LAW ON AMENDMENTS TO THE CRIMINAL PROCEDURE CODE
(Official Gazette of the Republic of Serbia, Nos. 32/2013)

Article 1.

In the Criminal Procedure Code (Official Gazette of the Republic of Serbia, No. 72/11, 101/11 and 121/12), Article 73, paragraph 2 is amended as follows:

„In proceedings for criminal offenses punishable by a term of imprisonment of up to five years, the defense counsel may be substituted by a legal intern."

Article 2.

In Article 162. paragraph 1. item 2) after the words: "(Article 185. paragraphs 2. and 3. of the Criminal Code)," the following words are added: „robbery (Article 206. paragraphs 2. and 3. of the Criminal Code)," after the words: „money laundering (Article 231. paragraphs 1. to 4. of the Criminal Code)," the following words are added: „ abuse of the position of responsible person (Article 234 of the Criminal Code), abuse in connection with public procurement (Article 234a of the Criminal Code)," and the words: „taking hostages (Article 392. of the Criminal Code)" are replaced by the words: "public incitement to the commission of terrorist crimes (Article 391a of the Criminal Code), recruitment and training for terrorist crimes (Article 391b of the Criminal Code), use of a deadly device (Article 391v of the Criminal Code), destruction and damaging of a nuclear facility (Article 391g of the Criminal Code), putting in jeopardy persons under international protection (Article 392 of the Criminal Code), terrorist association (Article 393a of the Criminal Code)."

Article 3.

After Article 425. the heading and text of Article 425a are added and they read as follows:

"Detention after Sentencing in the First Instance

Article 425a

When the panel renders a judgment and sentences a defendant who has been released pending trial to a term of imprisonment of less than five years, it will impose detention on him if the reasons referred to in Article 211 paragraph 1 items 1) and 3) of this Code exist, and release the defendant who has been kept in detention if the reasons due to which detention has been ordered have ceased to exist.

The panel will always revoke detention and order that the defendant be released in case of his acquittal, or if the indictment was rejected, or if he was pronounced guilty but released from serving the sentence, or if he was only fined, sentenced to community service or seizure of his driving license, or if he received a judicial admonition or was sentenced to probation, or if he has already served his sentence because of the calculation of detention in his sentence, or if the indictment was dismissed (Art 416), except in the case of a lack of subject-matter jurisdiction.

Provision of paragraph 1 of this Article will apply to the ordering or revocation of detention after announcement of the judgment and until the time it becomes final. This decision is rendered by the first instance court panel (Article 21 paragraph 4).

The opinion of the public prosecutor shall be obtained before the issuance of a ruling ordering or revoking detention in cases referred to in paragraphs 1 and 3 of this Article, when the proceedings are conducted at his request.

If the defendant is already in detention, and the panel finds that the reasons due to which detention was ordered still exist, or that the reason referred to in Article 211 paragraph 1 item 4) of this Code exists, the panel will issue a separate ruling on extending detention. The panel issues a separate ruling also when detention should be imposed or revoked. An appeal against the decision does not stay the enforcement of the ruling.

Detention that has been ordered or extended in accordance with the provisions of paragraphs 1 to 5 of this Article may last until the defendant, or the convicted person, has been sent to the institution where he will serve his sentence, but not longer than the time to which he was sentenced in the first instance judgment."

Article 4.

This Law enters into force on the eighth day from the date of its publication in the *Official Gazette of the Republic of Serbia*, except Article 2. which will enter into force on April 15, 2013.

LAW ON AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

(Official Gazette of the Republic of Serbia, Nos. 121/2012)

Article 1.

In the Criminal Procedure Code (Official Gazette of the Republic of Serbia, Nos. 72/2011, 101/2011) in Article 604, paragraph 2, the words "January 15, 2013" are replaced with "October 1, 2013".

Article 2.

In Article 608, the words "January 15, 2013" are replaced with "October 1, 2013".

Article 3.

This Law enters into force on the eighth day from the date of its publication in the *Official Gazette of the Republic of Serbia.*

THE CRIMINAL PROCEDURE CODE
(Official Gazette of RS, no 72/2011 and 101/2011)

Part One

GENERAL PART

Chapter I

BASIC PROVISIONS

Subject-Matter of the Code

Article 1

This Code establishes rules whose aim is to prevent the conviction of any innocent person, and enabling a perpetrator of a criminal offence to be sanctioned in accordance with conditions envisaged by the Criminal Code, based on lawfully and fairly conducted proceedings.
This Code also establishes rules on conditional release, rehabilitation, termination of security measures and legal consequences of conviction, exercise of the rights of persons wrongly deprived of liberty and wrongly convicted confiscation of proceeds from crime, resolution of restitution claims and issuance of wanted circulars and notices.

Definitions of Terms

Article 2

Certain terms used in this Code have the following meaning:

1) a suspect is a person against whom a competent public authority has undertaken a certain act stipulated under this Code in the pre-investigation proceedings due to existence of grounds of suspicion that he committed a criminal offence, and a person against whom an investigation is being conducted;

2) a defendant is a person against whom an indictment has been filed but not yet confirmed, or against whom a motion to indict, a private prosecution or a motion to pronounce a security measure of compulsory psychiatric treatment has been submitted, and the date of the trial or hearing for pronouncing a criminal sanction has not yet been set, but also a term used as a general term for a suspect, an accused person, a defendant and a convicted person;

3) an accused is a person against whom an indictment has been confirmed and a person against whom a trial date or a hearing has been scheduled in summary criminal proceedings for pronouncing a criminal sanction based on a motion to indict, a private prosecution or a motion to pronounce a security measure of compulsory psychiatric treatment;

4) a convicted person is a person determined by a final decision of a court of law to have committed a criminal offence or an unlawful offence determined by law as a criminal offence, unless he is regarded as not convicted under the provisions of the Criminal Code;

5) a prosecutor is a public prosecutor, private prosecutor and subsidiary prosecutor;

6) a public prosecutor is the Republic Public Prosecutor, an appellate public prosecutor, a higher public prosecutor, a basic public prosecutor, a public prosecutor of special jurisdiction, deputy public prosecutors and persons authorised by law to deputise for the same;

7) a private prosecutor is a person who has submitted a private prosecution in connection with a criminal offence prosecutable by law by private prosecution;

8) a subsidiary prosecutor is a person who has taken over prosecution from a public prosecutor;

9) a party is the prosecutor and the defendant;

10) charges are an indictment, a motion to indict, a private prosecution and a motion to pronounce a security measure, but also a term serving as a general expression for an act by the prosecutor containing the elements of the criminal offence or unlawful offence determined by law as a criminal offence;

11) an injured party is a person whose personal or property right has been violated or jeopardised by a criminal offence;

12) a representative of the injured party is the legal representative and proxy of the injured party, subsidiary prosecutor and private prosecutor;

13) the police is an authority of the Ministry of Internal Affairs, an officer of that authority and an officer of a corresponding international authority who, in accordance with international law and this Code, undertakes actions on the territory of the Republic of Serbia, its vessel or aircraft, as well as other public authority with police competences, where provided for by this Code or other statute;

14) proceedings are pre-investigation proceedings and criminal proceedings;

15) an authority conducting proceedings is the public prosecutor, the court or other public authority before which the proceedings are being conducted;

16) the competent bar association is the bar association with which a lawyer is registered;

17) grounds for suspicion is a set of facts which indirectly show that a certain person is the perpetrator of a criminal offence;

18) grounded suspicion is a set of facts that directly show that a certain person is the perpetrator of a criminal offence;

19) justified suspicion is a set of facts which directly substantiate grounded suspicion and justify the filing of an indictment;

20) certainty is a conclusion about indubitable existence or non-existence of facts, based on objective standards of logic;

21) basic examination is the questioning of witnesses, expert witnesses or other persons being questioned by a party, defence counsel or an injured party who proposed the questioning;

22) cross-examination is the questioning of witnesses, expert witnesses or other persons being questioned by an opposing party or the injured party, following the basic examination;

23) deprivation of liberty is an arrest, keeping in custody, prohibition of leaving an abode, detention, and a stay in an institution which is under this Code counted into detention;

24) common law marriage is a permanent personal association regulated by law, as well as an association in which a child was born to the parties irrespective of the duration of the association;

25) other permanent personal association is an association of two persons which by its duration and mutual obligations has the properties of family life;

26) an instrument is every object or computer data suitable for or designated as proof of a fact being determined in proceedings (Article 83 paragraphs 1 and 2);

27) optical recording is photographic, cinematographic, television or other recording by a technical device which makes a video recording or a video and audio recording;

28) audio recording is the recording of speech and other sound effects by technical devices which make an audio recording;

29) an electronic record is audio, video or graphical data in electronic (digital) form;

30) an electronic address is a set of characters, letters, numbers and signals intended for determining the origin of a connection;

31) an electronic document is a set of data which is defined as an electronic document under the law regulating electronic documents;

32) an electronic signature is the set of data which is defined as an electronic signature under the law regulating the electronic signature item 2) ;

33) an organised criminal group is a group of three or more persons which exists for a certain period of time and acts in collusion with the aim of committing one or more criminal offences punishable by a term of imprisonment of four years or more, for the purpose of direct or indirect acquisition of pecuniary or other gain;

34) organised crime represents the commission of criminal offences by an organised criminal group or its members;

35) the criminal code is the Criminal Code and other law of the Republic of Serbia containing provisions of criminal law;

36) a transaction is the treatment of property defined as a transaction under the law that regulates the prevention of money laundering item 5) ;

37) data record is the record of data on the parties, business relations and transactions maintained by obligors under the law that regulates the prevention of money laundering;

38) classified data is secret data and foreign secret data defined in accordance with the law that regulates secrecy items 1) of data.

Where in the provisions of this Code several authorities of proceedings authorised to undertake the same procedural action are specified, the authorisation shall refer only to that authority of proceedings which is competent to undertake it in the appropriate part of the proceedings.

Presumption of Innocence

Article 3

Everyone is considered innocent until proven guilty by a final decision of the court.

Public and other authorities and organisations, the information media, associations and public figures are required to adhere to the rules referred to in paragraph 1 of this Article, as well as to abstain from violating the rights of the defendant with their public statements on the defendant, the criminal offence and the proceedings.

Ne bis in idem

Article 4

No one may be prosecuted in connection with a criminal offence for which he has been acquitted or convicted by a final decision of a court, or for which the indictment has been denied by a final decision, or where the proceedings have been discontinued by a final decision.

A final court decision may not be revised to the detriment of the defendant.

Undertaking and Initiating Criminal Prosecution

Article 5

The public prosecutor is the authorised prosecutor for criminal offences which are prosecuted *ex officio*, and the private prosecutor is the authorised prosecutor for criminal offences prosecutable by private prosecution.

Criminal prosecution is initiated:

1) by the first action of the public prosecutor, or authorised police personnel based on a request of a public prosecutor, undertaken in accordance with this Code for the purpose of investigating the grounds for suspicion that a criminal offence has been committed or that a certain person has committed a criminal offence;

2) by the submission of private prosecution.

Where a public prosecutor declares that he is abandoning prosecution (Article 52), he may be replaced by a subsidiary prosecutor, under the conditions prescribed by this Code.

Legality of Criminal Prosecution

Article 6

The public prosecutor is required to conduct criminal prosecution where there are grounds for suspicion that a criminal offence has been committed or that a certain person has committed a criminal offence prosecutable *ex officio*.

For certain criminal offences, where so prescribed by law, the public prosecutor may undertake criminal prosecution only on a motion by the injured party.

By exception from paragraphs 1 and 2 of this Article, the public prosecutor may decide to defer criminal prosecution or not to undertake it, under conditions regulated by this Code.

The public prosecutor and the police are required to impartially clear up suspicion about the criminal offence in connection with which they are conducting official activities, and to examine with equal attention both the facts against the defendant and the facts in his favour.

Initiating of Criminal Proceedings

Article 7

Criminal proceedings are instituted:

1) by the issuance of an order on undertaking an investigation (Article 296);

2) by the confirmation of an indictment not preceded by an investigation (Article 341 paragraph 1.);

3) by the issuance of a ruling ordering detention before submitting a motion to indict in summary proceedings (Article 498 paragraph 2.);

4) by scheduling a main hearing or a hearing for pronouncing a criminal sanction in summary proceedings (Articles 504 paragraph 1, 514 paragraph 1, and 515 paragraph 1);

5) by scheduling a main hearing in proceedings for pronouncing a security measure of compulsory psychiatric treatment (Article 523.).

Advice of Rights

Article 8

The authority conducting proceedings is required to advise the defendant or other participant in the proceedings, in accordance with the provisions of this Code, about the rights to which they are entitled.

Where a defendant or other participant in the proceedings might omit to perform an action or fail to exercise a right due to ignorance, the authority conducting proceedings is required to caution him about the consequences of the omission.

Prohibition of Torture, Inhumane Treatment and Coercion

Article 9

Any use of torture, inhumane and degrading treatment, force, threats, coercion, deception, medical procedures and other means affecting the free will or extorting a confession or other statement or action by a defendant or other participant in proceedings is prohibited and punishable.

Restrictions of the Liberties and Rights of Defendants in Proceedings

Article 10

Before the issuance of a final decision pronouncing a criminal sanction, the rights and liberties of a defendant may be restricted only to the extent necessary for realising the aim of the proceedings, under the conditions prescribed by this Code.

The fact that an investigation is being undertaken against a person shall be communicated by the public prosecutor only to a court upon its request, to another public prosecutor or the police, and to the defendant, defence counsel or the injured party only where the requirements prescribed by Article 297 of this Code are fulfilled.

Where it is prescribed that institution of criminal proceedings results in the restriction of certain liberties and rights, the restriction has effect from:

1) the confirmation of the indictment;

2) the scheduling of a trial or hearing for pronouncing a criminal sanction in summary proceedings;

3) the scheduling of a trial in proceedings for pronouncing a security measure of compulsory psychiatric treatment.

The court shall within three days of issuing its decision notify *ex officio* the authority or employer where the defendant is employed of the circumstances referred to in paragraph 3 items

1) to 3) of this Article or the placement of the defendant in detention. The court will communicate these facts to the defendant and his defence counsel at their request.

The Language and Script Used in Proceedings

Article 11

The Serbian language and the Cyrillic script are in official use in proceedings, and other languages and scripts are in official use in accordance with the Constitution and the law.

Proceedings are conducted in the language and script in official use in the authority conducting proceedings, in accordance with the law.

Parties, witnesses and other persons participating in proceedings are entitled to use their own languages and scripts during proceedings, and, where proceedings are not being conducted in their language and unless, after being advised on their right to translation, they declare that they know the language in which the proceedings are being conducted and that they waive their right to translation, the interpretation of what they or others are saying, as well as translation of instruments and other written evidence, are secured and paid from budget funds.

Translation and interpretation is entrusted to a translator.

Authorisation to Pronounce Criminal Sanctions

Article 12

Only a competent court may pronounce a criminal sanction to the perpetrator of a criminal offence in criminal proceedings instituted and conducted in accordance with this Code.

The Defendant's Presence in Court

Article 13

A defendant accessible to the court may be tried only in his presence, except where *in absentia* trials are exceptionally allowed under this Code.

A criminal sanction may not be pronounced to a defendant who is accessible to the court if that defendant has not been allowed to be heard and to defend himself.

Trial within a Reasonable Time

Article 14

Courts are required to conduct criminal proceedings without delays and to prevent all abuses of law aimed at delaying proceedings.

Criminal proceedings against a defendant who is in detention are urgent.

Evidentiary Actions

Article 15

Evidence is collected and examined in accordance with this Code.

The burden of proof is on the prosecutor.

The court examines evidence upon motions by the parties.

The court may order a party to propose additional evidence, or, exceptionally, order such evidence to be examined, if it finds that the evidence that has been examined is contradictory or unclear, and finds such action necessary in order to comprehensively examine the subject of the evidentiary action.

Assessing Evidence and Finding of Fact

Article 16

Court decisions may not be based on evidence which is, directly or indirectly, in itself or by the manner in which it was obtained, in contravention of the Constitution, this Code, other statute or universally accepted rules of international law and ratified international treaties, except in court proceedings in connection with the obtaining of such evidence.

The court is required to make an impartial assessment of the evidence examined and based on the evidence to establish with equal care both the facts against the defendant and the facts which are in his favour.

The court assesses the evidence examined which is of importance for rendering a decision at its discretion.

The court may base its judgment, or ruling corresponding to a judgment, only on facts of whose certainty it is convinced.

In case it has any doubts about the facts on which the conduct of criminal proceedings depends, the existence of the elements of a criminal offence, or application of another provision of criminal law, in its judgment, or ruling corresponding to a judgment, the court rules in favour of the defendant.

Preliminary Legal Question

Article 17

Where the application of criminal law depends on a legal question for whose resolution another court in a different type of proceeding or another public authority is competent, the criminal court may resolve also that question itself, in accordance with provisions pertaining to evidentiary actions in criminal proceedings.

The resolution of the legal question referred to in paragraph 1 of this Article has effect only in criminal proceedings in which the question was discussed.

If a decision on the legal question referred to in paragraph 1 of this Article has already been rendered by a court in a different type of proceedings or another public authority, the criminal court is not bound by that decision in respect of assessing whether a certain criminal offence has been committed.

Right to Compensation for Damages

Article 18

A person wrongfully deprived of liberty or convicted of a criminal offence is entitled to compensation of damages by the state and other rights prescribed by law.

Duty to Assist a Participant in Proceedings

Article 19

All public authorities are required to render necessary assistance to the public prosecutor, courts or other authorities conducting proceedings, as well as to the defendant and his defence attorney at their request with the aim of collecting evidence.

Discontinuance of Proceedings due to the Death of the Defendant

Article 20

If it is established during criminal proceedings that the defendant has died, the authority conducting proceedings issues a ruling discontinuing the proceedings.

Chapter II

JURISDICTION OF COURTS

1. Composition of Courts

Composition of Trial Panels

Article 21

First-instance courts adjudicate in panels consisting of:
1) one judge and two lay judges for criminal offences punishable by a term of imprisonment exceeding eight years, up to twenty years;
2) two judges and three lay judges for criminal offences punishable by a term of imprisonment of from thirty to forty years;
3) three judges, for criminal offences determined by separate laws as being within the jurisdiction of a prosecutor's office of special jurisdiction.

Second-instance courts adjudicate in panels consisting of:
1) three judges, unless this Code stipulates otherwise;
2) five judges, for criminal offences punishable by a term of imprisonment of from thirty to forty years and for criminal offences determined by separate laws as being within the jurisdiction of a prosecutor's office of special jurisdiction.

Third-instance courts adjudicate in panels consisting of:
1) three judges, unless this Code stipulates otherwise;

2) five judges, for criminal offences punishable by a term of imprisonment of from thirty to forty years and for criminal offences determined by separate laws as being within the jurisdiction of a prosecutor's office of special jurisdiction .

Courts sit in three-judge panels when deciding on appeals on judicial rulings for the preliminary proceedings and other rulings in accordance with this Code, issuing decisions outside trials, and initiating proposals in cases specified by this Code or other statute.

The Supreme Court of Cassation decides on requests for protecting legality in panels consisting of five judges.

Unless specified otherwise by this Code, higher-instance courts also decide in panels consisting of three judges in cases not referred to in paragraphs 1 to 5 of this Article.

Judges

Article 22

An individual judge adjudicates in the first instance for criminal offences punishable by a fine or a term of imprisonment of up to eight years.

In the pre-investigation proceedings and the investigation, the judge for the preliminary proceedings adjudicates in cases specified in this Code.

The president of the court and the president of the panel decide in cases specified by this Code.

The judge for the execution of criminal sanctions decides in the procedure of executing criminal sanctions and other cases specified in this Law.

2. Territorial Jurisdiction

Location where the Crime was Committed

Article 23

As a rule, the court within whose territory the criminal offence was committed or attempted has territorial jurisdiction.

Private prosecution may be instituted with a court within whose territory the defendant has permanent or temporary residence.

Where a criminal offence was committed or attempted within the territories of several courts or at the boundary between their territories, or where it is not certain in which territory it was committed or attempted, the court in whose territory criminal proceedings were first instituted has jurisdiction.

Defendant's Temporary or Permanent Residence

Article 24

If the place where the crime was committed is not known, or if this place lies outside the territory of the Republic of Serbia, the court within whose territory the defendant has temporary or permanent residence has jurisdiction.

Where proceedings have been instituted in accordance with paragraph 1 of this Article, the court which has initiated proceedings will retain jurisdiction even if the place where the crime was committed becomes known.

Defendant's Place of Birth, Arrest or Surrender

Article 25

If the place where the crime was committed or the temporary or permanent residence of the defendant are not known, or both lie outside the territory of the Republic of Serbia, the court whose territorial jurisdiction includes the place of birth of the defendant, or the place where he is arrested, or where he surrenders himself, has jurisdiction.

Criminal Offences Committed on Domestic Vessels or Aircraft

Article 26

If a criminal offence is committed on a domestic vessel or a domestic aircraft while at a domestic port or airport, the court within whose territory the port or airport is located has jurisdiction, and in other cases the court which has jurisdiction will be the one within whose territory the home port of the vessel or airport of the aircraft is located, or within whose territory the domestic port or airport where the vessel or aircraft makes its first stop is located.

Criminal Offences Committed through Media

Article 27

If a criminal offence was committed through the media, the court on whose territory lies the seat of the media has jurisdiction, and where the location of its seat is not known or if it is abroad, the court within whose territory the information was published has jurisdiction.

Where the author of the information is accountable under the law, the court where the author has temporary or permanent residence has jurisdiction, or the court of the location where the event to which the information relates took place.

The provisions of paragraphs 1 and 2 of this Article apply *mutatis mutandis* to criminal offences committed by way of other printed materials.

Criminal Offences Committed in the Republic of Serbia and Abroad

Article 28

If a person has committed criminal offences both in the Republic of Serbia and abroad, the court which is competent for the criminal offence committed in the Republic of Serbia has jurisdiction.

Designated Jurisdiction

Article 29

If under the provisions of this Code it is not possible to establish which court has territorial jurisdiction, the Supreme Court of Cassation will designate one among all courts with substance matter jurisdiction to conduct criminal proceedings.

3. Joinder and Severance of Criminal Proceedings

Joinder of Criminal Proceedings

Article 30

As a rule, joint criminal proceedings shall be conducted:

1) where the same person is accused of committing several criminal offences;

2) where several persons are accused in connection with the same criminal offence;

3) against accomplices, concealers, persons who assisted the perpetrator after the commission of the criminal offence, as well as persons who failed to report the preparation of a criminal offence, commission of the criminal offence or the perpetrator;

4) where an injured party had simultaneously committed a criminal offence against the defendant.

Single criminal proceedings may also be conducted in the case where several persons are accused of several criminal offences, but only if there is a mutual link between the criminal offences committed, and where the same evidence exists.

Where a lower court has jurisdiction for some of the criminal offences referred to in paragraphs 1 и 2 of this Article and a higher court for others, the higher court has jurisdiction for conducting single criminal proceedings. Where courts of the same type have jurisdiction, the court in whose territory the proceedings were first instituted has jurisdiction (Article 7).

The court which is competent for conducting single criminal proceedings shall decide on joinder of criminal proceedings. A ruling ordering joinder of criminal proceedings and a ruling denying a motion for joining criminal proceedings is not appealable.

Severance of Criminal Proceedings

Article 31

Acting on a motion by the parties and defence counsel, or *ex officio*, the court which has jurisdiction under Article 30 of this Code may for the reasons of fairness, efficiency or other important reasons, by the conclusion of the trial, decide to sever criminal proceedings in connection with certain criminal offences or against certain defendants, and to complete them separately or transfer them to another competent court.

The ruling ordering severance of criminal proceedings or denying a motion for severing criminal proceedings is issued by the court after hearing the present prosecutor and defendant.

The ruling referred to in paragraph 2 of this Article is not appealable.

4. Transfer of Territorial Jurisdiction

Inability of Competent Court to Adjudicate

Article 32

If a competent court is for legal or material reasons unable to conduct criminal proceedings, it is required to notify thereof the immediately higher court, which will issue a ruling designating another court with substance matter jurisdiction in its territory.

The ruling referred to in paragraph 1 of this Article is not appealable.

Reasons of Purposefulness

Article 33

Acting on a motion by the judge for the preliminary proceedings, an individual judge or the president of a panel, the Supreme Court of Cassation may designate another court with the same substance matter jurisdiction to conduct the criminal proceedings, where it is obvious that this will facilitate the conduct of the proceedings, or if other important reasons exist.

5. Assessment and Conflict of Jurisdiction

Assessment of Jurisdiction

Article 34

The court is required to look after its substance matter and territorial jurisdiction, and as soon as it determines that it is not competent, to declare its lack of jurisdiction in a ruling and after the ruling becomes final, to refer the case to the court with the proper jurisdiction

If after a trial has been initiated the court determines that a lower court is competent, it will not refer the case to the lower court, but will complete the proceedings and render a decision itself.

After an indictment has been confirmed, a court may not declare lack of territorial jurisdiction, nor may parties in proceedings challenge the court's territorial jurisdiction.

Courts which lack territorial jurisdiction are required to conduct those activities in the proceedings for which there is a danger of postponement.

Where the ruling referred to in paragraph 1 of this Article orders the case to be referred to an immediately higher court, an appeal against the ruling will be decided jointly by the immediately higher court.

Conflict of Jurisdiction

Article 35

If a court to which a case has been referred as the court with the proper jurisdiction considers that the court that referred the case or another court has jurisdiction, it will initiate proceedings for resolving the conflict of jurisdiction.

Exceptionally from paragraph 1 of this Article, a procedure for resolving a conflict of jurisdiction may not be instituted where the decision on the grounds for an appeal against the ruling referred to in Article 34 paragraph 1 of this Code was issued by the court which was competent for deciding on conflicts of jurisdiction.

Resolution of Conflict of Jurisdiction

Article 36

A conflict of jurisdiction is resolved:
1) by the immediately higher common court, for courts between which there exists a conflict of jurisdiction;
2) by the appellate court, for conflicts of jurisdiction between special departments of the higher court in its territory, or between a special and another department of that higher court;
3) by the Supreme Court of Cassation, for conflicts of jurisdiction between special departments of the same appellate court, or a special department and another department of that appellate court.

Before rendering a decision on a conflict of jurisdiction, the court shall request the opinion of the public prosecutor upon whose request proceedings before that court or special department are being conducted.

In deciding on conflicts of jurisdiction, the Supreme Court of Cassation may *ex officio* issue a decision on transfer of territorial jurisdiction, if the requirements referred to in Article 33 of this Code are fulfilled.

Until conflict of jurisdiction between two courts is resolved, each of them is required to conduct procedural actions that cannot be postponed.
A ruling issued in connection with a conflict of jurisdiction is not appealable.

Chapter III

RECUSAL

Grounds for Recusal

Article 37

A judge or lay judge may not perform judicial duty in certain proceedings in the following cases:

1) where he was injured by the criminal offence;

2) where the judge is the spouse or person with whom he lives in a common law marriage or other permanent relationship or a relative by blood to any degree, or collaterally to the fourth degree, and by marriage to the second degree, or the defendant, defence counsel, the prosecutor, injured parties, their legal representatives or proxies;

3) where the judge is a foster-parent or foster-child, adopter or adoptee, guardian or ward of the defendant, his defence counsel, the prosecutor or injured party;

4) where in the same criminal proceedings the judge had acted as a judge for the preliminary proceedings, or had decided on confirming the indictment, or had participated in

rendering a decision on the merits of the charges which is being challenged through an appeal or extraordinary legal remedy, or had taken part in proceedings as a prosecutor, defence counsel, legal representative or proxy of an injured party or of the prosecutor, or was heard as a witness or an expert witness, unless specified otherwise by this Code.

A judge or lay judge may be recused in a certain case if there are circumstances which raise doubt as to his/her impartiality.

Actions to be taken by a Judge upon Discovery of Reasons for Recusal

Article 38

As soon as he learns of the existence of any of the grounds for his recusal (Article 37 paragraph 1), a judge or lay judge is required to suspend all work on the case and notify thereof the president of the court, who will issue a ruling on recusal of the judge and assign the case to another judge according to the roster.

Where a judge or lay judge believes that there are circumstances causing doubt about his impartiality (Article 37 paragraph 2), he will notify the president of the court thereof.

Recusal Motions

Article 39

Recusal may be sought by the parties and the defence counsel.

Motions for recusal of a judge or lay judge may be filed by the parties or the defence counsel prior to the commencement of the trial, and where they learn of grounds for recusal at a later date, they file such motions immediately upon becoming aware of those grounds.

The parties and defence counsel may request the recusal only of an individually named judge or lay judge acting in the proceedings.

A motion for recusal of a judge of a court deciding on an appeal may be filed by parties and the defence counsel through the appeal or in the response to an appeal.

The parties and defence counsel are required to substantiate in their motion the circumstances which led them to believe in the existence of any of the grounds for recusal provided by law. Grounds listed in earlier recusal motions which were denied may not be specified in a new recusal motion, unless in the case of filing of new evidence of which the filing party had not previously been aware.

Actions to be taken by a Judge upon Learning about a Recusal Motion

Article 40

If a judge or lay judge learns that a recusal motion against him has been submitted, he is required to suspend all work on the case immediately, and where recusal on the grounds of the existence of circumstances referred to in Article 37 paragraph 2 of this Code is concerned, he may, up until the issuance of a ruling on the motion, undertake only those actions for which there is a risk from postponement.

Deciding on Recusal Motions

Article 41

The president of the court rules on the recusal motion referred to in Article 39 of this Code.

Where the recusal is sought only for a president of the court, or for a president of the court and a judge or lay judge, the recusal ruling is rendered by the president of the immediately higher court, and where the recusal of the president of the Supreme Court of Cassation is sought, the ruling is rendered by a General session.

Before a ruling is issued on a recusal motion, statements are taken from the judge, lay judge, or president of the court, and other actions are to be taken as required.

Where actions have been taken in contravention of the provisions of Article 39 paragraphs 3 and 5 of this Code, the motion shall be denied in full or in part by a ruling of the president of the court, and if the motion refers to the president of the court – by that of the deputy president of the court. From the opening of trial, the aforementioned ruling is issued by a panel which may include the judge whose recusal is being sought.

A ruling denying a recusal motion may be challenged by a special appeal which is decided by the appellate court. Where such a ruling was issued after the indictment was filed it may be challenged only in the appeal against the judgment.

A ruling of the president of the Supreme Court of Cassation or the General session denying a recusal motion is not appealable.

A ruling denying or upholding a recusal motion is not appealable.

Analogous Application of Provisions on Recusal

Article 42

The provisions on the recusal of judges and lay judges apply accordingly to public prosecutors and persons authorised by law to deputise the public prosecutor in proceedings, record-keepers, translators, interpreters and other professionals, as well as expert witnesses, unless this Code specifies otherwise (Article 116).

Public prosecutors decide on motions for the recusal of persons authorised by law to deputise him in criminal proceedings. Motions for recusal of a public prosecutor are ruled on by the immediately superior public prosecutor. Motions to exclude the Republic Public Prosecutor shall be decided by the State Prosecutors Council upon obtaining an opinion from the Collegium of the Republic Public Prosecutor's Office.

Motions for recusal of record-keepers, translators, interpreters, professionals or expert witnesses are ruled on by the public prosecutor or the court.

Where authorised officers of the police perform evidentiary actions pursuant to this Code, motions for their recusal are ruled on by the public prosecutor. If a record-keeper participates in the performance of such actions, motions to recuse the record-keeper are ruled on by the police official performing the action.

Chapter IV

THE PUBLIC PROSECUTOR

Rights and Duties of the Public Prosecutor

Article 43

The basic right and the basic duty of the public prosecutor is to prosecute the perpetrators of criminal offences.

In the case of criminal offences prosecutable *ex officio,* the public prosecutor is authorised to:

1) manage pre-investigation proceedings;
2) decide on not undertaking or deferring criminal prosecution;
3) conduct investigations;
4) conclude plea agreements and agreements on giving testimony;
5) file and represent an indictment before a competent court;
6) abandon charges;
7) file appeals against court decisions which are not final and submit extraordinary legal remedies against final court decisions;
8) conduct other actions when specified by this Code.

Duty to Act upon a Public Prosecutor's Request

Article 44

All authorities participating in the pre-investigation proceedings are required to notify the competent public prosecutor of all actions taken with the aim of detecting a criminal offence and locating a suspect. The police and other public authorities responsible for discovering criminal offences are required to comply with every request of the competent public prosecutor.

Where the police or other public authority does not comply with a request of the public prosecutor referred to in paragraph 1 of this Article, the public prosecutor will immediately notify thereof the head of that authority, and may, if needed, also notify the competent minister, the Government or the competent working body of the National Assembly.

If within 24 hours of the time when the notification referred to in paragraph 2 of this Article was received the police or other public authority fails to comply with the request of the public prosecutor referred to in paragraph 1 of this Article, the public prosecutor may request the institution of disciplinary proceedings against the person who he believes is responsible for not complying with his request.

Public Prosecutor's Substance Matter Jurisdiction

Article 45

The substance matter jurisdiction of the public prosecutor is determined in accordance with the provisions of the law applicable to determination of the substance matter jurisdiction of courts, unless specified otherwise by law.

Public Prosecutor's Territorial Jurisdiction

Article 46

The public prosecutor's territorial jurisdiction is determined in accordance with the provisions of this Code applicable to determination of the territorial jurisdiction of the court before which the public prosecutor acts.

If a criminal offence was committed or attempted in the territory of various courts or on the boundary between such territories, or where is not clear where it was committed or attempted, the public prosecutor in whose territory the first action was taken to check whether there are grounds for suspicion that a person has committed a criminal offence shall have jurisdiction (Article 5 paragraph 2 item 1).

Conflicts of Jurisdiction between Public Prosecutors

Article 47

Conflicts of jurisdiction between public prosecutors are resolved by a common immediately superior public prosecutor.

Conflicts of jurisdiction between public prosecutors of special jurisdiction, or a public prosecutor of special jurisdiction and another public prosecutor, are resolved by the Republic Public Prosecutor.

Manner of Taking Actions

Article 48

Public prosecutors take actions in proceedings directly or through a deputy, and in proceedings in connection with criminal offences punishable by a term of imprisonment of up to five years also through prosecutorial associates, or in proceedings in connection with a criminal offence punishable by a term of imprisonment of up to eight years also through higher prosecutorial associates.

Procedural actions that cannot be postponed will also be taken by a public prosecutor who is not competent, but he must immediately notify the competent public prosecutor thereof.

Dismissing Charges

Article 49

A public prosecutor may dismiss charges:

1) from the confirmation of the indictment until the conclusion of the trial;

2) at a hearing before a second-instance court in accordance with Article 450 paragraph 5 of this Code.

Where the public prosecutor dismisses charges in accordance with paragraph 1 of this Article, the injured party is entitled to assume criminal prosecution (Article 52).

Chapter V

THE INJURED PARTY, THE SUBSIDIARY PROSECUTOR AND THE PRIVATE PROSECUTOR

1. Injured Party

Rights of the Injured Party

Article 50

The injured party is entitled to:

1) submit a motion and evidence for realising a restitution claim and a motion for interim measures for securing it;

2) present facts and propose evidence of importance for proving the claim;

3) retain a proxy from amongst attorneys;

4) examine the files and objects serving as evidence;

5) be notified about the dismissal of a criminal complaint or abandonment of criminal prosecution by the public prosecutor;

6) submit objections to the public prosecutor's decision not to conduct criminal prosecution or to abandon criminal prosecution;

7) be advised about the possibility of assuming criminal prosecution and representing the prosecution;

8) attend the preparatory hearing;

9) attend the trial and participate in examining evidence;

10) file an appeal against the decision on the costs of the criminal proceedings and the adjudicated restitution claim;

11) be notified about the outcome of the proceedings and be served the final judgment;

12) perform other actions where provided for by this Code.

The injured party may be denied the right to examine the case files and objects until he is questioned as a witness.

The public prosecutor and the court will inform the injured party of the rights referred to in paragraph 1 of this Article.

Objection of the Injured Party

Article 51

If in connection with a criminal offence prosecutable *ex officio* the public prosecutor dismisses a criminal complaint, discontinues the investigation or abandons criminal prosecution until the indictment is confirmed, he is required to notify the injured party thereof within eight days and to advise him that he is entitled to submit an objection to the immediately higher public prosecutor.

