that the State Prosecutor's motion is satisfied; personal data of the defendant; the criminal offence for which he is found guilty with stating the facts and circumstances which constitute elements of the criminal offence and on which depends the application of a particular provision of the Criminal Code; the statutory title of the criminal offence and the provisions of the Criminal Code and other statutes that have been applied; the decision on a fine or measure pronounced as well as the decision on directing the authorised person to the civil proceedings in regard with his claim under property law; the statement of reasons for the pronouncement a punishment or measure.

Serving the warrant pronouncing sentence and the right to appeal

Article 460

(1) The warrant pronouncing sentence shall be delivered to the State Prosecutor and the defendant.

(2) An appeal against the warrant pronouncing sentence may be filed within a term of eight days. The appeal may be filed only against the decision on punishment and due to the violation of the provisions of Article 457 of the present Code.

Chapter XXVIII

SPECIAL PROVISIONS ON THE IMPOSITION OF JUDICIAL ADMONITION

Pronouncement of judicial admonition

Article 461

(1) Judicial admonition shall be pronouncement by a ruling.

(2) Unless otherwise provided in this Chapter, the provisions of the present Code concerning the verdict of conviction shall apply accordingly to the ruling on judicial admonition.

(3) Judicial admonition may be pronounced in the proceedings for the issuance of a warrant pronouncing sentence without holding a trial (Chapter XXVII).

Contents of ruling on judicial admonition

Article 462

(1) The ruling on judicial admonition, together with essential reasons, shall be announced immediately after the completion of the trial. On this occasion the judge or the Chair of the Panel shall remind the defendant that a punishment is not pronounced on him for the criminal offence he has committed, because it is expected that a judicial admonition shall influence him to the sufficient extent not to commit criminal offences any more. If the ruling on judicial admonition is announced in the defendant's absence, the Court shall include such a warning in the statement of reasons. The provisions of Article 454, Paragraph 5 of the present Code shall apply to the waiver of the right to appeal and to the issuance of a written copy of the ruling.

(2) Beside the personal data of the defendant, the pronouncement of the ruling on judicial admonition shall only state that judicial admonition is pronounced on the defendant for the offence he is charged with and the statutory title of the criminal offence. The pronouncement of the ruling shall also state the data required and referred to in Article 364, Paragraph 1, Items 5 and 7 of the present Code.

(3) In the statement of reasons for the ruling, the Court shall state the reasons it was guided by in the pronouncement of judicial admonition.

Grounds for contest the ruling on judicial admonition

Article 463

(1) The ruling on judicial admonition may be contested for the reasons referred to in Article 375, Items 1 to 3 of the present Code, but also because the circumstances which justify the pronouncement of judicial admonition do not exist.

(2) If the ruling on judicial admonition contains a decision on security measures, on the forfeiture of property gain, on the costs of criminal proceedings, on a claim under property law or on a public announcement, this decision may be contested because the Court did not correctly apply the security measure or the forfeiture of property gain, or because it rendered a decision on the costs of criminal proceedings, on a claim under property law or on a public announcement in violation of the legal provisions.

Violation of the Criminal Code

Article 464

In addition to the issues referred to in Article 377, Items 1 to 4 of this Act, a violation of the Criminal Code shall also exist in the case of the pronouncement of judicial admonition when the Court exceeds its statutory power in a decision on judicial admonition, a security measure, the forfeiture of property gain or on a public announcement.

Ruling of a second instance Court

Article 465

(1) If an appeal against the ruling on judicial admonition filed by the Prosecutor to the detriment of the defendant, the second instance Court may render a guilty verdict conviction and impose a punishment or suspended sentence if it establishes that the first instance Court correctly established the relevant facts but that upon the correct application of the a law punishment or suspended sentence should have been considered.

(2) Upon an appeal against the ruling on judicial admonition filed by any authorised person, the second instance Court may render a ruling dismissing the charge or a verdict rejecting the charge or a verdict of acquittal if it establishes that the first instance Court correctly established the relevant facts and that the rendering of one of these decisions is conceivable upon the correct application of the law.

(3) When the conditions referred to in Article 396 of the present Code are met, the second instance Court shall render a ruling rejecting the appeal as unfounded and confirm the ruling of the first instance Court on judicial admonition.

Chapter XXIX

JUVENILE PROCEEDINGS

1. GENERAL PROVISIONS

Application of other provisions of the present Code in the proceedings against juveniles

Article 466

(1) The provisions of this Chapter shall apply in proceedings conducted against persons who were minors at the time when they committed a criminal offence and who had not reached the age of twenty-one at the time proceedings were instituted or when

those persons were tried. The other provisions of the present Code shall apply to the extent that they do not conflict with the provisions of this Chapter.

(2) The provisions of Articles 468 to 470, 473 to 476, 485, 487, 489, Paragraphs 1 and 2 and Article 497 of the present Code shall be applied in the proceedings against a young adult if, before the trial commences, it is established that an corrective measure may be pronounced on that person in virtue of Article 111 of the Criminal Code, provided that at that time that person has not reached the age of twenty-one.

Application of provisions against children

Article 467

When it is established in the course of the proceeding that at the time when the minor committed the criminal offence he had not reached the age of fourteen the criminal proceeding shall be discontinued, and the juvenile welfare authorities shall be so informed.

Circumspect treatment and prohibition of trying *in absentia*

Article 468

(1) A minor cannot be tried *in absentia*.

(2) When undertaking actions in the presence of a minor and particularly during his interrogation, the participants in the proceedings shall be bound to be circumspect, taking into account the minor's mental development, his sensibility, personal characteristics and his privacy, so as the conduct of the criminal proceedings would not have an adverse effect on his development.

(3) At the same time these authorities shall prevent by appropriate measures any undisciplined behaviour of a minor.

Right to a defence attorney

Article 469

(1) The minor may retain a defence attorney from the moment of the commencement of pre-trial proceedings.

(2) The minor shall retain a defence attorney from the moment of the commencement of a pre-trial proceedings if the proceedings are conducted for a criminal offence punishable by imprisonment for a term exceeding than three years, and for other criminal offences punishable by a less severe punishment – if a judge for juveniles deems that the minor needs the defence attorney.

(3) If, in the cases referred to in Paragraph 2 of this Article, the minor, his legal guardian or relatives fail to retain a defence attorney, the judge for juveniles shall appoint a defence attorney by virtue of an office.

(4) Defence attorney of a minor shall be from among the members of the Bar.

Duty to testify

Article 470

No one can be exempted from the duty to testify concerning circumstances necessary to evaluate mental development of the minor, understand his personality and conditions he lives in (Article 485).

Separation and joinder of proceedings

Article 471

(1) If the minor has participated in committing a criminal offence together with an adult, the proceedings against him shall be separated and conducted pursuant to the provisions of this Chapter.

(2) A proceedings against a minor may be joined with the proceedings against an adult and conducted in accordance with general provisions of the present Code provided that a joinder of the proceedings are necessary for a comprehensive clarification of the matter. The Panel for juveniles of the Competent Court shall render a ruling thereof upon a substantiated motion of the State Prosecutor. This ruling shall not be subject to an appellate review.

(3) When a joint proceedings are conducted against a minor and adults, the provisions of Articles 468 to 470, 473 to 476, 485, 487, 488, 489, Paragraphs 1 and 2 and Article 496 of the present Code shall always be applied in regard with the minor when the Court clarifies issues regarding him at the trial, as well as the provisions of Articles 497, 503 and 504 of the present Code, while other provisions of this Chapter shall be applied to the extent that it does not conflict the conduct of a joint proceeding.

Joint proceedings

Article 472

If a person has committed some criminal offence as a minor and some other offence as an adult, the joint proceedings shall be conducted before the Panel competent to try adults pursuant to Article 31 of the present Code.

Right of the Juvenile Welfare Authority

Article 473

(1) In the minor proceedings, along with the rights explicitly determined by the provisions of this Chapter, the juvenile welfare authority shall have the right to be kept informed of the course of the proceeding, to make motions in the course of the proceeding and to point out the facts and evidence that are important to the rendering of a correct decision..

(2) The Prosecutor shall notify the competent juvenile welfare authority of each proceeding instituted against a minor.

Serving summons, decisions and other documents on minors

Article 474

(1) The minor shall be summoned through parents or a legal guardian except when this is not possible due to a necessity to proceed expeditiously or for other reasons.

(2) Decisions and other documents shall be served on a minor pursuant to Article 168 of the present Code, but service shall not be effected upon a minor through a bulletin board of the Court, nor shall the provision of Article 164, Paragraph 2 of the present Code apply.

Prohibition of announcement of the course of the proceedings

Article 475

(1) Without a permission of the Court, the course of a minor proceedings and a decision rendered in the proceedings shall not be made public.

(2) Only a part of the course of the proceedings or a part of the decision regarding which there is the Court's permission may be made public, but in that case the name and other data revealing the identity of a minor must not be indicated.

Duty to proceed urgently

Article 476

Authorities participating in the proceeding against a minor and other agencies and institutions from whom information, reports or opinions are sought shall be bound proceed with the greatest urgency so that the proceeding is completed as soon as possible.