The injured party is entitled to submit an objection within eight days of receiving the notification and advice referred to in paragraph 1 of this Article. If the injured party has not been notified, he is entitled to submit an objection within three months of the date when the public

prosecutor dismissed the complaint, discontinued the investigation or abandoned criminal prosecution.

An immediately higher public prosecutor will within 15 days of receiving the objection referred to in paragraph 2 of this Article, deny or uphold the objection by a ruling against which an appeal or objection is not allowed. By the ruling upholding the objection, the public prosecutor issues a compulsory instruction to the competent public prosecutor to conduct or resume criminal prosecution.

Assumption of Criminal Prosecution by the Injured Party

Article 52

If after the indictment is confirmed the public prosecutor declares that he is dismissing charges, the court will ask the injured party whether he wishes to assume criminal prosecution and represent the prosecution. If the injured party is not present, the court will within eight days notify him that the public prosecutor dismissed the charges and advise him that he may declare if he wishes to assume criminal prosecution and represent the prosecution.

The injured party is required immediately, or within eight days of receiving the notice and advice referred to in paragraph 1 of this Article, to declare whether he wishes to assume criminal prosecution and represent the prosecution, and if he/she has not been notified - within three months from the day when the public prosecutor has stated that he is dismissing the charges

If the injured party declares that he is assuming criminal prosecution, the court will resume the trial or schedule a trial. In case the injured party does not declare himself within the time limit referred to in paragraph 2 of this Article or declares that he does not wish to assume criminal prosecution, the court issues a ruling discontinuing the proceedings or a judgment dismissing the charges.

If the injured party is not present at the preparatory hearing or the trial, and was duly summoned or could not be served a summons because of a failure to notify the court of a change of permanent or temporary residence, it will be presumed that he does not wish to assume prosecution and the court will issue a ruling discontinuing the proceedings or a judgment dismissing the charges.

Motion Initiating Criminal Prosecution

Article 53

A motion for prosecuting criminal offences which are prosecuted on the basis of a motion by an injured party is submitted to the competent public prosecutor.

The motion for criminal prosecution is submitted within three months of the date when the injured party learnt about the criminal offence and the suspect.

If the injured party submitted a criminal complaint or a motion for realising a restitution claim in criminal proceedings, it will be deemed that he thereby also submitted a motion for criminal prosecution.

A timely private prosecution is deemed a timely motion by the injured party if during the proceedings it is established that what is concerned is a criminal offence which is prosecuted based on a motion for criminal prosecution.

If several persons suffered injury as a result of a criminal offence, prosecution will be instituted or resumed on a motion by any one of the injured parties.

Abandoning a Motion for Criminal Prosecution

Article 54

An injured party may abandon a motion for criminal prosecution by a declaration made to the public prosecutor or the court where the criminal proceedings are being conducted, by the conclusion of the trial at the latest. In that case the injured party forfeits the right to submit the motion anew.

Duty of the Injured Party

Article 55

The injured party, as well as his legal representative and proxy, are required to notify the public prosecutor or the court before which the proceedings are being conducted of every change of temporary or permanent residence.

Legal Representative of the Injured Party

Article 56

If the injured party is a minor or a person declared completely incompetent, his legal representative is authorised to make all statements and perform all actions to which the injured party is entitled under this Code. The legal representative may exercise his rights through a proxy.

Legal Successor of the Injured Party

Article 57

If an injured party dies during the prescribed time limit for making a declaration on assuming criminal prosecution, or submitting a motion for criminal prosecution, or during the proceedings, his spouse, common-law spouse or other persons with whom he had lived in a common law marriage or other permanent relationship, children, parents, adopter, adoptee and siblings and legal representative may within three months of his death declare that they are assuming prosecution or submit a motion that they continue the proceedings.

The provisions of paragraph 1 of this Article shall apply accordingly to the legal successor of a legal person which has ceased to exist.

2. Injured Party as a Subsidiary Prosecutor

Rights of an Injured Party as a Subsidiary Prosecutor

Article 58

An injured party as a subsidiary prosecutor is entitled to:

1) represent the prosecution in accordance with the provisions of this Code;

2) submit a motion and evidence for realising a restitution claim and a motion for interim measures to secure it;

3) retain a proxy from amongst attorneys;

4) request the appointment of a proxy;

5) perform other actions provided for by this Code.

Besides the rights referred to in paragraph 1 of this Article, a subsidiary prosecutor also exercises the rights of the public prosecutor, except those that the public prosecutor has in his capacity as a public authority.

Appointed Proxy

Article 59

When criminal proceedings are being conducted in connection with a criminal offence punishable by law by a term of imprisonment of over five years, at the request of the subsidiary prosecutor a proxy may be appointed for him, if this is in the best interest of the proceedings and if the financial standing of the subsidiary prosecutor makes it impossible for him to bear the costs of representation.

The request referred to in paragraph 1 of this Article is decided by the president of the trial panel or individual judge, and the proxy is appointed by a ruling by the president of the court from the ranks of lawyers according to the order on the roster of lawyers which is submitted to the court by a bar association competent for determining court appointed defence counsel (Article 76).

Termination of Status of Subsidiary Prosecutor

Article 60

The injured party terminates his status of subsidiary prosecutor in the following cases:

1) by dismissing charges;

2) if the public prosecutor assumes criminal prosecution;

3) by his death, or the termination of a legal person.

Dismissing Charges

Article 61

A subsidiary prosecutor may by means of a declaration given to the court before which the criminal proceedings are being conducted dismiss charges no later than the end of the trial, or the trial before a court of second instance (Article 450, paragraph 5). The declaration on dismissal of charges is irrevocable.

If a subsidiary prosecutor does not appear at the preparatory hearing or the trial although he was duly summoned, or the summons could not be served because the court was not notified of a change of temporary or permanent residence, it will be presumed that he has waived charges and the court will issue a ruling on termination of proceedings or a judgment dismissing the charges.

Assumption of Criminal Prosecution by the Public Prosecutor

Article 62

In proceedings conducted on the basis of charges brought by a subsidiary prosecutor, the public prosecutor is entitled to assume criminal prosecution and representation of the prosecution no later than the end of the trial.

Analogous Application of Provisions on the Injured Party

Article 63

The provisions of Article 53 paragraph 5 and Articles 55 to 57 of this Code shall apply accordingly to subsidiary prosecutors.

3. Private Prosecutor

Rights of Private Prosecutors

Article 64

Private prosecutors are entitled to:

1) bring and represent a private lawsuit;

2) submit a motion and evidence for realising of a restitution claim and a motion for interim measures to secure it;

3) retain a proxy from amongst attorneys;

4) perform other actions provided for by this Code.

Besides the rights referred to in paragraph 1 of this Article, a private prosecutor has the rights to which public prosecutors are entitled, except for those they exercise in their capacity as public authorities.

Private Prosecution

Article 65

Private lawsuit is filed with the competent court.

Private lawsuit is filed within three months of the date the injured party learnt about the criminal offence and the suspect.

If the injured party had submitted a criminal complaint or motion for criminal prosecution, and it is established during the proceedings that what is concerned is a criminal

offence prosecutable on the basis of private lawsuit, the complaint, or motion, shall be deemed a timely private lawsuit if they were submitted within the time limit prescribed for a private lawsuit.

Counter-suit

Article 66

A defendant subject to a private lawsuit for a criminal offence may by the end of the trial, even after the expiry of the time limit specified in Article 65 paragraph 2 of this Code, bring a counter-suit against the private prosecutor who had on the same occasion committed against him a criminal offence prosecuted by a private lawsuit.

The court issues a single decision on the private lawsuit and the counter-suit.

Analogous Application of Provisions on the Injured Party and the Subsidiary Prosecutor

Article 67

The provisions of Article 53 paragraph 5 and Articles 55to 57 and Article 61 of this Code apply accordingly to private prosecutors.

Chapter VI

THE DEFENDANT AND DEFENCE COUNSEL

1 The Defendant

The Defendant's Rights

Article 68

The defendant is entitled:

1) to be informed in the shortest possible time, and always before the first interrogation, in detail and in a language he understands, about the charges against him, the nature and grounds of the accusation, as well as that everything he says may be used as evidence in proceedings;

2) not to say anything, to refrain from answering a certain question, to present his defence freely, to admit or not to admit his culpability;

3) to defend himself on his own or with the professional assistance of a defence counsel, in accordance with the provisions of this Code;

4) to have a defence counsel attend his interrogation;

5) to be taken before a court in the shortest possible time and to be tried in an impartial and fair manner and in a reasonable time;

6) to read immediately before his first interrogation the criminal complaint, the crime scene report, and the findings and opinions of a expert witnesses;

7) to be given sufficient time and opportunity to prepare his defence;

8) to examine documents contained in the case file and objects serving as evidence;

9) to collect evidence for his own defence;

10) to state his position in relation to all the facts and evidence against him and to present facts and evidence in his favour, to question witnesses for the prosecution and to demand that witnesses for the defence be questioned in his presence, under the same conditions as the witnesses for the prosecution ;

11) to make use of legal instruments and legal remedies;

12) to perform other actions where provided for by this Code.

The authority conducting the proceedings is required to advise the defendant before his first interrogation of the rights referred to in paragraph 1, items s 2) to 4) and item 6) of this Article.

Rights of Persons Arrested

Article 69

Besides the rights referred to in Article 68 paragraph 1, items 2) to 4) and item 6), and paragraph 2 of this Code, a person arrested is entitled to:

1) be informed immediately in a language he understands of the reason for his arrest;

2) have before his first interrogation a confidential conversation with his defence counsel, which can be supervised only visually, but not by way of listening;

3) demand that a family member or other person close to him be notified without delay about his arrest, as well as a diplomatic and consular representative of the state of which he is a national, or a representative of an authorised organisation of international public law, in case of a refugee or a stateless person;

4) demand that he be examined without delay by a physician of his own choosing, and if that physician is not accessible, by a physician designated by the public prosecutor or the court.

A person arrested without a court decision, or a person who has been arrested on the basis of a court decision but not interrogated, must without delay, and within 48 hours at most, be handed over to the competent judge for the preliminary proceedings, or, if this is not done, must be released from custody.

Duties of a Defendant

Article 70

A defendant is required to:

1) respond to a summons from the authority conducting proceedings;

2) notify the authority conducting proceedings about the change of his temporary or permanent residence, or about his intention to change his temporary or permanent residence.

2. Defence Counsel

Rights of the Defence Counsel

Article 71

The defence counsel is entitled to:

1) conduct a confidential conversation with the arrested person before his first interrogation (Article 69 paragraph 1 item 2));

2) read the criminal complaint, crime scene report and expert witness' finding and opinion, immediately before the first interrogation of the suspect;

3) examine case file documents and objects serving as evidence, after the issuance of an order on conducting an investigation or after an indictment was filled directly (Article 331 paragraph 5); and also before that time if the defendant had been interrogated in accordance with the provisions of this Code;

4) have confidential conversations with the defendant who is in custody (Article 69 paragraph 1 item 2)) and to engage in unimpeded correspondence, unless otherwise provided by this Code ;

5) perform on behalf of the defendant all the actions to which the defendant is entitled;

6) perform other actions where provided for by this Code.

Duties of the Defence Counsel

Article 72

The defence counsel is required to:

1) submit his power of attorney without delay to the authority conducting proceedings;

2) provide to the defendant assistance with his defence in a professional, conscientious and timely manner;

3) refrain from abusing rights in order to delay the proceedings;

4) advise the defendant about the consequences of waiving rights;

5) provide legal assistance to the defendant within 30 days from the date when he revoked the power of attorney, unless a defence counsel is selected before the expiry of that time limit in accordance with Article 75 paragraph 1 of this Code.

Where a defendant declares to the authority conducting proceedings that he refuses a court appointed defence counsel and that he wants to conduct his own defence, the court appointed defence counsel is required to:

1) be informed about the content of evidentiary actions and the content and course of the trial;

2) provide explanation and advice to the defendant in writing, if the defendant refuses to talk to him;

3) attend procedural actions, as well as to present closing arguments, unless the defendant is expressly opposed to that;

4) file an ordinary legal remedy and perform other procedural actions at the request of the defendant, or with his express consent.

Capacity to Act as Defence Counsel

Article 73

Only an attorney may be a defence counsel

In proceedings in connection to criminal offences punishable by a term of imprisonment of ten or more years only an attorney with at least five years of experience as an attorney, or an attorney who was a judge, public prosecutor or deputy public prosecutor for at least five years may act as a defence counsel.

The following cannot be a defence counsel:

1) co-defendant, injured party, spouse or person who lives with the co-defendant, injured party or the prosecutor in a common law marriage or other permanent personal association, their relative by blood in direct line to any degree, or in collateral line to the fourth degree, or an in-law to the second degree;

2) persons summoned to the trial as witnesses, except if under this Code they may not be questioned as witnesses, or have been freed from the duty to testify and have duly declared that they will not testify;

3) persons who had in the same case acted as judge, public prosecutor, representative of an injured party, police officer, or other persons who had performed actions in the pre-investigation proceedings;

4) defence counsel of co-defendant charged in the same case with the same criminal offence, unless the authority conducting proceedings concludes that it would not be detrimental to the interests of the defence.

Mandatory Defence

Article 74

The defendant must have a defence counsel:

1) if he is mute, deaf, blind or incapable to conduct his own defence successfully – from the first interrogation until the final conclusion of the criminal proceedings;

2) if the proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of eight years or more – from the first interrogation until the final conclusion of the criminal proceedings;

3) if he has been taken into custody, or prohibited from leaving his abode, or is in detention – from the moment of deprivation of liberty until the ruling discontinuing the measure becomes final;

4) if he is being tried *in absentia* – from the issuance of a ruling on an *in absentia* trial and for the duration of such trial;

5) if the trial is being held in his absence due to reasons he himself induced – from the issuance of a ruling for the trial to be held *in absentia* until the ruling by which the court establishes that reasons for his inability to stand trial have ceased becomes final;

6) if he has been removed from the courtroom for disturbing the order, until the conclusion of the evidentiary procedure or the termination of the trial – from the issuance of the order on his removal until his return to the courtroom or the pronouncement of the judgment;

7) if proceedings for pronouncing a security measure of compulsory psychiatric treatment are being conducted against him – from the submission of a motion for pronouncing such a measure until the issuance of the decision referred to in Article 526 paragraphs 2 and 3 of this Code or until the ruling pronouncing a security measure of compulsory psychiatric treatment becomes final;

8) from the beginning of the negotiations with the public prosecutor on the conclusion of the agreement referred to in Article 313 paragraph 1, Article 320 paragraph 1 and Article 327 paragraph 1 of this Code, until the issuance of a court decision on the agreement;

9) if the trial is held in his absence (Article 449 paragraph 3) – from the moment of adoption of the ruling to hold the trial in his absence, to the adoption of the judicial decision on the appeal against the judgment.

Defence Counsel of Choice

Article 75

One or several defence counsel may be chosen and authorised with a power of attorney by the defendant, his legal representative, spouse, lineal relative by blood, adopter, adoptee, sibling, foster-parent or person with whom the defendant lives in a common law marriage or other permanent personal association, except where the defendant is expressly opposed to this.

A defendant may grant a defence counsel an oral power of attorney by a declaration given on the record with the authority conducting proceedings.

Court Appointed Defence Counsel

Article 76

If in the cases referred to in Article 74 of this Code no defence counsel is chosen, or the defendant is left without a defence counsel during the criminal proceedings, or in the case referred to in Article 73 paragraph 3 item 4) of this Code, in case of mandatory defence, he fails to agree with co-defendants on a defence counsel or does not select another defence counsel, the public prosecutor or the president of the court before which the proceedings are being conducted shall issue a ruling appointing a court appointed defence counsel for the remaining part of the proceedings, according to the order on the roster of attorneys provided by the competent bar association.

The bar association is required to specify the date of registration of the attorney in the list of attorneys referred to in paragraph 1 of this Article and in compiling the list to take into account the fact that the practical or professional work of an attorney in the area of criminal law provides a foundation for an assumption that the defence will be effective.

A court appointed defence counsel may seek his recusal only on justifiable grounds.

The list referred to in paragraph 1 of this Article is posted on the webpages and notice boards of the competent bar association and the court.

Defence of Indigent Persons

Article 77

A defence counsel shall be appointed for a defendant who because of his financial status cannot afford to pay the fees and costs of the defence counsel at the defendant's request although the reasons for mandatory defence do not exist if the criminal proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of over three years,

or where reasons of fairness so demand. In this case, the costs of defence shall be borne by the budget of the court.

The judge for preliminary proceedings, president of a trial panel or individual judge decides on the request referred to in paragraph 1 of this Article, and the defence counsel is appointed by a ruling issued by the president of the court before which the proceedings are being conducted, according to the order on the roster of attorneys provided by the competent bar association.

The appointed defence counsel referred to in paragraph 1 of this Article has the standing of a court appointed defence counsel.

Joint Defence Counsel and Several Defence Counsel

Article 78

Several defendants in the same case may have a common defence counsel only where that would not hinder the professional, conscientious and timely provision of legal assistance with their defence.

Where several defendants have a common defence counsel in contravention of paragraph 1 of this Article or Article 73 paragraph 3 item 4) of this Code, the authority conducting proceedings will invite them to agree within three days which of them would be defended by the defence counsel who defended all of them up until that point, or for each of them to choose a different defence counsel. If they do not do so in the case of mandatory defence, a court appointed defence counsel will be appointed for them.

One defendant may have a maximum of five defence counsel in one proceeding, and it will be considered that defence has been secured when one of the defence counsel is participating in proceedings.

Where one defendant has more than five defence counsel, the authority conducting proceedings will invite him to choose within three days which defence counsel he will retain, and caution him that if he fails to do so, the first five attorneys pursuant to the order of submission of their powers of attorney or provision thereof on the record will be deemed his defence counsel.

Termination of the Rights and Duties of Defence Counsel

Article 79

The rights and duties of defence counsel are terminated:

1) if the power of attorney is withdrawn or cancelled;

2) if the defence counsel is disqualified.

Reasons for disqualifying the defence counsel

Article 80

A defence counsel of choice shall be disqualified if:

1) any of the reasons referred to in Article 73 paragraph 3 of this Code exists;

2) after being cautioned and fined he continues to disturb the order in the court;

3) criminal proceedings are instituted against him based on grounded suspicion that in connection with the same case he had committed the criminal offence of preventing and obstructing evidentiary actions or escape or assisted escape of a person deprived of liberty;

4) he has been re-granted a power of attorney after its withdrawal or cancellation, as an obvious abuse of the law (Article 14 paragraph 1);

5) a common defence counsel is concerned and the defendants do not act in accordance with Article 78 paragraph 2 of this Code;

6) a defendant who has more than five defence counsel fails to decide which defence counsel to retain (Article 78 paragraph 4).

Besides the reasons referred to in paragraph 1 items 1) to 3) of this Article, a court appointed defence counsel will be relieved of duty if:

1) the defendant or person referred to in Article 75 paragraph 1 of this Code retains another defence counsel;

2) he fails to perform the duty referred to in Article 72 paragraph 1 item 2) of this Code;

3) due to a change of the financial status of the defendant the reasons for the defence based on indigence have ceased to exist (Article 77 paragraph 1).

Decision on disqualifying

Article 81

Acting upon a proposal of the public prosecutor or *ex officio*, the judge for the preliminary procedure, the president of the trial panel, the trial panel or an individual judge decides on motions to relieve the defence counsel of duty.

Before issuing its decision, the court is required to invite the defendant and the defence counsel to state their position in relation to the reasons for disqualifying the defence counsel of within no more than 24 hours, and to substantiate their assertions with evidence, and to caution them that if they fail to provide declarations or substantiate them, the decision would be made on the basis of available data.

An appeal against a ruling on disqualification a defence counsel does not stay its execution.

The ruling on disqualification of a defence counsel on the grounds specified in Article 80 paragraph 1 item 1) of this Code is not appealable.

The public prosecutor or the president of the court notifies the competent bar association about disqualification of a defence council of duty on the grounds specified in Article 80 paragraph 1 items 2) to 4), and paragraph 2 item 2) of this Code.

Chapter VII

EVIDENCE

1. Basic provisions

Proving Facts in Proceedings

Article 82

Evidence is collected and examined in proceedings in accordance with the provisions of this Code, and in other manner prescribed by law.

Subject-matter of Evidentiary Actions

Article 83

The subject-matter of evidentiary actions are the facts which constitute the elements of a criminal offence, or those on which application of another provision of criminal law depends.

The subject-matter of evidentiary actions are also facts on which the application of provisions of criminal procedure depends.

Facts assessed by the court as generally known, sufficiently examined, admitted to by the defendant in a manner making further examination of that evidence unnecessary (Article 88), or where the consent of the parties in relation to such facts is not contrary to other evidence, shall not be proven.

Unlawful Evidence

Article 84

Evidence collected in contravention of Article 16 paragraph 1 of this Code (unlawful evidence) may not be used in criminal proceedings.

Unlawful evidence is excluded from the case file, placed in a separate sealed cover and kept by the judge for preliminary proceedings until the final conclusion of the criminal proceedings, after which they are destroyed and a record is made about their destruction.

By exception from paragraph 2 of this Article, unlawful evidence is preserved until the final conclusion of court proceedings held in connection with the obtaining of such evidence.

2. Evidentiary Actions

a) Interrogation of the Defendant

Preconditions for the Interrogation of the Defendant

Article 85

When a defendant is being interrogated for the first time, he will be asked to state his first name and surname, his personal ID number, or the number of a personal document, nickname, the first names and surnames of his parents, his mother’s maiden name, his place of birth, his residence, date of birth, citizenship, occupation, family circumstances, literacy status, professional qualifications, his and his family's financial standing, whether he was ever convicted of any offence, when and which offence, whether he served any sanction pronounced against him, and whether proceedings are being conducted against him in connection with another criminal offence.

The defendant will be advised of the rights referred to in Article 68 paragraph 1 of this Code and enabled to exercise them, and also be cautioned about his duties (Article 70) and the consequences of not obeying them.

The defendant will then be invited to state expressly whether he will retain a defence counsel of his own choosing, and cautioned that if he does not choose a defence counsel in the case of mandatory defence a court appointed defence counsel will be appointed, in accordance with the provisions of this Code.

The defendant may be interrogated without a defence counsel being present if the defendant has expressly waived that right, if a duly summoned defence counsel is not present although he has been informed about the interrogation (Article 300 paragraph 1.) and there exists no possibility for the defendant to hire another defence counsel, or if the defendant has failed to secure the presence of a defence counsel even after the expiry of a period of 24 hours after first being advised about that right (Article 68 paragraph 1 item 4)), except in the case of mandatory defence.

If the defendant has not been duly advised or enabled to use the rights referred to in paragraph 2 of this Article, or the statement of the defendant referred to in paragraph 3 of this Article about the presence of a defence counsel has not been entered into record, or where it was acted contrary to paragraph 4 of this Article, or where a statement of the defendant has been obtained contrary to Article 9 of this Code, the court's decision may not be based on the defendant's statement.

Rules of Interrogating Defendants

Article 86

A defendant is interrogated orally, with decency and full respect for his personality. A defendant is entitled to use his notes during interrogation.

During the interrogation it will be made possible to the defendant to state, without being interrupted, his position in relation to all circumstances against him and facts which support his defence.

After a defendant has completed his statement, and it is necessary to fill in gaps in the statement or clarify it, he will be asked questions which must be clear, unambiguous and understandable, which may not contain deception or be based on an assumption that he has admitted to something which he has not admitted, and the questions may not be leading.

Where the defendant's subsequent statements differ from those given previously, and especially if the defendant recants his confession, the authority conducting proceedings may invite him to explain why he had made differing statements or why he had recanted his confession.

Interrogation through an Interpreter or Translator

Article 87

If a defendant is deaf, he will be questioned in writing, if the defendant is mute, he will be invited to reply in writing and if he is blind, the contents of written evidence will be presented

to him orally. If the interrogation cannot be conducted in this manner, a person capable of communicating with the defendant will be invited to serve as an interpreter.

If the defendant does not understand the language of the proceedings, he will be asked questions through a translator.

If the interpreter or translator was has not been sworn in previously, he will swear that he will faithfully communicate the questions asked of the defendant and the statements he makes.

The provisions of this Code relating to expert witnesses apply accordingly to interpreters and translators.

Confession of the Defendant

Article 88

When a defendant confesses to having committed a criminal offence, the authority conducting proceedings is required to continue collecting evidence about the perpetrator and the criminal offence only where there exists grounded suspicion about the veracity of the confession or if the confession is incomplete, contradictory or unclear and contrary to other evidence.

Confronting the Defendant

Article 89

A defendant may be confronted with a witness or other defendant, if their statements do not match in respect of facts which are being proved.

The persons confronting each other are placed facing each other and are asked by the authority conducting proceedings to repeat to each other the statements about every disputed circumstance and to discuss the veracity of their statements. The course of the confrontation and statements made by the confronted persons will be entered into record by the authority conducting the proceedings.

Recognition of Persons or Objects

Article 90

If is is necessary to establish whether a defendant recognises a certain person or object, or the characteristics of it as described by him, he will be shown that person or object together with other persons not known to him or objects whose basic characteristics are similar to those he has described.

The defendant will then be asked to state whether he can recognise that person or object with full certainty or with a degree of certainty, and, if so, to point to the person or object thus recognised.

If the person or object referred to in paragraph 1 of this Article is not accessible, the defendant may be shown a photograph of the person or object together with other photographs of persons unknown to him or objects whose basic characteristics are similar to those he has described.

In accordance with the provisions from paragraphs 1 to 3 of this Article, recognition of a person may also be performed on the basis of his voice.

b) Questioning Witnesses

a) Basic provisions

Witness

Article 91

A witness is a person for whom it is probable that he will provide information about a criminal offence, the perpetrator, or other facts being determined in the proceedings.

Capacity and Duty to Provide Testimony

Article 92

Every person capable of presenting his knowledge or impressions in connection with the subject-matter of the testimony has a capacity to give evidence.

The injured party, subsidiary prosecutor or private prosecutor may be questioned as witnesses.

All persons being summoned as witnesses are required to respond to the summons as well as to testify, unless specified otherwise by this Code (Articles 93 and 94).

Exclusion from the Duty of Testifying

Article 93

The duty to testify does not apply to:

1) a person who would by his statement violate the duty to preserve a state, military or official secret until the competent authority or person from public authorities revokes the secrecy of information or releases him from that duty;

2) a person who would by his statements violate the duty of maintaining confidentiality of information acquired in a professional capacity (a religious confessor, lawyer, physician, midwife, etc.), unless released from such obligation by a special regulation or a statement of the person for whose benefit the confidentiality was established;

3) a person who is the defence counsel, in connection with what he was told by the defendant;

By exception from paragraph 1 of this Article, the court may decide, at the proposal of the defendant of his defence attorney, to examine a person who has been excluded from the duty to testify.

Exemption from the Duty of Testifying

Article 94

The following are released from the duty of giving evidence:

1) the defendant's spouse or common-law spouse or other person with whom the defendant lives in a common law marriage or other permanent association;

2) the defendant's blood relatives in the direct line, collateral relatives to the third degree, and in-laws to the second degree ;

3) adopter and adoptees of the defendant.

Juveniles who are in view of their age and mental development not capable of understanding the significance of the right not to have to testify may not be questioned as witnesses, except if the defendant so demands.

The authority conducting proceedings is required to caution the person referred to in paragraph 1 of this Article that he does not have to testify before questioning or as soon as it learns about his relationship with the defendant,. The caution and reply are entered into record.

A person with valid grounds to decline to testify in connection with one of the defendants is relieved of the duty to testify in connection with all the other defendants, if by the virtue of his testimony it cannot be limited only to the other defendants.

Preconditions for Questioning Witnesses

Article 95

Witnesses will be warned that they are required to tell the truth and that they may not omit anything, and then cautioned that perjury constitutes a criminal offence.

Witnesses will also be cautioned that they are not required to answer certain questions if its is probable that they would thereby expose themselves or persons close to them referred to in Article 94 paragraph 1 of this Code to serious disgrace, considerable pecuniary damage or criminal prosecution. The caution will be entered into record.

Witnesses will then be asked to provide their first name and surname, personal ID number, name of father or mother, temporary residence, permanent residence, , place and year of birth and information about their relationships with the defendant and injured party. Witnesses will be cautioned that they are required to notify the authority conducting proceedings of every change of temporary or permanent residence.

If a person has been examined as a witness in contravention of Article 93 paragraph 1 of this Code, or a person exempt from the duty to give evidence (Article 94) has not been duly cautioned or has not expressly waived that right or if the caution and waiver were not entered into record, or if a witness's statement was obtained in contravention of Article 9 of this Code, the court's decision may not be based on the testimony of that witness.

Swearing-in Witnesses

Article 96

Witnesses shall be required to swear in before giving evidence.

Witnesses may swear in before the trial only where there is a danger that poor health or another reason could prevent them from attending the trial. The reasons for swearing in on that date will be entered in the record.

The text of the oath is: “I swear by my honour that I will tell only the truth about everything I am asked, and that I will omit nothing”.

Witnesses take the oath orally, by reading its text, or by giving an affirmative reply after being read out the text by the authority conducting proceedings. Mute witnesses able to read and write sign the text of the oath, and deaf, blind or mute witnesses who are illiterate are sworn in with the help of an interpreter.

Refusals of witnesses to take an oath and their reasons will be entered in the record.

Witnesses who do not Take Oaths

Article 97

The following witness does not have to take an oath:

1) a person who has not come of age at the time of the questioning;

2) a person unable to comprehend the significance of the oath due to the state of his mental health.

Rules on Questioning Witnesses

Article 98

A witness is questioned individually and without the presence of other witnesses . A witness is required to give testimony orally.

Following the general questions, witnesses are asked to state everything known to them about the case.

After a witness has completed his statement, and it is necessary to fill in gaps in the statement, amend or clarify it, he will be asked questions which must be clear, unambiguous and understandable, which may not be deceiving or be based on an assumption that he has admitted to something which he has not admitted, and the questions may not be leading, except during cross-examination at the trial.

Witnesses are always asked for the origin of their knowledge.

Injured parties questioned as witnesses will be asked whether they wish to realise their restitution claim in the criminal proceedings.

If the questioning of a witness is being conducted through an interpreter or a translator, or if a witness is deaf, blind or mute, the questioning is conducted in the manner specified in Article 87 of this Code.

Confronting Witnesses

Article 99

A witness may be confronted with another witness or the defendant, if their statements are not in agreement in respect of the facts being proved.

The provisions of Article 89 paragraph 2 of this Code are applied to the confrontation of witnesses.

Recognition of Persons or Objects

Article 100

If it is necessary to establish whether a witness has recognised a certain person or a certain object, or their characteristics as he had described them, the recognition is performed in accordance with Article 90 of this Code.

The recognition of persons in the pre-investigation proceedings and during the investigation is conducted so as to prevent the person being recognised from seeing the witness, and from preventing the witness from seeing that person before the formal recognition procedure.

During the pre-investigation proceedings and the investigation, the recognition of persons is performed in the presence of the public prosecutor.

Punishing Witnesses

Article 101

If a duly summoned witness fails to appear and fails to justify his absence, or without authorisation or a justifiable reason leaves the location where he was to be questioned, the authority conducting proceedings may order that he be brought in by force, and the court may fine him up to 100,000 dinars.

If a witness appears, and after being cautioned about the consequences refuses to testify without legal justification, he may be fined up to 150,000 dinars by the court, and if he continues to refuse to testify, may be punished again with the same sanction.

An appeal against a ruling pronouncing a fine is decided by the panel. An appeal does not stay execution of the ruling.

b) Protection of Witnesses

Basic Protection

Article 102

The authority conducting proceedings is required to protect an injured party or witness from an insult, threat and any other attack.

The public prosecutor or the court will caution a participant in proceedings or other person who, before the authority conducting proceedings insults an injured party or a witness, threatens him or endangers his safety, and the court may also fine him up to 150,000 dinars.

An appeal against a ruling pronouncing a fine is decided on by the panel. The appeal does not stay execution of the ruling.

Upon receiving notification from the police or the court or upon learning about the existence of violence or a serious threat directed at an injured party or a witness, the public prosecutor will undertake criminal prosecution or notify the competent public prosecutor thereof.

A public prosecutor or the court may request that the police undertake measures to protect an injured party or a witness in accordance with the law.

Especially Vulnerable Witness

Article 103

The authority conducting proceedings may *ex officio*, at the request of parties or the witness himself, designate as an especially vulnerable witness a witness who is especially vulnerable in view of his age, experience, lifestyle, gender, state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances.

The ruling determining a status of an especially vulnerable witness is issued by the public prosecutor, president of the panel or individual judge.

If it deems it necessary for the purpose of protecting the interests of an especially vulnerable witness, the authority conducting proceedings referred to in paragraph 2 of this Article will issue a ruling appointing a proxy for the witness, and the public prosecutor or the president of the court will appoint a proxy according to the order on the roster of attorneys submitted to the court by the bar association competent for designating court appointed defence counsels (Article 76).

No special appeal is allowed against a ruling approving or denying a request.

Rules on Examining an Especially Vulnerable Witness

Article 104

An especially vulnerable witness may be examined only through the authority conducting the proceedings, who will treat the witness with particular care, endeavouring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings.

If the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination is conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located.

An especially vulnerable witness may also be examined in his dwelling or other premises or in an authorised institution professionally qualified for examining especially vulnerable persons. In such case the authority conducting proceedings may order application of the measures referred to in paragraph 2 of this Article.

An especially vulnerable witness may not be confronted with the defendant, unless the defendant himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defence.

No special appeal is allowed against a ruling referred to in paragraphs 1 to 3 of this Article.

Protected Witness

Article 105

If there exist circumstances which indicate that by giving testimony or answering certain questions a witness would expose himself or persons close to him to a danger to life, health, freedom or property of substantial size, the court may authorise one or more measures of special protection by issuing a ruling determining a status of protected witness.

The measures of special protection include questioning the protected witness under conditions and in a manner ensuring that his identity is not revealed to the general public, and exceptionally also to the defendant and his defence counsel, in accordance with this Code.

Measures of Special Protection

Article 106

The measures of special protection ensuring that the identity of a protected witness is not revealed to the public are excluding the public from the trial and prohibition of publication of data about the identity of the witness.

The measure of special protection whereby data about the identity of a protected witness is withheld from the defendant and his defence counsel may be ordered by the court exceptionally if after taking statements from witnesses and the public prosecutor it determines that the life, health or freedom of the witness or a person close to him is threatened to such an extent that it justifies restricting the right to defence and that the witness is credible.

The identity of the protected witness withheld in accordance with paragraph 2 of this Article will be revealed by the court to the defendant and his defence counsel no later than 15 days before the commencement of the trial.

In deciding on the measures of special protection referred to in paragraphs 1 and 2 of this Article, the court will endeavour to order a harsher measure only if the purpose cannot be achieved by the application of a more lenient measure.

Initiating Proceedings for Determining Protected Witness Status

Article 107

The status of a protected witness may be granted by the court *ex officio*, or at the request of the public prosecutor or the witness himself.

The request referred to in paragraph 1 of this Article contains: the witness's personal data, data on the criminal offence in connection with which the witness is being examined, facts and evidence indicating that in the case of giving testimony there exists a danger to the life, body, health or property of substantial size of the witness or persons close to him, and a description of the circumstances to which the provision of evidence relates.

The request is submitted in a sealed cover marked "witness protection – strictly confidential" and is submitted during the investigation to the judge for preliminary proceedings, and after the indictment is confirmed, to the president of the panel.

If during his examination the witness withholds the provision of the data referred to in Article 95 paragraph 3 of this Code or his replies to certain questions, or refuses to give testimony, with the explanation that the circumstances referred to in Article 105 paragraph 1 of this Code exist, the court will invite the witness to act within three days in accordance with the provisions of paragraphs 2 and 3 of this Article.

If it deems the withholding of data, replies, or testimony clearly unfounded, or the witness fails to act in accordance with the provisions of paragraphs 2 and 3 of this Article within the prescribed time limit, the court will apply the provisions of Article 101 paragraph 2 of this Code.

Deciding on Determining Protected Witness Status

Article 108

During the investigation the judge for preliminary proceedings decides on determining protected witness status by issuing a ruling, and after the indictment is confirmed, the panel. The public is excluded from the trial if the decision is taken at that time (Article 363), without the exceptions prescribed by Article 364 paragraph 2 of this Code.

The ruling determining protected witness status contains a pseudonym of the protected witness, the duration of the measure and the manner in which it will be implemented: alteration or erasure from the record of data on the identity of the witness, concealment of the witness's appearance, examination from a separate room with distortion of the witness's voice, examination using technical devices for transferring and altering sound and picture.

The parties and the witness may appeal against the ruling referred to in paragraph 1 of this Article.

An appeal against a ruling of the judge for preliminary proceedings is decided on by the panel (Article 21 paragraph 4), and in other cases the panel (Article 21 paragraph 4) of the immediately higher court. A decision on the appeal is rendered within three days of the date of receiving documentation.

Examining a Protected Witness

Article 109

When the ruling determining protected witness status become final, the court will, by a special order that represents a secret, confidentially notify the parties, defence counsel and the witness about the date, hour and location of the questioning of the witness.

Before the commencement of the questioning the protected witness is notified that his identity will not be revealed to anyone but the court, the parties and the defence counsel, or only to the court and the public prosecutor, under the conditions referred to in Article 106 paragraphs 2 and 3 of this Code, and is informed about the manner in which he will be examined.

The court will caution all those present that they are required to keep confidential data on the protected witness and persons close to him and on other circumstances which may lead to the

exposure of their identities, and that divulging a secret represents a criminal offence. The caution and the names of those present will be entered in the record.

The court will deny any question that requires an answer that might reveal the identity of the protected witness.

If the examination of the protected witness is being conducted using technical means for altering sound and image, they are handled by a professional.

The protected witness signs the minutes with the pseudonym.

Protecting Data on a Protected Witness

Article 110

Data on the identities of the protected witness and persons close to him and on other circumstances which may lead to the exposure of their identities will be sealed under a separate cover marked "protected witness – strictly confidential", sealed and submitted for safekeeping to the judge for preliminary proceedings.

The sealed cover may be opened only by a court deciding on a legal remedy against a judgment. The reason, date and hour of its opening and the names of the members of the panel informed about the data referred to in paragraph 1 of this Article will be marked on the cover. The cover will thereafter be resealed, the date and time of resealing being indicated on the cover, and returned to the judge for preliminary proceedings.

The data referred to in paragraph 1 of this Article represent secret data. Besides public officials, all other persons who learn about them in any capacity whatsoever are required to maintain their confidentiality.

Duty of Notification about Special Protection Measures

Article 111

The police and the public prosecutor are required during the collection of information from citizens to inform them about the special protection measures referred to in Article 106 of this Code

Analogous Application of Provisions on a Protected Witness

Article 112

The provisions of Articles 105 to 111 of this Code apply accordingly to the protection of an undercover investigator, expert witness, professional consultant and professional.

v) Expert Examination

a. Basic Provisions

Reasons for Expert Examination

Article 113

The authority conducting proceedings will order an expert examination when professional knowledge is required for establishing or evaluating a certain fact in the proceedings.

An expert examination cannot be ordered for the purpose of establishment or evaluation of legal questions which are being decided on the proceedings.

Designating Expert Witness

Article 114

An expert witness is a person who possesses the requisite professional knowledge for establishing or evaluating a fact in the proceedings.

As a rule a single expert witness will be designated for expert examination, and where the expert examination is complex – two or more expert witnesses.

If for a certain type of expert examination there exist expert witnesses from the list of permanent expert witnesses, other expert witnesses may be designated only if there exists a danger of a delay, or if the permanent expert witnesses are prevented, or if other circumstances so require.

If a professional institution exists for a certain type of expert examination, or an expert examination may be performed within a public authority, such expert examinations, especially if they are more complex, will as a rule be entrusted to such an institution or authority, which will thereafter designate one or more experts to issue findings and opinions.

If a domestic expert, professional institution or public authority does not exist for a certain type of expert examination, or if this is justified by the special complexity of a case, the nature of the expert examination or other important circumstances, a foreign national may exceptionally be designated as an expert witness, or a foreign professional institution or an authority of a foreign state may exceptionally be entrusted with an expert examination.

Duty of Conducting Expert Examination

Article 115

A person being summoned as an expert witness is required to respond to the summons and to provide his findings and opinion within a certain time limit. At the request of the expert witness, on justifiable grounds, the authority conducting proceedings may extend the time limit.

If an expert witness duly summoned fails to appear and does not justify his absence, or departs without authorization from the location where he is to be questioned, the authority conducting proceedings may order him brought in forcibly, and the court may impose a fine of up to 100,000 dinars on him, and a fine of up to 300,000 dinars on a professional institution.

If an expert witness, after being cautioned about the consequences of declining to perform expert examination, refuses to perform expert examination without a justifiable reason, or does not provide findings an opinion within the designated time limit, the court may fine him up to 150,000 dinars, and fine a professional institution up to 500,000 dinars.

In the case referred to in paragraphs 2 and 3 of this Article, the court may punish a responsible person in a public authority with a fine envisaged for an expert witness, it the expert examination is performed by the public authority.

An appeal against a ruling ordering a fine is decided on by the panel. An appeal does not stay execution of the ruling.

Exemption from the Duty to Conduct Expert Examination

Article 116

A person excluded (Article 93) or exempted (Article 94) from the duty of testifying may not be designated as an expert witness, and if such person was designated as an expert witness, the court's decision cannot be based on his findings and opinion.

Grounds for exemption from the duty of conducting expert examination (Article 37 paragraph 1) also exist in respect of a person who is employed by an injured party or defendant, or is, together with them or some of them, employed with another employer.

As a rule, a person examined as a witness will not be designated an expert witness.

An appeal against a ruling denying a request for the exemption of an expert witness (Article 41 paragraph 5) is decided on by the judge for preliminary proceedings or the panel (Article 21 paragraph 4). An appeal stays the conduct of expert examination, unless there is a danger of delay.

Ordering an Expert Examination

Article 117

The authority conducting proceedings orders an expert examination by issuing a written order, *ex officio* or on a motion by a party and defence counsel, and if there is a danger of delay an expert examination may also be ordered verbally, with an obligation to compose an official note.

If a motion for an expert examination is made by a party or defence counsel, the authority conducting the proceedings may invite him to propose a person or professional institution or public authority to whom the expert examination should be entrusted and to pose the questions to which the expert witness should reply.

An appeal may be submitted against a ruling by which during the investigation the public prosecutor denied a motion of a defendant or his defence counsel to order an expert examination, which is decided on by the judge for preliminary proceedings within 48 hours.

If a motion to order an expert examination is made by the defendant and his defence counsel, a subsidiary prosecutor or a private prosecutor, the authority conducting proceedings may request the payment of a deposit for the costs of the expert examination.

If an expert examination is ordered by the court, the order is also delivered to the parties.

Order on an Expert Examination

Article 118

The order on an expert examination contains:

1) the title of the authority which ordered the expert examination;

2) the first name and surname of the person designated as an expert witness, or the title of the professional institution or state institution entrusted with the expert examination;

3) a designation of the subject-matter of the expert examination;

4) the questions which should be answered;

5) an obligation for exempted and secured samples, traces and suspicious substances to be transferred to the authority conducting proceedings;

6) the time limit for submitting findings and opinions;

7) an obligation for the finding and opinion to be delivered in a sufficient number of copies for the court and the parties;

8) a caution that the facts learned during the expert examination represent a secret;

9) a caution about the consequences of providing false findings and opinion.

If a party has a professional consultant (Article 125), his name and address is designated in the order.

The Expert Witness's Oath

Article 119

An expert witness will be asked to take an oath before his expert examination, and a permanent expert witness will be cautioned before the expert examination about an oath he took previously.

If there is a danger that due to poor health or other reasons an expert witness will not be able to attend the trial, he may take an oath before the trial, before the public prosecutor or the court, with their obligation to state in the record the reasons why the oath is being taken on that occasion.

The text of the oath is as follows: "I swear to perform expert examination in accordance with the rules of science or skill, conscientiously, impartially and according to the best of my knowledge, and that I will present my findings and opinion accurately and in full".

Process of Expert Examination

Article 120

Before commencing the expert examination the authority conducting proceedings will caution the expert witness that giving false findings and opinions represents a criminal offence and ask him to carefully consider the object of the expert examination, to state accurately everything he observes and finds, and to present his opinion impartially and in accordance with the rules of science or skill.

The authority conducting proceedings manages the expert examination, shows to the expert witness the objects he will consider, poses questions to him and if needed asks for clarification in respect of the findings and opinion given.

If the expert examination requires the analysis of a substance, if possible only a part of the substance will be placed at the disposal of the expert witness, and the remainder will be secured in a necessary quantity in case of subsequent analyses.

The expert witness is entitled to request and obtain from the authority conducting proceedings and the parties additional clarification, to view objects and examine documentation, to propose collection of evidence or acquisition of data of importance for providing findings and opinions, and to propose during a crime scene inspection, reconstruction or the performance of another evidentiary action the clarification of certain circumstances or that a person making a statement be asked certain questions.

Expert Examination in a Professional Institution or State Institution

Article 121

When an expert examination has been entrusted to a professional institution or state institution, the provisions of Article 119 and Article 120 paragraphs 1 and 2 of this Code will not be applied, and the authority conducting proceedings will caution the managing official of the professional institution or state institution about the consequences of providing false findings and opinions and that the person referred to in Article 116 of this Code may not participate in the provision of findings and opinions.

The authority conducting proceedings will place at the disposal of the professional institution or state institution the material needed for the expert examination and act in accordance with Article 120 paragraph 3 of this Code.

The professional institution or state institution delivers written findings and opinion signed by the persons who performed the expert examination.

The head of the professional institution or state institution is required to inform a party at its request about the names of the persons who will perform the expert examination.

The authority conducting proceedings may ask for clarification in respect of the findings and opinion provided.

Placement in a Health-care Institution for the Purpose of Expert Examination

Article 122

The judge for preliminary proceedings, the president of the trial panel or an individual judge, *ex officio* or on a motion of a party or expert witness, may issue a ruling ordering the defendant placed in a health-care institution if it is required for the purpose of medical expert examination.

The measure referred to in paragraph 1 of this Article may last no more than 15 days and may exceptionally, on the basis of a reasoned proposal of an expert witness and after obtaining an opinion of the head of the health-care institution, be extended by another 15 days at most.

The parties and the defence counsel may appeal against the ruling ordering the defendant placed in a health-care institution or denying the motion referred to in paragraphs 1 and 2 of this Article within 24 hours of being delivered the ruling.

The appeal, which does not stay execution, is decided by the panel (Article 21 paragraph 4) within 48 hours.

If a defendant who is in detention is being placed in a health-care institution, the judge for preliminary proceedings, the president of the trial panel or an individual judge will notify the

head of the institution about the reasons for which the detention was ordered, to ensure that the measures required for realising the purpose of the detention are undertaken.

The time spent in a health-care institution will count towards the defendant's time spent in detention, or time spent serving a custodial criminal sanction.

Expert Witness's Findings and Opinion

Article 123

An expert witness's findings and opinion given orally is entered immediately in the record.

An expert witness may be authorised to submit written findings and opinion, within a time limit determined by the authority conducting proceedings.

The record of the expert examination or the written finding and opinion will state who performed the expert examination, the profession, professional qualification and specialization of the expert witness, as well as the names and standing of the persons who attended the expert examination.

After the conclusion of the expert examination, the authority conducting proceedings informs the parties who did not attend the expert examination that they may examine and copy the record of the expert examination or written findings and opinion, and determines a time limit within which they may present their observations.

Shortcomings in Expert Witness's Findings and Opinion

Article 124

The authority conducting proceedings will *ex officio* or on a motion by the parties order an expert examination to be repeated:

1) if the findings are unclear, incomplete, erroneous, self-contradictory or contrary to the circumstances in connection with which the expert examination was performed, or if there is doubt as to its truthfulness ;

2) if the opinion is unclear or contradictory.

If the shortcomings referred to in paragraph 1 of this Article cannot be rectified by a repeated examination of the expert witness or a supplementary expert examination, the authority conducting proceedings will designate another expert witness to perform a new expert examination.

Professional Consultant

Article 125

A professional consultant is a person possessing professional knowledge in the field in which an expert examination has been ordered.

A party may select and issue a power of attorney to a professional consultant when the authority conducting proceedings orders an expert examination.

The defendant and subsidiary prosecutor are entitled to submit to the authority conducting proceedings a motion for appointing a professional consultant. In deciding on the motion, the provisions of Article 59, Article 77 paragraphs 1 and 2, Article 114 paragraph 3 and Article 116 paragraphs 1 to 3 of this Code are applied accordingly.

An appeal against a ruling denying the motion referred to in paragraph 3 of this Article is decided on by the judge for preliminary proceedings or the panel (Article 21 paragraph 4).

Rights and Duties of the Professional Consultant

Article 126

The professional consultant is entitled to be informed about the date, hour and location of the expert examination and to attend the expert examination which may also be attended by the defendant and his counsel, to examine during the expert examination documents and the object of the expert examination, and to propose to the expert witness the performance of certain actions, to make remarks about the findings and opinion of the expert witness, to examine the expert witness at the trial, and to be examined on the subject-matter of the expert examination.

Before questioning a professional consultant will be required to take an oath which states: "I swear to give a statement pursuant to the rules of science or skill, conscientiously, impartially, and to the best of my knowledge".

The professional consultant is required to submit the power of attorney without delay to the authority conducting proceedings, to render assistance to the party in a professional, conscientious and timely manner, and to refrain from abusing his rights and from delaying the proceedings.

b) Special Cases of Expert Examination

Expert Examination of Physical Injuries

Article 127

If there exists suspicion in respect of the type and manner of origin of a physical injury, the authority conducting proceedings will order expert examination of physical injuries.

As a rule expert examination of physical injuries is performed by an examination of the injured person, and where it is not possible or in the opinion of an expert witness unnecessary – based on medical documentation or other data in the case file.

During the examination referred to in paragraph 2 of this Article the provisions of Articles 133 and 134 of this Code are applied accordingly.

Findings and Opinion of an Expert Witness

Article 128

An expert witness will accurately describe the injuries and if needed document them photographically, and thereafter render an opinion on the type and seriousness of each individual

injury and their aggregate effect, in view of their nature or special circumstances of the case, on the usual consequences of such injuries, and their consequences in the concrete case, and on the objects used to inflict the injuries and the manner of their infliction.

During the expert examination, the expert witness is required to act in accordance with the provision of Article 130 paragraph 2 of this Code.

Expert Examination of a Cadaver

Article 129

If there exists suspicion that the death of a certain person is a direct or indirect consequence of a criminal offence or that at the moment of death the person was deprived of liberty, or the identity of the person is unknown, the public prosecutor or the court will order a physician specializing in forensic medicine to perform an examination and autopsy of the cadaver.

When the expert examination is being performed outside a professional institution, the examination and autopsy of the body will as needed be performed by two or more physicians referred to in paragraph 1 of this Article.

If the cadaver has already been interred, the court will order its exhumation for the purpose of examination and autopsy.

Findings and Opinion of the Expert Witness

Article 130

During the autopsy of a cadaver necessary measures will be taken to establish the identity of the cadaver and to that aim it is necessary to describe the external and internal physical characteristics of the cadaver, and appropriate samples from the cadaver for forensic-genetic analysis and papillary line prints will be secured.

The expert witness is required in the examination and autopsy of the cadaver to give consideration to the materials of biological origin found (blood, saliva, semen, urine etc.), traces and suspicious substances, to describe them and to exclude them, and if the authority conducting proceedings requests or if the expert witness suspects that death was caused by poisoning, he will secure samples of biological origin (blood, urine, vitreous fluid, bodily organs etc.).

A photo-documentary record of the examination and autopsy of the cadaver will be made.

In his opinion the expert witness will in particular specify the origin and immediate cause of death, as well as how that cause originated.

If an injury was found on the cadaver, it will be determined whether the injury was inflicted by another person, what it was inflicted with, in what manner, how long before death it occurred and whether death was caused by it, and if several injuries were found on the cadaver, it will be established if every injury was inflicted with the same means and which of the injuries caused the death, whether there were several fatal wounds, what was the sequence of their infliction and whether only some of them caused death, or the death was the consequence of the aggregate effect.

In the case referred to in paragraph 5 of this Article, it will be established in particular whether death was caused by the type and general nature of the injury or because of a personal property or particular state of the injured person's body, or by accidental circumstances or the circumstances under which the injury was inflicted.

In the examination and autopsy of a fetus or a newborn, besides the obligations referred to in paragraphs 4 and 5 of this Article, their age, capacity for life outside the uterus and cause of death should also be established, as well as whether they were born alive or stillborn.

Psychiatric expert examination

Article 131

If suspicion appears that the defendant's mental competency is non-existent or diminished, that the defendant committed a criminal offence because of alcohol or drug addiction , or that mental problems make him incapable of participating in the proceedings, the authority conducting proceedings will order a psychiatric expert examination of the defendant.

If suspicion appears about the capacity of a witness to convey his knowledge or observations in connection with the object of the testimony, the authority conducting proceedings may order a psychiatric expert examination of the witness.

Findings and Opinion of the Expert Witness

Article 132

If expert examination was ordered for the purpose of evaluating the mental competency of the defendant, the expert witness will establish whether at the time of the commission of the criminal offence the defendant suffered from a mental disease, temporary mental disturbance, retarded mental development or other serious mental disorder, determine the nature, type, degree and permanency of the incompetence and issue an opinion about the effect of such a mental state to the capacity of the defendant to comprehend the significance of his action or to control his actions.

If expert examination was ordered for the purpose of evaluating the capacity of the defendant to participate in the proceedings, the expert witness will establish if the defendant is mentally disturbed and issue an opinion whether the defendant is capable of understanding the nature and purpose of the criminal proceedings, whether he understands individual procedural actions and their consequences, and conducts his defence on his own or with the help of his defence counsel.

If expert examination was ordered for the purpose of evaluating the capacity of a witness to convey his knowledge or observations in connection with the subject matter of the testimony, the expert witness will establish whether the witness is mentally disturbed and issue an opinion whether the witness if capable of testifying.

g)Examination

Performing Examination

Article 133

An examination is performed when establishment or clarification of a fact in the proceedings requires direct insight into the matter by an authority conducting proceedings.

The object of the examination may be a person, an object or a location.

In the performance of an examination, the authority conducting proceedings will as a rule request professional assistance from a forensic, traffic, medical or other expert, who will, if required, also locate, secure or describe traces, perform necessary measurements and recordings, render sketches, take necessary samples for analysis or collect other data.

An expert witness may also be invited to an examination if his presence would be of benefit for providing findings and opinions.

Examination of a Person

Article 134

An examination of a defendant will be performed even without his consent if it is necessary for establishing facts of importance for the proceedings.

Examinations of other persons may be performed without their consent only if it has to be established whether their bodies bear a certain trace or consequence of a criminal offence.

If the conditions referred to in Article 141 of this Code are fulfilled, samples may be taken for the purpose of analysis from the persons referred to in paragraphs 1 and 2 of this Article (Articles 141 and 142).

Examination of Objects

Article 135

An examination is performed on movable and immovable objects of the defendant or other persons. An examination of a cadaver is performed if the conditions referred to in Article 129 paragraph 1 of this Code are fulfilled.

Everyone is required to provide for the authority conducting proceedings access to objects and to provide necessary information. Under the conditions referred to in Article 147 of this Code, movable assets may be seized.

If performance of an examination requires entering buildings, dwellings and other premises, the provisions of Article 155 and Article 158 paragraph 1 item 1) of this Code are applied.

Examination of a Location

Article 136

The examination of a location is performed at a crime scene or other location where the objects or traces of a criminal offence are located.

The authority conducting proceedings may take into custody a person found at the location of the examination under the conditions stipulated in Article 290 of this Code.

d) Reconstruction of an Event

Ordering the Reconstruction of an Event

Article 137

For the purpose of checking evidence examined or establishing facts which are of significance for clarifying the facts being proved, the authority conducting proceedings may order a reconstruction of an event, which is performed by repeating actions or situations in the conditions under which according to the evidence examined the event took place. If in statements made by individual witnesses or defendants actions or situations are described differently, as a rule a reconstruction of the event will be performed separately with each of them.

A reconstruction may not be performed in a manner offensive to public order and morals or threatening to human lives or health.

During the reconstruction, certain evidence may if needed be adduced again.

đ) Record

Using a Record as Proof

Article 138

Proving by a record is performed by reading, observing, listening or inspecting the contents of the record in another manner.

A record issued in a prescribed form by a state institution within the boundaries of its competences, as well as a record issued in that form by a person in the performance of a public authorisation vested in him by law, proves the veracity of what is contained in it.

It is permitted to prove that the content of the instrument referred to in paragraph 2 of this Article is not authentic or that the instrument was not composed correctly.

The veracity of the contents of other instruments is determined by examining other evidence and evaluated in accordance with Article 16 paragraph 3 of this Code.

Obtaining a Record

Article 139

A record is obtained *ex officio* or on a motion of the parties by the authority conducting proceedings, or is submitted by the parties, as a rule in its original form.

If a person or state institution refuses to voluntarily surrender a record at the request of the authority of proceedings, actions will be taken in accordance with the provisions of Article 147 of this Code. If the original of a record has been destroyed, has disappeared or cannot be acquired, a copy of the instrument may be obtained.

The authority conducting proceedings will enter the contents of the instrument in the record and make a copy of the instrument, and if required return the original to the person who submitted it.

e) Obtaining Samples

Obtaining Biometric Samples

Article 140

With the aim of establishing facts in the proceedings, impressions of papillary lines and body parts, buccal (cheek) swabs and personal data may be taken, a personal description made, and a photograph taken (forensic registration of the suspect) of a suspect even without his consent

When necessary for the purpose of establishing identity or in other cases of interest to the successful conduct of proceedings, the court may allow a suspect's photograph to be made public.

In order to eliminate suspicion about being connected with a criminal offence, impressions of papillary lines and body parts and mouth swabs may be taken from an injured party or other person found at a crime scene even without their consent.

The action referred to in paragraphs 1 and 3 of this Article is performed by a professional acting under an order of the public prosecutor or the court.

Obtaining Samples of Biological Origin

Article 141

The obtaining of samples of biological origin and performance of other medical actions which are under the rules of the medical profession required for the purpose of analysing and establishing facts in proceedings may be conducted even without the consent of the defendant, except if it would cause harm to his health in some way.

If it is necessary to establish the existence of a trace or consequence of a criminal offence on another person, the obtaining of samples of biological origin and performance of other medical actions in accordance with paragraph 1 of this Article may be conducted even without the consent of the person, except if it would cause harm to his health in some way.

A voice or handwriting sample may be taken from a defendant, injured party, witness or other person for the purpose of establishing facts in proceedings for the purpose of making comparisons.

The actions referred to in paragraphs 1 and 2 of this Article are performed by a health-care professional, acting on an order of the public prosecutor or the court.

The person referred to in paragraph 3 of this Article who without a lawful reason (Article 68 paragraph 1 item 2), Article 93, Article 94 paragraph 1 and Article 95 paragraph 2) refuses to provide a voice or handwriting sample may be fined by the court by a fine of up to 150,000 dinars.

An appeal against the ruling pronouncing a fine is decided on by the panel. An appeal does not stay execution of the ruling.

Obtaining Samples for Forensic-Genetic Analysis

Article 142

If necessary for detecting the perpetrator of a criminal offence or establishing other facts in the proceedings, the public prosecutor or the court may order the taking of samples for forensic-genetic analysis:

1) from the crime scene or other location where traces of the criminal offence are located;

2) from the defendant and injured party, under the conditions stipulated in Article 141 paragraph 2 of this Code;

3) from other persons if there is one or more characteristics that bring them in connection with the criminal offence.

In a decision pronouncing a custodial criminal sanction, a first-instance court may *ex officio* order a sample for forensic-genetic analysis to be taken from:

1) a defendant sentenced to a term of imprisonment of more than year in connection with an intentional criminal offence;

2) a defendant found guilty of an intentional criminal offence against sexual freedom;

3) a person on whom has been imposed a security measure of compulsory psychiatric treatment.

The keeping of records on the obtained samples, their safekeeping and destruction is regulated by the act referred to in Article 279 of this Code.

ž) Checking Accounts and Suspicious Transactions

Object of Checking

Article 143

If there exist grounds for suspicion that a person suspected of a criminal offence punishable by a term of imprisonment of four or more years, or of the criminal offence of showing, procuring and possessing pornographic materials and exploiting juvenile persons for pornography (Article 185 paragraph 4 of the Criminal Code), money laundering (Article 231 paragraph 5 of the Criminal Code), trading in influences (Article 366 paragraph 2 of the Criminal Code), taking bribes (Article 367 paragraph 4 of the Criminal Code) and giving bribes (Article 368 paragraph 2 of the Criminal Code) possesses accounts or conducts transactions, the authority conducting proceedings may order that accounts or suspicious transactions be checked.

The check referred to in paragraph 1 of this Article encompasses:

1) acquiring data;

2) monitoring of suspicious transactions;

3) temporarily suspending a suspicious transaction.

Acquiring Data

Article 144

If the conditions referred to in Article 143 paragraph 1 of this Code are fulfilled, the public prosecutor may order a bank or other financial organisation to provide him within a certain time limit data:

1) about accounts a suspect has or controls and the funds in those accounts;

2) from data records.

The bank or other financial organisation is required to preserve as a secret the fact that it acted in accordance with paragraph 1 of this Article.

If he does not initiate criminal proceedings within six months of the date of examining the collected data referred to in paragraph 1 of this Article, or if he declares that he will not request the conduct of proceedings against the suspect, or if he deems the collected data not necessary for conducting proceedings, the public prosecutor will issue a ruling on the destruction of the collected materials.

The public prosecutor will inform the person against whom the evidentiary action was performed about the ruling referred to in paragraph 3 of this Article. The materials are destroyed under the supervision of the public prosecutor, who makes a record thereof.

Monitoring of Suspicious Transactions

Article 145

If the conditions referred to in Article 143 paragraph 1 of this Code are fulfilled, the public prosecutor may request a court to order the monitoring of suspicious transactions.

The monitoring referred to in paragraph 1 of this Article is ordered by the judge for preliminary proceedings by a reasoned order. The order contains data on the suspect, designation of the account, the obligation of the bank or financial organisation to submit periodical reports to the public prosecutor, and the duration of the supervision. The monitoring may last no more than three months, and may for important reasons be extended by another three months at most. The monitoring is discontinued as soon as the reasons for its application cease to exist.

Unless specified otherwise in the order, the bank or other financial organisation is required to notify the public prosecutor before every transaction that the transaction will be performed and to specify the time limit in which it will be performed.

If due to the nature of the transaction it is not possible to act in accordance with paragraph 3 of this Article, the bank or other financial organisation will notify the public prosecutor immediately after the performance of the transaction and specify the reasons for the delay.

The bank or financial organisation is required to maintain as a secret the fact that it has acted in accordance with paragraph 2 of this Article.

If the public prosecutor does not initiate criminal proceedings within six months of the date of examining the data obtained by the supervision referred to in paragraph 1 of this Article or if he declares that he will not request the conduct of proceedings against the suspect, or if he deems the data collected not necessary for conducting proceedings, the judge for preliminary proceedings will act in accordance with Article 144 paragraphs 3 and 4 of this Code.

Temporary Suspension of a Suspicious Transaction

Article 146

If the conditions referred to in Article 143 paragraph 1 of this Code are fulfilled and if there are grounds for suspicion that a suspect is performing the transaction referred to in Article 145 paragraph 1 of this Code, acting on a written and reasoned request of the public prosecutor the judge for preliminary proceedings may order a bank or other financial organisation to temporarily suspend the performance of a suspicious transaction.

The measure of temporary suspension referred to in paragraph 1 of this Article may last no longer than 72 hours, and in case the duration of the measure encompasses holidays, may on an order of the court be extended by a maximum of another 48 hours.

The bank or another financial organisation is required to maintain as a secret the data that it has acted in accordance with paragraph 1 of this Article.

z)Seizure of Objects

Objects Being Seized

Article 147

The authority conducting proceedings will seize objects which must be seized under the Criminal Code or which may serve as evidence in criminal proceedings and secure their safekeeping.

The decision on the seizure of funds which are the object of a suspicious transaction (Article 145) and their placement in a special account for safekeeping is issued by the court.

Among the objects referred to in paragraph 1 of this Article are automatic data processing equipment and devices and equipment on which electronic records are kept or may be kept.

Duty of a Holder of an Object

Article 148

A person holding objects referred to in Article 147 paragraphs 1 and 2 of this Code is required to make possible to the authority conducting proceedings access to the objects, to provide information needed for their use and to surrender them at the request of the authority. Before seizing the objects, the authority conducting proceedings will if needed inspect the objects, in the presence of a professional.

A person referred to in paragraph 1 of this Article who refuses to make possible access to objects, to provide information needed for their use or to surrender them, may be fined by the public prosecutor or the court up to 150,000 dinars, and if after being fined still refuses to fulfill his duty, may be punished with the same fine once again. The same will be done in respect of a responsible person in a public authority, a military facility or an enterprise or other legal person.

An appeal against the ruling pronouncing a fine is decided on by the judge for preliminary proceedings or the panel. An appeal does not stay execution of the ruling.

Exemption from the Duty to Surrender Objects

Article 149

The following are exempted of the duty to surrender objects:

1) the defendant;

2) the person referred to in Article 93 items 1) and 2) of this Code, unless the court decides otherwise (Article 93 paragraph 2).

Procedure for Seizing an Object

Article 150

A certificate is issued to a person from whom objects are seized in which they will be described, the locations where they were found indicated, data on the person from whom the objects are being sized given, and the capacity and signature of the person conducting the action given.

Documents which may serve as evidence will be listed, and if that is not possible, the documents will be placed under a cover and sealed. The owner of the documents may place his seal on the cover.

The person from whom the documents were seized will be summoned to attend the opening of the cover. If he does not respond or is absent, the authority conducting proceedings will open the cover, inspect the documents and make a list of them. In the inspection of documents care must be taken for unauthorised persons not to be allowed to learn their content.

Return of Seized Objects

Article 151

Objects seized during proceedings will be returned to their holder if the reasons for which the objects were seized cease to exist, and the reasons for their confiscation do not exist (Article 535).

If the object referred to in paragraph 1 of this Article is indispensable for the holder, it may be returned to him even before the cessation of the reasons for which it was seized, with an obligation that he bring it in at the request of the authority conducting proceedings.

The public prosecutor and the court *ex officio* look after the existence of reasons for the seizure of objects.

i)Search

a. Basic Provisions

Subject-matter and Grounds for a Search

Article 152

A search of a dwelling or other premises or a person may be performed if it is probable that the search will result in finding the defendant, traces of the criminal offence or objects of importance for the proceedings.

A search of a dwelling or other premises or a person is performed on the basis of a court order or exceptionally without an order, on the basis of a legal authorisation.

The search of automatic data processing devices and equipment on which electronic records are kept or may be kept is undertaken under a court order and, if necessary, with the assistance of an expert.

Seizure of Objects and Documents

Article 153

During a search, objects and documents connected to the purpose of the search will be seized.

If during a search objects are found which are not connected to the criminal offence for which the search was undertaken, but which indicate another criminal offence prosecutable *ex officio*, they will be described in the record and seized, and a receipt on the seizure will be issued immediately.

If the search was not undertaken or attended by the public prosecutor, the authority which performed the search will notify the public prosecutor thereof immediately.

If the public prosecutor finds that there are no grounds to initiate criminal proceedings or if the reasons for which the objects were seized cease to exist, and the reasons for their confiscation do not exist (Article 535), the objects will immediately be returned to the person from whom they were seized.

Treatment of Objects Belonging to an Unidentified Owner

Article 154

If during a search an object is found whose owner is not known, the authority conducting proceedings will post a notice on the notice board of the assembly of the local self-government where the search was performed and in whose territory the criminal offence was committed, and if items of substantial value are concerned also in the media, in which it will describe the object and invite the owner to report within a year of the date of publication of the notice, with a caution that failing to do so will result in the sale of the object.

If the object is liable to deterioration or its safekeeping demands substantial expense, it will be sold in accordance with provisions regulating the enforcement procedure, and the money will be kept in the court deposit.

If within one year no one claims the objects or the proceeds from their sale, the court will issue a ruling under which the object becomes property of the state or the funds are transferred to the budget of the Republic of Serbia.

The owner of objects is entitled to demand in civil litigation the return of objects or proceeds from their sale. The statutory limit of this right begins to run from the date of publication of the notice.

b) Search Based on an Order

Search Order

Article 155

A search is ordered by the court, acting on a reasoned request by the public prosecutor.

The search order contains the following:

1) the title of the court which ordered the search;
2) designation of the subject-matter of the search;
3) the reason for the search;
4) the name of the authority which will perform the search;
5) other data of importance for the search.

The search referred to in paragraph 1 of this Article will commence no more than eight days from the date of issuance of the order. If it does not commence in the foresaid time limit, the search cannot be performed and the order will be returned to the court.

Preconditions for a Search

Article 156

After serving the search order, the holder of a dwelling and other premises or person who will be searched is asked to voluntarily surrender the person, or objects which are being sought.

The holder or person referred to in paragraph 1 of this Article will be advised of the right to retain a lawyer, or defence counsel, who may attend the search. If the holder or the person referred to in paragraph 1 of this Article requests the presence of a lawyer or defence counsel, the commencement of the search will be postponed until his arrival, but by no more than three hours.

A search may be performed even without the service of the search order, and without an invitation for a person or object to be surrendered and the advice on the right to a defence counsel or lawyer, if armed resistance or other form of violence is expected, or if there is obvious preparation for or commencement of the destruction of traces of a criminal offence or objects of importance for the proceedings, or if the holder of a dwelling or other premises is inaccessible.

The holder of a dwelling and other premises will be summoned to attend the search, and if he is absent, an adult member of his household or another person will be called to attend the search on his behalf.

When military facilities, premises or state institutions, enterprises or other legal persons are searched, their managing official or person he designates will be summoned to attend the search. If the person summoned does not appear within three hours of receiving the summons, the search may be performed without his presence.

When a lawyer's office or an apartment in which an attorney lives is searched, a lawyer appointed by the president of the competent bar association will be summoned. If the lawyer appointed by the president of the bar association does not appear within three hours, the search may be performed without his presence.

The search is attended by two citizens of adult age as witnesses who will before the commencement of the search be advised to observe the course of the search, and that they are entitled before they sign the record of the search to enter their objections on the veracity of the

content of the record. If the conditions referred to in paragraph 3 of this Article are fulfilled, the search may also be performed without the presence of witnesses.

When a search of a person is being conducted, the witnesses and the person conducting the search must be of the same sex as the person being searched.

Search Procedure

Article 157

A search is performed carefully, respecting the dignity of person and right to intimacy, without unnecessary obstruction of the house rules of order. As a rule a search is conducted in the daytime, and exceptionally at night, between 22:00 and 06:00 hours, if it was commenced in the daytime and not completed, or if it so ordered in the search order.

Locked rooms, furniture and other objects will be opened by force only if their holder is not present or refuses to open them voluntarily or a person present refuses to do so (Article 156 paragraph 4). Unnecessary damage will be avoided in the opening process.

If a search of the devices and equipment referred to in Article 152 paragraph 3 of this Code is being performed, the holder of the object or the person present (Article 156 paragraph 4), besides the defendant, is required to make possible access and provide information needed for their use unless any of the reasons from Article 93, Article 94 paragraph 1 and Article 95 paragraph 2 of this Code exist.

A record will be made of every search in which the objects and instruments being seized and the location of their finding will be accurately described, and a special explanation will be provided on why the search is conducted at night. Observations of the persons present are also entered in the record. The record of the search is signed by the persons present. In case a person refuses to sign the record, this will be noted on the record. A receipt will be made in respect of the seized objects and will immediately be issued to the person from whom the objects or instruments were seized.