2. COMPOSITION OF THE COURT

Article 477

(1) The Courts of law shall have Panel for juveniles. There shall be one or more judges for juveniles within the judges of the first instance Courts.

(2) The Panel for juveniles of the first instance Court and juvenile Panel of the second instance Court, apart from a Panel for juveniles of the Supreme Court, shall be composed of a judge for juveniles and two lay judges. A judge for juveniles shall be the Chair of the Panel.

(3) In the Supreme Court a Panel for juveniles shall be determined by a working schedule and composed of three judges. At a trial, the Panel for juveniles shall be composed of two judges and three lay judges.

(4) Lay judges shall be elected from among professors, teachers, tutors and other persons experienced in a minor education.

(5) Panel for juveniles of higher Courts, composed pursuant to Paragraphs 1 and 2 of this Article, shall decide on an appeal as well as in other cases prescribed by the present Code.

(6) A judge for juveniles of the first instance Court shall conduct pre-trial proceedings and undertake other actions in the minor proceedings.

Competent second instance Court

Article 478

A competent second instance Court shall decide upon appeals filed against decisions rendered by Panel for juveniles of the first instance Court, appeals filed against rulings rendered by the State Prosecutor and judge for juveniles in the cases prescribed by the present Code, as well as in the cases when it is determined by the present Code that the Panel for juveniles of a higher Court shall have jurisdiction.

Territorial jurisdiction

Article 479

As a rule, the Court within whose territory a minor has permanent residence shall have territorial jurisdiction to conduct juvenile proceedings, and if a minor does not have a permanent residence or it is unknown – the Court within whose territory his temporary residence is located. Against a minor who has a permanent residence the proceedings may be conducted before the Court within whose territory he has a temporary residence or within whose territory a criminal offence has been committed, if it is obvious that it shall facilitate conducting of the proceedings.

Extended territorial jurisdiction

Article 480

For the territory of several Courts a competent authority in the Republic may designate one Court to have jurisdiction at first instance for all criminal cases against minors.

3. INSTITUTING THE PROCEEDINGS

Exclusive jurisdiction of the State Prosecutor

Article 481

(1) For all criminal offences a juvenile proceedings shall be instituted only upon a request of the State Prosecutor.

(2) For criminal offences prosecuted upon a private complaint, the proceedings may be instituted if the injured party has submitted the motion for the institution of the proceedings within a term specified by Article 51 of the present Code to the competent State Prosecutor.

(3) If the State Prosecutor does not submit a request for the institution of juvenile proceedings, he shall notify the injured party thereof. The injured party may not assume the prosecution or submit a private complaint to the Court, but he may, within a term of eight days from the day of receiving the notification from the State Prosecutor, request that a Panel for juveniles of the Competent Court decide on the institution of the proceedings.

Application of the principle of opportunity

Article 482

(1) Albeit existing evidence that a minor has committed a criminal offence, for criminal offences punishable by imprisonment for a maximum term not exceeding three years or a fine, the State Prosecutor may decide not to request the institution of the criminal proceedings if he finds that it would not be purposeful to conduct the criminal proceedings, taking into account the nature of the criminal offence, circumstances under which it has been committed and personal characteristics of the minor. In order to establish these circumstances, the State Prosecutor may seek information from parents or guardians of the minor and from other persons and institutions and when necessary, he may summon those persons and the minor to obtain direct information. He may seek the opinion of the juvenile welfare authority concerning the purposefulness of conducting criminal proceedings against the minor.

(2) If, for rendering a decision from Paragraph 1 of this Article, it is necessary to examine personal characteristics of a minor, the State Prosecutor may, upon the consent of a guardian authority, send the minor to a shelter or institution for examination or educational institution for a period not longer than one month.

(3) When the execution of a punishment or an corrective measure is pending, the State Prosecutor may decide not to request the institution of the criminal proceedings for another criminal offence committed by him if, taking into account the gravity of that criminal offence and the punishment or corrective measure which execution is pending, the conduct of the criminal proceedings and the imposition of criminal sanction for that offence would be purposeless.

(4) If in the cases referred to in Paragraphs 1 and 3 of this Article, the State Prosecutor finds that it would be purposeless to institute the criminal proceedings against a minor, he shall notify a juvenile welfare authority and the injured party thereof along with the statement of reasons, who may, within a term of eight days, request that the Panel for juveniles decide on the institution of juvenile proceedings.

Institution of the proceedings upon the Panel's decision

Article 483

(1) In the cases referred to in Article 481, Paragraph 3 and Article 482, Paragraph 4 of the present Code, a Panel for juveniles shall decide at the session upon receiving files from the State Prosecutor. The State Prosecutor shall be summoned to appear at the session.

(2) The Panel for juveniles may decide not to institute the proceedings or to institute the proceedings against a minor before a judge for juveniles. A ruling rendered by the Panel for juveniles shall not be subject to an appellate review.

(3) If the Panel for juveniles decides to institute the criminal proceedings against a minor before a judge for juveniles, the State Prosecutor may participate in the proceedings and shall be entitled to all procedural powers conferred to him by the present Code.

4. PRE-TRIAL PROCEEDINGS

Request for institution

Article 484

(1) The State Prosecutor shall submit a request for the institution of the pre-trial proceedings to a judge for juveniles of the Competent Court. If the judge for juveniles does not concur with this request, he shall request a Panel for juveniles of a higher Court to decide thereof.

(2) The judge for juveniles of the higher Court may entrust the conducting of the pre-trial proceedings to a judge for juveniles of the lower Court within whose territory the minor resides if the lower Court is located out of the seat of that higher Court.

(3) The judge for juveniles may entrust to the police to search a dwelling or to seize an object in accordance with the present Code.

Obtaining data regarding minor's personality

Article 485

(1) In the course of the pre-trial proceedings against a minor, along with the facts regarding a criminal offence, the minor's age and circumstances necessary to evaluate his mental development shall be particularly established, and the conditions he lives in as well as other circumstances that have bearing on his personality shall be examined.

(2) In order to establish these circumstances, the minor's parents, his guardian and other persons who may provide necessary data shall be heard. If necessary, records from a juvenile welfare authority regarding these circumstances shall be requested, and if a corrective measure was applied against the minor, the records on the application of that measure shall be obtained.

(3) The judge for juveniles shall obtain data regarding minor's personality. The judge for juveniles may request that a particular expert (a social worker, teacher of the handicapped and etc), if available in the Court, obtain these data or may entrust collection of it to the juvenile welfare authority.

(4) When it is necessary for a minor to be examined by expert witnesses in order to establish his health condition, mental development, psychological characteristics or preferences, physicians, psychologists and pedagogues shall be appointed for such examinations. Such examinations may be carried out in a health or other institution.

Persons present when actions in the pre-trial proceedings are undertaken

Article 486

(1) The judge for juveniles himself shall decide on the manner in which particular actions shall be undertaken, taking into account the provisions of the present Code to such a degree to secure a defendant's right to defence, the rights of the injured party and obtaining evidence necessary for rendering a decision.

(2) The State Prosecutor and defence attorney may be present during the performance of actions in the course of the pre-trial proceedings. If necessary, the minor shall be interrogated with a help of a pedagogue or other expert. The judge for juveniles may allow that a representative of the juvenile welfare authority and a parent or legal guardian be present during the performance of actions in the course of the juvenile proceedings. If the mentioned persons are present at the performance of these actions, they may submit motions and ask questions of the person who is interrogated.

Placement of a minor in a shelter or similar institution

Article 487

(1) In the course of the pre-trial proceedings, the judge for juveniles may order a minor be placed in a shelter, educational or other similar institution, or to be placed under the supervision of a juvenile welfare authority or moved to another family, if this is necessary to separate the minor from the environment he lives in, for providing an assistance to him, or for the protection or housing of the minor.

(2) The costs of the minor's housing shall be paid in advance from budget funds and shall be included in the costs of the criminal proceedings.

Detention

Article 488

(1) Exceptionally, the judge for juveniles may order a minor to be detained if the grounds referred to in Article 148, Paragraph 1 of the present Code exist.

(2) In the pre-trial proceedings, detention ordered upon a ruling of a judge for juveniles may last at the longest one month. The Panel for juveniles of the same Court may, for justifiable reasons, extend detention for a term not longer than one month.

(3) After pre-trial proceedings are closed, detention may last up to one year at the longest.

(4) After a motion of the State Prosecutor is submitted, the provisions of Article 152 of the present Code shall apply accordingly in regard with detention, but the Panel for juveniles shall be bound to review every month whether grounds for detention still exist.

Serving detention

Article 489

(1) The minor shall be detained separately from adult detainees.

(2) The judge for juveniles may order a minor to be detained together with adult detainees provided that his separation should last longer and there is a possibility for him to be detained in the room with an adult who would not be of harmful influence to him.

(3) The judge for juveniles shall have the same powers against detained minors as are the powers conferred by the present Code to the investigative judge regarding detainees.

Substantiated motion

Article 490

(1) After he has examined all circumstances regarding the commission of a criminal offence and a minor's personality, the judge for juveniles shall submit the files to the competent State Prosecutor who may, within a term of eight days, either request the pre-trial proceedings be supplemented, or submit to the Panel for juveniles a substantiated motion for punishment or imposing an corrective measure.

(2) The motion of the State Prosecutor shall contain: the name and surname of the minor, his age, a description and statutory title of the offence, evidence that he has committed the criminal offence, a statement of reasons containing the evaluation of the minor's mental development and a motion to impose a punishment or an corrective measure.

Motion to discontinue the proceedings

Article 491

(1) If in the course of the pre-trial proceedings the State Prosecutor establishes that there are no grounds for conducting the proceedings against the minor, or that reasons referred to in Article 482, Paragraph 3 of the present Code exist, he shall submit a motion to the judge for juveniles to discontinue the proceedings. In addition, he shall notify a juvenile welfare authority thereof, and the juvenile welfare authority shall be bound, if it disagrees with the State Prosecutor's motion, to inform the judge for juveniles thereof within a term of eight days from the day of receiving the notification from the State Prosecutor.

(2) If the judge for juveniles does not concur with the motion of the State Prosecutor, he shall request the Panel for juveniles of a higher Court to decide thereof. Having heard the State Prosecutor, the Panel for juveniles shall render a decision. The judge for juveniles shall proceed in the same manner if only the juvenile welfare authority did not concur with the motion of the State Prosecutor.

(3) The provision of Article 483, Paragraph 3 of the present Code shall also be applied when the Panel for juveniles does not satisfy the motion of the State Prosecutor to discontinue the proceedings.

Presentation of the case to the Panel for juveniles

Article 492

If, in the cases referred to in Articles 483 and 491 of the present Code, the State Prosecutor did not participate in the juvenile proceedings, the judge for juveniles shall, after the completion of the pre-trial proceedings, present the case to the Panel for juveniles for a trial.

Control of the juvenile proceedings

Article 493

The judge for juveniles shall inform the President of the Court every month about which juvenile cases are not completed and shall inform him about the reasons why certain cases are still pending. The President of the Court shall, if necessary, undertake measures to speed up the proceeding.

5. PROCEEDINGS BEFORE A PANEL FOR JUVENILES

Sequence of actions before the Panel

Article 494

(1) Upon receiving a motion of the State Prosecutor, as well as when the proceedings against the minor is conducted without a motion of the State Prosecutor, the judge for juveniles shall schedule a session of the Panel or a trial.

(2) When the proceedings against the minor is conducted without a motion of the State Prosecutor, at the beginning of the session or the trial, the judge for juveniles shall introduce a criminal offence for which the minor is charged with.

(3) Punishments and institutional measures may be imposed on minors only upon holding a trial. Other corrective measures may be imposed at a session of the Panel, as well.

(4) It may be decided to hold a trial at the Panel session.

(5) The State Prosecutor, defence attorney, a representative of a juvenile welfare authority and, if necessary – a minor, his parents or guardian shall be notified of the Panel session and may be present at the session, as well.

(6) At the Panel session the judge for juveniles shall announce a corrective measure pronounced on a minor.

Appropriate application of the provisions of the present Code at a trial

Article 495

(1) When the Panel for juveniles decides on the basis of a trial, the provisions of the present Code regarding preparation of the trial, administration of the trial, continuance and recess of the trial, records of the trial and the course of the trial shall apply

accordingly, but the Court may deviate from these rules if it deems that their application in a particular case would not be opportune.

(2) In addition to the persons referred to in Article 293 of the present Code, a minor's parents or his guardian and a juvenile welfare authority shall be summoned to the trial. Failure of the parents, guardian or representative of the juvenile welfare authority to appear at the main trial shall not preclude the Court from holding the main trial.

(3) Apart from minor's presence, the State Prosecutor shall be present at the trial in the case he submitted the motion pursuant to Article 490 of the present Code, and in the case of mandatory defence – a defence attorney shall be present, as well.

(4) In the juvenile proceedings the provisions of the present Code regarding amendments and extension of the charge shall also apply, but the Panel for juveniles shall be entitled to render a decision based on the factual situation altered at the trial, even without a motion of the State Prosecutor.

Exclusion of public

Article 496

(1) A minor shall always be tried *in camera*.

(2) The Panel may allow the main trial to be attended by persons professionally concerned with the welfare and development of minors or with combating juvenile delinquency, as well as scientists.

(3) In the course of the trial, except for the State Prosecutor, defence attorney and representatives of the guardian authority, the Panel may order that all or some of the persons present be removed from the session.

(4) The Panel may order that the minor be temporarily removed from the session during the presentation of certain evidence or the presentation of arguments by the parties.

Temporary housing of a minor

Article 497

In the course of the proceedings, the judge for juveniles or the Panel for juveniles may render a decision on a temporary housing of the minor (Article 487) or may vacate the previous decision rendered thereof.

Scheduling a trial or a Panel session

Article 498

(1) The judge for juveniles shall be bound to schedule the trial or the Panel session within a term of eight days from the day of receiving the motion of the State Prosecutor or from the day of closing of the pre-trial proceedings (Article 492) or from the day when at the session it was decided to hold the trial. For any extension of this term, the judge for juveniles must obtain permission of the President of the Court.

(2) The trial shall be postponed or recessed only in exceptional cases. The judge for juveniles shall notify the President of the Court of each continuance or recess of the trial and present reasons which caused a continuance or recess.

(3) The judge for juveniles shall be bound to issue a verdict in writing or a ruling within a term of three days from the day it was announced.

Pronouncement of punishments and corrective measures

Article 499

(1) When deciding whether to impose a punishment or a corrective measure on a minor, the Panel for juveniles shall not be bound by motion of the State Prosecutor, but if the juvenile proceedings are conducted without the motion of the State Prosecutor or if he has desisted from prosecution, the Panel may not pronounce a punishment but may only apply a corrective measure.

(2) The Panel shall discontinue the proceedings by a ruling in the cases when the Court pursuant to Article 362, Items 2 or 3 of the present Code render a verdict rejecting the charge or a verdict of acquittal (Article 363), as well as when the Panel establishes that it would not be purposeful to pronounce punishment or to impose corrective measure against the minor.

(3) The Panel shall also pronounce a corrective measure against the minor. The pronouncement of this ruling shall only state the measure to be applied, but the minor shall not be found guilty for the criminal offence he has been charged with. The statement of reasons of the ruling shall contain a description of the offence and the circumstances which justify the application of the corrective measure.

(4) The verdict by which a punishment is imposed on the minor shall be rendered in a form specified in Article 364 of the present Code.

(5) If the Panel for juveniles establishes that a Panel for juveniles of the higher Court is competent to try the minor, it shall render a ruling on the transfer of the case to that Court.

Decision on costs and a claim under property law

Article 500

(1) The Court may render a decision ordering the minor to pay the costs of the criminal proceedings and to meet a claim under property law only if it pronounces a punishment against a minor. If a corrective measure is applied against the minor, the costs of the proceedings shall be paid from budget funds, and the injured party shall be directed to assert a claim under property law in a civil proceedings.

(2) If the minor has an income or property, the Court may order him to pay the costs of the proceedings and to meet a claim under property law even if the corrective measure is applied against him.

6. LEGAL REMEDIES

Appeal against a verdict and a ruling

Article 501

(1) All persons entitled to right to appeal against a verdict (Article 372) may file an appeal against the verdict pronouncing a punishment on the minor, the ruling pronouncing a corrective measure and the ruling on discontinuance of the proceedings (Article 499, Paragraph 2) within a term of eight days from the day the verdict or the ruling is served.

(2) The defence attorney, the State Prosecutor, the spouse of the minor, his linear relative in blood, adoptive parent, guardian, brother, sister and foster parent may file an appeal in favour of the minor even against his will.

(3) If the Court in agreement with a minor's parents and after interrogation of the minor does not decide otherwise, an appeal filed against the ruling imposing a corrective measure to be served in an institution, shall stay its execution.

(4) The minor shall be summoned for the session of the appellate Panel (Article 383), only if the Chair of the Panel or the Panel finds that his presence is useful.

Decisions on an appeal

Article 502

(1) The appellate Panel may revise the first instance decision by pronouncing more severe punishment on the minor only if this has been proposed in the appeal.

(2) If a punishment of the juvenile imprisonment or an institutional measure is not pronounced on the minor by the first instance decision, the appellate Panel may pronounce such a punishment or a measure only upon holding a trial. The punishment of juvenile imprisonment for a longer term or a more severe institutional measure than that imposed by the decision at the first instance may be imposed at the session of the appellate Panel, as well.

Request for protection of legality

Article 503

A request for the protection of legality may be submitted if law has been violated by the Court's decision as well as if a punishment or a corrective measure has been incorrectly applied against the minor.

Reopening of the proceedings

Article 504

The provisions related to retrial concerning the proceedings completed by a final verdict shall accordingly be applied regarding reopening concerning the proceedings that have been completed by a final ruling on application of a corrective measure.