An audio or video recording may be made of the course of a search, and the objects found during the search may be photographed separately and if the search is conducted without the presence of witnesses (Article 156 paragraph 7) or without the representatives of the bar association (Article 156 paragraph 6) the recording and taking of photographs is mandatory. The recordings and photographs will be attached to the record of the search.

v) A Search without an Order

Searching Dwellings and Other Premises

Article 158

The public prosecutor or authorised police officers may by exception without a court order enter a dwelling and other premises and without the presence of witnesses undertake a search of the dwelling or other premises or persons found there:

1) with the consent of the holder of the dwelling and other premises;

2) if someone calls out for help;

3) in order to directly arrest the perpetrator of a criminal offence;

4) for the purpose of executing a court decision on the placement of a defendant in detention or on bringing him in;

5) for the purpose of eliminating a direct and serious threat to persons or property.

If after entering a dwelling or other premises no search was undertaken, a certificate will immediately be issued to the holder of the premises or person present (Article 156 paragraph 4) which will specify reason for entering and state observations of the holder or person present.

If a search was undertaken after entering a dwelling and other premises, a record will be made of the entry into the premises and the search performed without a court order and presence of witnesses, in which will be specified the reasons for the entry and search.

Searching Persons

Article 159

Authorised police officers may without a search order issued by the court and without the presence of witnesses undertake the search of a person during deprivation of liberty or during the execution of an order for a person to be brought in, if suspicion exists that the person possesses a weapon or other tool that may be used for attack, or there is suspicion that he will discard, conceal or destroy objects which should be seized from him as evidence in proceedings.

Report to the Judge for Preliminary Proceedings

Article 160

When the public prosecutor or authorised police officers undertake a search of a dwelling and other premises or persons without a court order they are required to submit a report thereon immediately to the judge for preliminary proceedings who will assess whether the requirements for the search have been met.

3. Special Evidentiary Actions

a) Basic Provisions

Requirements for Ordering

Article 161

Special evidentiary actions may be ordered against a person for whom there are grounds for suspicion that he has committed a criminal offence referred to in Article 162 of this Code, and evidence for criminal prosecution cannot be acquired in another manner, or their gathering would be significantly hampered.

Special evidentiary actions may also exceptionally be ordered against a person for whom there are grounds for suspicion that he is preparing one of the criminal offences referred to in paragraph 1 of this Article, and the circumstances of the case indicate that the criminal offence could not be detected, prevented or proved in another way, or that it would cause disproportionate difficulties or a substantial danger.

In deciding on ordering and the duration of special evidentiary actions, the authority conducting proceedings will especially consider whether the same result could be achieved in a manner less restrictive to citizens' rights.

Criminal Offences in Respect of Which Special Evidentiary Actions are Applied

Article 162

Under the conditions referred to in Article 161 of this Code, special evidentiary actions may be ordered for the following criminal offences:

1) those which according to separate statute fall within the competence of a prosecutor's office of special jurisdiction;

2) aggravated murder (Article 114 of the Criminal Code), abduction (Article 134 of the Criminal Code), showing, procurement and possession of pornographic materials and exploiting juveniles for pornography (Article 185 paragraphs 2 and 3 of the Criminal Code), extortion (Article 214 paragraph 4 of the Criminal Code), counterfeiting money (Article 223 paragraphs 1 to 3 of the Criminal Code), money laundering (Article 231 paragraphs 1 to 4 of the Criminal Code), unlawful production and circulation of narcotic drugs (Article 246 paragraphs 1 to 3 of the Criminal Code), threatening independence (Article 305 of the Criminal Code), threatening territorial integrity (Article 307 of the Criminal Code), sedition (Article 308 of the Criminal Code), inciting sedition (Article 309 of the Criminal Code), subversion (Article 313 of the Criminal Code), sabotage (Article 314 of the Criminal Code), espionage (Article 315 of the Criminal Code), divulging state secrets (Article 316 of the Criminal Code), inciting national, racial and religious hatred or intolerance (Article 317 of the Criminal Code), violation of territorial sovereignty (Article 318 of the Criminal Code), conspiring to conduct activities against the Constitution (Article 319 of the Criminal Code), plotting an offences against the constitutional order and security of Serbia (Article 320 of the Criminal Code), serious offences against the constitutional order and security of Serbia (Article 321 of the Criminal Code), illegal manufacture, possession and sale of weapons and explosive materials (Article 348 paragraph 3 of the Criminal Code), illegal crossing of the national boarder and human trafficking (Article 350 paragraphs 2 and 3 of the Criminal Code), abuse of office (Article 359 of the Criminal Code), trading in influences (Article 366 of the Criminal Code), taking bribes (Article 367 of the Criminal Code), offering bribes (Article 368 of the Criminal Code), human trafficking (Article 388 of the Criminal Code), taking hostages (Article 392 of the Criminal Code) and the criminal offence referred to in Article 98 paragraphs 3 to 5 of the Law on the Secrecy of Data;

3) obstruction of justice (Article 336 paragraph 1 of the Criminal Code), if committed in connection with the criminal offence referred to in items 1) and 2) of this paragraph.

A special evidentiary action referred to in Article 183 of this Code may be ordered only in connection with a criminal offence referred to in paragraph 1 item 1) of this Article.

Under the conditions referred to in Article 161 of this Code the special evidentiary action referred to in Article 166 of this Code may also be ordered for the following criminal offences: unauthorised exploitation of copyrighted work or other works protected by similar rights (Article 199 of the Criminal Code), damaging computer data and programmes (Article 298 paragraph 3 of the Criminal Code), computer sabotage (Article 299 of the Criminal Code), computer fraud (Article 301 paragraph 3 of the Criminal Code) and unauthorised access to protected computers, computer networks and electronic data processing (Article 302 of the Criminal Code).

Treatment of Collected Materials

Article 163

If the public prosecutor does not initiate criminal proceedings within six months of the date of first examining the materials collected by applying special evidentiary actions or if he declares that he will not use them in the proceedings or that he will not request the conduct of proceedings against the suspect, the judge for preliminary proceedings will issue a ruling on the destruction of the collected materials.

The judge for preliminary proceedings may inform the person against whom a special evidentiary action referred to in Article 166 of this Code was conducted about the issuance of the ruling referred to in paragraph 1 of this Article if during the conduct of the action his identity was established and if it would not threaten the possibility of conducting criminal proceedings. The materials are destroyed under the supervision of the judge for preliminary proceedings who makes a record thereof.

If during the performance of the special evidentiary actions it was acted in contravention of the provisions of this Code or an order of the authority conducting proceedings, the court's decision may not be based on the data collected and the collected material will be treated in accordance with Article 84 paragraph 3 of this Code.

Accidental Finding

Article 164

If by the undertaking of special evidentiary actions materials have been collected about a criminal offence or a perpetrator not covered by the decision on ordering special evidentiary actions, such materials may be used in proceedings only if they relate to a criminal offence referred to in Article 162 of this Code.

Confidentiality of Data

Article 165

The motion for ordering special evidentiary actions and the decision on the motion are recorded in a special register and kept together with materials on the conduct of special evidentiary actions in a special cover of the file bearing the mark "special evidentiary actions" and a mark determining the level of secrecy, in accordance with the regulations on secret data.

Data on requesting, deciding on and implementing special evidentiary actions represent secret data.

Other persons who in whatever capacity, learn about the data referred to in paragraph 2 of this Article are required to keep them secret.

b)Covert Interception of Communications

Conditions for Ordering

Article 166

If the conditions referred to in Article 161 paragraphs 1 and 2 of this Code are fulfilled, acting on a reasoned request by the public prosecutor the court may order interception and recording of communications conducted by telephone or other technical means or surveillance of the electronic or other address of a suspect and the seizure of letters and other parcels.

Order on Covert Interception of Communications

Article 167

The special evidentiary action referred to in Article 166 of this Code is ordered by the judge for preliminary proceedings by a reasoned order.

The order referred to in paragraph 1 of this Article contains available data on the person against whom the covert interception of communication is being ordered, legal designation of the criminal offence, designation of a known telephone number or address of the suspect or telephone number or address for which exist grounds for suspicion that the suspect is using, the reasons on which the suspicion is founded, manner of conduct, scope and duration of the special evidentiary action.

Covert interception of communication may last three months, and if it is necessary in order to continue collecting evidence it may be extended by another three months at most. If criminal offences referred to in Article 162 paragraph 1 item 1) of this Code are concerned, covert interception may exceptionally be extended at the most two times by another three months, respectively. The conduct of interception is discontinued as soon as the reasons for its application cease to exist.

Conducting Covert Interception of Communications

Article 168

The order referred to in Article 167 paragraph 1 of this Code is executed by the police, Security Information Agency or Military Security Agency. Daily reports are made on the conduct of the covert interception of communication and are together with the collected recordings of communications, letters or other parcels sent to the suspect or sent by the suspect, delivered to the judge for preliminary proceedings and the public prosecutor at their request.

Postal, telegraphic and other enterprises, companies and persons registered for transmission of information are required to make accessible to the public authority referred to in paragraph 1 of this Article which executes the order the conduct of covert interception and recording of communications, and, with a receipt of delivery, hand over letters and other parcels.

Expanding Covert Interception of Communications

Article 169

If during the conduct of covert interception of communications it becomes apparent that the suspect is using another telephone number or address, the public authority referred to in Article 168 paragraph 1 of this Code will expand the covert interception of communications to that number or address and immediately inform the public prosecutor thereof.

Upon receiving the notice referred to in paragraph 1 of this Article, the public prosecutor will immediately submit a motion for an expansion of the covert interception of communications. The motion is decided on within 48 hours of the receipt of the motion by the judge for preliminary proceedings, who makes a note thereof in the record.

If he approves the motion referred to in paragraph 2 of this Article, the judge for preliminary proceedings will authorise an expansion of the covert interception of communications, and if he denies the motion, the materials collected in accordance with paragraph 1 of this Article are destroyed (Article 163 paragraphs 1 and 2).

Delivery of Reports and Materials

Article 170

Upon the termination of the covert interception of communications, the authority referred to in Article 168 paragraph 1 of this Code delivers to the judge for preliminary proceedings recordings of the communications, letters and other parcels and a special report which contains: the time of commencement and termination of the interception, data on the official who conducted the interception, a description of the technical means used, the number and available data on the persons encompassed by the interception, and an assessment of purposefulness and results of the application of the interception.

The judge for preliminary proceedings will in the opening of letters and other parcels take care not to damage seals and to preserve the covers and addresses. A record will be made of the opening. All the materials obtained by the implementation of the covert interception of communications will be delivered to the public prosecutor.

The public prosecutor will order the recordings obtained through use of technical means to be transcribed in full or in part and to be described.

The provisions of Articles 237, 358, 407 and Article 445 paragraph 2 of this Code will apply accordingly to recordings made in contravention of the provisions of Articles 166 to 169 of this Code.

v. Covert Surveillance and Audio and Video Recording

Conditions for Ordering

Article 171

If the conditions referred to in Article 161 paragraphs 1 and 2 of this Code are fulfilled, acting on a reasoned motion of the public prosecutor the court may order covert surveillance and [audio and video] recording of a suspect for the purpose of:

1) detecting contacts or communication of the suspect in public places where access is limited or in premises, except in a dwelling;

2) determining the identity of a person or locating persons of things.

The locations or premises referred to in paragraph 1 item 1) of this Article or vehicles belonging to other persons may be the object of covert surveillance and [audio and video] recording only if it is probable that the suspect will be present there or that he is using those vehicles.

Order on Covert Surveillance and Audio and Video Recording

Article 172

The special evidentiary action referred to in Article 171 of this Code is ordered by the judge for preliminary proceedings by a reasoned order.

The order referred to in paragraph 1 of this Article contains data on the suspect, legal designation of the criminal offence, reasons on which the suspicion is based, designation of the premises, location or vehicle, authorization to enter and place the technical equipment for recording, manner of conduct, scope and duration of the special evidentiary action.

Covert surveillance and [audio and video] recording may last three months, and if it is necessary in order to continue collecting evidence, it may be extended by a maximum of three months. If criminal offences referred to in Article 162 paragraph 1 item 1) of this Code are concerned, covert surveillance and recording may exceptionally be extended two more times at most by three months, respectively. The conduct of surveillance and recording is discontinued as soon as the reasons for their application cease to exist.

Conducting Covert Surveillance and Audio and Video Recording

Article 173

The order referred to in Article 172 paragraph 1 of this Code is executed by the police, Security Information Agency or Military Security Agency. Daily reports are made on the conduct of the covert surveillance and [audio and video] recording and are together with the collected recordings delivered to the judge for preliminary proceedings and the public prosecutor, at their request.

Upon the termination of the covert surveillance and recording, the provisions of Article 170 of this Code are applied accordingly.

g) Simulated [business] deals

Conditions for Ordering

Article 174

If the conditions referred to in Article 161 paragraphs 1 and 2 of this Code are fulfilled, acting on a reasoned motion by the public prosecutor the court may order:

1) a simulated purchase, sale or rendering of business services;

2) a simulated offering or acceptance of bribes.

Order Allowing for Conclusion of Simulated [business] deals

Article 175

The special evidentiary action referred to in Article 174 of this Code is ordered by the judge for preliminary proceedings by a reasoned order.

The order referred to in paragraph 1 of this Article contains data on the suspect, legal designation of the criminal offence, reasons on which the suspicion is based, manner of conducting, recording and documenting, and the scope and duration of the special evidentiary action.

The implementation of simulated [business] deals may last three months, and if it is necessary in order to continue collecting evidence it may be extended by a maximum of three months. If the criminal offences referred to in Article 162 paragraph 1 item 1) of this Code are concerned, conclusion of simulated [business] deals may exceptionally be extended two more times at most, by three months, respectively. The conclusion of simulated [business] deals is discontinued as soon as the reasons for their application cease to exist.

Implementation of Simulated [Business] Deals

Article 176

The order referred to in Article 175 paragraph 1 of this Code is executed, as a rule, by an authorized person from the police, Security Information Agency or Military Security Agency, and if this is required by special circumstances of the case, by another authorized person. Daily reports are made on the implementation of simulated [business] deals and, together with the collected recordings, they are delivered to the judge for preliminary proceedings and the public prosecutor, at their request.

The authorized person referred to in paragraph 1 of this Article concluding a simulated [business] deal is not committing a criminal offence if the action he is undertaking is specified by criminal law as a criminal offence.

It is prohibited and punishable for the person referred to in paragraph 2 of this Article to incite another to commit a criminal offence.

Delivery of Reports and Materials

Article 177

Upon the termination of simulated [business]deals the public authority which implements the order referred to in Article 175 paragraph 1 of this Code delivers to the judge for preliminary proceedings the entire documentation on the undertaken special evidentiary action, video, audio or electronic recordings and other evidence and a special report containing: the time of concluding the simulated [business] deals, data on the person who concluded the simulated [business] deals, except when it is was done by an undercover investigator, description of the technical means employed, number of and available data on the persons involved in the conclusion of simulated [business] deals.

The judge for preliminary proceedings will deliver to the public prosecutor the materials and report referred to in paragraph 1 of this Article.

d) Computer Search of Data

Conditions for Ordering

Article 178

If the conditions referred to in Article 161 paragraphs 1 and 2 of this Code are fulfilled, acting on a reasoned motion by the public prosecutor the court may order computer searches of already processed personal data and other data and their comparison with data relating to the suspect and the criminal offence .

Order on a Computer Search of Data

Article 179

The special evidentiary action referred to in Article 178 of this Code is ordered by the judge for preliminary proceedings by a reasoned order.

The order referred to in paragraph 1 of this Article contains data on the suspect, the statutory title of the criminal offence, description of the data it is necessary to search and process by computer, designation of the public authority which is required to conduct the search of the requested data, scope and duration of the special evidentiary action.

A computer search of data may last a maximum of three months, and if it is necessary in order to continue collecting evidence it may be extended two more times at most by three months, respectively. The conduct of a computer search of data is discontinued as soon as the reasons for its application cease to exist.

Conduct of a Computer Search of Data

Article 180

The order referred to in Article 179 paragraph 1 of this Code is executed by the police, Security Information Agency, Military Security Agency, customs service, tax administration or other services or other public authority, or a legal person vested with public authority on the basis of the law.

On concluding a computer search of data the public authority, or the legal person referred to in paragraph 1 of this Article delivers to the judge for preliminary proceedings a report containing: data on the time of commencing and terminating a computer search of data, data searched and processed, data on the official who conducted the special evidentiary action, description of the technical means employed, data on the persons encompassed and results of the implemented computer search of data.

The judge for preliminary proceedings will deliver the report referred to in paragraph 2 of this Article to the public prosecutor.

đ) Controlled Delivery

Conditions for Ordering

Article 181

If the conditions referred to in Article 161 paragraphs 1 and 2 of this Code are fulfilled, the Republic Public Prosecutor, or the public prosecutor of special jurisdiction may for the purpose of collecting evidence for the proceedings and detecting suspects order a controlled delivery where it is permitted that, with the knowledge and under the supervision of the competent authorities, illegal or suspicious parcels:

1) be delivered within the territory of the Republic of Serbia;

2) enter, transit through and exist from the territory of the Republic of Serbia.

The public prosecutor referred to in paragraph 1 of this Article determines by an order the manner of conducting the controlled delivery.

Conducting a Controlled Delivery

Article 182

A controlled delivery is conducted by the police and other public authorities designated by the public prosecutor referred to in Article 181 paragraph 1 of this Code.

The controlled delivery referred to in Article 181 paragraph 1 item 2) of this Code is conducted with the consent of the competent authorities of interested states and on the basis of reciprocity, in accordance with ratified international agreements which regulate its content in more detail.

Upon concluding a controlled delivery, the police or other public authority deliver to the public prosecutor a report containing: data on the time of commencement and termination of the controlled delivery, data on the official who conducted the action, description of the technical means employed, data on the persons encompassed and results of the implemented controlled delivery.

e) Undercover Investigator

Conditions for Ordering

Article 183

If the conditions referred to in Article 161 paragraphs 1 and 2 of this Code are fulfilled, acting on a reasoned motion by the public prosecutor the court may order the deployment of an undercover investigator if evidence for criminal prosecution cannot be secured by other special evidentiary actions or if their collection would be made substantially more difficult.

Order on Engaging an Undercover Investigator

Article 184

The special evidentiary action of engaging an undercover agent is ordered by the judge for preliminary proceedings by a reasoned order.

The order referred to in paragraph 1 of this Article contains data on persons and the group related to whom it is being applied, description of possible criminal offences, manner, scope, location and duration of the special evidentiary action. It may be specified in the order that the undercover investigator may use technical means for making photographs, or for audio, video or electronic recording.

The duration of the engagement of undercover investigator is as long as necessary to collect evidence, but no longer than one year. Upon a reasoned motion of the public prosecutor, the special evidentiary action may be extended by a maximum of six months by the judge for for preliminary proceedings. The engagement of an undercover investigator is discontinued as soon as the reasons for his deployment cease to exist.

Designating an Undercover Investigator

Article 185

Tthe minister responsible for internal affairs, director of the Security Information Agency or director of the Military Security Agency, or a person authorised by them desjgnate an undercover investigator under a pseudonym or code-name. .

As a rule an undercover investigator is an authorised officer of the internal affairs authorities, Security Information Agency or Military Security Agency, and if special circumstances of the case so require, another person, who may also be a foreign national.

For the purpose of protecting the identity of the undercover investigator, the competent authorities may alter data in databases and issue personal documents with altered data. These data represent secret data.

It is prohibited and punishable for an undercover investigator to incite to the commission of a criminal offence.

Delivery of Reports and Materials

Article 186

During his deployment an undercover investigator submits periodical reports to his immediate superior.

At the conclusion of the deployment of the undercover investigator, the superior official referred to in paragraph 1 of this Article delivers to the judge for preliminary proceedings photographs, optical, audio or electronic recordings, documentation collected and all evidence acquired and a report containing: the time of commencement and termination of deployment of the undercover investigator; code-name or pseudonym of the undercover investigator; description of the procedures applied and technical means used; data on the persons covered by the special evidentiary action and description of the results achieved.

The judge for preliminary proceedings will deliver the materials and report referred to in paragraph 2 of this Article to the public prosecutor.

Examination of an Undercover Investigator as a Witness

Article 187

An undercover investigator under a code-name or pseudonym may exceptionally be examined as a witness in the criminal proceedings. The examination will be performed so that the identity of the undercover investigator is not revealed to the parties and the defence counsel.

The undercover investigator is summoned through his superior officer (Article 186 paragraph 1) who immediately before the examination by a declaration given before the court confirms the identity of the undercover investigator. The data on the identity of the undercover investigator being examined as a witness represent secret data.

A court decision cannot be based only or to a decisive extent on the testimony of an undercover investigator.

Chapter VIII

MEASURES TO SECURE THE PRESENCE OF THE DEFENDANT AND FOR UNOBSTRUCTED CONDUCT OF CRIMINAL PROCEEDINGS

1. Basic Provisions

Types of Measures

Article 188

The measures which may be undertaken against a defendant in order to secure his presence and unobstructed conduct or criminal proceedings are as follows:

1) summonses;
2) bringing [a defendant] in;
3) prohibition of approaching, meeting or communicating with a certain person;
4) prohibition of leaving a temporary residence;
5) bail;
6) prohibition of leaving a dwelling;
7) detention.

General Conditions for Ordering Measures

Article 189

In ordering measures referred to in Article 188 of this Code, the authority conducting proceedings will take care not to apply a harsher measure if the same purpose can be achieved by a more lenient measure.

If required, the authority conducting proceedings may order two or more of the measures referred to in paragraph 1 of this Article.

The measure referred to in paragraph 1 of this Article will also be repealed *ex officio* when the reasons for ordering it cease to exist, or be replaced with a more lenient measure when the conditions for that arise.

Control of Observance of a Prohibition to Leave One's Dwelling

Article 190

The court may order the application of electronic surveillance to a defendant against whom has been ordered the measure referred to in Article 188 item 6) of this Code for the purpose of controlling the observance of the restrictions ordered.

The location device – transmitter, is attached to the wrist or ankle or other place on a defendant by a professional, who gives the defendant detailed instructions on the manner in which the device works. The professional controls the device which remotely tracks the movements of the defendant and his position in space – the receiver.

Electronic monitoring is performed by the public authority in charge of executing criminal sanctions or another public authority specified by law.

2. Specific Measures

a) Summonses

Content of a Summons

Article 191

The presence of a defendant in criminal proceedings is secured by summoning him. Summonses are issued to the defendant by the public prosecutor or the court.

A defendant is summoned by the delivery of a sealed written summons containing: the title of the authority conducting proceedings issuing the summons, first name and surname of the defendant, legal designation of the criminal offence with which he is charged, place where the defendant is to appear, date and time when he is to appear, remark that he is being summoned in the capacity of defendant and caution that in case of a failure to appear a harsher measure referred to in Article 188 of this Code will be ordered against him, official seal and first name and surname of the public prosecutor or judge issuing the summons.

Rights and Duties of the Defendant

Article 192

When a defendant is summoned for the first time, he will be advised in the summons on his right to retain a defence counsel and that the defence counsel may attend his interrogation, about the duty referred to in Article 70 item 2) of this Code and the rights on the service to the defendant (Article 246 paragraphs 1 and 2).

If a defendant is unable to respond to a summons because of illness or other compelling reason, he will be interrogated in the place where he is located or transportation will be provided for him to the building housing the authority conducting proceedings or other place where an action is being performed.

Summoning Participants in Proceedings

Article 193

Before an indictment is filed the public prosecutor summons a witness, expert witness or other participant in the proceedings, and if the public prosecutor does not do so, at the request of the defendant and his defence counsel, the summons is issued by the judge for preliminary proceedings.

After the indictment is filed the participant in the proceedings referred to in paragraph 1 of this Article is summoned by the court if the court has ordered his examination, or by the parties and defence counsel, if they assume an obligation to do so.

When a juvenile under the age of 16 is being summoned in the capacity of a witness, the summoning is performed through his parents or legal representatives, unless this is not possible due to a need for expediency or other justifiable reasons.

A participant in proceedings avoiding the receipt of a summons may be fined up to 150,000 dinars. The ruling on the fine is issued by the court.

An appeal against the ruling referred to in paragraph 4 of this Article is decided on by the panel. An appeal does not stay execution of the ruling.

The provision of paragraph 4 of this Article is not applied to juveniles.

Summoning by Public Notice

Article 194

If it possesses grounds for suspicion about a criminal offence, the authority conducting proceedings may invite persons with knowledge of the perpetrator and circumstances of the event to respond by posting a public notice in the media.

b) Bringing [a Defendant] In

Order to Bring [a Defendant] In

Article 195

The public prosecutor or the court may issue an order for a defendant to be brought in:

1) if a duly summoned defendant fails to appear, without justifying his absence;

2) if service of the summons could not be performed, and the circumstances obviously indicate that the defendant is evading the receipt of a summons;

3) if a ruling ordering detention has been issued.

The order referred to in paragraph 1 of this Article is issued in writing. The order contains: the first name and surname of the defendant who is to be brought in, place and date of birth, statutory title of the criminal offence with which he is being charged with a citation of the provision of criminal law, reason for ordering the defendant to be brought in, official seal and signature of the public prosecutor or judge ordering the defendant to be brought in.

Execution of the Order to Bring a Defendant In

Article 196

The order referred to in Article 195 paragraph 1 of this Code is executed by the police.

An authorised police officer entrusted with the execution of the order referred to in Article 195 paragraph 1 of this Code serves the order to the defendant and calls him to come with him. If the defendant refuses, he will bring him in by force.

The order referred to in Article 195 paragraph 1 of this Code to bring in a member of the police, a military serviceperson, a member of the Security Information Agency, Military Security Agency, Military Intelligence Agency or a member of guards at an institution where persons deprived of liberty are held is executed by their command, or by the institution.

v. Prohibition of Approaching, Meeting or Communicating with a Certain Person

Conditions for Ordering

Article 197

If there are circumstances which indicate that a defendant could disrupt the proceedings by exerting influence on an injured party, witnesses, accomplices or concealers or could repeat a criminal offence, complete an attempted criminal offence or commit a criminal offence he is threatening to commit, the court may prohibit the defendant from approaching, meeting or communicating with certain persons.

Together with the measure referred to in paragraph 1 of this Article, the court may order the defendant to periodically report to the police, an officer of the public authority in charge of executing criminal sanctions or other public authority specified by law.

Deciding on the Measure

Article 198

The court decides on ordering the measure referred to in Article 197 of this Code on a motion by the public prosecutor, and after the indictment is confirmed, also *ex officio*.

During the investigation a reasoned ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article is issued by the judge for preliminary proceedings, and after the indictment is filed by the president of the panel, and at the trial, by the panel. If the measure was not proposed by the public prosecutor, and the proceedings are being conducted in connection with a criminal offence which is prosecutable *ex officio*, the opinion of the public prosecutor will be sought before the decision is rendered.

In the ruling pronouncing the measure referred to in paragraph 1 of this Article the defendant will be cautioned that a harsher measure (Article 188) may be ordered against him if he violates the prohibition ordered against him. The ruling is also delivered to the person in relation to whom the measure against the defendant was ordered.

The measure referred to in paragraph 1 of this Article may last for as long as a need for it exists, but not longer than the time of the final judgment, or the commitment of the defendant to

serve a custodial criminal sanction. The court is required to examine once every three months whether the measure is still justified.

The parties and defence counsel may appeal against a ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article. The public prosecutor may also appeal against a ruling denying a motion for ordering the measure. An appeal does not stay execution of the ruling.

Control of the application of the measure referred to in paragraph 1 of this Article is performed by the police.

g) Prohibition on Leaving a Temporary Residence

Conditions for Ordering

Article 199

If there are circumstances indicating that a defendant could abscond, go into hiding, leave for an unknown destination or to a foreign country, the court may prohibit the defendant to leave the place of his temporary residence or the territory of the Republic of Serbia without permission.

Together with the measure referred to in paragraph 1 of this Article, the defendant may be prohibited from visiting certain locations or ordered to periodically report to a certain public authority, or his travel documents or driver's license may be seized.

The measures referred to in paragraphs 1 and 2 of this Article may not restrict the defendant's right to live in his dwelling, and to meet his family members, close relations and defence counsel without obstruction.

Deciding on the Measure

Article 200

The court decides on ordering the measures referred to in Article 199 paragraphs 1 and 2 of this Code on a motion by the public prosecutor, and after the indictment is confirmed, also *ex officio*. The court informs the ministry in charge of internal affairs about the ordering of the measure.

During the investigation a reasoned ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article is issued by the judge for preliminary proceedings, and after the indictment is filed by the president of the panel, and at the trial, by the panel. If the measure was not proposed by the public prosecutor, and the proceedings are being conducted in connection with a criminal offence which is prosecutable *ex officio*, the opinion of the public prosecutor will be sought before the decision is rendered.

In the ruling pronouncing the measure referred to in paragraph 1 of this Article the defendant will be cautioned that a harsher measure (Article 188) may be ordered against him if he violates the prohibition ordered against him.

If the defendant referred to in paragraph 3 of this Article has an urgent need to travel to a foreign country, the court may order his travel documents to be returned to him, if he appoints a

proxy to receive mail for him in the Republic of Serbia and promises to respond to every summons of the court, or posts bail.

The measure referred to in paragraph 1 of this Article may last as long as there is a need for it, but no longer than the finality of the judgment, or the commitment of the defendant to serve a custodial criminal sanction. The court is required to examine once every three months whether the measure is still justified.

The parties and defence counsel may appeal against a ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article. The public prosecutor may also appeal against a ruling denying a motion for ordering the measure. An appeal does not stay the execution of the ruling.

Seizure of a Driver's License

Article 201

Seizure of a driver's license may be ordered as an independent measure if the proceedings are being conducted in connection with:

1) a criminal offence in connection with whose commission or preparation a motor vehicle was used;

2) the criminal offence of threatening public traffic committed with intent.

The period for which a driver's license was seized from a defendant will be counted into an ordered penalty of seizure of a driver's license or security measure of prohibition of operating a motor vehicle.

The provisions of Article 200 paragraph 2 and paragraphs 4 to 6 of this Code are applied accordingly in ordering the measure referred to in paragraph 1 of this Article.

d) Bail

Conditions for Ordering

Article 202

A defendant who is to be placed in detention or is already in detention due to the existence of the reasons prescribed in Article 211 paragraph 1 items 1) and 4) of this Code, may be left at liberty, or be released, if he personally or another on his behalf offers a bail that he will not abscond until the conclusion of the criminal proceedings, and if the defendant himself issues a promise before the court conducting the proceedings that he will not go into hiding or leave his abode without the permission of the court.

The bail is always in the form of an amount of money which the court determines on the basis of the level of danger from absconding , the personal and family circumstances of the defendant and the financial standing of the person depositing the guarantee.

Content of a Bail

Article 203

Bail consists of depositing cash money, securities, valuables or other moveable assets of substantial value which are easy to sell and safeguard, or the placement of a mortgage in the amount of the guarantee on immovable assets of the person posting the guarantee, or a personal obligation of one or more persons that in case the defendant breaches the promise referred to in Article 202 paragraph 1 of this Code they will pay the set amount of the bail.

Proposing Bail

Article 204

A motion for setting bail may be submitted by the parties and the defence counsel or person who is depositing the bail for the defendant.

If it deems that the conditions referred to in Article 202 of this Code are fulfilled, the court may even without a motion, and after obtaining the opinion of the parties, set an amount of money which in the concrete case may be deposited as bail. A decision thereon is issued in the ruling ordering detention, or in a separate ruling, if the defendant is already in detention.

Deciding on Bail

Article 205

During the investigation a reasoned ruling ordering or repealing bail or confiscating bail is issued by the judge for preliminary proceedings, and after the indictment is filed, by the president of the panel, and at the trial, by the panel.

If bail was not proposed by the public prosecutor, and the proceedings are being conducted in connection with a criminal offence prosecutable *ex officio*, before issuing a decision the court will seek the opinion of the public prosecutor.

The persons referred to in Article 204 paragraph 1 of this Code may appeal against a ruling denying a motion to set bail or the ruling referred to in paragraph 1 of this Article. An appeal does not stay execution of the ruling.

Confiscation of Bail

Article 206

If the defendant breaches the promise referred to in Article 202 paragraph 1 of this Code, the court will by a ruling confiscate the value deposited as bail towards the budget of the Republic of Serbia.

The defendant referred to in paragraph 1 of this Article will be ordered placed in detention.

Repealing a Bail

Article 207

Detention will be ordered against a defendant for whom bail was deposited if he fails to respond to a duly served summons without justifying his absence, or if another reason for detention arises.

In the case referred to in paragraph 1 of this Article, the bail is repealed by a ruling, the deposited cash money, valuables, securities or other movable assets are returned, and the mortgage is lifted. It will be acted in the same manner when the criminal proceedings are concluded by a final ruling on discontinuing proceedings or a dismissal of the charges or a final judgment.

If a custodial criminal sanction has been pronounced by the judgment, bail is repealed only after the defendant begins to serve the criminal sanction.

đ) Prohibition of Leaving a Dwelling

Conditions for Ordering

Article 208

If there exist circumstances indicating that a defendant could abscond, or the circumstances specified in Article 211 paragraph 1 items 1), 3) and 4) of this Code, the court may prohibit the defendant from leaving his dwelling without permission and determine the conditions under which he will stay in the dwelling, such as a prohibition on using the telephone or the internet or receiving other persons into the dwelling.

As an exception from paragraph 1 of this Article, the defendant may leave his dwelling without permission if it is necessary for the purpose of an urgent medical intervention he or another person living with him in the dwelling needs to undertake, or in order to avoid a substantial threat to the life and health of people or property. The defendant is required to notify without delay an officer of the authority in charge of the execution of criminal sanctions about leaving his dwelling, the reasons and the place where he is currently located.

Deciding on the Measure

Article 209

The court decides on ordering the measure referred to in Article 208 paragraph 1 of this Code on a motion by the public prosecutor, and after the indictment is confirmed, also *ex officio.*

During the investigation a reasoned ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article is issued by the judge for preliminary proceedings, and after the indictment is filed by the panel. If the measure was not proposed by the public prosecutor, and the proceedings are being conducted in connection with a criminal offence which is prosecutable *ex officio*, the court will seek the opinion of the public prosecutor before rendering a decision.

In the ruling pronouncing the measure referred to in paragraph 1 of this Article, the defendant will be cautioned that he may be ordered placed in detention if he violates the pronounced prohibition.

The measure referred to in paragraph 1 of this Article may last as long as there exists a need for it, but no longer than the final judgment, or the commitment of the defendant to serve a

custodial criminal sanction. The court is required to examine once in every three months whether the measure is still justified.

The parties and defence counsel may appeal against a ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article. The public prosecutor may also appeal against a ruling denying a motion for ordering the measure. An appeal does not stay the execution of the ruling.

e) Detention

a. Basic Provisions

Basic Rules on Ordering Detention

Article 210

Detention may be ordered only under the conditions specified in this Code and only if the same purpose cannot be achieved by another measure.

It is the duty of all authorities participating in criminal proceedings and authorities providing legal assistance for them to keep the duration of detention as short as possible and to act especially expeditiously if the defendant is in detention.

For the duration of the proceedings, detention will be revoked as soon as the reasons for which it was ordered cease to exist.

Reasons for Ordering Detention

Article 211

Detention may be ordered against a person for whom there exists grounded suspicion that he has committed a criminal offence if:

1) he is in hiding or his identity cannot be established or in the capacity of defendant he is clearly avoiding appearing at the trial or if there exist other circumstances indicating a flight risk;

2) there exist circumstances indicating that he will destroy, conceal, alter or falsify evidence or traces of a criminal offence or if particular circumstances indicate that he will obstruct the proceedings by exerting influence on witnesses, accomplices or concealers;

3) particular circumstances indicate that in a short period of time he will repeat the criminal offence, or complete an attempted criminal offence, or commit a criminal offence he is threatening to commit;

4) the criminal offence with which he is charged is punishable by a term of imprisonment of more than ten years or a term of imprisonment of more than five years for a criminal offence with elements of violence, or he has been sentenced by a court of first instance to a term of imprisonment of five years or more, and the way of commission or the gravity of consequences of the criminal offence have disturbed the public to such an extent that this may threaten the unimpeded and fair conduct of criminal proceedings.

In the case referred to in paragraph 1 item 1) of this Article, detention ordered solely because the identity of the person cannot be established lasts only until that identity is established, and detention ordered solely because a defendant obviously avoids appearing at the

trial may last until the publication of the judgment. In the case referred to in paragraph 1 item 2) of this Article, detention will be revoked as soon as the evidence because of which detention was ordered is secured.