7. SUPERVISION OF THE COURT OVER EXECUTION OF MEASURES

Report on a minor's behaviour

Article 505

(1) The administration of the institution in which the corrective measure is being executed against the minor shall be bound every six month to submit a report on his behaviour to the Court that pronounced the measure. The judge for juveniles of that Court may visit minors placed in the institution, as well.

(2) The judge for juveniles may through a juvenile welfare authority obtain information regarding the execution of other corrective measures, or may order an expert (social worker, teacher of the handicapped etc.) if available at the Court to do so.

8. DISCONTINUANCE OF EXECUTION AND AMENDMENT OF THE DECISION ON CORRECTIVE MEASURES

Article 506

(1) When the conditions provided by the law for amending a decision on a corrective measure are met, the decision thereof shall be rendered by the first instance Court that rendered a ruling on the corrective measure if it establishes that it is necessary to do so or upon a motion of the State Prosecutor, the administrator of the institution or the juvenile welfare authority conferred supervision over the minor.

(2) Before rendering a decision, the Court shall hear the State Prosecutor, the minor, his parents or legal guardian or other persons, and shall obtain necessary reports from the institution in which the minor is serving the institutional measure, from the juvenile welfare authority or other authorities and institutions, as well.

(3) The decision on discontinuance of the implementation of the corrective measure shall be rendered pursuant to Paragraphs 1 and 2 of this Article, as well.

(4) The Panel for juveniles shall render a decision on discontinuance or amendment of the corrective measure.

Chapter XXX

SPECIAL REGULATIONS ON PROCEEDINGS FOR CRIMINAL OFFENCES COMMITTED IN AN ORGANIZED MANNER

General provisions

Article 507

(1) The provisions of this Chapter comprise special rules for the criminal prosecution of perpetrators of criminal offences committed in an organized manner (hereinafter referred to as: the organized crime), as well as for the proceedings of seizure of objects and forfeiture of property gain and the proceedings of international cooperation in revealing and prosecuting of perpetrators of criminal offences of organized crime.

(2) If provisions of this Chapter regarding the cases referred to in Paragraph 1 of this Article do not contain provisions on particular matter, other provisions of the present Code shall be applied accordingly.

(3) Provisions of this Chapter shall be applied in cases where there is a reasonable suspicion that offence that has been committed has been the result of organized acting of more than two persons whose aim has been to commit serious criminal offences in order to gain a certain benefit or power.

(4) At least three conditions have to be fulfilled for the existence of an organized crime offence, apart from the conditions referred to in Paragraph 3 of this Article. These conditions are the following: that every member of the criminal organization has been given in advance an assignment or a role; that activities of the criminal organization have been planned for a longer period or unlimited period; that activities of the organization have been based on implementation of certain rules of internal control and discipline of its members; that activities of the organization have been planned and performed in international proportions; that violence and intimidation have been applied in performing their activities or are likely to be applied; that operations have been conducted through a political, economic and business structures; that money laundering or illegal acquisition of gain takes place; that there is an influence of the criminal organization or its part upon a legislative authorities, media, executive or judiciary authorities or other social and economic factors.

Urgency of proceedings

Article 508

Persons acting in an official capacity who participate in the criminal proceedings regarding criminal offences of organized crime shall be obliged to act in an urgent manner.

Official secret

Article 509

(1) Data on the pre-investigating and investigating proceedings involving criminal offences of organized crime shall be deemed to be an official secret. Besides the official authorities, these data may not be revealed either by other participants in those proceedings who come across them. A person acting in an official capacity in charge of the proceedings shall be bound to inform the participants to the proceedings of their obligation to keep the official secret.

(2) Data on the pre-investigating regarding criminal offences of organized crime may be disclosed only on the grounds of a written approval of the competent State Prosecutor.

(3) Data on the investigating proceedings may be disclosed only on the grounds of a written approval of the investigative judge with a previously obtained approval of the State Prosecutor.

Adjudication in a judicial Panel composed of professional judges

Article 510

In the proceedings regarding the criminal offences of organized crime the first instance Panel shall be composed of three judges, while the second instance Panel shall be composed of five judges.

Witness collaborator

Article 511

(1) The State Prosecutor may suggest to the Court to examine a member of the criminal organization as a witness (hereinafter referred to as: the witness collaborator) against whom criminal charges have been brought or the criminal proceedings have bee instituted for an organized crime offence, provided that:

- his statement and testimony are likely to help to a larger extent in regards to proving the criminal offence in question and culpability of perpetrators or in regards to revealing, proving and preventing other criminal offences of the criminal organization,

- implication of his testimony as to proving these criminal offences and culpability of other perpetrators is prevail over the harmful consequences of the criminal offence he has been charged with.

(2) The State Prosecutor may submit the proposal referred to in Paragraph 1 of this Article by the end of the trial, and such a proposal must contain all the facts and data on the basis of which the Court shall render a ruling on establishment of the status of a witness collaborator.

Warning to the witness collaborator

Article 512

(1) Before submitting a proposal, the State Prosecutor shall warn the witness collaborator regarding the obligations referred to in Article 101, Paragraph 2 and Article 105 of the present Code. The witness collaborator may not refer to the convenience of being released from the obligation to testify referred to in Article 97 of the present Code and the obligation to answer to certain questions referred to in Article 99 of the present Code.

(2) The State Prosecutor shall enter into the records, signed also by the witness collaborator, the warning referred to in Paragraph 1 of this Article, answers of the witness collaborator and his statement that he shall report everything he knows and that he shall not remain silent about anything. If the witness collaborator does not speak the language in the official use in the Court, translation of the records shall be provided into the language of the witness who shall then sign the records. The records shall be submitted with the proposal to the Court referred to in Article 511 of the present Code.

(3) If the defendant is detained, and the State Prosecutor finds that there are grounds to propose that the defendant be a witness collaborator, the Court will empower the State Prosecutor to establish a contact with the defendant, in order to perform the actions referred to in Paragraphs 1 and 2 of this Article.

(4) Witness collaborator may not be a person against whom there is a reasonable suspicion that he is the organizer or leader of a criminal group.

Deciding on the proposal by the State Prosecutor

Article 513

(1) The Panel referred to in Article 24, Paragraph 6 of the present Code shall decide on the proposal submitted by the State Prosecutor referred to in Article 511 of the present Code during investigation and until the beginning of the trial, and at the trial - the Panel before which the trial is held.

(2) The State Prosecutor, person proposed to be a witness collaborator and his defence attorney shall be invited to attend the session of the Panel to decide whether prerequisites are met to render the ruling referred to in Article 512 of the present Code. The session shall be held *in camera.* Statements made at this session shall not be used in the criminal proceedings against the witness collaborator as evidence on the grounds of which he may be convicted.

(3) The State Prosecutor may file an appeal against the decision of the Panel referred to in Paragraph 1 of this Article by which the proposal of the State Prosecutor has been rejected, within 48 hours from the receipt thereof. The second instance Court shall render a decision on the appeal within three days from receipt of the appeal and files from the first instance Court.

(4) When the proposal by the State Prosecutor is satisfied, the Panel shall order that records and official notes regarding the previous statements made by the witness collaborator in the capacity of a suspect and defendant be separated from the files and those statements shall not be used as evidence in the criminal proceedings, save in the cases referred to in Article 515 of the present Code.

(5) If the defendant is detained, and the Panel decides pursuant to Paragraph 4 of this Article, it shall render a ruling on termination of detention.

Ruling on acknowledgement of witness collaborator

Article 514

(1) If after deliberation held pursuant to Article 513 of the present Code it is established that all prerequisites are met referred to in Article 511 of the present Code, the Panel shall render a ruling by which the suspect or defendant is acknowledged as a witness collaborator.

(2) The ruling shall state the following: a statement that the criminal proceedings shall not be instituted or continued against the witness collaborator; description of the act that constitute the elements of the definition of the criminal offence, the statutory title of the criminal offence, to which prohibition of institution or continuation of criminal proceedings are related, kind and description of collaboration with the witness collaborator and conditions under which the ruling may be annulled.

(3) Ruling referred to in Paragraph 1 of this Article shall be delivered to the State Prosecutor, witness collaborator and his defence attorney.

Barring the criminal prosecution

Article 515

(1) Witness collaborator who has made a statement before the Court pursuant to the provisions of Article 512, Paragraphs 1 and 2 of the present Code may not be prosecuted for the criminal offence of organized crime for which the criminal proceedings are being conducted.

(2) When the Court state in its ruling that it has been entered into records that the witness collaborator has made a statement in accordance with of Article 512, Paragraph 2 of the present Code, the State Prosecutor shall dismiss the criminal report or refrain from prosecution of the witness collaborator at latest until the completion of the trial being conducted against other members of the criminal organization, and the Court shall render a verdict by which the charges against the witness collaborator are rejected.

(3) In the case referred to in Paragraph 2 of this Article, provisions of Article 59 of the present Code shall not be applied.

Annulment of the decision

Article 516

(1) If the witness collaborator fails to comply with obligations referred to in Article 512, Paragraphs 1 and 2 of the present Code, or if he commits a new criminal offence of organized crime before completion of the proceedings, the State Prosecutor shall propose that the ruling referred to in Article 513, Paragraph 1 of the present Code be annulled and shall continue the prosecution for the existing and institute the criminal proceedings for a new criminal offence.

(2) If during the proceedings a previous criminal offence committed by the witness collaborator is revealed, the State Prosecutor shall proceed in accordance with the provisions of Article 511 of the present Code.

Exclusion of public

Article 517

(1) Unless the Panel, upon a proposal by the State Prosecutor and the consent of the witness, decides otherwise, examination of the witness collaborator shall be held *in camera.*

(2) Prior to the decision referred to in Paragraph 1 of this Article, the Chair of the Panel shall, in the presence of the defence attorney, inform the witness collaborator of the State Prosecutor's proposal and of his right to be examined *in camera*. The statement made by the witness collaborator concerning his examination with the exclusion of public, shall be entered into records.

Inadmissible declaration of guilt

Article 518

No one shall be found guilty solely on the ground of evidence obtained by the testimony of a witness collaborator.

Inadmissible grounds for decision

Article 519

Statements and announcements collected by the Prosecutor in the pre-investigating proceedings may be used as evidence in the criminal proceedings, but decision may not be grounded solely on such evidence.

Obligation to submit data

Article 520

(1) State Prosecutor may request that the competent state authorities, banking or other financial institutions make an inspection of business activities of certain persons and to submit to him documentation and data that may be used as evidence of the criminal offence or property gained by commission of the criminal offence, as well as information on suspicious money transactions referred to in the Convention on laundering, searching, seizure and confiscation of gain obtained by criminal activities.

(2) Under the conditions referred to in Paragraph 1 of this Article, the State Prosecutor may issue an order by which a competent authority or institution shall be requested to suspend temporarily the payment and issuance of suspicious money, securities or objects for the period of three months but no longer than six months

(3) In the order referred to in Paragraphs 1 and 2 of this Article, the State Prosecutor shall state more explicitly the contents of measure or action he requested to be undertaken.

Proceeding by police authorities

Article 521

(1) If the police authorities in the pre-investigating proceedings undertake a measure concerning a criminal offence of organized crime, they will immediately inform the competent State Prosecutor about it.

(2) State Prosecutor may request from police authorities to undertake certain measures or actions within the specified time limit and inform him about it.

(3) The Police authorities shall be bound to explain any failure to undertake a specific measure or action and to comply with the specified time limits set.

Providing special protection

Article 522

State Prosecutor may order that a special protection be provided to a certain witness, witness collaborator and members of their close family pursuant to Article 108, Paragraph 3 of the present Code.

Temporary confiscation of objects and property gain

Article 523

(1) If there are grounds for suspicion or a reasonable suspicion that a criminal offence of organized crime has been committed, the Court may order a measure of temporary confiscation of objects and property gain regardless of the conditions set forth in the provisions of Articles 81 to 87 and Articles 538 to 545 of the present Code.

(2) Unless otherwise prescribed by the provisions of this Chapter, in the proceedings of temporary confiscation of objects and property gain referred to in Article 1 of the present Code, provisions of the Law in Executive Proceedings as well as relevant provisions of the present Code shall be applied accordingly.

Contents of request for pronouncement of measures and deciding on request

Article 524

(1) Investigative judge or the Panel before which the trial is held shall rule on the measures of temporary confiscation of objects and property gain. The Panel referred to in Article 24, Paragraph 6 of the present Code or a higher Court shall decide on appeals filed against those rulings.

(2) The State Prosecutor shall institute the proceedings for pronouncement of measures referred to in Paragraph 1 of this Article.

(3) The request of the State Prosecutor referred to in Paragraph 2 of this Article shall contain the following: a short description of the criminal offence and its statutory title, a description of objects or property gain obtained by the commission of organized crime, data on the person who possesses those objects or property gains, reasons for suspicion that the objects an property gains originate from the criminal offence and reasons to believe that by the time criminal proceedings are completed it would be significantly difficult or hardly possible to confiscate objects or property gain gained by the commission of offence of the organized crime.

Contents of ruling and appeal against ruling

Article 525

(1) In the ruling on the pronouncement of the measure of temporary confiscation of objects or property gain, the Court shall specify the value and type of objects and property gain, as well as the time period for which they shall be confiscated.

(2) In the ruling referred to in Paragraph 1 of this Article, the Court may decide that the measure does not imply objects and property gains which should be excluded by implementation of rules on the good faith gainers.

(3) Appeal against the ruling referred to in Paragraph 1 of this Article shall not stay its execution.

(4) The Court shall deliver the ruling referred to in Paragraph 1 of this Article, together with a statement of reasons, to the persons against whom the measure shall be imposed, as well as to the banking or other institutions or organizations authorised to carry out the payment transactions, and if necessary to other persons and state authorities.

Scheduling a hearing and decisions against appeal

Article 526

(1) When an appeal against the ruling on pronouncement of the measure of temporary confiscation of objects or property gain is filed, the Panel referred to in Article 24, Paragraph 6 or the Panel of a higher Court shall schedule a hearing and summon the person to whom ruling is related, as well as his defence attorney and the State Prosecutor.

(2) The hearing referred to in Paragraph 1 of this Article shall be held within a term of 30 days from the date of filing an appeal. All summoned persons shall be examined at the hearing. Their failure to appear shall not preclude holding of the hearing.

(3) The Panel may revoke the measure referred to in Paragraph 1 of this Article if a legitimate origin of objects and property gain is proved on the basis of authentic documents and if there are reasons to believe that objects and property gain do not originate from a criminal offences of organized crime and that they are not obtained by concealing of the origin and grounds of their acquisition.

Duration of measure

Article 527

(1) The measure of temporary confiscation of objects and property gain may last only until the completion of the criminal proceedings before the first instance Court.

(2) If the measure referred to in Paragraph 1 of this Article is pronounced prior to the institution of the criminal proceedings, it shall be revoked if the criminal proceedings regarding the criminal offence of organized crime be not instituted within a term of three months of the date of rendering the ruling by which the measure is imposed.

(3) The measure may be revoked before the lapse of time referred to in Paragraphs 1 and 2 of this Article, by virtue of an office or upon request of the State Prosecutor or a person concerned if it is proved that the measure is not indispensable or justifiable taking into consideration the gravity of the criminal offence, financial situation of the person the measure is imposed on or the situation of persons he is legally bound to support, as well as circumstances of the case indicating that confiscation of objects or property gain shall not be difficult or hardly possible until the closing of the criminal proceedings.

Jurisdiction as to execution of measure

Article 528

(1) The measure of temporary confiscation of objects or property gain shall be executed by the Court competent for implementation of execution in accordance with the Law on Executive Proceedings.

(2) The Court referred to in Paragraph 1 of this Article shall be competent to decide on disputes arising from the execution.

(3) On the date of opening a bankruptcy proceedings against the person who is in possession of objects and property gain that are temporarily confiscated, the right to file a third-party claim in respect to these objects and property gain shall be due.

Right to administration

Article 529

The competent state authority in the Republic shall, during the period the measure is in force, be in charge of administration of property and assets temporarily confiscated, in accordance with special regulations.

Part Three

SPECIAL PROCEEDINGS

Chapter XXXI

PROCEEDINGS FOR IMPLEMENTATION OF SECURITY MEASURES, CONFISCATION OF PROPERTY GAIN, AND REVOCATION OF A SUSPENDED SENTENCE

1. PROCEEDINGS FOR IMPLEMENTATION OF SECURITY MEASURES

Motion for imposition of measures and grounds for measures

Article 530

(1) If a defendant commits a criminal offence in the state of mental incapacity, the State Prosecutor shall submit to the Court a motion to impose a security measure of compulsory psychiatrist treatment and confinement in a medical institution or motion for compulsory psychiatrist treatment of the perpetrator out of the institution, if the conditions for the imposition of such a measure set forth in Articles 69 and 70 of the Criminal Code are met.

(2) In this case, the defendant who is in detention shall not be released but shall be temporarily placed in an appropriate medical institution or in some other suitable premises until the completion of the proceedings for implementation of the security measures.

(3) After the motion referred to in Paragraph 1 of this Article is submitted, the defendant must have a defence attorney.

Holding trial for imposition of measures

Article 531

(1) The competent Court to decide at first instance shall, upon holding the trial, decide on the application of security measures of compulsory psychiatrist treatment and confinement in a medical institution or compulsory psychiatrist treatment out of the institution.

(2) Along with the persons who must be summoned for the trial, physiatrists from the medical institution entrusted to testify on mental capacity of the defendant shall also be summoned as expert witnesses. The defendant shall be summoned if he is capable to be present at the trial. The spouse of the defendant, his parents or legal guardian shall be notified of the trial, and with respect to the circumstances, other close relatives as well.

(3) If the Court, upon the presentation of evidence, determines that the defendant has committed a certain criminal offence and that at the time of the perpetration of the criminal offence he was not mentally capable, it shall decide, after interrogation of the summoned persons and upon findings and opinions of the expert witnesses, whether to impose on the defendant a security measures of compulsory psychiatrist treatment and confinement in a medical institution or compulsory psychiatrist treatment out of the institution. When deciding which of these security measures to impose, the Court shall not be bound by the motion of the State Prosecutor.