When it pronounces a judgment ordering a term of imprisonment of less than five years, the court may order detention for a defendant who is at liberty if the reasons referred to in paragraph 1 items 1) and 3) of this Article exist, and it will revoke detention for a defendant who is in detention if the reasons for which it was ordered no longer exist.

Deciding on Detention

Article 212

The court decides on ordering detention on a motion by the public prosecutor, and after the indictment is confirmed, also *ex officio*.

Before issuing the decision referred to in paragraph 1 of this Article, the court will question the defendant in connection with the reasons for ordering detention. The questioning may be attended by the public prosecutor and the defence counsel.

The court is required to inform in a suitable manner the public prosecutor and the defence counsel on the time and place of the defendant's questioning. The questioning may also be performed in the absence of persons duly notified.

By exception from paragraph 2 of this Article, the decision ordering detention may be issued without questioning the defendant if the circumstances referred to in Article 195 paragraph 1 items 1) and 2) of this Code, or a danger of delays, exist.

If detention was ordered in accordance with paragraph 4 of this Article, the court will within 48 hours of the hour of the arrest question the defendant in accordance with the provisions of paragraphs 2 and 3 of this Article. After the questioning, the court will decided whether to leave the decision ordering detention in force or to repeal detention.

Ruling Ordering Detention

Article 213

Detention is ordered by a ruling of the competent court.

The ruling ordering detention contains: the first name and surname of the person being detained, criminal offence with which he is charged, legal basis for the detention, time for which detention is being ordered, time of the arrest, advice on a right to an appeal, substantiation of the grounds and reasons for ordering detention, official seal and signature of the judge who orders detention.

The ruling ordering detention is served to the defendant at the time of his arrest, or no later than 12 hours after he has been remanded to custody. The file must specify the date and hour of the arrest of the defendant and service of the ruling.

Detention during the Investigation

Article 214

Detention during the investigation may be ordered, extended or repealed by a ruling of the judge for preliminary proceedings or the panel (Article 21 paragraph 4).

The ruling extending or repealing detention is issued *ex officio* or on a motion of the parties and the defence counsel.

The parties and defence counsel may appeal against the ruling on detention to the panel (Article 21 paragraph 4). The appeal, ruling and other documents are immediately delivered to the panel. An appeal does not stay execution of the ruling.

A decision on the appeal is issued within 48 hours.

Duration of Detention during the Investigation

Article 215

Based on ruling of the judge for preliminary proceedings, a defendant may be kept in detention for a maximum of three months from the date of being deprived of liberty. The judge for preliminary proceedings is required, even without a motion by the parties or defence counsel, to examine at the end of each 30 days whether the reasons for detention still exist and to issue a ruling extending or repealing detention.

A panel of the immediately higher court (Article 21 paragraph 4) may, acting on a reasoned motion of the public prosecutor, for important reasons extend detention by a maximum of another three months. An appeal is allowed against that ruling, but it does not stay execution of the ruling.

If no indictment is filed by the expiry of the time limits referred to in paragraphs 1 and 2 of this Article, the defendant will be released.

Detention after an Indictment has been filed

Article 216

From the filing of the indictment to the court until the commitment of the defendant to serve a custodial criminal sanction, detention may be ordered, extended or repealed by a ruling of the panel.

The ruling ordering, extending or repealing detention is issued *ex officio* or on a motion of the parties and the defence counsel.

The panel is required even without a motion of the parties and the defence counsel to examine whether reasons for detention still exist and to issue a ruling extending or repealing detention, at the expiry of each 30 days until the indictment is confirmed, and at the expiry of each 60 days after the indictment is confirmed and up to the adoption of a first instance judgment.

If after the indictment is confirmed detention is repealed because there are no grounds for suspicion about the existence of a criminal offence, the court will examine the indictment in accordance with Article 337 of this Code.

The parties and the defence counsel may appeal against the ruling referred to in paragraph 2 of this Article, and the public prosecutor may also appeal against a ruling denying a motion for ordering detention. The appeal, ruling and other documents are immediately delivered to the panel. An appeal does not stay the execution of the ruling.

Detention ordered or extended in accordance with the provisions of paragraphs 1 to 5 of this Article may last until the commitment of the defendant to serve a custodial criminal sanction, but no longer than the expiry of the duration of the criminal sanction pronounced in the first-instance judgment.

b. Treatment of Detainees

Basic Rules

Article 217

During detention the personality and dignity of a detainee may not be insulted.

Only those restrictions necessary for preventing escape, incitement of other persons to destroy, conceal, alter or falsify evidence or traces of a criminal offence may be applied against a detainee, as well as direct or indirect contacts of the detainee aimed at influencing witnesses, accomplices or concealers.

Persons of different sex will not be detained in the same room. As a rule, persons suspected of participating in the commission of the same criminal offence, or persons serving a custodial criminal sanction and persons in detention will not be accommodated in the same room. If possible, persons for whom there is grounded suspicion of being repeat offenders will not be accommodated in the same room as other persons deprived of liberty against whom they could exert harmful influence.

Rights and Duties of Detainees

Article 218

A detainee is entitled to an uninterrupted nightly rest every day lasting a minimum of eight hours.

A detainee will be provided a possibility to move outdoors for at least two hours per day.

Detainees are entitled to wear their own clothing, to use their own bedding, and to obtain at their own expense food, books, professional publications, newspapers, writing and drawing kits and other things corresponding to their regular needs, except objects suitable for inflicting injury, harming health or for preparing an escape.

For the duration of the investigation, the judge for preliminary proceedings may issue a ruling temporarily denying or restricting a detainee's right to newspapers, if it is probable that it would lead to an obstruction of the investigation. An appeal against the ruling of the judge for preliminary proceedings may be submitted to the panel (Article 21 paragraph 4).

A detainee may be obligated to perform work necessary for keeping the room he is in clean. If the detainee so requests, the judge for preliminary proceedings, or the president of the panel, may in agreement with the management of the institution warden , allow him to work within the institution on activities corresponding with his mental and physical properties, provided it does not harm the conduct of the proceedings. The detainee is entitled to compensation for his work determined by the warden of the custodial institution.

Visits to a Detainee

Article 219

On the approval of the judge for preliminary proceedings and under his supervision or the supervision of a person designated by the judge, within the limits of house rules of the institution, a detainee may be visited by close relatives, and upon his request – by a physician and other persons. Certain visits may be prohibited if it is likely that they could lead to an obstruction of investigation. A detainee may appeal a ruling of the judge for preliminary proceedings prohibiting certain visits to the panel (Article 21 paragraph 4) which does not stay the execution of the ruling.

A diplomatic-consular representative of the state whose national the detainee is, or a representative of an authorized organisation of international public law if a refugee or a stateless person is concerned, are entitled in accordance with ratified international agreement and with the knowledge of the judge for preliminary proceedings to visit the detainee and conduct unsupervised conversations with him. The judge for preliminary proceedings will inform the warden of the custodial institution where the defendant is detained about the visit of a diplomatic-consular representative, or a representative of an authorized organization of international public law,

The defence attorney, Protector of Citizens [Ombudsman] and National Assembly Commission on the Control of the Execution of Criminal Sanctions, in accordance with the law, and a representative of an authorized organization of international public law, in accordance with a ratified international agreement, are entitled to have unhampered visits to detained persons and to talk to them without the presence of other persons.

After the indictment is filed, and until the judgment becomes final, the competences referred to in paragraphs 1 and 2of this Article are exercised by the president of the panel.

Correspondence with a Detainee

Article 220.

A detainee may engage in correspondence with persons outside the institution with the knowledge and under the supervision of the judge for preliminary proceedings. The judge for preliminary proceedings may prohibit the dispatch and receipt of letters and other dispatches if it is likely that it would lead to an obstruction of the investigation. A detainee may appeal a ruling of the judge for preliminary proceedings to the panel (Article 21 paragraph 4) which does not stay the execution of the ruling.

The prohibition referred to in paragraph 1 of this Article dos not relate to letters a detainee sends to or receives from international courts, authorized organizations of international public law, Protector Citizens and domestic authorities belonging to legislative, judicial and executive branch, as well as to letters he is sending to or receiving from his defence counsel. The dispatch of a petition, complaint or appeal may never be prohibited.

After the indictment is filed, and until the judgment becomes final, the competences referred to in paragraphs 1 and 2 of this Article are exercised by the president of the panel.

Disciplinary Offences

Article 221

The judge for preliminary proceedings, or the president of the panel, may pronounce a disciplinary penalty of restricting visits for a disciplinary offence by a detainee. The restriction does not relate to the defence counsel. A detainee may not be sanctioned before being informed about the disciplinary offence of which he is accused, before being given an opportunity to present his defence, and before the court has comprehensively examined the case.

An appeal to the panel (Article 21 paragraph 4) is allowed against the ruling on a penalty issued for a disciplinary offence within 24 hours of the time of receiving the ruling. An appeal does not stay the execution of the ruling. The panel will decide on the appeal within eight days of the date of receiving the appeal.

Monitoring of Detainees

Article 222

Monitoring of detainees is performed by the judge for the execution of criminal sanctions or a judge designated by the president of the court.

The judge referred to in paragraph 1 of this Article is required at least once in 15 days to visit detainees and, if he deems this necessary, and without the presence of employees of the custodial institution, inform himself about the diet of the detainees, fulfilment of their other needs, and their treatment. The judge is required to notify without delay of irregularities detected during a visit to the custodial institution the ministry responsible for the judiciary as well as the Ombudsman. The ministry is required to inform the judge within 15 days from the date of receipt of the notification on irregularities about the measures undertaken to rectify them.

The judge referred to in paragraph 1 of this Article may visit all detainees at any time, talk to them and receive complaints from them.

Adoption of by-laws

Article 223

The execution of the measure of detention is regulated in detail in a regulation issued by the minister responsible for the judiciary.

Chapter IX

TIME LIMITS

1. Basic Provisions

Ways of Calculating Time Limits

Article 224

The time limits specified by this Code cannot be extended, except where expressly permitted by the Code. When a time limit determined by this Code for the purpose of protecting the rights of the defence and other procedural rights of the defendant is concerned, that time limit may be shortened if the defendant requests that in writing, or orally on the record before the authority conducting proceedings.

Time limits are counted in hours, days, months and years.

The hour or the day of delivery or notification, or when an event from which the calculation of the time limit is to commence takes place, is not counted towards the time limit, but the first following hour or day is taken as the outset of the time limit. One day is counted as 24 hours, and months are counted according to calendar time.

Time limits stipulated in months or years terminate on the expiry of the date of the last month or year which by its number corresponds to the date when the time limit commenced. If there is no such date in the last month, the time limit terminates on the last day of that month.

If the last day of a time limit falls on a national holiday or a Saturday or a Sunday or any other day when a public authority was not working, the time limit shall expire on the first following working day.

Timely Delivery

Article 225

When the filing of a submission is bound by a time limit, it is deemed delivered in time if it is delivered to the person authorized to receive it before the expiry of the time limit.

When a submission is sent through the mail by registered mail or telegraph, the date of delivery to the post office is deemed as the date of delivery to the person to whom it was sent. Delivery to a military post office in places where there is no general post office is deemed as delivery to the post office by registered mail.

When a submission is sent by electronic mail, the date and hour when the device for electronic transmission of data registered the dispatch of the submission is deemed as the date of delivery to the person to whom it was sent.

A defendant in detention may also orally make a submission whose giving is bound by a time limit on the record with the court conducting the proceedings or deliver it through the custodial institution, and a person serving a custodial criminal sanction may deliver such a submission through the custodial institution where he is accommodated. The date when such a record was made, or when the submission was delivered through the custodial institution, shall be deemed as the date of delivery to the authority which is competent to receive it. The custodial institution will issue the defendant with a receipt of delivery of the submission.

If a submission bound by a time limit, due to ignorance or an obvious mistake by the submitter, is delivered or sent to a public prosecutor or court which is not competent before the expiry of a time limit, and is received by the public prosecutor or court which is not competent after the expiry of the time limit, it will be considered as having been submitted in a timely manner.

2. Reinstatement to a Prior Position

Reasons for Reinstatement to a Prior Position

Article 226

Reinstatement to a prior position may be sought by:

1) a defendant who for justifiable reasons could not come to a hearing at which it was decided on the agreement referred to in Article 313 paragraph 1 and Article 320 paragraph 1 of this Code or misses a time limit for submitting an appeal against a judgment or a ruling corresponding to a judgment;

2) an injured party, subsidiary prosecutor or private prosecutor who for justifiable reasons could not notify the court in due time about a change of permanent or temporary residence or could not come to a preparatory hearing, trial, or a hearing from Art. 505 paragraph 1 of this Code (Article 52 paragraph 4, Article 61 paragraph 2 and Article 67);

3) a private prosecutor who for justifiable reasons misses a deadline for correcting shortcomings of a private lawsuit or for collecting evidence (Article 333 paragraph 3, Article 337 paragraph 5, and Article 501, paragraphs 2 and 7).

Application for Reinstatement to a Prior Position

Article 227

An application for reinstatement to a prior position is submitted within eight days of the date when the obstacle seized to exist.

A defendant who missed a time limit for an appeal against a judgment or a ruling corresponding to a judgment is required to submit the appeal together with the application for reinstatement to a prior position.

The application referred to in paragraph 2 of this Article as a rule does not stay execution of the judgment or ruling corresponding to a judgment, but the court which has competence to decide on the application may decide to defer the execution until the issuance of a decision on the application.

After the expiry of a period of three months from the date of the failure to act, reinstatement to a prior position cannot be sought.

Deciding on an Application for Reinstatement to a Prior Position

Article 228

The president of the panel or an individual judge who issued the judgment or ruling being challenged by the appeal, or a ruling discontinuing proceedings or a judgment dismissing the charges decides on an application for reinstatement to a prior position, and an application for reinstatement to a prior position is decided on by the panel (Article 21 paragraph 4) which issued the ruling dismissing the charges.

A ruling allowing reinstatement to a prior position is not appealable.

When a defendant has appealed against a ruling not allowing reinstatement to a prior position, the court is required to deliver the appeal, together with the appeal against the judgment

or ruling corresponding to a judgment, and the response to the appeal and the entire case- file, to the immediately higher court for deciding.

Chapter X

SUBMISSIONS AND TRANSCRIPTS

1. Submissions

Basic Rules on Submission

Article 229

Charges, a motion, legal remedy or other declaration or notification is submitted in writing or given orally for the record.

The submission referred to in paragraph 1 of this Article must be comprehensible and contain everything necessary for it to be acted on.

Unless specified otherwise in this Code, the authority conducting proceedings will ask the submitter of the submission which is incomprehensible or does not contain everything necessary for it to be acted on to correct the submission, or amend it, and if he fails to do so within a specified time limit, will dismiss the submission.

In the notice to correct or amend a submission, the submitter will be cautioned about the consequences of omission.

A submission which under this Code is delivered to the opposing party is submitted to the authority conducting proceedings in a sufficient number of copies for that authority and for the other party. If such a submission is not submitted in a sufficient number of copies, it will be copied at the expense of the submitter.

Electronic Submission

Article 230

A submission which is under this Code composed in written form and signed may be submitted in the form of an electronic document supplied with an electronic signature of the submitter (electronic submission).

An electronic submission is delivered to the authority conducting proceedings by electronic mail at the electronic mail address designated by the authority conducting proceedings for receiving electronic submissions or by other electronic means, in accordance with the law.

An authority conducting proceedings who received an electronic submission confirms to the submitter without delay receipt of the submission by electronic means.

If the submitter does not receive a confirmation of reception, the electronic submission is deemed not to have been sent.

The authority conducting proceedings makes an official note on an electronic submission. In the event of an incomprehensible or incomplete submission it will be acted in accordance with Article 229 paragraphs 3 and 4 of this Code.

The method of submission of and the actions taken with electronic submissions are regulated in detail in the Court Rules of Procedure

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Penalizing a Submitter

Article 231

The authority conducting proceedings is required to protect its reputation and the reputations of the parties and other participants in proceedings from insults, threats and every other attack.

The court will fine up to 100,000 dinars a defendant, defence counsel of a defendant, proxy, legal representative, injured party, private prosecutor or subsidiary prosecutor who in his submission insults the authority or a participant in proceedings. The competent bar association is informed about the penalization of a lawyer and it has the obligation to inform the court about the undertaken measures.

The decision on the fine referred to in paragraph 2 of this Article is issued by the court. The panel decides on an appeal against the ruling pronouncing a fine. An appeal does not stay the execution of the ruling.

If the public prosecutor or person deputising him insults another participant in the proceedings in a submission, the court will notify thereof the competent public prosecutor and the State Prosecutors Council

2. Transcripts

a) Basic Provisions

Recording Actions

Article 232

A transcript will be made of every action performed during proceedings simultaneously with the performance of the action, and if that is not possible, then immediately thereafter.

The transcript is written by the record-keeper. Only when an action is being performed outside the official premises of the authority conducting proceedings, and a record-keeper cannot be secured, the transcript may be written by the person performing the action.

When the transcript is written by the record-keeper, the transcript is composed by the person performing the action saying out loud to the record-keeper what to enter in the transcript.

A person being questioned or examined may be allowed to speak for the transcript in his own words. In the case of abuse, this possibility may be denied.

By exception from paragraph 1 of this Article, an official note is made of the statements of persons of importance for undertaking criminal prosecution or other actions performed in the pre-investigation proceedings in which besides the essence of the statement or action the data referred to in Article 233 paragraph 1 of this Code are also entered.

Contents of a Transcript

Article 233

The following are entered in the transcript: the title of the authority conducting proceedings before which the action is being undertaken, the place where the action is being undertaken, the date and hour when the action was commenced and terminated, the first names and surnames of the persons present and their capacities, as well as a designation of the criminal case in connection with which the action is being undertaken.

The transcript should contain essential data on the course and content of the action undertaken. Only the essential content of the testimony and statements made is entered in the transcript in a narrative form. Questions are entered in the transcript only if it is necessary for understanding the answer. When the authority conducting proceedings deems it necessary, or on a motion by the parties or defence counsel, a question asked and the answer given will be entered in the transcript *verbatim*. In the case of abuse, this right may be denied to them. If objects or documents were seized during the performance of the action, it will be stated so in the transcript, and the objects seized will be attached to the transcript or it will be noted where they are being kept.

In undertaking an action such as an examination, taking of samples, search or recognition, data which are of importance given the nature of the action or for establishing the identities of certain objects (description, measurements and size of objects or traces, placement of markings on objects etc.) will be entered in the transcript, and if sketches, drawings, plans, photographs, film and other technical recordings were made – this will be stated in the transcript and attached to the transcript.

Manner of Keeping a Transcript

Article 234

A transcript must be kept in an orderly manner. Nothing in a transcript may be erased, added or changed. Everything crossed out must remain legible.

All changes, corrections and amendments are entered at the end of the transcript and must be certified by the persons who sign the transcript.

Determining the Authenticity of Transcripts

Article 235

Persons who have been questioned or examined, persons who are required to attend actions in proceedings, as well as the parties, defence counsel and injured party if they are present, are entitled to read a transcript or to request that it be read out to them. The person undertaking the action is required to advise them thereof, and it will be noted in the record whether the advice was given and whether the transcript was read.

A transcript will always be read if there was no record-keeper, and it will be so stated in the transcript.

The transcript is signed by the person questioned or examined, and if a transcript is made up of several pages, the person questioned or examined signs every page.

An illiterate person instead of signing places a print of the index finger of his right hand, and the record-keeper will write his first name and surname under the print. If, because it is not possible to make a print of the index finger of the right hand, the print of another finger is being made, or a print of a finger of the left hand, it will be noted in the record from which finger of which hand the print was taken.

If a person questioned or examined has no hands – he will read the transcript, and if he is illiterate – the transcript will be read to him, and it will be stated so in the transcript.

If a person questioned or examined refuses to sign a transcript or leave his fingerprint, it will be so stated in the transcript and the reason for the refusal noted.

At the end of the transcript it will be signed by the translator or interpreter, if one was present, witnesses whose presence is obligatory in the undertaking of evidentiary actions, and during a search also the holder of a dwelling and other premises or the person being searched. If the transcript is not being written by a record-keeper (Article 232 paragraph 2), the transcript is signed by the persons attending the action. If there are no such persons or they are not able to understand the contents of the transcript, the transcript is signed by two witnesses, except if it is not possible to secure their presence.

If it was not possible to undertake the action without interruptions, the date and hour when the interruption began will be noted in the transcript, as well as the date and hour when the action is resumed.

If there were objections in respect of the contents of the transcript, those objections will be entered in the transcript.

The transcript is signed at the end by the person who undertook the action and the record-keeper.

Audio or Video Recording

Article 236

The authority conducting proceedings may order that the undertaking of an evidentiary or other action be recorded by a device for audio or video recording. Audio recording of the interrogation of a defendant and examination of a witness and expert witness in the proceedings in connection with criminal offences referred to in Article 162 paragraph 1 item 1) of this Code is mandatory.

The authority conducting proceedings will notify the person participating in the action referred to in paragraph 1 of this Article in advance that it will be recorded.

Audio or video recording may be performed at a trial only when it is authorised for a particular trial by the president of the panel. If recording at a trial has been authorised, the trial panel may for justifiable reasons decide that certain parts of the trial are not recorded. Audio recording of a trial at which offences referred to in Article 162 paragraph 1 item 1) of this Code are being discussed is mandatory.

The recording referred to in paragraph 1 of this Article must contain the data referred to in Article 233 paragraph 1 of this Code, data required for the identification of persons whose statements are being recorded and data on the capacity in which they are being questioned or examined, as well as data on the duration of the recording. When statements made by several persons are being recorded, it must be ensured that it can be discerned easily from the recording who made which statement.

At the request of the person questioned or examined, the recording will be played back immediately, and that person's corrections and explanations will be recorded.

It will be entered in the record of an evidentiary or other action or the trial that a recording was made, who performed the recording, whether the person questioned or examined had been informed in advance about the recording, whether the recording was played back and where the recording is kept, unless it is attached to the case file.

The public prosecutor or the court may order a recording transcribed in full or in part. In that case he will examine the transcript, certify it and attach it to the record of an evidentiary or other action.

The recording is kept in the public prosecution or the court for as long as the crime documentation is kept.

The public prosecutor or the court may allow participants in proceedings with a justifiable interest to use audio or video recording devices to record the undertaking of an evidentiary or other action or the trial.

Besides the needs of the proceedings, the recording referred to in paragraphs 1 to 9 of this Article in proceedings which have been ended with final decisions may also be shown publicly for professional and scientific purposes. In that case the identities of the parties and participants of the recorded action must be concealed.

Excluding Transcripts and Information

Article 237

When it is prescribed in this Code that certain evidence may not be used in criminal proceedings or that a court decision may not be based on it, the judge for preliminary proceedings will *ex officio* or on a motion of the parties and the defence counsel issue a ruling on excluding the transcript of those actions from the file immediately, or no later than the conclusion of the investigation. A special appeal against this ruling is allowed.

After the ruling becomes final, the excluded transcripts are placed under a separate sealed cover and kept by the judge for preliminary proceedings separate from other documents and may not be examined or used in the proceedings. After the criminal proceedings are ended by a final decision, the excluded transcripts will be treated in accordance with Article 84 paragraph 2 and 3 of this Code.

After the conclusion of the investigation, the judge for preliminary proceedings will act in accordance with provisions of paragraphs 1 and 2 of this Article also in respect of all information which was within the meaning of Article 282 paragraph 1 item 2) and paragraph 4 and Article 288 of this Code provided to the public prosecutor and police by citizens, except for the transcripts referred to in Article 289 paragraph 4 of this Code. When the public prosecutor files an indictment without conducting an investigation (Article 331 paragraph 5), he will deliver documentation with such information to the judge for preliminary proceedings, who will act in accordance with provisions of this Article.

b) Special Types of Transcripts

a. Trial Transcript

Recording the Trial

Article 238

A transcript of the trial is kept in which is entered, in essence, the content of the work and the entire course of the trial.

The course of the trial may also be recorded stenographically. Stenographic notes will within 48 hours be translated, examined, signed by the stenographer and attached to the file.

The provisions of Article 236 of this Code are applied accordingly to the audio recording of the course of the trial. Permission for audio recording is issued by the president of the panel.

Contents of the Trial Transcript

Article 239

The introductory part of the transcript must contain the indication of the court where the trial is being held, the time and place of the session, the first names and surnames of the president of the panel, members of the panel and the record-keeper, prosecutor, defendant and defence counsel, injured party and his legal representative or proxy, translator, interpreter, the criminal offence which is the subject-matter of the trial, as well as whether the trial is public or held *in camera*.

The transcript must in particular contain data on which indictment was read at the trial, or presented verbally, and whether the prosecutor altered or amended the charges, what motions were made by the parties and what decisions were made by the president of the panel or the panel, which evidence was examined, whether records and other documents were examined, whether video or audio or other recordings were played and what objections the parties made in respect of the records, documents or recordings. If the public is excluded from the trial, it must be noted in the transcript that the president of the panel cautioned those present about the consequences of revealing without authorisation what they learnt at the trial as a secret.

Statements given by the defendant, witness, expert witness or other person are entered in the transcript if they contain deviations from or amendment to their earlier statement, so that their basic content is presented.

The president of the panel may, on a motion of the parties or *ex officio*, order statements he deems particularly important to be entered in the transcript *verbatim*.

The entire summary judgment (Article 428. paras. 3 to 5.) is entered in the trial transcript, with a designation of whether the judgment was made public. The summary judgment contained in the trial transcript represents the original.

If a ruling on detention was issued at the trial, it must also be entered in the trial transcript.

The information about the beginning and end of the trial, participants who are present and evidence presented, rulings on the management of proceedings and a transcript of the audio recording which is made within 72 hours and represents an integral part of the transcript of the trial held in connection with the offences referred to in Article 162 paragraph 1 item 1) of this Code is entered in the trial transcript.

If an audio recording is made of the trial or one of its parts (Article 236 paragraph 3), the trial transcript is made in the way described in paragraph 7 of this Article.

Determining the Authenticity of the Trial Transcript

Article 240

A transcript must be concluded by the conclusion of a session. The transcript is signed by the president of the panel and the record-keeper.

The parties are entitled to examine a completed transcript and its attachments, to voice objections in respect of its content and to request corrections of the transcript. The parties are entitled to a copy of the transcript after the conclusion of the session, if they so request.

Corrections of incorrectly entered names, numbers and other obvious writing errors may be ordered by the president of the panel on a motion of the parties or the person who gave the statement, or *ex officio*. Other corrections of and amendments to the transcript may be ordered only by the panel.

Objections and motions of the parties in respect of the transcript, as well as corrections of and amendments to the transcript, must be entered after the end of a concluded transcript. In the continuation of the transcript also the reasons for which certain motions and objections were not approved will be entered. The president of the panel and the record–keeper also sign the continuation of the transcript.

b. Minutes of Deliberation and Voting

Composing the Minutes of Deliberation and Voting

Article 241

Separate minutes will be composed of deliberation and voting.

The minutes of deliberation and voting contain the course of the voting and the decision taken.

These minutes are signed by all the members of the panel and the record-keeper.

A dissenting opinion of a panel member who was in minority during the voting will be attached to the minutes of deliberation and voting, unless it is entered in the transcript. The panel member who has the dissenting opinion has the obligation to send his written rationale within eight days from the date of the vote at the latest.

The minutes of deliberation and voting will be sealed under a separate cover. These minutes may be examined only by the court of legal remedy when it is adjudicating on a legal remedy and in that case it is required to re-seal the minutes in a separate cover and to designate on the cover that it had examined the minutes.

If the written reasoning is not sent to the president of the panel by the expiry of the deadline from paragraph 4 of this Article, the minutes of deliberation and voting will be sealed under a separate cover without the written reasoning.

Chapter XI

DELIVERY OF DOCUMENTS AND REVIEWING CASE FILES DOCUMENTS

1. Delivery of Documents

a) Basic Provisions

Basic Rules on Delivery

Article 242

Documents are as a rule delivered by an official of the authority conducting proceedings which issued the decision or directly at that authority, through the post office or other organisation registered to deliver documentation, authorities of local self-government, by letter rogatory through another public authority, by telecommunication or electronic means, and exceptionally also through the police.

Summons for a trial of other summons may also be verbally communicated by the authority conducting proceedings to a person who is before it, with a caution about the consequences of not attending. The summons and caution will be entered in the record which will be signed by the person summoned, except if it is designated in the trial transcript, and the service is thereby deemed executed.

Delivery may also be undertaken by posting on a notice board or webpage of the authority conducting proceedings, and, with the consent of the person to whom the delivery is to be made, also through a proxy for receiving documents, through a post office box or electronic mail. Delivery is deemed executed by the expiry of a time limit of eight days from the date of the posting of the document on the notice board or webpage of the authority conducting proceedings, or from the reception of a receipt that the document was served on the proxy for receiving documents, delivered to a post office box, or to an electronic mail address.

Delivery

Article 243

A document is served by delivering it directly to the person to whom it was dispatched.

If the person referred to in paragraph 1 is not present at the place where the delivery is to be executed, the document may be delivered to an adult member of his household who is required to accept it. If no member of the family household is present, the document will be delivered to a doorman, neighbour or president of the house council if they agree to it, and the delivery is thereby deemed executed.

If the delivery is being conducted at the workplace of the person referred to in paragraph 1 of this Article, and that person is not present, the document may be delivered to a person authorised for receiving mail, who is required to accept the document, or a person employed there, if he agrees to receive the document, and the delivery is thereby deemed executed.

If the person referred to in paragraph 2 and 3 of this Article who is not required to accept a document refuses in writing to accept it, the process server will leave a notice that he will post the document on the notice board of the court, and, if possible, also on the internet site of the authority conducting proceedings. At the expiry of a time limit of eight days from the date of posting of the document, the delivery is deemed executed.

When the person referred to in paragraph 1 of this Article or person referred to in paragraphs 2 and 3 of this Article who is required to accept a document refuses in writing to do so, the process server will mark on the delivery slip the date, hour and reason of the refusal to accept, and leave the document in the dwelling of the person referred to in paragraph 1 of this Article or in the premises where he is employed, and the delivery is thereby executed.

If in the place where a delivery is to be executed the person referred to in paragraph 2 and 3 of this Article who is required to receive a document is not present, the delivery will be effected in the manner specified in paragraph 4 of this Article.

Receipt of Delivery

Article 244

Documents delivered by direct delivery are delivered in a sealed cover.

The recipient and process server sign a receipt on a performed delivery – a receipt of delivery or return receipt. The recipient will mark the date of acceptance on the back.

If the recipient is illiterate or unable to sign the document, the process server will sign it, designating the date of receipt and placing a remark explaining why he signed it on behalf of the recipient.

If the recipient refuses to sign the receipt referred to in paragraph 2 of this Article, the process server will so note on the receipt and designate the date of delivery, whereby the delivery is executed.

The certificate of receipt of a document delivered through a post office box is a document certified by the post office on the date and hour of the delivery of the document to the post office box.

The certificate of receipt of a document delivered by electronic means is a printed electronic record of the date and hour when the device for electronic transmission of data marked that the document was sent to the recipient, the names of the sender and the recipient and the title of the document.

Special Means of Delivery

Article 245

If the authority conducting proceedings holds that a delivery will be executed, until the conclusion of the trial documents may be delivered to a participant in proceedings through another participant in the proceedings who agrees to deliver them. Delivery may not be executed in this manner to the defendant.

If the authority conducting proceedings holds that a notice will be received, a participant in proceedings, and if there is a danger of a delay exceptionally also the defendant, may be notified by a telegram or telephone about a summons to a trial or other summons, or a decision to defer a trial or other actions.

The authority conducting proceedings will make an official note in the file on delivery or notice made in accordance with the provisions of this Article.

If the delivery or notice was executed in a timely manner in accordance with the provisions of this Article, the consequences prescribed for omission are applied only if the person referred to in paragraphs 1 and 2 of this Article was cautioned about them.

b) Special Rules on Delivery

Service upon a Defendant

Article 246

If service of documents upon a defendant cannot be executed at the address about which the defendant has informed the authority conducting proceedings, the process server will leave a notice stating he will post the document on the notice board and, if possible, on the webpage of the authority conducting proceedings. At the expiry of eight days from the date of posting the document, the service is deemed executed.

If the defendant has issued a power of attorney to his defence counsel to receive documents from whose service begins to run the time limit for applying for a legal remedy, the service is deemed executed by the delivery of the document to the lawyer's office of the defence counsel.

By exception from paragraph 1 of this Article, if a defendant who has no defence counsel needs to be served a judgment pronouncing a custodial criminal sanction, and the service cannot be executed at the address about which the defendant informed the court, a defence counsel will be appointed for him *ex officio* until the defendant informs the court about the new address.

A necessary time limit of no less than three days will be determined for the appointed defence counsel for examining the files, after which the judgment will be served on him and the proceedings continued.

Service upon a Prosecutor

Article 247

Documents are served upon the public prosecutor by delivery to the clerk's office of the public prosecution.

When decisions from whose time of delivery a time limit begins to run are being served, the date of delivery of the document to the clerk's office of the public prosecution is deemed the date of delivery.

The court will at the request of the public prosecutor serve upon him a criminal file for examination. If a time limit for filing a regular legal remedy is running, or if it is so required by other interests of the proceedings, the court may determine the time limit within which the public prosecutor should return the file.

If a subsidiary prosecutor or private prosecutor has a proxy, documents are served only upon the proxy, and if there are more than one, then only to one of them.

In accordance with paragraph 4 of this Article, documents are served upon an injured party who has a proxy.

Service upon Persons with a Certain Status

Article 248

Documents are served upon military personnel, personnel of the police, the Security Information Agency, the Military Security Agency, Military Intelligence Agency, or members of the guards of the institution where persons deprived of liberty are held, and persons employed in river and air transport through their commands, direct superiors or managing officials or the seat of the legal person.

Documents are served upon persons deprived of liberty through the custodial institution where they are held.

Documents are served upon persons who in accordance with international law enjoy immunity in the Republic of Serbia through the ministry responsible for foreign affairs, unless specified otherwise by a ratified international agreement.

Documents are served upon persons included in a programme of protection of participants in criminal proceedings through the protection unit, in accordance with this Code and other regulations.

Delivery of Documents Abroad

Article 249

Documents are served upon to a participant in proceedings who is at a known address in a foreign country in accordance with the provisions of a separate law, unless it is regulated by a ratified international agreement.

Together with the document referred to in paragraph 1 of this Article, the authority conducting proceedings may order a defendant to appoint within a certain time limit a proxy for the receipt of documents in the Republic of Serbia and to inform thereof the authority conducting proceedings, with a caution of the consequences referred to in paragraph 3 of this Article.

If the defendant does not act in accordance with paragraph 2 of this Article, the authority conducting proceedings will appoint a proxy for him. Service of a document upon the appointed proxy is deemed execution of the delivery.

2. Examination of Case File Documents

Conditions for Examining Case File Documents

Article 250

Everyone who has a justified interest may examine, copy or record certain [case file] documents, except those bearing an indication of secrecy level.

Permission to examine the documents referred to in paragraph 1 of this Article during the proceedings is issued by the public prosecutor or the court, and after the conclusion of the proceedings, the president of the court or an official appointed by him.

If the public had been excluded from the trial or there could be a substantial violation of the right to privacy, examination of the documents referred to in paragraph 1 of this Article may be denied or made conditional on a ban on the public use of the names of participants in the

proceedings. A ruling on denying the examination of [case file] documents is appealable, but the appeal does not stay execution.

Examining Case File Documents and Viewing Objects

Article 251

A defendant or suspect questioned in accordance with provisions on the questioning of a defendant and his defence counsel, are entitled to examine [case file] documents and view collected objects serving as evidence.

The injured party (Article 50 paragraph 1 item 4) and paragraph 2), the subsidiary prosecutor (Article 58 paragraph 2) and the private prosecutor (Article 64 paragraph 2) also exercise the right referred to in paragraph 1 of this Article

Chapter XII

RESTITUTION CLAIM

General Conditions and Subject-matter of a Restitution Claim

Article 252

A claim for restitution which arose as a result of commission of a criminal offence or of a wrongful act designated by law as a criminal offence will be considered on a motion by authorised persons in criminal proceedings if those proceedings would not be substantially prolonged thereby.