(4) If the Court determines that the defendant was not mentally incapable when he has committed the offence, it shall discontinue the proceedings for the implementation of security measures.

(5) Except the injured party, all other persons entitled to file an appeal against a verdict (Article 372) are entitled to file an appeal against a ruling of the Court within a term of eight days from the day the ruling is served.

Imposition of measures after amendment of the charges at the trial

Article 532

The security measures referred to in Article 530, Paragraph 1 of this Act may also be imposed when, at the trial, the State Prosecutor amends the indictment or the indictment proposal by submitting a motion for the imposition of those measures.

Imposition of punishment and security measures

Article 533

If the Court pronounces punishment on a person who has committed a criminal offence in the state of diminished mental capacity, it shall impose a security measure of compulsory psychiatric treatment and confinement in a medical institution by the same verdict, provided that it establishes that statutory conditions are met (Article 68 of the Criminal Code).

Delivering final verdict to a competent Court to decide on deprivation of civil capacity

Article 534

The final verdict by which the security measure of compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment out of the institution is imposed (Articles 531 and 533), shall be submitted to a competent Court to decide on a deprivation of civil capacity. The juvenile welfare authority shall also be notified of the decision.

Examination of justifiability of imposed measures

Article 535

(1) Every nine months, the Court that pronounced security measure shall, by virtue of an office, review whether the treatment and confinement in a medical institution are still necessary. The medical institution, the juvenile welfare authority and person against whom the security measure is imposed may submit a motion to that Court to take decision on discontinuance of the measure. After the State Prosecutor is heard, the Court shall discontinue the application of this measure and order the perpetrator be released, provided that it establishes, upon the opinion of a physician, that a necessity for the treatment and confinement in a medical institution cease to exist, or it may order his compulsory treatment out of the institution. If the motion for discontinuance of the measure is rejected, it may be submitted again after six months from the day the decision has been rendered.

(2) When the perpetrator with diminished mental capacity is being released from the institution in which he spent less time than a term of the imprisonment he has been sentenced to, the Court shall by a ruling decide whether this person is to serve the rest of the punishment or shall be released on parole. Against the perpetrator who is released on parole, the security measure of compulsory psychiatric treatment out of the institution may be imposed if the statutory conditions are met.

(3) After the State Prosecutor is being heard and by virtue of an office or upon a motion of the medical institution in which the defendant is treated or should have been treated, the Court may, impose on the perpetrator against whom the security measure of compulsory psychiatric treatment out of the institution is applied, the security measure of compulsory psychiatric treatment and confinement in a medical institution, provided that it establishes that the perpetrator fails to undergo the treatment or discontinues it by a self-will, or that notwithstanding the treatment he is still pose a danger for other people so that his compulsory treatment and confinement in a medical institution is needed. If necessary, before it renders a decision, the Court shall also obtain an opinion of the physician and interrogate the defendant, provided that his condition allow for such interrogation.

(4) The Court shall render the decisions referred to in previous paragraphs of this Article at the Panel session (Article 24, Paragraph 6). The State Prosecutor and the defence attorney shall be notified of the Panel session. Before rendering a decision, if necessary and possible, the perpetrator shall be interrogated.

Proceedings in case of motion to impose security measures of compulsory treatment of alcohol and drug addiction

Article 536

(1) After it obtains the findings and opinion of an expert witness, the Court shall decide on the application of the security measure of compulsory treatment of alcohol and drug addiction. The expert witness shall also give a statement regarding possibilities for the defendant’s treatment.

(2) If the compulsory treatment out of the institution is ordered against the perpetrator by a suspended sentence, and if he fails to undergo the treatment or discontinues it by his own decision, after having heard the State Prosecutor and the perpetrator, the Court may by virtue of an office or upon a motion of the institution in which the perpetrator is treated or should have been treated, order the revocation of the suspended sentence or the enforcement of the security measure of compulsory treatment for alcohol and drug addicts in a medical institution or other specialised institution. If deems necessary, before rendering a decision, the Court shall obtain an opinion of the physician.

Seizure of objects

Article 537

(1) Objects which must be seized according to the Criminal Code shall also be seized when the criminal proceedings are not terminated with a guilty verdict, provided that this is required by considerations of public safety or the protection of moral.

(2) The authority before which proceedings have been held at the time it was terminated or discontinued shall render a separate ruling thereon.

(3) The ruling on the seizure of objects referred to in Paragraph 1 of this Article shall also be rendered by the Court when it has failed to include such a decision in guilty verdict.

(4) A certified copy of the decision on the seizure of objects shall be delivered to the owner of the object if he is known.

(5) The owner of the object shall be entitled to file an appeal against the decision referred to in Paragraphs 2 and 3 of this Article if he considers that there is no legal ground for the seizure of the object. If the ruling referred to in Paragraph 2 of this Article is not rendered by the Court, the Panel (Article 24, Paragraph 6) of the competent Court to try at first instance shall decide upon the appeal.

2. PROCEEDINGS FOR CONFISCATION OF PROPERTY GAIN

Article 538

(1) Property gain obtained as a result of the commission of a criminal offence shall be established as such in the criminal proceedings by virtue of an office.

(2) In the course of proceedings, the Court and other authorities before which criminal proceedings are conducted shall be bound to obtain evidence and investigate circumstances that are relevant to the determination of property gain.

(3) If the injured party submits a claim under property law regarding the recovery of an object acquired in consequence of the commission of a criminal offence or regarding the amount which corresponds to the value of the object, the property gain shall only be determined for the part which exceeds the claim under property law.

Summoning and interrogation of persons before rendering a decision on seizure of objects

Article 539

(1) When the confiscation of property gain obtained as result of the commission of a criminal offence from other persons is being considered (Article 112, Paragraph 2 and Article 113, Paragraph 2 of the Criminal Code), the person to whom the property gain was transferred or the person for whom it was obtained, or the representative of the legal entity shall be summoned for interrogation in the pre-trial proceedings and at the trial. The summons shall state that the proceedings will be held even in his absence.

(2) The representative of the legal entity shall be heard at the trial after the interrogation of the defendant. The Court shall proceed in the same manner regarding other person referred to in Paragraph 1 of this Article, unless he is summoned as a witness.

(3) The person to whom the property gain was transferred or the person for whom it was obtained, or the representative of the legal entity, shall be entitled to propose presentation of evidence concerning the determination of the property gain and, upon the authorization of the Chair of the Panel, to pose questions to the defendant, witnesses and expert witnesses.

(4) The exclusion of the public from the trial shall not relate to the person to whom the property gain was transferred or for whom it was obtained or the representative of the legal entity.

(5) If the Court establishes that the confiscation of property gain comes into consideration while the trial is in progress, it shall recess the trial and summon the person to whom the property gain was transferred or for whom it was obtained, or the representative of the legal entity.

Amount of property gain

Article 540

The amount of property gain shall be fixed at the discretion of the Court if its assessment entails disproportionate difficulties or a significant delay in the proceedings.

Provisional security measures

Article 541

When the confiscation of property gain is under consideration, the Court shall, by virtue of an office and pursuant to the provisions of executive proceedings, order provisional security measures be enforced. In such a case, the provisions of Article 216, Paragraphs 2 and 3 of the present Code shall apply accordingly.

Confiscation of property gain

Article 542

(1) The Court may order the confiscation of property gain by a guilty verdict, by a warrant pronouncing sentence issued without the trial, by a ruling on a judicial admonition or by a ruling on the application of a corrective measure, as well as by a ruling on the imposition of a security measure of compulsory psychiatric treatment and confinement in a medical institution, or compulsory psychiatric treatment out of the institution (Articles 69 and 70 of the Criminal Code).

(2) In the pronunciation of the verdict or the ruling the Court shall state which object is to be seized or which sum confiscated.

(3) A certified copy of the verdict or the ruling shall also be delivered to the person to whom the property gain was transferred or for whom it was obtained, as well as to the representative of the legal entity, provided that the Court orders the confiscation of property gain from such a person or a legal entity.

Request for retrial regarding the measures of confiscation of property gain

Article 543

The person referred to in Article 542 of the present Code may submit a request for retrial regarding the decision on the confiscation of property gain.

Appropriate application of provisions regulating an appeal

Article 544

The provisions of Article 373, Paragraphs 2 and 3 and Articles 381 and 385 of the present Code shall be applied accordingly in regard to an appeal filed against the decision on the confiscation of property gain.

Appropriate application of other provisions of the present Code

Article 545

Unless otherwise provided by the provisions of this Chapter, in regard with the implementation of security measures or the confiscation of property gain, other provisions of the present Code shall be applied accordingly.

3. PROCEEDINGS FOR REVOCATION OF A SUSPENDED SENTENCE

Article 546

(1) When the Court orders in a suspended sentence that the punishment will be imposed if the convicted person does not restore property gain, does not make compensation for damages or does not fulfil other obligations, and if the convicted person fails to fulfil these obligations within a specified term, the Court which tried the case at first instance shall conduct the proceedings for the revocation of the suspended sentence upon a motion of the authorised Prosecutor or by virtue of an office.