A claim for restitution may relate to the compensation of damage, return of objects or annulment of a certain legal transaction.

Authorised Claimants

Article 253

A claim for restitution in proceedings may be submitted by a person authorised to pursue such a claim in civil litigation.

The person referred to in paragraph 1 of this Article is required to designate his claim in a certain manner and to submit evidence.

If due to the criminal offence or wrongful act designated by law as criminal offence damage was inflicted to public property, the authority authorised by a law or other regulation to look after the protection of this property may participate in proceedings in accordance with the authorisation it possesses pursuant to that law or other regulation.

Submitting a Claim for Restitution

Article 254

A claim for restitution is submitted to the authority conducting proceedings.

A claim for restitution may be submitted no later than the conclusion of the main hearing before the court of first instance.

If an authorised person has not submitted a claim for restitution until the charges are filed, he will be notified that he can submit it by the end of the trial. If due to a criminal offence or wrongful act designated by law as a criminal offence damage was inflicted to public property, and no claim for restitution was submitted, the court will notify thereof the authority referred to in Article 253 paragraph 3 of this Code.

Disposal of a Claim for Restitution

Article 255

Authorised persons (Article 253) may until the end of the main hearing desist from a claim for restitution in criminal proceedings and pursue it in civil litigation. In the case of desisting, a claim for restitution may not be submitted again.

If the claim for restitution has after its submission, and before the conclusion of the main hearing, been transferred to another person according to the rules of property law, that person will be called to declare himself whether he intends to pursue the claim. If a duly summoned person does not respond, it is deemed that he has desisted from the claim for restitution already submitted.

Examining Circumstances on a Claim for Restitution

Article 256

The authority conducting proceedings will question the defendant in respect of facts in connection with a claim for restitution and examine the circumstances of importance for adjudicating it. The authority conducting proceedings is required to collect evidence for adjudicating a claim even before it is submitted.

If the collection of evidence and examination of circumstances regarding a claim for restitution would substantially prolong proceedings, the authority conducting proceedings will limit itself to collecting those data whose determination at a later date would be impossible or substantially difficult.

Temporary Measures

Article 257

Upon a motion of the authorised persons (Article 253), temporary measures of securing a claim for restitution which arose due to the commission of a criminal offence or wrongful act designated by law as a criminal offence may be ordered in criminal proceedings in accordance with provisions of the law that regulates the procedures of enforcement and security.

The judge for a preliminary proceeding decides on the motion referred to in paragraph 1 of this Article by a ruling during the investigation, and after the indictment is filed, the panel.

An appeal against a ruling on temporary measures does not stay the execution of the ruling.

If an injured party has a claim against a third person because he holds things acquired by a criminal offence or a wrongful act designated by law as a criminal offence, or because due to that act he acquired material gains, the court may in criminal proceedings, on a motion by the person referred to in paragraph 1 of this Article and in accordance with provisions of the law that regulates the procedures of enforcement and security order temporary measures of security also against the third person. The provisions of paragraphs 2 and 3 of this Article also apply in this case.

In a judgment convicting a defendant or a ruling pronouncing a security measure of compulsory psychiatric treatment the court will either revoke the measures referred to in paragraph 4 of this Article, if they were not already revoked, or refer the injured party to civil litigation, with the proviso that the measures will be revoked if civil litigation is not initiated within a time limit determined by the court.

Deciding on a Claim for Restitution

Article 258

The court decides on a claim for restitution.

When a court declares itself incompetent for a criminal proceeding, it will refer an authorised person to submit a claim for restitution in criminal proceedings which will commence or be resumed before a competent court.

When a court issues a judgment acquitting a defendant or rejecting the charges or discontinues criminal proceedings by a ruling, it will refer an authorised person to pursue a claim for restitution in civil litigation.

In a judgment convicting a defendant or ruling pronouncing a security measure of compulsory psychiatric treatment, the court will award the claim for restitution to the authorised person in full or in part, and refer him to civil litigation for the remaining part. If the facts of the criminal proceedings do not provide a reliable basis either for full award of partial award, the court will refer the authorised person to pursue the claim for restitution in full in civil litigation.

If the claim for restitution relates to the return of objects, and the court determines that an object belongs to an injured party and that it is held by the defendant or other participant in the criminal offence or a person to whom they gave it for safekeeping, it will in the judgment or ruling referred to in paragraph 4 of this Article order the object transferred to the injured party.

If the claim for restitution relates to the annulment of a certain legal transaction, and the court finds the claim justified, it will pronounce in the judgment or ruling referred to in paragraph 4 of this Article a full or partial annulment of that legal transaction, with consequences emanating from that, without affecting the rights of third persons.

Changing a Final Decision on a Restitution Claim

Article 259

The court may change a final judgment or ruling deciding on a claim for restitution in criminal proceedings only in connection with a retrial 2or a request for protecting legality.

As an exception from the case referred to in paragraph 1 of this Article, the convicted person, or his successors, may only request in civil litigation an alteration of a final judgment or ruling of a criminal court deciding on a claim for restitution, and only if the necessary conditions exist for repeating the proceedings in accordance with provisions of the law which regulates civil litigation.

Return of Objects to an Injured Party

Article 260

If objects which indubitably belong to an injured party are concerned, and they do not serve as evidence in criminal proceedings, they will be transferred to the injured party even before the conclusion of the proceedings.

If several injured parties are in dispute over possession of objects, they will be referred to civil litigation, and the court in criminal proceedings will only order the safekeeping of the objects as a temporary security measure.

Chapter XIII

COSTS OF PROCEEDINGS

Definition and Types of Costs

Article 261

The costs of criminal proceedings are the expenses incurred in connection with the proceedings from its initiation until its conclusion.

The costs of criminal proceedings include the:

1) costs of witnesses, expert witnesses, professional consultants, translators, interpreters and professionals and costs of inquests;

2) costs of transporting the defendant;

3) costs of brining in the defendant;

4) travel expenses of official persons;

5) costs of medical treatment of a defendant in detention, as well as the costs of giving birth, except from those which are collected from the health insurance fund;

6) costs of technical inspections of vehicles, analyses of samples (Articles 140 to 142) and transportation of a cadaver to the site of the autopsy;

7) fee of an expert witness, the fee of a professional consultant, fee of a translator, fee of a interpreter, the fee and necessary expenses of a defence counsel, the necessary expenses of a private prosecutor and subsidiary prosecutor and their legal representatives, as well as the fee and necessary expenses of their proxies;

8) necessary expenses of an injured party and his legal representative, as well as the fee and necessary expenses of his proxy;

9) lump sum for costs not encompassed by items 1) to 8) of this paragraph.

The lump sum is determined according to the duration and complexity of the proceedings and the financial standing of the person required to pay that sum.

The costs referred to in paragraph 2 items 1) to 6) of this Article, as well as the necessary expenses of an appointed defence counsel (Article 76) and appointed proxy (Article 59 and Article 103 paragraph 3), in proceedings in connection with criminal offences prosecutable *ex officio*, are paid out in advance from the funds of the authority conducting proceedings, and collected later from persons required to indemnify them in accordance with provisions of this Code. The authority conducting proceedings is required to enter all costs paid out in advance into an inventory to be attached to the file.

The costs of translation and interpretation as well as the costs of defence of an indigent defendant (Article 77 paragraph 1) will not be collected from the persons who are under the provisions of this Code required to indemnify the costs of the criminal proceedings.

The costs of the pre-investigation proceedings relating to the fee and necessary expenses of the defence counsel appointed by the police are paid out by that authority.

Deciding on the Costs of Proceedings

Article 262

It will be decided in every judgment or ruling corresponding to a judgment who will bear the costs of the proceedings and what their amount is. In the proceedings in connection with criminal offences in which a prosecutor's office of special jurisdiction acts in accordance with a special law, the fee for the expert witness, translator and interpreter may be determined up to a double amount of fee stipulated for the expertise, translation or interpretation in other criminal matters.

If data on the amount of the costs are missing, a separate ruling on the amount of costs will be issued by the president of the panel or individual judge when those data are obtained. Data on the amount of costs and the claims for their restitution may be submitted no later than one year from the date when the judgment or referred to in paragraph 1 of this Article becomes final.

When the costs of criminal proceedings have been decided by a separate ruling, an appeal against that ruling is decided on by the panel (Article 21 paragraph 4).

Costs for Which Participants are Culpable

Article 263

A defendant, injured party, subsidiary prosecutor, private prosecutor, defence counsel, legal representative, proxy, witness, expert witness, translator, interpreter and professional, irrespective of the outcome of the criminal proceedings, bear the costs of being brought in, deferment of an evidentiary action or a trial hearing, and other costs of the proceedings for which they were responsible, as well as a corresponding part of the lump sum.

A separate ruling is issued on the costs referred to in paragraph 1 of this Article, except if the costs borne by a private prosecutor and the defendant are decided in the decision on the principal matter.

An appeal against the separate ruling referred to in paragraph 2 of this Article is decided on by the panel (Article 21 paragraph 4).

Obligation of the Defendant to Indemnify Costs

Article 264

When a court convicts a defendant, it will pronounce in the judgment that he is required to indemnify the costs of the criminal proceedings.

A person charged with several criminal offences is not required to indemnify the costs in respect of the part of the charges of which he was acquitted, if it is possible to separate those costs from the overall costs.

In a judgment convicting several defendants, the court will order what part of the costs will be borne by each of them, and if that is not possible, it will order all defendants to bear the costs jointly. The payment of the lump sum will be determined for each defendant separately.

In the decision in which it decides on costs, the court may relieve a defendant of the duty to indemnify in full or in part the costs of criminal proceedings referred to in Article 261 paragraph 2 items 1) to 6) and item 9) of this Code, as well as the fees of an expert witness and appointed professional consultant, if their payment would bring into question the support of the defendant or a person he is required to support. If these circumstances are established after the issuance of a decision on costs, the president of the panel or individual judge may issue a separate ruling relieving the defendant of the duty to indemnify the costs of criminal proceedings.

Compensation of Costs from the Budget and at the Expense of Other Persons

Article 265

When criminal proceedings are discontinued or charges are dismissed or a defendant is acquitted, it will be pronounced in the ruling or judgment that the costs of the criminal proceedings referred to in Article 261 paragraph 2 items 1) to 6) of this Code, necessary expenses of the defendant and the necessary expenses and the fee of the defence counsel and proxy (Article 103 paragraph 3), as well as the fees of the expert witness and professional consultant, are covered from the budget funds of the court.

A person convicted by a final judgment for the criminal offence of false reporting will be bound by a separate ruling to bear the costs of criminal proceedings he caused. The ruling is issued by the panel (Article 21 paragraph 4) acting on a motion of the public prosecutor.

A private prosecutor is required to indemnify the costs of criminal proceedings referred to in Article 261 paragraph 2 items 1) to 6) and item 9) of this Code, necessary expenses of the defendant, necessary expenses and fee of his defence counsel and proxy (Article 103 paragraph 3), as well as the fee of an expert witness and professional consultant, if the proceedings were discontinued or the charges dismissed of the defendant acquitted of the charges, except if the proceedings were discontinued or the charges dismissed due to the death of the defendant or the expiry of the statute of limitations on criminal prosecution due to the delay of proceedings for which the private prosecutor cannot be blamed. If the proceedings were discontinued because the prosecutor abandoned the charges, the defendant and the private prosecutor may settle their mutual expenses. If there are several private prosecutors, they will all bear the costs jointly.

An injured party who desisted from a motion to prosecute will bear the costs of criminal proceedings unless the defendant has declared that he himself will bear them.

When a court dismisses an indictment because it is not competent, the decision on the costs will be issued by the competent court.

If a motion for the restitution of necessary expenses and the fee referred to in paragraph 1 of this Article is not approved, or the court does not issue a decision on it within three months of the date of submission of the motion, the defendant and defence counsel are entitled to pursue their claims in civil litigation against the Republic of Serbia.

Payment of Fees and Necessary Expenses

Article 266

The person represented is required to pay the fee and necessary expenses of the defence counsel and proxy of the injured party, subsidiary prosecutor or private prosecutor, irrespective of who, according to the decision of the court, is required to bear the costs of the criminal proceedings, unless under the provisions of this Code the fee and necessary expenses of the defence counsel are paid from budget funds. If a defence counsel was appointed for the defendant, and payment of a fee and necessary expenses would bring into question the support of the defendant or the support of a person he is required to support, the fee and necessary expenses of the defence counsel will be paid from budget funds of the court. It will also be acted in this manner if a proxy was appointed for a subsidiary prosecutor.

Costs Before a Court of Legal Remedy

Article 267

The court of legal remedy decides on the payment of costs incurred before that court, pursuant to the provisions of Articles 261 to 266 of this Code.

Issuance of Regulations

Article 268

The restitution of the costs of proceedings and the amount of the lump sum is regulated in more detail in a regulation issued by the minister in charge of the judicial affairs.

Chapter XIV

RENDERING, ANNOUNCEMENT AND EXECUTION OF DECISIONS

1. Rendering and Announcing Decisions

Types of Decisions

Article 269

Decisions are issued in proceedings in the form of a judgment, ruling and order.

A judgment is issued only by a court, and rulings and orders are issued also by other authorities conducting proceedings.

Preconditions for Deciding

Article 270

The court deliberates and votes in a closed session.

Only the members of the panel and record-keeper may be present in the room where the deliberation and vote are taking place.

The president of the panel manages the deliberation and the voting, ensures that all questions are discussed comprehensively and fully, and is the last to vote.

Order in Which Issues will be Decided

Article 271

In deciding on the subject-matter of proving, it is first voted on whether the court is competent, if it is necessary to amend the proceedings, and other preliminary questions. When a decision on preliminary questions is made, it is moved to resolving the principal matter.

In deciding on the principal matter, a vote will first be taken on whether the defendant committed the criminal offence, then on a penalty, other criminal sanctions, costs of the criminal proceedings, claim for restitution and other questions on which a decision should be issued.

If one person is charged with several criminal offences, a vote will be taken on a penalty for each of those offences, and then on a single penalty for all the offences.

Deliberation and Voting

Article 272

A panel issues its decisions after oral deliberation and voting. A decision is rendered when a majority of the panel's members vote in favour of it.

If in respect of certain questions being voted on the votes are divided into several different opinions, so that none of them has majority, the questions will be separated and the voting will be repeated until majority is achieved. If a majority is not achieved in this manner, a decision will be taken in such manner that the most unfavourable votes for the defendant will be added to the votes less unfavourable than them, until the necessary majority is achieved.

Panel members may not refuse to vote on questions posed by the president of the panel, but a member of the panel who voted to acquit the defendant or reject the charges and remained in minority is not required to vote on the criminal sanction. If he does not vote, it will be deemed that he accepted the vote which is the most favourable for the defendant.

Dissenting Opinion

Article 273

A judge of the Supreme Court of Cassation, who at a session of the panel during a vote remains in minority in connection with the question on whether a violation of the law exists, is entitled to dissent from the majority and explain his dissenting opinion in writing.

The judge is required to orally announce the written explanation of his dissenting opinion at a session of the panel after the issuance of the decision, and may request that his opinion be published together with the decision.

The judge is required to deliver the written explanation of his dissenting opinion to the president of the panel within 15 days from the date of the issuance of the decision.

If the written explanation of his dissenting opinion is not delivered to the president of the panel until the expiry of the time limit referred to in paragraph 3 of this Article, the decision is dispatched, and a dissenting opinion delivered at a later date is attached to the court case and represents its integral part.

Announcement of Decisions

Article 274

Unless specified otherwise by this Code, decisions are made public by oral announcement to the persons who have a legal interest in it, if they are present, and by the delivery of a certified copy, if they are absent.

If a decision was announced orally, it will be noted in the record or file, and a person entitled to file an appeal will confirm so by his signature. If that person declares that he will not appeal, a certified copy of the orally announced decision will not be delivered to him, unless specified otherwise by this Code.

Copies of decisions which are appealable are delivered with a remedial clause. An appeal submitted in favour of the defendant will be deemed timely if it is filed in the time limit specified in the remedy clause although that time limit is longer than the statutory time limit.

2. Enforcement of Decisions

Finality and Enforceability of a Judgment

Article 275

A judgment becomes final when it can no longer be challenged by an appeal and when an appeal is not permitted.

A final judgment becomes enforceable from the date of its delivery, if there are no legal obstacles for enforcement. If no appeal was filed or the parties waived an appeal or abandoned an appeal, a judgment is enforceable from the expiry of the time limit for an appeal, or the date of the waiver or abandoning of an appeal already filed.

If the court which issued a judgment in the first instance is not competent for its enforcement, it will deliver a certified copy of the judgment with a certificate of enforceability to the court competent for enforcement.

Enforcement of Certain Decisions Contained within a Judgment

Article 276

Enforcement of a judgment in respect of the costs of criminal proceedings, seizure of pecuniary gains, confiscation of proceeds from crime and claims for restitution is performed by a competent court or other public authority in accordance with the law.

The costs of criminal proceedings are collected forcibly for the benefit of the budget of the Republic of Serbia *ex officio*. The costs of the forced collection are paid in advance from the budget funds of the court.

When a decision by which it was decided on a claim for restitution became final, an injured party may request the court which decided in the first instance to issue to him a certified copy of the decision, with specification that the decision is enforceable.

If a security measure of confiscation of objects was pronounced in a judgment, the court which pronounced the judgment in the first instance will decide whether the objects will be sold in accordance with the law or transferred to a certain public institution or destroyed. The proceeds from the sale of objects are paid into the budget of the Republic of Serbia.

The provision of paragraph 4 of this Article will be applied accordingly when a decision on confiscation of objects in accordance with Article 535 of this Code is issued.

A final decision on the confiscation of objects may, apart from the case of a repeat of criminal proceedings or deciding on a request to protect legality, be changed in civil litigation if a dispute appears in connection with the ownership of the confiscated objects.

Finality and Enforceability of a Ruling or an Order

Article 277

A ruling becomes final when it can no longer be challenged by an appeal or when an appeal is not allowed.

Unless specified otherwise by this Code, a ruling is enforceable when it becomes final. An order is enforceable immediately after it is issued, unless specified otherwise by the authority which issued the order.

Rulings and orders, unless specified otherwise, are enforced by the authorities who issued those decisions. In the enforcement of a ruling corresponding to a judgment, the provisions of Article 276 of this Code are applied accordingly.

Special Ruling on Permissibility of Enforcement

Article 278

If doubt appears about the permissibility of the enforcement of a court decision or the calculation of a penalty, or if no decision was made in a final judgment or ruling corresponding to a judgment on counting detention or penalty already served towards a penalty, or the calculation was not performed correctly, the court which adjudicated in the first instance will decided thereon in a special ruling. An appeal does not stay the execution of the ruling, unless specified otherwise by the court.

If doubt appears during enforcement in respect of the interpretation of a court decision, the court which issued the final decision decides thereon.

Issuance of Regulations

Article 279

The manner of keeping criminal records is regulated by the Government.

Part Two

COURSE OF THE PROCEEDINGS

Chapter XV

PRE-INVESTIGATION PROCEEDINGS

1. Criminal Complaint

Submitting a Criminal Complaint

Article 280

State and other bodies, legal and natural persons report criminal offences which are prosecutable *ex officio* about which they were informed or they learn in other manner, under the conditions stipulated by law or other regulation.

It is stipulated by the Criminal Code in which cases a failure to report a criminal offence represents a criminal offence.

The submitter of the criminal complaint referred to in paragraph 1 of this Article will relate details known to him and undertake measures to preserve the traces of the criminal offence, objects on which or by means of which the criminal offence was committed, and other evidence.

Manner of Submitting and Recording a Criminal Complaint

Article 281

A criminal complaint is submitted to the competent public prosecutor, in writing, orally, or by other means.

If a criminal complaint is submitted orally, a transcript will be made thereof and the submitter will be cautioned about the consequences of false reporting. If the criminal complaint is communicated by telephone or other telecommunications medium an official note will be made, and if the complaint was submitted by electronic mail it will be saved on an appropriate recording medium and printed.

If a criminal complaint was submitted to the police, an incompetent public prosecutor or a court, they will receive the complaint and deliver it to the competent public prosecutor immediately.

Actions to be taken by the Public Prosecutor upon Receiving a Criminal Complaint

Article 282

If the public prosecutor cannot assess from the criminal complaint if its assertions are probable, or if the data in the complaint do not provide sufficient grounds to decide whether to conduct an investigation, or if he finds out in some other way that a criminal offence has been committed, the public prosecutor may:

1) collect the necessary data himself;

2) request citizens [to provide information], under the conditions referred to in Article 288 paragraphs 1 to 6 of this Code;

3) submit a request to public and other authorities and legal persons to provide necessary information.

A responsible person may be fined up to 150,000 dinars for failing to comply with the request of the public prosecutor referred to in paragraph 1 item 3) of this Article, and if after being fined he still refuses to provide the necessary information, another fine in the same amount may be imposed on him once again.

The decision on imposing the fine referred to in paragraph 2 of this Article is issued by the public prosecutor. An appeal against the ruling imposing the fine is decided by the judge for the preliminary proceedings. An appeal does not stay the execution of the ruling.

If he is not able to undertake the actions referred to in paragraph 1 of this Article by himself, the public prosecutor will request the police to collect the necessary information and to undertake other measures and actions with the aim of uncovering the criminal offence and the perpetrator (Articles 286 to 288).

The police are required to act in accordance with the request of the public prosecutor and to notify him about the measures and actions it had undertaken not later than 30 days from the date of receiving the request. In the case of a failure to act in accordance with the request, the public prosecutor will act in accordance with Article 44 paragraphs 2 and 3 of this Code.

The public prosecutor, public and other authorities or legal persons, are required during the collection of information or provision of data to act with due care and ensure that no damage is done to the honour and reputation of the person to whom the data relate.

Deferring Criminal Prosecution

Article 283

The public prosecutor may defer criminal prosecution for criminal offences punishable by a fine or a term of imprisonment of up to five years if the suspect accepts one or more of the following obligations:

1) to rectify the detrimental consequence caused by the commission of the criminal offence or indemnify the damage caused;

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

3) to perform certain community service or humanitarian work;

4) to fulfil maintenance obligations which have fallen due;

5) to submit to an alcohol or drug treatment programme;

6) to submit to psycho-social treatment for the purpose of eliminating the causes of violent conduct;

7) to fulfil an obligation determined by a final court decision, or observe a restriction determined by a final court decision.

In the order deferring criminal prosecution the public prosecutor will determine a time limit during which the suspect must fulfil the obligations undertaken, with the proviso that the time limit may not exceed one year. Oversight of the fulfilment of obligations is performed by an officer of the authority in charge of the execution of criminal sanctions, in accordance with a regulation issued by the minister responsible for the judiciary.

If the suspect fulfils the obligation referred to in paragraph 1 of this Article within the prescribed time limit, the public prosecutor will dismiss the criminal complaint by a ruling and notify the injured party thereof, and the provision of Article 51 paragraph 2 of this Code will not be applied.

Dismissing a Criminal Complaint

Article 284

The public prosecutor will dismiss a criminal complaint by a ruling if it proceeds from the complaint that:

1) the reported offence is not a criminal offence which is prosecutable *ex officio*;

2) the statute of limitations has expired, or the offence is encompassed by an amnesty or a pardon, or there exist other circumstances which permanently exclude prosecution;

3) there are no grounds for suspicion that a criminal offence which is prosecutable *ex officio* has been committed.

The public prosecutor will notify the injured party within eight days about the dismissal of the criminal complaint and the reasons thereof and advise him of his rights (Article 51 paragraph 1), and if the criminal complaint was submitted by a police authority, he will also notify that authority.

In the case of criminal offences punishable by a term of imprisonment of up to three years, the public prosecutor may dismiss a criminal complaint if the suspect, as a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full, and in view of the circumstances of the case the public prosecutor finds that pronouncing a criminal sanction would not be fair. In this case the provision of Article 51 paragraph 2 of this Code will not be applied.

2. Authority of the Authorities Conducting Pre-investigation Proceedings

Authority of the Public Prosecutor

Article 285

The public prosecutor leads the pre-investigation proceedings.

For the purpose of exercising the authority referred to in paragraph 1 of this Article the public prosecutor undertakes necessary actions aimed at prosecuting the perpetrators of criminal offences.

The public prosecutor may assign to the police the undertaking of certain actions aimed at detecting criminal offences and locating suspects. The police are required to execute the order of the public prosecutor and to inform him regularly about actions undertaken.

In case the police do not comply with the order the public prosecutor will act in accordance with Article 44 paragraphs 2 and 3 of this Code.

During the pre-investigation proceedings the public prosecutor is authorised to assume from the police the performance of an action which the police had undertaken on its own pursuant to the law.

Authority of the Police

Article 286

If there are grounds for suspicion that a criminal offence which is prosecutable *ex officio* has been committed, the police is required to implement necessary measures to locate the perpetrator of the criminal offence, for the perpetrator or accomplice not to go into hiding or abscond, to detect and secure traces of the criminal offence and objects which may serve as evidence, as well as to collect all information which could be of benefit for the successful conduct of criminal proceedings.

For the purpose of fulfilling the duty referred to in paragraph 1 of this Article, the police may: seek necessary information from citizens; perform necessary inspection of vehicles, passengers and luggage; restrict movement in a certain space for a necessary period of time and up to a maximum of eight hours; undertake necessary measures in connection with the establishment of the identity of persons and objects; post a wanted circular for a person and r objects being searched for; in the presence of a responsible person inspect certain facilities and premises of public authorities, enterprises, shops and other legal persons, inspect their documentation and if needed seize it; undertake other necessary measures and actions. A transcript or an official note will be made of facts and circumstances established during the performance of certain actions, as well as objects found or seized, which may be of interest for the criminal proceedings.

Acting on an order of the public prosecutor the police may for the purpose of fulfilling the duty referred to in paragraph 1 of this Article obtain a record of telephone communications or the base stations used, or perform location of the place from where a communication is being conducted.

The police immediately, or no later than 24 hours after performing them, notify the public prosecutor about the performance of the measures and actions referred to in paragraphs 2 and 3 of this Article.

A person against whom any of the measures and actions referred to in paragraphs 2 and 3 of this Article has been applied is entitled to submit a complaint to the competent public prosecutor.

Evidentiary Actions of the Police

Article 287

If the police conduct an evidentiary action during the pre-investigation proceedings, it will inform the public prosecutor thereof without delay.

Evidence obtained by the police by conducting evidentiary actions may be used in the further course of the criminal proceedings if the evidentiary actions were conducted in accordance with this Code.

Collecting Information from Citizens

Article 288

The police may summon citizens for the purpose of collecting information. The summons must contain the reason for summoning the citizen and the capacity in which the citizen is being summoned. A person who did not respond to a summons may be brought in forcibly only if he had been cautioned accordingly in the summons.

In acting according to the provisions of this Article, the police may not question a citizen in a capacity of defendant, or in a capacity of witness or expert witness, except in the case referred to in Article 289 of this Code.

Collection of information from a person may last for as long as it is necessary to obtain the necessary information, but not longer than four hours, or longer with the consent of the person providing the information.

No coercion may be used in collecting information from citizens.

An official note on the information provided will be read out to the citizen who provided the information, and he may make remarks, which the police is required to enter in the official note. A copy of the official note about the information provided will be issued to the citizen, if he so requests.

The citizen may be summoned again for the purpose of collecting information about the circumstances of another criminal offence or perpetrator, but with respect to the same criminal offence he may not be brought in forcibly again for the purpose of collecting information about it.

Acting on the approval of the judge for preliminary proceedings, the president of the panel or an individual judge, the police may also collect information from detainees, if it is necessary for detecting other criminal offences or other perpetrators. This information will be collected in the institution in which the defendant is detained, at a time determined by the court, in the presence of the defence counsel.

Based on the information collected, the police draft a criminal complaint in which they specify the evidence it learnt during the collection of information. The content of statements made by individual citizens during the collection of information is not entered in the criminal complaint, except for the statement given by the suspect in accordance with Article 289 of this Code.

Objects, sketches, photographs, reports obtained, documents about the measures and actions undertaken, official notes, statements and other materials which may be of benefit for the successful conduct of proceedings are delivered with the criminal complaint.

If after submitting the criminal complaint the police learn about new facts, evidence or traces of the criminal offence, they are required to collect necessary information and deliver to the public prosecutor a report thereof, as a supplement to the criminal complaint.

Questioning the Suspect

Article 289

When the police collect information from a person for whom there exist grounds for suspicion that he is the perpetrator of a criminal offence, or undertake towards that person actions in the pre-investigation proceedings stipulated by his Code, they may summon him only in the capacity of a suspect. The suspect will be advised in the summons that he is entitled to obtain a defence counsel.

If during collection of information the police find that the citizen summoned may be deemed a suspect, they are required to advise him immediately of the rights referred to in Article 68 paragraph 1 items 1) and 2) of this Code and of the right to obtain a defence counsel who will attend his questioning.

The police will notify the competent public prosecutor without delay about acting within the meaning of the provisions of paragraphs 1 and 2 of this Article. The public prosecutor may conduct the suspect's questioning, attend the questioning or assign the questioning to the police.

If the suspect agrees to make a statement, the authority conducting the questioning will act in accordance with the provisions of this Code relating to the questioning of a defendant provided that the consent of the suspect to be questioned and his statement during the questioning are given in the presence of his defence counsel. The transcript of this questioning is not excluded from the files and may be used as evidence in criminal proceedings.

If the public prosecutor is not present at the questioning of a suspect, the police will deliver to him without delay the transcript of the questioning.

Holding Persons at a Crime Scene

Article 290

The police may take persons found at a crime scene to a public prosecutor or hold them until his arrival, if those persons could provide data of importance for the proceedings and if it is probable that their questioning could subsequently not be performed or would entail substantial delays or other difficulties.

The persons referred to in paragraph 1 of this Article may not be held at a crime scene for longer than six hours.

Police Arrest

Article 291

The police may arrest a person if there exist a reason for ordering detention (Article 211), but it is required to take such a person without delay to the competent public prosecutor. When

bringing the person in, the police will submit to the public prosecutor a report on the reasons for and time of the arrest.

The person arrested must be advised of the rights referred to in Article 69 paragraph 1 of this Code.

If the taking of the arrested person [to the prosecutor] due to unavoidable obstacles lasted more than eight hours, the police are required to explain the delay in detail to the public prosecutor, about which the public prosecutor will draft an official note. The public prosecutor will enter in the note the arrested person's statement about the time and place of the arrest.

Arrest during the Commission of a Criminal Offence

Article 292

Any person may arrest a person found committing a criminal offence which is prosecutable *ex officio*.

The arrested person will be taken to the public prosecutor or the police immediately, and if that is not possible, one of those authorities must be notified immediately and will act in accordance with the provisions of this Code (Articles 291 and 293).

Questioning the Arrested Person

Article 293

The public prosecutor is required to advise an arrested person brought before him about the rights referred to in Article 69 paragraph 1 of this Code and to make it possible for him to use a telephone or other electronic message communicator, in his presence, to notify a defence counsel directly or through members of the family or a third person whose identity must be revealed to the public prosecutor, and if necessary also to assist him to find a defence counsel.

If the arrested person does not secure the presence of a defence counsel within 24 hours of the time when it was made possible to him within the meaning of paragraph 1 of this Article, or declares that he does not wish to obtain a defence counsel, the public prosecutor is required to question him without delay.

If in the case of mandatory defence (Article 74) the arrested person does not obtain a defence counsel within 24 hours of the time he was advised of this right or declares that he will not obtain a defence counsel, an *ex officio* defence counsel will be appointed for him.

Immediately after the questioning, the public prosecutor will decide whether to release the arrested person or request that the judge for the preliminary proceedings order detention.

Acting on a request of the arrested person or his defence counsel, a member of the family of the arrested person or the person with whom the arrested person is living in a common law marriage or other permanent personal association, or *ex officio*, the public prosecutor may order the arrested person to be examined by a physician.

The public prosecutor will attach to the files the decision determining the physician who will conduct the examination and a transcript of the questioning of the physician.

Keeping a Suspect in Custody

Article 294

The public prosecutor may exceptionally keep in custody for the purpose of questioning a person arrested in accordance with Article 291 paragraph 1 and Article 292 paragraph 1 of this Code, as well as the suspect referred to in Article 289 paragraphs 1 and 2 of this Code, not more than 48 hours from the time of the arrest, or the response to a summons.

The public prosecutor, or upon his authorisation, the police, issues and serves a ruling on custody immediately, or not more than two hours after the suspect was told that he would be kept in custody. The ruling must specify the offence of which the suspect is accused, grounds for suspicion, date and time of deprivation of liberty or response to a summons, as well as time of commencement of the custody.

The suspect and his defence counsel are entitled to appeal against the ruling on custody within six hours of the delivery of the ruling. A decision on the appeal is issued by the judge for the preliminary proceedings within four hours of receiving the appeal. The appeal does not stay the execution of the ruling.

The suspect is entitled to the rights referred to in Article 69 paragraph 1 of this Code.

The suspect must have a defence counsel as soon as the authority conducting proceedings referred to in paragraph 2 of this Article issues a ruling on custody. If the suspect does not retain a defence counsel on his own within four hours, the public prosecutor will secure one for him *ex officio*, according to the order on the list of lawyers submitted by the competent bar association.

Chapter XVI

INVESTIGATION

1. Basic Provisions

Purpose of the Investigation

Article 295

An investigation is initiated:

1) against a specific person for whom there are grounds for suspicion that he has committed a criminal offence;

2) against an unknown perpetrator when there are grounds for suspicion that a criminal offence has been committed.

During the investigation the following are collected: evidence and data necessary for deciding whether to file an indictment or discontinue proceedings, evidence necessary for establishing the identity of the perpetrator, evidence for which there is risk that it could not be repeated at the trial or that its examination [at trial] would be hampered, as well as other evidence which could be of benefit to the proceedings, whose examination, in view of the circumstances of the case, proves appropriate.

Order to Conduct an Investigation

Article 296

An investigation is initiated by an order issued by the competent public prosecutor.

An order to conduct an investigation is issued before or immediately after the first evidentiary action undertaken by the public prosecutor or the police in the pre-investigation proceedings, but not later than 30 days after the public prosecutor was notified about the first evidentiary action undertaken by the police.

The order to conduct an investigation must specify the following: the personal data of the suspect, if his identity is known, the description of the act on which the legal elements of a criminal offence are based, the legal qualification of the criminal offence and the circumstances from which the grounds for suspicion are derived.

Delivery of the Order to the Suspect

Article 297

The order to conduct an investigation is delivered to the suspect and his defence counsel, if he has one, together with a summons or notice about the first evidentiary action which they may attend (Article 300).

If the identity of an unidentified perpetrator is established during the investigation , the public prosecutor will amend the order to conduct an investigation within the meaning of Article 296 paragraph 3 of this Code and act in accordance with paragraph 1 of this Article.

Simultaneously with the delivery of the order to conduct an investigation to the suspect and his defence counsel, the public prosecutor will notify the injured party about the initiation of the investigation and advise him about the rights referred to in Article 50 paragraph 1 of this Code.

Conducting the Investigation

Article 298

The investigation is conducted by the competent public prosecutor.

One public prosecutor’s office may be designated by law to conduct investigations on the territory of several public prosecutors' offices (the investigation centre).

As a rule the public prosecutor undertakes evidentiary actions only on the territory which is within the competence of the court before which he acts. If the interest of the investigation so requires, he may undertake certain evidentiary actions outside the territory of competence of this court, but is required to notify the public prosecutor acting before the court in whose territory he is undertaking the evidentiary actions about it.

If the public prosecutor needs assistance from the police (forensic, analytical, etc.) or other state authorities in connection with the conduct of the investigation, they are required to provide such assistance at his request. At the request of the public prosecutor, a legal person is required to render assistance in conducting an evidentiary action which cannot be delayed.

Referral of Certain Evidentiary Actions

Article 299

During the investigation a public prosecutor may refer the conduct of certain evidentiary actions to the public prosecutor acting before the court in whose territory the actions are to be conducted, and if one court has been designated for providing legal aid on the territory of several courts – to the public prosecutor acting before that court.

The public prosecutor to whom conduct of certain evidentiary actions has been referred to will undertake as needed other evidentiary actions which are connected to the ones taken earlier or stem from them.