(2) The judge assigned to the case shall interrogate the convicted person, if he is available, and conduct the necessary inquiries for the purpose of establishing facts and obtaining evidence important for the decision.

(3) Thereafter, the Chair of the Panel shall schedule a session of the Panel and notify the Prosecutor, the convicted person and the injured party thereof. If the duly notified parties and the injured party fail to appear, this shall not prevent the session of the Panel from being held.

(4) If the Court establishes that the convicted person has failed to fulfil an obligation ordered by the verdict, the Court shall render a verdict revoking the suspended sentence and ordering the punishment determined in the suspended sentence to be imposed, or ordering a new term within which the obligation must be fulfilled, or discharging the convicted person of obligation or replacing the obligation with other obligation. If the Court determines that there are no grounds for rendering any of these decisions, it shall by a ruling discontinue the proceedings for the revocation of the suspended sentence.

Chapter XXXII

PROCEEDINGS FOR REHABILITATION, FOR TERMINATION OF LEGAL CONSEQUENCES OF CONVICTION AND SECURITY MEASURES

Ruling on rehabilitation

Article 547

(1) When, under the law, rehabilitation occurs by the lapse of a certain period of time and provided that the convicted person within that period does not commit a new criminal offence (Article 119, Paragraph 2, Items 1 to 4 of the Criminal Code), the authority in charge of keeping criminal records shall by virtue of an office render a ruling on rehabilitation.

(2) Before rendering a ruling on rehabilitation, the necessary inquires shall be conducted and, in particular, data shall be obtained on whether the criminal proceedings are pending against the convicted person for any new criminal offence committed before the lapse of the term prescribed to expunge the conviction.

Request of the convicted for rehabilitation

Article 548

(1) If the competent authority does not render a ruling on the rehabilitation, the convicted person may request that a determination be made that the rehabilitation occurs by force of law.

(2) If the competent authority fails to comply with the request of the convicted person within a term of thirty days from the day of receipt of the request, the convicted person may request that the Court which rendered the verdict at first instance render a ruling on the rehabilitation.

(3) The Court shall decide on the request of the convicted person having obtained the opinion of the State Prosecutor.

Rehabilitation of the person on whom a suspended sentenced is imposed

Article 549

If the suspended sentence is not revoked even one year after the lapse of the probation period, the Court which tried the case at first instance shall render a ruling on the rehabilitation. This ruling shall be served on the convicted person, the State Prosecutor and the authority in charge of keeping the criminal records.

Rehabilitation upon the Court's decision

Article 550

(1) The proceedings for the rehabilitation upon the Court's decision (Articles 120 and 121 of the Criminal Code), shall be instituted upon a petition of the convicted person.

(2) The petition shall be submitted to the Court that tried the case at first instance.

(3) The judge assigned to the case shall inquire whether the term prescribed by law has elapsed, and thereafter he shall conduct the necessary inquiries, determine the facts indicated by the petitioner and obtain evidence on all circumstances important for the decision.

(4) The Court may request records on behaviour of the convicted person from the police authority in whose region he has resided after serving the sentence, and may request such records from the administration of the institution in which the convicted person has served the sentence.

(5) After the inquiries are made and the State Prosecutor heard, the judge shall submit the files with a substantiated motion to the Panel of the Court which tried the case at first instance.

(6) The petitioner and the State Prosecutor may file an appeal against decision of the Court on the rehabilitation rendered upon the petition.

(7) If the Court rejects the petition because the convicted person's behaviour has not been good enough to allow for the rehabilitation, the convicted person may again submit a petition one year from the day the ruling on the rejection of the petition has become final.

Prohibition of disclosing the data on rehabilitation and expunged legal consequences of conviction

Article 551

The certificate of criminal records issued to the citizens must not make reference to the decision on rehabilitation and termination of legal consequences of the conviction.

Discontinuance of security measures

Article 552

(1) The petition for discontinuance of the security measure on prohibition to engage in a certain profession, activity or duty or the security measure on prohibition to drive a motor vehicle or a petition for discontinuance of the legal consequence of conviction regarding the acquirement of certain rights (Articles 78 and 122 of the Criminal Code) shall be submitted to the Court which tried the case at first instance.

(2) The judge assigned to the case shall inquire whether the term prescribed by law has expired, and thereafter he shall conduct the necessary inquiries, determine the facts indicated by the petitioner and obtain evidence on all circumstances important for the decision.

(3) The Court may request a records on behaviour of the convicted person from the police authority in whose region he has resided after the principal sentence is served, remitted or purged by the statute of limitation, and may request such a records from the institution in which the convicted person has served the sentence.

(4) After the inquiries are made and after obtaining the opinion of the State Prosecutor, the judge shall submit the files with a substantiated motion to the Panel of its Court (Article 24, Paragraph 6).

New petition for discontinuance of security measures

Article 553

When the Court rejects the petition for discontinuance of the security measures or the legal consequences of conviction, a new appeal may be submitted one year from the day the ruling on the rejection of the previous petition become final.

Chapter XXXIII

PROCEEDINGS FOR COMPENSATION OF DAMAGES, REHABILITATION AND EXERCISE OF OTHER RIGHTS OF UNJUSTIFIABLY CONVICTED PERSONS OR PERSONS ILLEGALLY DEPRIVED OF LIBERTY

Compensation of damages for unjustified conviction

Article 554

(1) The right to compensation of damages for unjustifiable conviction shall have person against whom a criminal sanction was imposed by a final decision or who was pronounced guilty but whose punishment was remitted, and subsequently, upon an

extraordinary legal remedy, the new proceedings was finally discontinued or the convicted person was acquitted by a final verdict or the charges were rejected, except in the following cases:

1) if the proceedings was discontinued or the charge was rejected because in the new proceedings the subsidiary Prosecutor or private Prosecutor desisted from prosecution, provided that a desistance occurred on the grounds of an agreement with the defendant;

2) if in the new proceedings the charge was dismissed because the Court lacked jurisdiction and the authorised Prosecutor has initiated prosecution before the Competent Court.

(2) A convicted person i.e. an acquitted person, shall not be entitled to compensation of damages if he brought about criminal proceedings by making false confession in the pre-trial proceedings or otherwise, or brought about his conviction through such statements during the proceedings, unless he was forced to do so.

(3) In the case of conviction for offences committed in concurrence, the right to compensation of damages may also relate to respective criminal offences in regard to which the conditions for approving compensation are met.

Statute of limitations for compensation of damages

Article 555

(1) The statute of limitation of the right to compensation of damages shall be applicable three years from the day the verdict at first instance for acquittal or verdict rejecting the charge became final or from the day the ruling at first instance discontinuing the proceedings became final, and if a higher Court decided on an appeal - from the day of receipt of the decision of the higher Court.

(2) Before bringing a civil action for the compensation of damages to the Court, the injured party shall be bound to file his claim to the competent authority for the purpose of agreeing on existence of damages and the kind and amount of compensation

(3) In the case referred to in Article 554, Paragraph, Item 2 of the present Code, a claim may be decided on the request only if the authorised Prosecutor has not initiated prosecution before the Competent Court within a term of three months from the day of receipt of the final verdict. If, after this term has elapsed, the authorised Prosecutor initiates prosecution before the Competent Court, the proceedings for compensation of damages shall be recessed until the completion120 of the criminal proceedings.

Civil action for compensation of damages

Article 556

(1) If the request for the compensation of damages is not accepted or if an administrative authority does not decide on it within a term of three months from the day the request is submitted, the injured party may bring a civil action for the compensation of damages with the Competent Court. If a settlement was only reached on one part of the claim, the injured party may bring a civil action regarding the rest of the claim.

(2) While the proceedings referred to in Paragraph 1 of this Article is pending, the statute of limitation referred to in Article 555, Paragraph 1 of the present Code shall not run.

(3) A civil action for the compensation of damages shall be filed against the Republic of Montenegro.

Inheritance of the right to compensation of damages

Article 557

(1) Heirs shall inherit only the right of the injured party to compensation of damage to property. If the injured party has already filed a claim, the heirs may resume the proceedings within the limits of the claim for compensation of property damage already filed.

(2) Pursuant to the rules on the compensation of damages specified by the Law on Obligations, after the death of the injured party, his heirs may resume the proceedings for the compensation of damages or institute the proceedings provided that the injured party died before the statute of limitation applies and provided that the injured party did not waive this claim.

Persons entitled to compensation of damages

Article 558

(1) The following persons shall be entitled to compensation of damages:

1) a person who has been detained but criminal proceedings have not been instituted or have been discontinued by a final ruling or who was acquitted by a final verdict or the charge was rejected;

2) a person who served the sentence of imprisonment and upon the request for retrial, request for the protection of legality or request for a review of the legality of final verdict, and was pronounced a shorter imprisonment sentence in new criminal proceedings than the sentence he had served or non-custodial criminal sanction was pronounced or if he was pronounced guilty but the punishment was remitted;

3) a person who, due to an error or the unlawful action of the state authorities, was deprived of liberty without legal grounds, or kept in detention or penitentiary institution for a longer period of time than he should have been;

4) a person who spent in detention longer term than he was convicted of.