If the public prosecutor to whom conduct of certain evidentiary actions has been referred to is not competent to conduct them, he will submit the case to the competent public prosecutor and notify the public prosecutor who gave him the case of that.

The public prosecutor may refer conduct of certain evidentiary actions to the police, in accordance with the provisions of this Code.

Attending Evidentiary Actions

Article 300

The public prosecutor is required to send the defence counsel of a suspect a summons to attend the questioning of the suspect, or to send a summons to the suspect and his defence counsel, and to notify the injured party about the time and place of the questioning of a witness or an expert witness.

By exception from paragraph 1 of this Article, in proceedings in connection with criminal offences in which a prosecutor's office of special jurisdiction acts in accordance with a special law the public prosecutor may question a witness even without summoning the suspect and his defence counsel to attend the questioning if he assesses that their presence may influence the witness. In such a case the court's decision may not be based only or to a decisive extent on the statement of the witness.

The suspect, his defence counsel and the injured party may attend an examination.

If the suspect has a defence counsel, the public prosecutor will as a rule summon or notify only the defence counsel. If the suspect is in detention, and the evidentiary action is being conducted outside the seat of the court, the public prosecutor will decide whether the presence of the suspect is necessary.

The public prosecutor is required to notify a professional consultant that he may attend an expert examination (Article 126 paragraph 1).

If a summons to a suspect and his defence counsel was not delivered in accordance with the provisions of this Code, or if the investigation is being conducted against an unknown perpetrator, the public prosecutor may undertake questioning of a witness or expert witness only on the basis of prior authorisation by the judge for the preliminary proceedings.

If a person to whom a summons or notice about an evidentiary action was sent is not present, the action may also be undertaken in his absence.

Persons undertaking evidentiary actions may propose to the public prosecutor to ask a suspect, witness or expert witness certain questions in other to clarify matters, and with the permission of the public prosecutor may also pose questions directly. These persons are entitled

to request that their remarks in respect of the conduct certain actions be entered in the transcript, and may also propose that certain evidence be obtained.

In order to clarify certain technical and other expert questions which are being posed in connection with obtained evidence or during questioning of a suspect or conduct of other evidentiary actions, the public prosecutor may request from a person holding appropriate qualifications necessary explanations about those questions. If the suspect or defence counsel is present during the provision of explanations, they may request that that person provide more detailed explanations. If necessary, the public prosecutor may also request explanations from an appropriate professional institution.

Gathering of Evidence and other Materials by the Defence

Article 301

The suspect and his defence counsel may collect on their own evidence and materials for the benefit of the defence.

For the purpose of enforcing the right referred to in paragraph 1 of this Article, the suspect and his defence counsel are entitled:

1) to talk to a person who can provide them data that can be useful for the defence and to obtain from that person written statements and information, with his consent;

2) to enter private premises or areas which are not open to the public, a dwelling or premises linked with a dwelling, with the consent of their holder;

3) to take over from a legal or natural person objects and instruments and obtain information possessed by that person, with their consent, as well as with an obligation to issue that person a certificate with a list of the objects and instruments taken.

The authorisation referred to paragraph 2 item 1) of this Article does not relate to the injured party and persons already questioned by the police or public prosecutor.

The written statement and opinion referred to in paragraph 2 item 1) of this Article may be used by the defendant and his counsel during the questioning of a witness or a test of the authenticity of his statement, or for issuing a decision to question a certain person as a witness by the public prosecutor or the court.

Undertaking Evidentiary Actions for the Benefit of the Defence

Article 302

If the suspect and his defence counsel believe that a certain evidentiary action needs to be taken, they will propose to the public prosecutor that it be undertaken.

If the public prosecutor rejects the proposal for conducting certain evidentiary action or does not decide on the proposal within eight days of the date of its submission, the suspect and his defence counsel may submit the proposal to the judge for the preliminary proceedings, who issues a decision thereon within eight days.

If the judge for the preliminary proceedings grants the proposal of the suspect and his defence counsel, he will order the public prosecutor to undertake the evidentiary action and will determine a deadline for its conduct.

Discovery

Article 303

The public prosecutor is required to enable, within a time limit sufficient for the preparation of defence, a suspect who has been questioned and his defence counsel ,
to examine case- file documents and view objects which will be used as evidence. In case several persons are suspects in connection with the same criminal offence, examination of case- file documents and viewing of objects which will be used as evidence may be deferred until the public prosecutor has questioned the last of the suspects who is accessible.

After examination of case-file documents and viewing of objects, the public prosecutor will call on the suspect and his defence counsel to file, within a specific time limit, a motion for conduct of certain evidentiary actions.

A suspect who has been questioned and his defence counsel are required after collecting evidence and materials for the benefit of the defence (Article 301) to notify the public prosecutor thereof and to enable him before the conclusion of the investigation to examine the case-file documents and view objects that will be used as evidence.

If the motion referred to in paragraph 2 of this Article is rejected (Article 302 paragraph 2) or if the suspect and his defence counsel do not act in accordance with paragraph 3 of this Article, the public prosecutor will decide on concluding the investigation (Article 310).

Maintaining Confidentiality

Article 304

If it is necessary in order to protect the interests of national security, public order and morality, interests of minors, privacy of participants in proceedings, or for other justified interests in a democratic society, the authority conducting proceedings which conducts an evidentiary action shall order persons he is questioning or examining or who are attending evidentiary actions or are examining the case-file to maintain confidentiality of certain facts or data learnt on the occasion, and warn them that disclosure of a secret represents a criminal offence under the law.

The order referred to in paragraph 1 of this Article will be entered into transcript of the evidentiary action, or will be marked on the case-file documents which are being examined and accompanied by a signature of the person warned.

Sanctions for Disturbing the Order

Article 305

A public prosecutor will warn a person disturbing the order during the conduct of an evidentiary action, and if he continues to disturb the order the court may fine him up to 150,000 dinars.

The panel (Article 21 paragraph 4) decides on an appeal against the ruling imposing a fine referred to in paragraph 1 of this Article. An appeal does not stay the execution of the ruling.

If the participation of the person referred to in paragraph is not necessary, he may be removed from the location where the evidentiary action is being undertaken.

Expanding the Investigation

Article 306

An investigation is conducted only in respect of the suspect and the criminal offence to whom the order to conduct an investigation refers.

If it turns out during the investigation that the proceedings should be expanded to include another criminal offence or another person, the public prosecutor will expand the investigation by issuing an order.

The provisions of Articles 296 and 297 apply to the expansion of the investigation.

Suspending an Investigation

Article 307

An investigation will be suspended if:

1) after committing a criminal offence a suspect gets a mental disease or disorder or another serious illness which makes it impossible for him to participate in the proceedings;

2) there is no motion by an injured party or authorisation by a competent state authority for prosecution, or if other circumstances which temporarily prevent prosecution appear.

An investigation may be suspended if:

1) the temporary residence of the suspect is not known;

2) the suspect is at large or otherwise inaccessible to the public authorities.

Before issuing an order to suspend an investigation, the public prosecutor will collect all available evidence about the criminal offence of the suspect. If the investigation has been suspended due to the reasons referred to in paragraph 2 item 2) of this Article, the public prosecutor will propose the ordering of detention against the suspect.

When obstacles which caused the suspension cease to exist, the public prosecutor will resume the investigation.

Discontinuing an Investigation

Article 308

During the investigation, the public prosecutor may discontinue prosecution of a suspect and discontinue the investigation if:

1) the offence which constitutes the subject matter of the indictment is not a criminal offence and the conditions for the application of a security measure do not exist;

2) statute of limitations has expired or the offence has been covered by amnesty or pardon or there are other circumstances which rule out criminal prosecution permanently;

3) there is insufficient evidence for filing an indictment.

In the case referred to in paragraph 1 of this Article, the public prosecutor will issue an order discontinuing the investigation and notify thereof the suspect and the injured party (Article 51 paragraph 1).

Obtaining Data on the Suspect

Article 309

The public prosecutor will before concluding an investigation obtain data about the suspect (Article 85 paragraph 1) if they are missing or should be checked, as well as data about prior convictions, and if the suspect is already serving a criminal sanction involving incarceration – data about his conduct during the service of the criminal sanction.

The public prosecutor will as needed obtain data about the suspect's prior life, his personal circumstances and other circumstances relating to his personality. If it is necessary to gather additional data on the personality of the suspect, the public prosecutor may order examinations or psychological testing of the suspect.

If the pronouncement of a single penalty encompassing penalties from earlier convictions may be considered, the public prosecutor will request the files of the cases in which the said convictions were made, or certified copies of the final judgments.

Concluding an Investigation

Article 310

When he finds that the subject matter of the investigation has been cleared up sufficiently, the public prosecutor will issue an order on the conclusion of the investigation which he will deliver to the suspect and his defence counsel, if he has one, and will notify the injured party about the conclusion of the investigation.

If the public prosecutor does not conclude an investigation against a suspect within six months, or within one year in relation to a criminal offence within jurisdiction of the public prosecutor's office of special jurisdiction year according to a separate law, he will be required to notify the immediately superior public prosecutor of reasons due to which the investigation has not been concluded.

The immediately superior public prosecutor is required to undertake measures to conclude the investigation.

If the public prosecutor decides to discontinue prosecution after the conclusion of the investigation, he will notify the suspect and the injured party about it (Article 51 paragraph 1)

Supplemental Investigation

Article 311

The public prosecutor will issue an order supplementing the investigation when after concluding the investigation he finds that new evidentiary actions need to be undertaken.

The suspect and his defence counsel may propose to the public prosecutor that the investigation be supplemented. In that case the provisions of Article 302 of this Code are applied accordingly.

Objecting to Irregularities during the Investigation

Article 312

The suspect and his defence counsel may immediately after learning about it, but no later than the conclusion of the investigation, submit an objection to the immediately superior public prosecutor on delays of the proceedings or other irregularities during the investigation.

The immediately superior public prosecutor will within eight days of receiving the objection issue a ruling rejecting or granting the objection. No appeal or objection against this ruling of the public prosecutor is allowed. By the ruling granting the objection, the public prosecutor will issue a mandatory instruction to the competent public prosecutor to rectify the established irregularities that occurred during the investigation.

In case the objection is rejected, the suspect and his defence counsel may within eight days of receiving the ruling referred to in paragraph 2 of this Article submit a complaint to the judge for the preliminary proceedings. If the judge for the preliminary proceedings finds the complaint well-founded, he will order the undertaking of measures to rectify the irregularities.

2. Agreements of the Public Prosecutor and the Defendant

a) Plea Agreement

Concluding an Agreement

Article 313

A plea agreement may be concluded by the public prosecutor and the defendant from the moment of issuance of an order to conduct an investigation until the defendant states his position in relation to the charges at trial.

A defendant must have a defence counsel (Article 74 item 8)) during the conclusion of the agreement referred to in paragraph 1 of this Article.

Plea agreement, done in writing, shall be submitted by the public prosecutor to the judge for the preliminary proceedings before an indictment is confirmed, and after the confirmation of the indictment to the president of the panel.

If a plea agreement is concluded before an indictment is filed, the public prosecutor will together with the agreement, file with the court the indictment, which constitutes an integral part of this agreement.

Provisions relating to examination of the indictment (Articles 337 to 341) are not applicable to the indictment referred to in paragraph 4 of this Article.

If the authorised person (Article 253 paragraph 1) has not filed a restitution claim, the public prosecutor will invite him to file the claim before the agreement is concluded.

Contents of the Agreement

Article 314

Plea agreement contains the following:

1) a description of the criminal offence which is the subject-matter of the charges;

2) a confession of the defendant that he committed the criminal offence referred to in item 1) of this paragraph;

3) an agreement on the type, extent or scope of the penalty or other criminal sanction;

4) an agreement on the costs of the criminal proceedings, on confiscation of the pecuniary benefits from the crime and the restitution claim, if one has been submitted;

5) a statement on the parties' and defence counsel's waiver of the right to appeal against a decision with which the court has accepted the agreement in its entirety, except in the case referred to in Article 319 paragraph 3 of this Code;

6) the signatures of the parties and defence counsel.

In addition to data referred to in paragraph 1 of this Article, the plea agreement may also contain:

1) a statement of the public prosecutor on desisting from criminal prosecution for criminal offences not covered by the plea agreement;

2) a statement of the defendant on acceptance of the obligation referred to in Article 283 paragraph 1 of this Code, provided that the nature of the obligation makes it possible to commence its execution before submitting the agreement to the court;

3) an agreement in respect to the proceeds from the crime which will be confiscated from the defendant.

Deciding on the Agreement

Article 315

The judge for the preliminary proceedings decides on the plea agreement, and if the agreement was submitted to the court after the confirmation of the indictment – the president of the panel.

The decision on the plea agreement is rendered at a hearing to which the public prosecutor, defendant and his defence counsel are summoned.

The hearing referred to in paragraph 2 of this Article is held in a closed session.

Dismissing an Agreement

Article 316

The court will dismiss a plea agreement by a ruling if:

1) the agreement does not contain the data specified by Article 314 paragraph 1 of this Code;

2) a duly summoned defendant has not appeared at the hearing and failed to justify his absence.

Accepting the Agreement

Article 317

The court will accept a plea agreement by a judgment and declare the defendant guilty if it determines:

1) that the defendant has knowingly and voluntarily confessed to the criminal offence or criminal offences which are the subject-matter of the charges;

2) that the defendant is aware of all the consequences of the concluded agreement, especially that he has waived his right to a trial and that he accepts a restriction of his right to file an appeal (Article 319 paragraph 3) against the decision of the court based on the agreement;

3) that the other existing evidence do not run contrary to the defendant's confession on having committed the criminal offence;

4) that the penalty of other criminal sanction or other measure in respect of which the public prosecutor and the defendant had reached an agreement was proposed in line with the criminal and other law.

In addition to elements referred to in Article 428 paragraphs 2, 3 and 5 of this Code, the judgment referred to in paragraph 1 of this Article also contains the reasons which led the court to accept the agreement.

Rejecting an Agreement

Article 318

The court will reject a plea agreement by a ruling if it determines:

1) that the reasons referred to in Article 338 paragraph 1 of this Code exist;

2) that one or more of the conditions referred to in Article 317 paragraph 1 of this Code have not been fulfilled.

When the ruling referred to in paragraph 1 of this Article becomes final, the plea agreement and all file documents related to it are destroyed in the presence of the judge who issued the ruling and a transcript is made thereof, while proceedings return to the stage which preceded the conclusion of the agreement.

The judge referred to in paragraph 2 of this Article may not participate in the further course of the proceedings.

Appeal against the Decision on the Agreement

Article 319

The court's decision on the plea agreement is delivered to the public prosecutor, the defendant and his defence counsel.

A ruling dismissing (Article 316) or rejecting (Article 318) the plea agreement is not appealable.

The persons referred to in paragraph 1 of this Article may within eight days if the date of delivery of the judgment appeal against the judgment accepting the plea agreement (Article 317) for the existence of reasons referred to in Article 338 paragraph 1 of this Code, or if the judgment does not relate to the subject-matter of the agreement (Article 314).

b) Agreement on Testifying of Defendant

Concluding an Agreement

Article 320

An agreement on testifying in connection with the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code may be concluded by the public prosecutor and the defendant from the moment of issuance of an order to conduct an investigation up until the end of the trial.

The agreement referred to in paragraph 1 of this Article may be concluded with the defendant who has confessed in entirety to having committed a criminal offence, provided that the significance of his testimony for detecting, proving or preventing the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code outweighs the consequences of the criminal offence he had committed (cooperating defendant).

A defendant for whom there is grounded suspicion that he is the organiser of an organised criminal group may not be proposed to be a cooperating defendant.

When concluding the agreement referred to in paragraph 1 of this Article the defendant must have a defence counsel (Article 74 item 8)).

The public prosecutor will, before concluding the agreement on testifying, ask the defendant to, within a time limit which may not exceed 30 days, autonomously and in his own writing, in as much detail as possible, truthfully describe everything he knows about the criminal offence in connection with which the criminal proceedings are being conducted and about other offences referred to in Article 162 paragraph 1 item 1) of this Code. An illiterate defendant will dictate the preliminary testimony into a voice-recording machine.

An agreement on testifying is concluded in written form and submitted to the court by the conclusion of the trial. A transcript of the testimony given by the defendant in accordance with paragraph 5 of this Article is attached to the agreement.

Contents of the Agreement

Article 321

An agreement on testifying by a defendant contains:

1) a description of the criminal offence which is the subject-matter of the charges;

2) a statement of the defendant that he confesses in entirety to the criminal offence, that he will testify to everything he knows about the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code and will omit nothing, that he has been warned about the duties referred to in Article 95 paragraph 1 and Article 96 of this Code and privileges referred to in item 3) of this paragraph , that he may not invoke the privilege of being relieved of the duty of giving testimony (Article 94 paragraph 1) and that of being relieved of the duty to answer certain questions (Article 95 paragraph 2);

3) an agreement on the type and extent or scope of the penalty or other sanction which will be issued, on being relieved from serving the penalty, or on an obligation of the public

prosecutor to discontinue criminal prosecution of the defendant in the case of providing testimony at trial in accordance with the obligations referred to in item 2) of this paragraph;

4) an agreement on the costs of the criminal proceedings, confiscation of the pecuniary benefits from crime, and about the restitution claim, if one has been submitted;

5) a statement of the parties and defence counsel waiving the right to an appeal against the decision of the court accepting the agreement in entirety;

6) the signatures of the parties and the defence counsel.

In addition to data specified in paragraph 1 of this Article, an agreement on testifying may also contain an agreement in respect of the proceeds from crime which will be confiscated from the defendant.

Deciding on the Agreement

Article 322

A decision on an agreement on testifying by a defendant is issued by the judge for the preliminary proceedings, and if the agreement was submitted to the court after the confirmation of the indictment, the decision is issued by the president of the panel.

A ruling on dismissing, accepting or rejecting the agreement on testifying by a defendant is issued at a hearing to which the public prosecutor, the defendant and the defence counsel are summoned.

The provisions of Article 316 of this Code are applied accordingly to the issuance of a decision dismissing an agreement on a defendant's testifying.

Accepting the Agreement

Article 323

The court will accept the agreement on testifying by a defendant with a ruling if it determines:

1) that the defendant has knowingly and voluntarily agreed to testify under the conditions specified in Article 321 paragraph 1 item 2) of this Code;

2) that the defendant is fully aware of all the consequences of the agreement concluded, in particularly the waiver of the right to file an appeal against a decision of the court issued on the basis of the agreement;

3) that the penalty or other sanction or measure, remission from serving the penalty, or discontinuance of criminal prosecution by the public prosecutor was proposed in accordance with the provisions of this Code or the Criminal Code.

Rejecting the Agreement

Article 324

The court will reject the agreement on testifying by a defendant with a ruling if it determines:

1) that the reasons referred to in Article 338 paragraph 1 of this Code exist;

2) that one or more of the conditions referred to in Article 323 of this Code has not been fulfilled.

When the ruling referred to in paragraph 1 of this Article becomes final, the agreement on testifying and all case-file documents connected with it are destroyed in the presence of the judge (Article 322 paragraph 1) who issued the ruling, and a record are made thereof.

The judge referred to in paragraph 2 of this Article may not participate in the further course of the proceedings.

Examination of a Cooperating Defendant

Article 325

The cooperating defendant is required to tell the truth and not to omit anything known to him in relation to the subject-matter of the trial.

The cooperating defendant is examined after questioning of defendants and is removed from the courtroom after the examination.

Court is Bound by the Decision on Acceptance of the Agreement

Article 326

A court of first instance and a court of legal remedy are bound by a ruling on acceptance of an agreement on testifying by a defendant in issuing a decision on a criminal sanction, costs of the criminal proceedings, confiscation of the pecuniary benefit from crime, restitution claim and confiscation of proceeds deriving from a criminal offence, provided that the cooperating defendant has fully fulfilled the obligations specified in the agreement.

The court will annul the ruling on acceptance of the agreement and act in accordance with Article 324 paragraphs 2 and 3 of this Code if:

1) the cooperating defendant has not fulfilled the obligations specified in the agreement;

2) the public prosecutor initiates an investigation against the cooperating defendant or learns about a prior conviction and files a motion with the court to annul the agreement.

v) Agreement on Testifying by a Convicted Person

Concluding an Agreement

Article 327

The public prosecutor and a convicted person may conclude an agreement on testifying if the significance of the convicted person's testimony for detecting, proving or preventing the criminal offences referred to in Article 162 paragraph 1 item 1) of this Code outweighs the consequences of the criminal offence for which he was convicted (cooperating convicted person).

A person convicted as the organizer of an organized criminal group may not be proposed as a cooperating convicted person.

The convicted person must have a defence counsel (Article 74 item 8)) during the conclusion of the agreement referred to in paragraph 1 of this Article..

The agreement on testifying is done in a written form and submitted to the court by the conclusion of the trial.

Contents of the Agreement

Article 328

The agreement on testifying by a convicted person contains the following:

1) a description of the criminal offence which is the subject matter of the charges;

2) a statement of the convicted person that he will testify about everything known to him about the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code and that he will omit nothing, that he has been warned about the duties referred to in Article 95 paragraph 1 and Article 96 of this Code, that he may not invoke the privilege of being relieved of the duty of giving testimony (Article 94 paragraph 1) and that of being relieved of the duty to answer certain questions (Article 95 paragraph 2);

3) an agreement on the type and extent or scope of the reduction of penalty or other sanction, or on the convict being relieved from serving a penalty, in case he provides testimony at the trial in accordance with the obligation proceeding from item 2) of this Article;

4) a statement by the public prosecutor that he will within 30 days from the date of the final conclusion of proceedings ending in a conviction in which the convicted person provided testimony in accordance with the obligation from item 2) of this Article submit a request in accordance with Article 557 of this Code;

5) a statement of the parties and defence counsel waiving the right to an appeal against a decision of the court based on the agreement on testifying, when the court has accepted the agreement in full;

6) the signatures of the parties and defence counsel.

Deciding on the Agreement

Article 329

The judge for the preliminary proceedings decides on an agreement on testifying by a convicted person, and if the agreement was submitted to the court after the confirmation of the indictment, the decision is issued by the president of the panel.

A ruling on dismissing, accepting or rejecting the agreement on testifying by a convicted person is issued at a hearing to which the public prosecutor, the convicted person and the defence counsel are summoned.

The provisions of Articles 316, 323 and 324 of this Code are applied accordingly during the issuance of the ruling referred to in paragraph 2 of this Article.

Court is Bound by the Decision on Acceptance of the Agreement

Article 330

The court is bound by a ruling whereby an agreement on testifying by a convicted person is accepted in issuing a decision on a criminal sanction in repeated proceedings, provided that the cooperating convicted person has fulfilled the obligations specified in the agreement in full.

Chapter XVII

INDICTING

Filing an Indictment

Article 331

The public prosecutor files an indictment when there is justified suspicion that a certain person has committed a criminal offence.

An indictment is filed within 15 days of the date when the investigation was concluded. In particularly complex cases this time limit may be extended by another 30 days on the basis of authorisation by the immediately superior public prosecutor.

If the public prosecutor does not file an indictment within the time limit referred to in paragraph 2 of this Article and does not state that he is discontinuing criminal prosecution, the defendant, his counsel and the injured party may, within eight days of the date of expiry of the time limit for filing an indictment, submit an objection to the immediately superior public prosecutor. If the injured party has not been notified about the conclusion of the investigation (Article 310 paragraph 1), he may submit an objection within three months of the date when the public prosecutor issued an order concluding the investigation.

The immediately superior public prosecutor will within 15 days of the date of receiving the objection referred to in paragraph 3 of this Article issue a ruling rejecting or adopting the objection. No appeal or objection is allowed against the public prosecutor's ruling. By the ruling accepting the objection the public prosecutor will issue a mandatory instruction to the competent public prosecutor to file an indictment within a specified time limit, which may not exceed 30 days.

If the data collected about the criminal offence and the perpetrator provide sufficient grounds for filing charges, an indictment may be filed even without having to conduct an investigation.

The provisions on the indictment and examination of the indictment will apply accordingly to a private lawsuit, unless it is being brought in connection with a criminal offence for which summary proceedings are conducted.

Contents of the Indictment

Article 332

The indictment contains:

1) the first name and surname of the defendant, with personal data (Article 85 paragraph 1), and data on whether and as of when he is in detention, or is at liberty, and, in case he was released before the filing of the indictment, information on the duration of detention;

2) a description of the act on which the legal elements of a criminal offence are based, time and place of the commission of the criminal offence, object on which and the means by which the criminal offence was committed, as well as other circumstances needed to determine the criminal offence as precisely as possible;

3) the legal qualification of the criminal offence, citing the provisions of the law that should be applied according to the prosecutor's proposal;

4) a designation of the court before which the trial will be held;

5) a proposal for the evidence to be examined at the trial, specifying the names of the witness and expert witness, file documents and objects that should be used as evidence;

6) a reasoning describing the state of the matter according to the results of the investigation, specifying evidence that will serve to establish the determining facts, describing the defence of the defendant and the prosecutor's position on the allegations of the defence.

If the defendant is at liberty, it may be proposed in the indictment that the detention be ordered, and if he is in detention, it may be proposed that he be released.

One indictment may encompass several criminal offences or several defendants only if under the provisions of Article 30 of this Code joint proceedings may be conducted and a single judgment rendered.

Filing the Indictment with the Court

Article 333

The indictment is submitted to the panel (Article 21 paragraph 4) of the competent court in as many copies as there are defendants and their defence counsel (Article 78 paragraph 3), and one copy for the court. The files made by the public prosecutor during the investigation are delivered to the court together with the indictment.

Immediately on receiving the indictment the panel will examine whether the indictment has been composed correctly (Article 332), and if it determines that it has was not, return it to the prosecutor to rectify the shortcomings within three days. On a motion of the prosecutor the panel may extend this limit for justified reasons.

If the public prosecutor misses out on the time limit referred to in paragraph 2 of this Article, the panel will issue a ruling dismissing the indictment, and in case a private prosecutor misses the aforesaid time limit, it will be deemed that he has desisted from the prosecution and the charges will be rejected by a ruling.

Proposal to Order Detention or Release a Defendant

Article 334

If the indictment contains a proposal to order placement of the defendant in detention or his release from detention, the panel (Article 21 paragraph 4) rules on it immediately, and not later than within 48 hours.

If the defendant is in detention, and no proposal is made in the indictment for his release, the panel will *ex officio*, within three days from the day of receiving the indictment, examine whether the grounds for detention continue to exist and issue a ruling extending or terminating detention. An appeal against this ruling does not stay its execution.

Delivery of the Indictment to the Defendant

Article 335

The president of the panel (Article 21 paragraph 4) delivers an indictment which is properly composed to the defendant who is at liberty without delay, and if he is in detention - within 24 hours of receiving the indictment, and in particularly complex cases, within no longer than three days from the date of receipt of the indictment.

If detention has been ordered against the defendant by a ruling of the panel (Article 334 paragraph 1), the indictment is served to the defendant during his arrest, together with the ruling ordering detention.

If during his arrest the defendant is not in an institution in the territory of the court where the trial will be held, the panel (Article 21 paragraph 4) will order the defendant to be immediately brought to that institution where he will be served the indictment.

Defendant's Response to the Indictment

Article 336

The defendant is entitled to submit a written response to the indictment within eight days from the delivery of the indictment. Advice of his to right to respond will be provided to him together with the indictment.

A response to the indictment may also be submitted by the defence counsel, without any special authorisation of the defendant, but not against his will.

Examination of the Indictment

Article 337

The panel (Article 21 paragraph 4) will examine the indictment within 15 days from the expiry of the time limit for submitting a response to the indictment (Article 336 paragraph 1).

If the panel determines that another court is competent for the criminal offence which is the subject-matter of the charges, it will issue a ruling on the incompetence of the court and after the ruling becomes final it will deliver the case to the competent court.

When the panel determines that a better clarification of the state of the matter is required in order to assess whether the indictment is justified, it will order a supplemental investigation, or an investigation to be conducted, or certain evidence be collected.

The public prosecutor will, within three days from the day the decision of the panel referred to in paragraph 3 of this Article is communicated to him, issue an order to supplement or to conduct an investigation, and a private prosecutor will collect evidence within 30 days from the date of announcement of the decision. At the request of the prosecutor, the panel may extend this time limit, for justified reasons.

If the public prosecutor misses the deadline referred to in paragraph 4 of this Article, he is required to notify the immediately superior public prosecutor of the reasons for missing the

deadline, and in case a private prosecutor misses the aforesaid time limit, it will be presumed that he has decided to desist from prosecution and the charges will be dismissed by a ruling.

If the panel determines that the files contain transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, it will issue a ruling excluding them from the files. A special appeal against this ruling is allowed.

Once the ruling referred to in paragraph 6 of this Article becomes final the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

Discontinuing Proceedings

Article 338

In examining the indictment, the panel (Article 21 paragraph 4) will decide by a ruling that the charges are unfounded and that the criminal proceedings are being terminated if it determines that:

1) the offence which is subject-matter of the charges is not a criminal offence, and that conditions for applying a security measure do not exist;

2) the statute of limitation for criminal prosecution has expired, or that the offence is covered by amnesty or pardon, or that the other circumstances exist which permanently preclude criminal prosecution;

3) there is insufficient evidence for a justified suspicion that the defendant committed the offence which is the subject-matter of the charges.

If after the examination of an indictment filed without an investigation an investigation is conducted (Article 337 paragraphs 3 and 4), and the panel, after the conducted investigation, finds that the reasons referred to in paragraph 1 item 3 of this Article exist, it will decide by a ruling that the charges are unfounded and that the criminal proceedings are being discontinued.

Rejecting Charges

Article 339

When it examines an indictment of the public prosecutor submitted without conducting investigation or a private lawsuit, the panel (Article 21 paragraph 4) will reject the charges by a ruling if it determines that there are the reasons referred to in Article 338 paragraph 1 items 1) and 2) of this Code, and where evidentiary actions have been conducted – also for reason referred to in Article 338 paragraph 1 item 3) of this Code.

If the panel determines that there is no request by an authorised prosecutor, the requisite motion or approval for criminal prosecution, or there are other circumstances temporarily preventing prosecution, it will dismiss the indictment or private lawsuit by a ruling.

Court is Not Bound by the Legal Qualification of the Offence

Article 340

In rendering the ruling referred to in Article 337 paragraph 2 and Articles 338 and 339 of this Code, the panel (Article 21 paragraph 4) is not bound by the legal qualification of the offence which the prosecutor specified in the indictment or private prosecution.

Confirming the Indictment

Article 341

If none of the rulings referred to in Article 340 of this Code are issued, the panel (Article 21 paragraph 4) will confirm the indictment by a ruling.

In the same ruling the panel will also decide on motions for joinder or severance of proceedings.

Substantiating a Ruling

Article 342

All rulings issued in the procedure of examining the indictment must be substantiated, but in a manner not impacting in advance the resolution of the issues which will be the subject-matter of examination at the trial.

Appealing against a Ruling

Article 343

The prosecutor may appeal against the ruling referred to in Article 337 paragraph 2 and Articles 338 and 339 of this Code, and the defendant may appeal against the ruling referred to in Article 341 of this Code.

Chapter XVIII

TRIAL AND JUDGMENT

1. Trial

a) Preparations for the Trial

Authority of the President of the Panel

Article 344

The president of the panel begins preparations for the trial immediately after receiving the confirmed indictment and the case file.

The preparations for the trial include the holding of a preparatory hearing, the scheduling of the trial and the rendering of other decisions relating to the management of the proceedings.

No appeal is allowed against the decisions issued by the president of the panel during preparations for the trial, unless specified otherwise by this Code.

a. Preparatory Hearing

Basic Rules

Article 345

At the preparatory hearing the parties state their positions in relation to the subject-matter of the charges, explain the evidence which will be examined at the trial and propose new evidence, the factual and legal questions which will be the subject-matter of discussion at the trial are determined, a decision is rendered on a plea agreement, on detention and on discontinuing criminal proceedings, as well as on other questions the court finds of relevance for holding a trial.

The preparatory hearing is held before the president of the panel, *in camera*.

In the summons for the preparatory hearing the president of the panel will caution the parties and the injured party that the trial [main hearing] may be held at the preparatory hearing (Article 350 paragraph 6).

Provisions on the trial are applied accordingly to the preparatory hearing, unless specified otherwise by this Code.

Scheduling a Preparatory Hearing

Article 346

The president of the panel will schedule a preparatory hearing not later than 30 days if the defendant is in detention, or 60 days if the defendant is at liberty, counting from the date of receipt of the confirmed indictment by the court.

If the president of the panel does not schedule a preparatory hearing within the time limit referred to in paragraph 1 of this Article, he will notify thereof the president of the court, who will undertake measures for the preparatory hearing to be scheduled immediately.

By exception from paragraph 1 of this Article, if an indictment has been filed in connection with a criminal offence punishable by a term of imprisonment of up to twelve years and if the president of the panel holds that in view of the evidence collected, the controversial factual and legal questions, or the complexity of the case the holding of a preparatory hearing is not necessary, he will issue an order scheduling a trial.

If the public prosecutor, the defendant and his defence counsel have concluded a plea agreement (Article 313 paragraph 1) in respect to certain counts of the indictment, the president of the panel will order a preparatory hearing for the part of the indictment not encompassed by the agreement.

If the president of the panel determines that the files contain transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, he will issue a ruling on their exclusion from the files. A special appeal is allowed against this ruling.

Once the ruling referred to in paragraph 5 of this Article becomes final, the president of the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

Summons for a Preparatory Hearing

Article 347

The parties and defence counsel, the injured party, legal representative and proxy of the prosecutor and injured party, and if needed a translator and an interpreter, will be summoned to the preparatory hearing.

The parties will be advised in the summons for the preparatory hearing that they may propose new evidence at the preparatory hearing if they learnt about it after the confirmation of the indictment.

If it is necessary to obtain for the preparatory hearing files, instruments or objects held by the court or other state authority, the president of the panel will on a motion of the parties order those objects or instruments to be obtained in a timely manner.

Commencement of the Preparatory Hearing

Article 348

The president of the panel checks whether all the persons summoned are present, and in the event of the absence of any of them whether the conditions prescribed by this Code for holding the preparatory hearing in their absence are fulfilled (Articles 379 to 382 and Article 383 paragraph 1).

By exception from paragraph 1 of this Article, if the defendant has been duly summoned, and does not appear at the preparatory hearing and does not justify his absence, the president of the panel may decide that the preparatory hearing be held if the defence counsel is present.

If the conditions referred to in paragraph 1 of this Article for holding a preparatory hearing have been fulfilled, the president of the panel checks the data referred to in Article 332 paragraph 1 item 1) of this Code.

The president of the panel will advise, within the meaning of Article 50 paragraph 1 item 1) of this Code, an injured party who has not submitted a restitution claim

If the public prosecutor and the defendant have concluded a plea agreement (Article 313 paragraph 1) they will notify thereof the president of the panel, who will act in accordance with the provisions of Articles 315 to 318 of this Code.

If the plea agreement relates to only some counts of the indictment, the proceedings for those offences will be severed in accordance with Article 31 of this Code, and for the other counts of the indictment it will be acted in accordance with the provisions of this Code on holding the preparatory hearing or, in the case referred to in Article 346 paragraph 3 of this Code, on the scheduling of the trial.

Parties' Declarations

Article 349

The public prosecutor quotes from the indictment the description of the act which meets the legal elements of a criminal offence and the legal qualification of the criminal offence, and

presents the evidence supporting the indictment, and may propose the pronouncement of a certain type and extent of criminal sanction. In the case of charges filed by a subsidiary prosecutor or a private prosecution, the president of the panel may summarize their contents.

If the injured party is present, he may submit a restitution claim, and if he is not present, the president of the panel will read out the claim, if one has been submitted.

After advising the defendant about his rights and duties (Articles 68 and 70), the president of the panel will instruct him to declare himself on the charges (Article 392).

If the defendant challenges the claims made in the charges the president of the panel will instruct him to explain which part of the indictment he is challenging and for what reasons, and will caution the defendant that only evidence connected to the part of the indictment which has been challenged will be examined at the trial.

If a co-defendant has confessed to certain counts of the indictment which also relate to the other co-defendant who has challenged them, the trial will be held for both co-defendants and as a rule a single judgment will be issued.