(2) A person deprived of liberty pursuant to Article 232 of the present Code without legal ground shall be entitled to compensation of damages if detention was not ordered against him or if the time during which he was deprived of liberty was not included in the punishment for the criminal offence or misdemeanour.

(3) A person who caused his deprivation of liberty, i.e. detention, by illicit acts is not entitled to compensation of damages. In the cases referred to in Paragraph, Item 1 of this Article, a person is not entitled to compensation of damages, despite the existence of circumstances referred to in Article 554, Paragraph 1, Items 1 and 2, or if the proceedings was discontinued pursuant to Article 222 of the present Code.

(4) In the cases referred to in Paragraphs 1 and 2 of this Article the provisions of this Chapter shall apply accordingly.

Announcement on the decision declaring that the previous conviction was unjustified

Article 559

(1) If the case related to unjustifiable conviction or illegal deprivation of liberty of some person is announced in the media and the reputation of that person has been damaged thereby, the Court shall, upon his request, publish in newspapers or through other media the announcement on a decision declaring that the previous conviction was unjust or that the deprivation of liberty was groundless. If the case is not announced in the media, such an announcement shall, upon this person's request, be delivered to a state authority, local government authority, enterprise, other legal entity or his employer, and if this is necessary for his rehabilitation – to a social or other organization. After the death of convicted person, his spouse, children, parents, brothers and sisters shall be entitled to submit such a request.

(2) The request referred to in Paragraph 1 of this Article may also be submitted if the claim for compensation of damages has not been submitted.

(3) Regardless of the conditions referred to in Article 554 of the present Code, the request referred to in Paragraph 1 of this Article may also be submitted when the legal qualification of the offence has been altered upon filing an extraordinary legal remedy if, due to the legal qualification in the original verdict, the reputation of the convicted person was seriously damaged.

(4) The request referred to in Paragraphs 1 to 3 of this Article shall be submitted to the Court that tried the case at first instance within a term of six months (Article 555, paragraph 1). The Panel (Article 24, Paragraph 6) shall decide on the request. In deciding on the request, the provisions of Article 554, Paragraphs 2 and 3 and Article 558, Paragraph 3 of the present Code shall apply accordingly.

Annulment of entry of an unjustified conviction into the criminal register

Article 560

The Court which tried the case at first instance shall by virtue of an office render a ruling which annuls the entry of an unjustified conviction into the criminal records. The ruling shall be delivered to an authority in charge keeping criminal records. Data from the criminal records concerning the annulled entry shall not be available to anyone.

Ban to use data

Article 561

A person allowed inspecting and copy files (Article 176) concerning unjustifiable conviction or deprivation of liberty may not use data from such files in a manner that would be detrimental to the rehabilitation of the person against whom the criminal proceedings have been conducted. The President of the Court shall remind the person allowed to inspect the files thereon, and this shall be noted in the file and signed by this person.

Acknowledgement of the rights related to labour relations

Article 562

(1) A person whose employment or social security coverage was terminated due to an unjustifiable conviction or illegal deprivation of liberty shall have the same years of employment service or years of social security coverage recognized as if he had been employed during the time of the loss of years of service due to an unjustifiable conviction or illegal deprivation of liberty. A period of unemployment shall also be included in the years of service or social security if caused by the unjustifiable conviction or unlawful deprivation of liberty but not by the guilt of this person.

(2) Whenever deciding on a right affected by the length of years of service or years of social security, the authority or institution having jurisdiction shall take into account the years of service or social security recognized by the provision of Paragraph 1 of this Article.

(3) If the authority or institution referred to in Paragraph 2 of this Article does not take into account the years of service or social security recognized by the provision of Paragraph 1 of this Article, the injured party may request that the Court referred to in Article 556, Paragraph 1 of the present Code determines that recognition of such a period occurred by force of law. A civil action shall be brought against the authority or institution which contests the recognition of years of service or social security and against the Republic.

(4) Upon the request of the authority or institution competent for the realization of the right referred to in Paragraph 2 of the present Code, the specified contribution shall be paid out from budget funds (Article 556, Paragraph 3) for the period of time to which the person is entitled pursuant to Paragraph 1 of this Article.

(5) The years of social security recognized pursuant to the provision of Paragraph 1 of this Article shall be fully included in the years of pension.

Chapter XXXIV

PROCEEDINGS FOR THE ISSUANCE OF A WARRANTS AND NOTIFICATIONS

Searching address

Article 563

If permanent or temporary residence of the defendant is unknown, when it is necessary pursuant to the provisions of the present Code, the Court or the State Prosecutor shall request the police authority to search for the defendant and inform them on his address.

Requirements for issuance of a warrant

Article 564

(1) The issuance of a warrants may be ordered if the defendant against whom the criminal proceedings are instituted for a criminal offence that is prosecuted *ex officio* and punishable by imprisonment for a term of three years or a more severe punishment is on the run, provided that order for his apprehension or a decision specifying his detention has been issued.

(2) The issuance of a warrant shall be ordered by the Court before which the criminal proceedings are pending.

(3) The issuance of a warrant shall also be ordered if the defendant escapes from the institution where he is serving a sentence regardless of the range of the punishment, or from the institution where an institutional measure related to deprivation of liberty is applied against him. In this case, the order shall be issued by the head of the institution.

(4) The order of the Court or the head of the institution for the issuance of a warrant shall be delivered to the police authorities for the purpose of its execution.

Issuance of notification

Article 565

(1) When information concerning particular objects in relation to a criminal offence are required or if these objects need to be located, and in particular if this is necessary to determine the identity of unknown corpse, the issuance of a notification shall be ordered, containing a request that the required information be communicated to the authority conducting the proceedings.

(2) The police authority may publish photographs of corpses and missing persons if there are grounds for suspicion that the death or disappearance of such persons has been bring about by commission of criminal offence.

Withdrawal of the order on the issuance of warrant or notification

Article 566

The authority which ordered the issuance of a warrant or an announcement shall be bound to withdraw it immediately after the wanted person or the object has been found, or after the statute of limitation for institution of the prosecution or for the execution of punishment applies, or when there are other reasons indicating that warrant or the notification is no longer necessary.

Issuance of a warrant and a notification

Article 567

(1) The warrant and the notification shall be issued by the authority located within the territory of the state authority before which criminal proceedings are pending or in the territory where the institution is located from which the person serving a sentence or is subject to an institutional measure has escaped.

(2) Media may be used in order to inform the public of the warrant or public announcement.

(3) If it is likely that the person in regard to whom a warrant has been issued is abroad, an international warrant may also be issued, provided that the approval of the Ministry of Justice is obtained.

(4) Upon a request of a foreign authority, a warrant may also be issued in regard to the person for whom there is suspicion that he is in Serbia and Montenegro, provided that the request contains the statement that his extradition shall be requested in the case he is found.

Chapter XXXV

TRANSITIONAL AND FINAL PROVISIONS

Article 568

If due to shortage of judges, the Court which decides at first instance cannot constitute the Panel prescribed in Article 24, Paragraph 6 of the present Code, a Panel of the immediately superior Court shall deal with the matters within the jurisdiction of this Panel.

Article 569

If on the day the present Code enters into force any term is still running, such a term shall be counted pursuant to the provisions of the present Code, except if the term was longer pursuant to the provisions of the previous regulations.

Article 570

(1) If, before the day of the entry of the present Code into force, a decision was rendered against which, according to the provisions of the act that was previously in force, a legal remedy may be filed, and if such a decision is not yet delivered, or if the term for submitting the legal remedy is still running, or the legal remedy was filed but the decision is not yet rendered, the provisions of the Criminal Proceedings Code (Official Gazette of SFRY, No. 4/77, 14/85, 74/87, 57/89 and 3/90 and Official Gazette of FRY, No. 27/92 and 24/94) shall be applied regarding the right to legal remedy and the proceedings upon filing legal remedy.

(2) If on the day the present Code enters into force undecided cases upon the legal remedy for which the Federal Court had jurisdiction to decide are pending before the Supreme Court, such legal remedy shall be decided by the Supreme Court.

Article 571

The competent authorities shall pass by-laws specified in the present Code within a six months period of time from the day the present Code enters into force.

Article 572

Provisions of Article 152 of the present Code on the terms of duration of detention shall be applied in the proceedings that commence after entry into force of the present Code.

Article 573

Upon entry into force of the present Code [1], the Law on Criminal Procedure (Official Gazette of SFRY, No. 4/77, 14/85, 74/87, 57/89 and 3/90 and Official Gazette of FRY, No. 27/92 and 24/94) shall cease to be valid, with the exception of the provisions of Chapters XXX and XXXI that shall be applied until the adoption of a special law.

Article 574

The present Code shall enter into force on the eighth day after being published in the "Official Gazette of the Republic of Montenegro", and its implementation shall commence three months after its entry into force.

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[1] Correction – Official Gazette no. 7/2004: Words "upon entry into force" shall be replaced by: 'on the day of the commencement of implementation'.