Proposing Evidence

Article 350

The president of the panel will ask the parties, the defence counsel and the injured party to explain the proposed evidence they intend to examine at the trial, and will caution them that evidence known to them, but not proposed at the preparatory hearing without justified reasons, will not be examined.

The president of the panel may order obtaining new evidence for the trial even without a motion by the parties, the defence counsel and the injured party (Article 15 paragraph 4).

If the defendant has confessed to having committed the criminal offence, proposing evidence for the trial will be limited to the evidence on which depends the assessment whether the confession fulfils the preconditions referred to in Article 88 of this Code, as well as evidence on which depends the decision on the type and extent of the criminal sanction.

Each party will state its position on the proposals of the opposing party and the injured party.

The provisions of Article 395 of this Code are applied accordingly to the deciding on the proposal for examining evidence.

If in view of the proposed evidence, the facts which will be the subject-matter of evidentiary actions (Article 83 paragraphs 1 and 2) and the legal questions which will be discussed the president of the panel holds that in accordance with the provisions of this Code a trial may be held, after taking statements from the parties he will issue a ruling on the holding of a trial (Article 385 paragraph 1).

Deciding on Detention

Article 351

The president of the panel may at the preparatory hearing, with consent of the parties, abolish detention or replace it with a more lenient measure. This ruling is not appealable.

Discontinuing Proceedings

Article 352

The president of the panel will discontinue criminal proceedings by a ruling is he determines that:

1) the prosecutor has desisted from the charges or the injured party has desisted from the motion to prosecute;

2) the defendant has already been convicted for the same criminal offence or acquitted of the charges with a final decision, or that the charges against him have been rejected with a final decision, or the proceedings against him have been discontinued with a final decision;

3) by an act of amnesty or pardon the defendant has been relieved from prosecution, or criminal prosecution cannot be undertaken due to expiry of the statute of limitations or other circumstances permanently excluding it.

The prosecution may appeal against the ruling referred to in paragraph 1 of this Article on which the panel (Article 21 paragraph 4) shall decide.

b. Scheduling the Trial

Time of Holding the Trial

Article 353

The president of the panel issues an order before the conclusion of the preparatory hearing designating the date, hour and place of the holding of the trial.

If no preparatory hearing was held (Article 346 paragraph 3), the president of the panel will schedule a trial within 30 days at the latest if the defendant is in detention, or within 60 days if the defendant is at liberty, counting from the date of reception of the confirmed indictment by the court.

If in the time limit referred to in paragraph 2 of this Article he does not schedule a trial, the president of the panel will notify about the reasons why no trial was scheduled the president of the court, who will undertake necessary measures to schedule a trial. In case the president of the panel is prevented for a considerable time, for justified reasons, from scheduling a trial, the president of the court will assign the case to another president of a panel.

Place of Holding the Trial

Article 354

The trial is held in the seat of the court and in the courthouse.

If in certain cases courthouse premises are unsuitable for holding a trial or for other justified reasons, the president of the court may order the trial held in a court building outside the seat of the court or in another building in the territory of that court.

The president of the Supreme Court of Cassation may, upon a reasoned motion of the president of the competent court, order a trial to be held outside the territory of the competent court.

Summoning Parties and other Persons to the Trial

Article 355

The defendant and his defence counsel, the prosecutor and the injured party and their legal representatives and proxies, and if needed also a translator and an interpreter, will be summoned to the trial.

Proposed witnesses and expert witnesses will also be summoned to the trial, except for those for whom the president of the panel holds that their examination at the trial is not necessary, or it has been determined at the preparatory hearing that they should not be summoned.

The provisions of Articles 191 and 193 of this Code will be applied in respect of the content of the summons for the defendant and witnesses. Where mandatory defence (Article 74) is not involved, the defendant will be advised in the summons that he is entitled to obtain a defence counsel, but that the trial will not be deferred because a defence counsel does not appear at the trial or because the defendant obtained a defence counsel only at the trial.

The summons must be delivered to the defendant so as to provide sufficient time between the delivery and the trial date for preparing the defence, in any case not less than eight days. For criminal offences punishable by a term of imprisonment or ten years or more, the time for preparing a defence is at least fifteen days. At the request of the defendant, or of the prosecutor, with consent of the defendant, these time limits may be shortened.

An injured party who is not being summoned as a witness will be notified by the court in the summons that the trial will be held even in his absence, and that his statement on an restitution claim will be read out. The injured party will also be cautioned that if he fails to appear it will be deemed that he does not intend to continue criminal prosecution if the public prosecutor desists from the charges.

The subsidiary prosecutor and the private prosecutor will be cautioned in the summons that if they fail to appear at the trial or to send a proxy it will be deemed that they have desisted from the charges.

The defendant, witness and expert witness will be cautioned in the summons about the consequences of failing to appear at the trial (Article 193 paragraph 4 and Article 383).

Proposing Evidence

Article 356

If a preparatory hearing (Article 346 paragraph 3) was not held, the parties, the defence counsel and injured party may propose after the scheduling of the trial that new witnesses or expert witnesses be called to the trial or other evidence examined, at which time they must specify which facts should be proved, and by which of the proposed items of evidence.

The provisions of Article 395 of this Code are applied accordingly in deciding on a proposal for examining evidence.

The president of the panel may even without a proposal by the parties and injured party order gathering of new evidence for the trial (Article 15 paragraph 4), of which he will notify the parties before the commencement of the trial.

Examining a Witness or Expert Witness Outside of the Trial

Article 357

The president of the panel decides on examining a witness or expert witness whose examination was proposed by the parties but who could not attend the trial due to illness or other justified reasons.

The president of the panel, a judge member of the panel or the judge for the preliminary proceedings in whose territory the witness or expert witness is located will perform the examination directly or by using a video and audio link, and will notify the parties, defence counsel and the injured party about the time, place and manner of examination.

If the defendant is in detention, the president of the panel decides about the need for his presence during the examination of a witness or expert witness.

When the parties, defence counsel and injured party attend the examination of a witness or expert witness, they are entitled to the rights specified in Article 300 paragraph 8 of this Code.

Excluding Unlawful Evidence

Article 358

If the president of the panel determines that the case-file contains transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, he will issue a ruling on their exclusion from the files. A special appeal against this ruling is allowed.

Upon the finality of the ruling referred to in paragraph 1 of this Article, the president of the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

Until the conclusion of the evidentiary proceedings the panel may act in accordance with Article 407 paragraph 4 of this Code.

Assigning Additional Judges

Article 359

If the trial is likely to last for a longer period, the president of the panel may ask the president of the court to assign one or two judges or lay judges to attend the trial in order to deputise for members of the panel in case they are unable to attend for a substantial period of time.

Deferring the Commencement of the Trial

Article 360

When it is justified by important reasons, the president of the panel may, on a motion by the parties and defence counsel, or *ex officio*, issue an order deferring the commencement of the trial by not longer than 30 days.

All persons summoned to the trial as well as the president of the court will be notified about the deferment immediately.

Dismissing Charges by the Prosecutor

Article 361

If a prosecutor decides to dismiss charges before the commencement of the trial, the president of the panel will notify thereof all persons summoned to the trial, and will discontinue criminal proceedings by a ruling which will be delivered to the parties, the defendant's counsel and the injured party.

b) Holding the Trial

a. Publicity of the Trial

General Rule about Publicity

Article 362

The trial is public.

Only persons over 16 years of age may attend a trial.

Excluding the Public

Article 363

From the commencement of the hearing until the conclusion of the trial, the panel may *ex officio* or upon a motion by a party or the defence counsel, but always after they had stated their positions, exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting:

1) the interests of national security;

2) public order and morality;

3) the interests of minors;
4) private lives of the participants in the proceedings;
5) other justified interests in a democratic society .

Exemptions from Excluding the Public

Article 364

The exclusion of the public does not apply to the parties, the defence counsel, the injured party and his representative and the proxy of the prosecutor.

The panel may permit a trial from which the public has been excluded to be attended by certain officials, scientists, scholars and other professionals, and at the request of the defendant also his spouse, close relatives and the person with whom who lives in a common law marriage or other permanent personal association.

The president of the panel will caution persons attending a trial from which the public has been excluded that they are required to maintain the confidentiality of everything they learn at the hearing and indicate to them that disclosure of secret represents a criminal offence.

Decision on Excluding the Public

Article 365

The panel's ruling on excluding the public must be reasoned and made public.

In the ruling referred to in paragraph 1 of this Article the panel also decides which persons are allowed to attend the trial (Article 364 paragraph 2).

The ruling referred to in paragraph 1 of this Article may be challenged only in an appeal against the judgment or ruling which corresponds to a judgment.

Special Case of Excluding the Public

Article 366

The public prosecutor may propose to the court to exclude the public from the trial during the examination of a cooperating defendant or cooperating convicted person.

Before deciding on the motion of the public prosecutor, the president of the panel will request from the defendant and his defence counsel to state their position on the proposal to exclude the public.

b. Conducting the Trial

Authority of the President of the Panel

Article 367

The president of the panel conducts the trial.

In session and at the trial, the president of the panel:

1) determines whether the panel is composed in accordance with the provisions of this Code and whether there are any reasons why members of the panel and the record-keeper must be recused (Article 37 paragraph 1);

2) determines whether the preconditions for holding the trial have been fulfilled;

3) is responsible for maintaining order and for applying measures to prevent disturbances of order in the courtroom;

4) is responsible for ensuring that the proceedings run without delays and without examination of questions that do not contribute to a comprehensive consideration of the subject-matter to be proved;

5) decides on deviating from the normal course of proceedings stipulated by this Code, owing to special circumstances, in particular the number of defendants and criminal offences and the volume of evidence;

6) gives the floor to the members of the panel, parties, defence counsel, injured party, legal representative and proxy, witness, expert witness and professional consultant;

7) decides on motions made by the parties, unless the panel decides on them;

8) instructs a party to propose additional evidence;

9) conveys into the transcript the contents of the work and the entire course of the trial;

10) undertakes necessary measures to protect witnesses (Articles 102 and 103);

11) rules on other questions, in accordance with this Code.

Authority of the Panel

Article 368

During the trial, the panel decides on:

1) a motion on which there is no agreement between the parties, and on a consensual motion of the parties not accepted by the president of the panel;

2) an objection against a measure of the president of the panel relating to the conduct of the trial;

3) prohibiting, irrespective of permission issued for video recording, video recording of certain parts of the trial on justified grounds;

4) removal from the courtroom, on the exclusion of a defence counsel or proxy, and on continuing, adjourning or deferring the trial for the purpose of maintaining order and conducting the trial;

5) examination of additional evidence, if it deems it necessary for the purpose of eliminating discrepancies or lack of clarity in the evidence examined and that it is necessary in order to discuss the subject-matter of the proving comprehensively;

6) other questions in accordance with this Code.

The panel's rulings are always pronounced and entered in the transcript with brief reasoning.

Protection of the Reputation of the Court and Participants in Proceedings

Article 369

The court is required to protect its reputation and security, the reputation and security of the parties and other participants in proceedings, from an insult, threat and any other assault.

During the entry of a judge or members of a panel into the courtroom and their egress from the courtroom, all those present are required to rise.

The president of the panel will immediately after opening the session, if there are any reasons for it, caution the persons present to behave with decency and to abstain from obstructing the work of the court.

The parties and other participants in the proceedings are required to stand when they are addressing the court, unless justified reasons make this impossible or a questioning or examination is made in another manner.

Persons attending a trial, except for the persons who secure the court and guard the defendant, may not carry firearms or dangerous weapons, and for the purpose of checking whether they are respecting the ban, the president of the panel may order them to be searched.

Measures for Maintaining Order

Article 370

If the defendant, defence counsel, injured party, legal representative, proxy, witness, expert witness, professional consultant, translator, interpreter or other person attending the trial disturbs the order by disregarding orders of the president of the panel to maintain order or by insulting the dignity of the court, the president of the panel will caution him, and if that person continues to disturb the order, will fine him up to 150,000 dinars.

The president of the panel will notify the competent public prosecutor and the State Prosecutors Council about any disturbance of order by the public prosecutor or a person deputising for him, or will adjourn the trial and request that the competent public prosecutor designate another person to represent the prosecution when the trial resumes, with the obligation to notify the court about the undertaken measures.

The president of the panel will notify the competent bar association about a penalty imposed on a lawyer for disturbing the order, with the obligation to notify the court about the undertaken measures.

Removal of the Defendant from the Courtroom

Article 371

If the measures referred to in Article 370 paragraph 1 of this Code are unsuccessful, the panel may order the defendant removed from the courtroom for the duration of a certain evidentiary action, and if after returning to the courtroom the defendant continues to disturb the order, the panel may remove him until the conclusion of the evidentiary proceedings and order, if there exists such a possibility, that the defendant follow the course of the proceedings from a separate room by means of an audio and video link.

Before the conclusion of the evidentiary proceedings the president of the panel will, if the technical link for monitoring the course of the proceedings referred to in paragraph 1 of this Article did not exist, inform the defendant about the course of the evidentiary proceedings for the period during which he was removed from the courtroom, inform him about the testimony given

by co-defendants previously questioned, or make it possible for him to read the transcripts of that testimony, if the defendant so requests, and ask him to state his position on the charges, unless he had already done so.

If the defendant in the case referred to in paragraph 2 of this Article continues to disturb the order, the panel may remove him from the courtroom again without a right to attend the trial until its conclusion, in which case the president of the panel or a judge member of the panel will inform the defendant about the judgment in the presence of the record-keeper.

In case a defendant who has no defence counsel is removed from the courtroom in accordance with paragraphs 1 and 3 of this Article, the president of the court will assign a court appointed defence counsel for him (Article 74 item 6) and Article 76).

Excluding Defence Counsel or Proxy

Article 372

The panel will exclude from the further course of the proceedings a defence counsel or proxy who continues to disturb the order after being fined, and ask the party or the person represented to obtain another defence counsel or proxy and notify the competent bar association thereof.

If a defendant or injured party, in the case referred to in paragraph 1 of this Article, cannot immediately obtain another defence counsel or proxy without detriment to their interests, or if in the case of mandatory defence (Article 74) the court is not able to appoint a new defence counsel without harming the defence, the trial will be adjourned or deferred.

If a subsidiary prosecutor or private prosecutor does not obtain another proxy, the panel may decide to resume the trial without a proxy if it finds that his absence would not adversely affect the interests of the person represented.

Removing Other Persons from the Courtroom

Article 373

The panel may remove from the courtroom until the end of the evidentiary procedure the subsidiary prosecutor or private prosecutor or their legal representative who continues to disturb order after the pronouncing of the sentence and will appoint a proxy for him for the rest of the proceedings. If the panel is unable to appoint a proxy immediately without harming the interests of the represented party, the trial will be either adjourned or deferred.

The panel may order that besides the defendant another person referred to in Article 370 paragraph 1 of this Code be removed from the courtroom if he continues to disturb the order even after being cautioned or fined, and may simultaneously remove him and fine him.

The panel may order removed from the courtroom all persons who are attending the trial in accordance with Article 362 of this Code, if unobstructed holding of the trial could not be ensured by the measures to maintain order stipulated by this Code.

Measures to Prevent Delaying Proceedings

Article 374

The panel will caution a defence counsel, injured party, legal representative, proxy, subsidiary prosecutor or private prosecutor undertaking actions obviously aimed at delaying the proceedings.

The president of the panel will notify the competent public prosecutor and the State Prosecutors Council about untimely or inappropriate actions by the public prosecutor or person deputising for him which delay the proceedings, with the obligation to notify the court about the undertaken measures.

The president of the panel will notify the competent bar association about the caution imposed on a lawyer for delaying the proceedings, with the obligation to notify the court about the undertaken measures.

Appeal against Decisions on Maintaining Order at the Trial

Article 375

A ruling on a caution, fine, removal from the courtroom, exclusion of a defence counsel or proxy, and resuming, adjourning or deferring a trial for the purpose of maintaining order and administering the trial is entered in the transcript with reasoning.

A ruling on a fine is appealable. Before it delivers an appeal to a court of second instance, the panel may revoke the ruling on a penalty.

A ruling to remove the defendant from the courtroom until the end of the evidentiary proceedings or until the conclusion of the trial and to exclude a defence counsel may be appealable, but the appeal does not stay the execution of the ruling. No special appeal is allowed against the ruling on the removal from the courtroom or the exclusion of a proxy.

Other decisions on measures to maintain order and administer the trial are not appealable.

Criminal Offence Committed at the Trial

Article 376

If the defendant or another person commits during the trial a criminal offence which is prosecutable *ex officio*, the president of the panel will notify the competent public prosecutor thereof.

If there are grounds for suspicion that a witness, expert witness or professional consultant has perjured himself at the trial, the president of the panel will order taking of a special record made of the testimony given by the witness, expert witness or professional consultant which will be delivered to the competent public prosecutor after being signed by the questioned witness, expert witness or professional consultant , or after the president of the panel notes that they have refused to sign it and lists the reasons for that refusal.

v. Preconditions for Holding a Trial

Presence at the Trial

Article 377

The preconditions for the holding of a trial are the:

1) presence of the president, members of the panel and the record-keeper;

2) presence of the persons summoned without whom the trial cannot be held, except if there exist conditions stipulated by this Code under which a trial may exceptionally be held in the absence of some of them.

The president of the panel, members of the panel, the record-keeper and additional judges must be constantly present at the trial.

Opening the Session

Article 378

If the panel is not in its full composition, the president of the panel, and in his absence a judge member of the panel or a judge designated by the president of the court, announces that the trial will not be held.

If the panel is in its full composition, the president of the panel opens the session and announces the composition of the panel and the subject-matter of the trial, determines if all persons summoned are present, and whether the persons not present have been duly summoned and whether they have justified their absences.

Absence of the Prosecutor

Article 379

If the public prosecutor or person deputising for him does not come to a trial scheduled on the basis of an indictment filed by the public prosecutor, the president of the panel will notify thereof the competent public prosecutor and request that he immediately designates a replacement. If that is not possible, the president of the panel will order that the trial will not be held and will notify the competent public prosecutor and the State Council of Prosecutors thereof, who will have the obligation to notify the court about the undertaken measures.

If a subsidiary prosecutor or private prosecutor or their proxy fail to come to the trial without justifying their absence although being duly summoned, the panel will discontinue the proceedings by a ruling.

Absence of the Defendant

Article 380

If a defendant has been duly summoned and fails to appear at the trial or to justify his absence, the panel will order that he be brought in. If the defendant cannot be brought in immediately, the panel will decide that the trial hearing will not be held and order that the defendant be brought in to the next trial hearing.

If the defendant justifies his absence before the [measure of] bringing in is executed, the panel may revoke the order for bringing him in and release the defendant from the obligation to bear the costs caused by the failure to hold the trial hearing.

In Absentia Trial

Article 381

A defendant may be tried *in absentia* only if there exist particularly justified reasons to try him although he is absent, provided he is at large or not accessible to the public authorities.

A ruling on an *in absentia* trial is issued by the panel on a motion of the prosecutor.

An appeal does not stay the execution of the ruling referred to in paragraph 2 of this Article.

Absence of the Defence Counsel

Article 382

If a defence counsel although duly summoned fails to come to the trial and fails to notify the court about the reason for his absence as soon as he learns about it, or if a defence counsel leaves the trial without permission, the president of the panel will ask the defendant to obtain another defence counsel immediately, and if the defendant does not do so, the panel may decide that the trial be held without a defence counsel being present.

If the case referred to in paragraph 1 of this Article concerns mandatory defence, and there is no possibility for the defendant to obtain another defence counsel immediately or for the court to appoint a court appointed defence counsel without harming the defence, the panel will decide that the trial not be held, or, if it has begun, to be adjourned or deferred.

A duly summoned defence counsel whose unjustified absence led to an adjournment or deferment of the trial will by a ruling of the panel, which will be entered in the transcript with a brief reasoning, be fined up to 150,000 dinars and ordered to bear the costs incurred thereby, and the competent bar association will be notified thereof by the panel, and the bar association will have the obligation to notify the court about the undertaken measures.

Holding the Trial without the Presence of the Defendant or Defence Counsel

Article 383

When under the provisions of this Code the necessary conditions exist for deferring the trial due to the absence of a defendant or defence counsel (Article 380 paragraph 1 and Article 382 paragraph 2), the panel may decide that the trial be held if according to the evidence contained in the files a ruling dismissing the charges (Article 416 paragraph 1) or a judgment rejecting the charges (Article 422) would obviously have to be issued.

If the defendant caused his own inability to participate in the trial, the panel may, after examining an expert witness, issue a ruling deciding that the trial be held, but not concluded, in the absence of the defendant. In the case of the holding of the trial without the presence of the defendant, the president of the court will appoint a court appointed defence counsel for him (Article 74 item 5) and Article 76).

An appeal does not stay execution of the ruling referred to in paragraph 2 of this Article.

As soon as the reasons for the absence of the defendant cease to exist, the trial will resume in the presence of the defendant, after the president of the panel has informed him about the preceding course and contents of the trial.

Absence of a Witness, Expert Witness or Professional Consultant

Article 384

If a duly summoned witness, expert witness or professional consultant does not come to a trial without justifying his absence, the panel may order him to be brought in immediately.

The trial may commence even without the presence of the summoned witness, expert witness or professional consultant, but the panel is required to decide subsequently during the trial whether to adjourn or defer the trial due to the absence of any of them.

The panel may fine a duly summoned witness, expert witness or professional consultant who did not justify his absence up to 150,000 dinars, order him brought in to the next trial hearing, and order that he bear the costs he caused, but may in justified cases revoke these decisions.

g. Course of the Trial

Commencement and Duration of the Trial

Article 385

The trial commences with the issuance of a ruling on the holding of the trial.

The trial is held continuously during the working hours on one or more consecutive workdays.

Adjourning the Trial

Article 386

Except in cases specially stipulated elsewhere in this Code, the president of the panel may adjourn the trial:

1) for the purpose of a recess;

2) at the expiry of working hours;

3) for the purpose of obtaining certain evidence in the short term;

4) to enable preparation of the prosecution or defence;

5) on other justified grounds.

Adjournment of a trial for a recess may last up to two hours in one workday, due to the end of the workday until the next workday, and on the grounds referred to in paragraph 1 items 3) to5) of this Article not longer than 15 days.

A ruling on adjourning a trial specifies the place and time of its resumption.

The ruling referred to in paragraph 3 of this Article is not appealable.

An adjourned trial is always resumed before the same panel.

If it is not possible to resume a trial before the same panel, or the adjournment of the trial exceeds 15 days, it will be acted in accordance with the provisions of Article 388 of this Code.

Deferring the Trial

Article 387

Except in cases specially stipulated elsewhere in this Code, the panel will defer a trial by a ruling if:

1) new evidence needs to be examined which cannot be obtained in the short term;

2) it is established during the trial that after committing a criminal offence the defendant has come down with a mental illness or mental disorder or other serious illness making it impossible for him to participate in the proceedings;

3) there are other obstacles for a successful conduct of the trial.

The ruling deferring the trial will as a rule specify the time and place where the trial will be resumed.

The ruling referred to in paragraph 2 of this Article is not appealable.

Commencing Anew or Resuming a Deferred Trial

Article 388

A trial which has been deferred must commence anew if the composition of the panel has been altered, but the panel may, after the parties have stated their positions, decide by a ruling not to examine witnesses and expert witnesses again, but to examine the transcripts of their testimonies given at the earlier trial or, if necessary, for the president of the panel to summarize the content of the testimony or read it out. This ruling is not appealable.

A trial which has been deferred and is held before the same panel will resume by a brief report of the president of the panel about the course of the earlier trial.

If the trial is held before a different president of the panel, the trial must commence anew and all evidence must be examined again.

By exception from paragraph 3 of this Article, due to the passage of time, protection of witnesses or other important reasons, the panel may, after the parties have stated their positions, decide by a ruling not to examine the witnesses and expert witnesses again, but to act in accordance with paragraph 1 of this Article.

An appeal against the ruling referred to in paragraph 4 of this Article is allowed and is decided on by the panel (Article 21 paragraph 4).

The president of the panel is required to notify the president of the court about all deferments lasting more than 60 days.

Prior Verification and Advice on Rights

Article 389

When the president of the panel determines that all the persons summoned have come to the trial, or when the panel decides to hold the trial in the absence of one of the persons summoned, or decides to rule on those questions subsequently, the president of the panel will:

1) ask the defendant to relate his personal data in order to establish his identity, as well as to declare himself on his prior convictions, unless he has done so at the preparatory hearing;

2) caution the defendant to follow the course of the trial carefully and that he is required to present motions for examining certain evidence (Article 395 paragraph 1) immediately, or promptly after learning that it is necessary to examine that evidence;

3) advise the defendant of his rights and duties (Articles 68 and 70), and especially of the right to present facts and propose evidence in his defence, pose questions to a co-defendant, witness, expert witness and professional consultant, make objections and provide explanations in connection with the evidence examined, and ask him if he has understood the advice.

If the defendant refuses to relate his personal data, his identity will be established in another manner. If the defendant declares that he has not understood the advice on his rights, the president will explain it to him in a suitable manner, and in case the defendant refuses to declare himself on whether he has understood the advice on his rights, it will be deemed, after he is cautioned, that has understood the advice.

If the injured party is present, the president of the panel will advise him about the rights referred to in Article 50 of this Code, and if he has not yet filed an restitution claim, he will advise him that he may file such a claim in criminal proceedings.

Acting with Persons Summoned

Article 390

When the identity of the defendant is established, the president of the panel will instruct witnesses to move from the courtroom to a location at which they will wait to be called to testify. In the same manner the president of the panel will act with expert witnesses and professional consultants, unless he finds it necessary for a certain expert witness or professional consultant to follow the course of the trial.

All defendants remain in the courtroom for the duration of the trial.

If a subsidiary prosecutor or private prosecutor is to be examined as witnesses, they will not be removed from the courtroom.

The president of the panel may undertake necessary measures to prevent mutual agreements between a witness, expert witness or professional consultant, and agreements of the witness, expert witness or professional consultant with parties, the defence counsel, legal representative or proxy.

The panel may exceptionally decide to have the defendant removed from the courtroom if a co-defendant or witness refuses to give testimony in his presence or the circumstances indicate that his presence exerts influence on the aforesaid persons. Upon the return of the defendant testimony given in his absence will be read out to him, and he may pose questions to a co-defendant or witness and make objections to the testimony.

Presentation of the Charges

Article 391

As a rule the charges are presented by the prosecutor reading the indictment (Article 332 paragraph 1 items 1) to 3) or a private prosecutor's lawsuit, but the president of the panel may instead allow the prosecutor to relate the contents of the charges orally.

An injured party may present a restitution claim, and in his absence, if he has filed such a claim, the claim will be read out by the president of the panel.

Defendant's Plea

Article 392

After presentation of the charges, the president of the panel will ask the defendant:

1) if he has understood the charges, and if he has convinced himself that the defendant has not understood them, he will relate their entire contents to the defendant in a manner which is the most understandable for the defendant;

2) whether he wants to state his position in relation to the charges, and state his position regarding the restitution claim, if one has been filed;

3) if he confesses to having committed the criminal offence of which he is accused, and if he convinces himself that the defendant has not understood what confession means, he will explain to him the meaning and consequences of confessing to the commission of a criminal offence in a manner which is the most understandable for the defendant.

The defendant is not required to state his position in relation to the charges or to answer any questions posed to him.

If several persons are encompassed by the indictment, they will be treated in the manner referred to in paragraphs 1 and 2 of this Article, according to the order in which they appear in the indictment.

Opening Statements

Article 393

After presentation of the charges and the defendant's declaration, the president of the panel will ask the prosecutor, and then the defence counsel or a defendant conducting his own defence to present their opening statements, unless the parties have stated their positions and proposed evidence at the preparatory hearing (Articles 349 and 350).

The opening statements must be concise and refer only to the facts which will be the subject matter of the evidentiary actions, explanation of the evidence the party will examine and legal questions which will be discussed.

The president of the panel may limit the opening statements to a certain time and interrupt a party or defence counsel if he exceeds the prescribed time or deviates from the subjects allowed for the opening statements.

After the opening statements, the injured party may briefly substantiate his restitution claim.

Commencement and Subject Matter of the Evidentiary Proceedings

Article 394

The president of the panel announces the commencement of the evidentiary proceedings.

Evidence on facts which are the subject matter of the evidentiary actions (Article 83 paragraphs 1 and 2) is examined in the evidentiary proceedings.

If the defendant confesses to having committed the criminal offence at the trial, the only evidence that will be examined is the evidence on which an assessment of whether the confession fulfils the preconditions referred to in Article 88 of this Code depends, as well as evidence on which the decision on the type and extent of the criminal sanction depends.

Proposing Evidence

Article 395

The parties, the defence counsel and the injured party may until the conclusion of the trial propose that new evidence be examined , and may repeat motions which were earlier denied.

The president of the panel decides on the examination of the evidence referred to in paragraph 1 of this Article.

If examination of evidence which is unlawful has been proposed (Article 84 paragraph 1) the president of the panel will deny the motion by a reasoned ruling.

The president of the panel may, by a reasoned ruling, deny a motion to examine evidence if he finds that:

1) the parties, defence counsel and injured party knew about the evidence during the preparatory hearing (Article 350 paragraph 1) or after the trial was scheduled (Article 356 paragraph 1), but did not propose it, without a justified reason;

2) the evidence is directed at proving facts which are not the subject matter of the evidentiary action (Article 83 paragraphs 1 and 2) or relates to facts which are not to be proved (Article 83 paragraph 3);

3) the evidence is such that its examination is obviously aimed at excessively delaying the proceedings.

The president of the panel may during the proceedings revoke the ruling referred to in paragraph 4 of this Article, and the panel may overturn the ruling after an objection and decide that the proposed evidence be examined.

Order of Examining Evidence

Article 396

After questioning the defendant, the president of the panel determines a period during which evidence proposed by the prosecutor is first examined, followed by evidence proposed by the defence, followed by evidence whose examination was proposed by the panel *ex officio* and evidence proposed by the injured party, and finally evidence on facts on which depends the decision on the type and extent of the criminal sanction. If there are justified reasons, the president of the panel may determine a different order and extend the period for examining evidence.

Data from the defendant's criminal record and other data about the defendant's convictions for punishable actions on which the decision on the type and severity of criminal sanction depends will be presented in accordance with paragraph 1 of this Article, except if the panel is deciding on measures for securing the presence of the defendant and for the unobstructed conduct of the criminal proceedings.

If an injured party who is present should be examined as a witness, his examination will be undertaken before the other witnesses.

After the examination of each item of evidence, the president of the panel will ask the parties, the defence counsel and the injured party whether they have any remarks in connection with the evidence examined.

Presentation of the Defence

Article 397

The president of the panel will advise the defendant that he may state his position in relation to all the circumstances against him and that he may present all circumstances which benefit him, and invite him to present his defence.

The defendant presents his defence according to the rules which are under this Code applicable to his questioning.

When the defendant concludes presentation of the defence, the president of the panel will ask him whether he has anything to add in his defence.

If the defendant deviates from a statement given earlier, the president of the panel will caution him thereof, ask him about the reasons for the deviation and, if needed, order *ex officio*, or at the request of the defendant, that the statement given earlier or a part of that statement be read out and its video or audio recording reproduced.

If necessary, and especially if the defendant's statement is being entered in the transcript verbatim, the president of the panel may order that that part of the transcript be read out immediately, and it will always be read out when so requested by a party or the defence counsel.

If the defendant refuses to present a defence or to answer certain questions, his earlier statement or a part of that statement will be read out or its video or audio recording will be reproduced.

Questioning the Defendant

Article 398

When the defendant concludes presentation of the defence, he may be asked questions first by his defence counsel, followed by the prosecutor, followed by the president of the panel and panel members, and then the injured party or his legal representative and proxy, co-defendant and his defence counsel, and expert witness and professional consultant.

The injured party, legal representative and proxy of the injured party, expert witness and professional consultant may pose questions directly to the defendant, with the approval of the president of the panel.

The president of the panel will prohibit a question or a reply to a question if it is inadmissible (Article 86 paragraph 3) or does not refer to the subject matter, except if the question is aimed at verifying the authenticity of the testimony.

The parties may request that the panel decide on the prohibition of a question or answer to a question. If the panel upholds the decision of the president of the panel on a prohibition of the question or answer as inadmissible, the question will be entered in the transcript at the request of a party.

The president of the panel may always pose to a defendant a question which contributes to a more comprehensive or clear reply to a question posed by other participants in the proceedings.

The defendant is entitled to consult his defence counsel during the trial, but may not collude with his defence counsel or any other person how to answer a question which has already been posed.

Treatment of Co-defendants

Article 399

If several persons are encompassed by the same indictment, they will be treated in the manner referred to in Articles 397 and 398 of this Code, according to their order in the indictment.

The president of the panel will ask a defendant who has presented his defence if he has anything to declare in connection with the testimony of a co-defendant who presented his defence after him.

Every co-defendant is entitled to pose questions to co-defendants.

The president of the panel may confront with each other co-defendants whose testimonies on the same circumstance differ.

Presence of a Witness, Expert Witness or Professional Consultant at the Examination of Evidence

Article 400

As a rule, a witness not yet examined will not attend the examination of evidence.

Witnesses, expert witnesses or professional consultants already examined shall remain in the courtroom unless the president of the panel, after the parties declare themselves, releases them completely, or unless, on a motion of the parties or *ex officio*, he orders them to leave the courtroom temporarily to allow for them to be called and examined once again in the presence or absence of other witnesses, expert witnesses or professional consultants.

If a person under 14 years of age is being examined as a witness, the panel may decide to exclude the public during his examination.

If a person under 16 years of age is attending a trial as a witness or injured party, he will be removed from the courtroom as soon as his presence is no longer necessary.

Cautioning a Witness, Expert Witness or Professional Consultant

Article 401

Before the commencement of the examination of a witness, expert witness or professional consultant, the president of the panel will caution him:

1) that perjury, or presentation of false finding or opinion, represents a criminal offence;

2) that he was sworn in before the trial;

3) about the duty of a witness to tell the truth and to omit nothing during examination, or the duty of an expert witness to present his findings and opinion accurately and fully.

The president of the panel will before the commencement of the examination ask a witness or expert witness or professional consultant who had not been sworn in before the trial to do so.

Examining a Witness, Expert Witness or Professional Consultant

Article 402

At the trial a witness or professional consultant is examined with the analogous application of Article 98 of this Code, while an expert witness presents his findings and opinion orally, but the panel may allow him to read written findings and opinion, which it will then attach to the transcript.

The parties and the defence counsel, the president of the panel and the members of the panel question a witness, expert witness and professional consultant directly, and the injured party or his legal representative and proxy, and an expert witness or professional consultant, may pose questions directly with the permission of the president of the panel.

If both parties propose the examination of the same witness or the same expert analysis, it will be deemed that the evidence was proposed by the party whose motion was first recorded in the court.

If the court ordered the examination of a witness or an expert analysis without a motion by the parties, the questions are first posed by the president and members of the panel, then by the prosecutor, the defendant and his defence counsel, and expert witness or professional consultant.

The injured party or his legal representative and proxy are entitled to question a witness, expert witness or professional consultant after the prosecutor, whenever the prosecutor is entitled to examination.

The direct examination is performed first, followed by cross-examination, and additional questions may be posed with the approval of the president of the panel.

In the examination of a witness, expert witness or professional consultant the provisions of Article 397 paragraphs 4 and 5 and Article 398 paragraphs 3 to 5 of this Code shall be analogously applied.

Presenting Written Expert Findings and Opinions

Article 403

If due to the nature of the expert examination detailed explanations either cannot be expected or are not necessary, the panel may decide, instead of summoning and examining an

expert witness, to inspect written findings and opinion, or, if the president of the panel deems it necessary, he will briefly relate their content or read them out.

After examination of other evidence and the parties' remarks, the panel may subsequently order a direct examination of the expert witness.

Examining Evidence Away from the Trial

Article 404

If it is learnt at the trial that a witness or expert witness either cannot appear before the court or that there is substantial difficulty to his appearance before the court, the panel may, if it deems his testimony important, order him examined away from the trial by the president of the panel, or a judge member of the panel, directly or through an audio and video link.

If it is necessary to conduct a crime scene investigation or reconstruction away from the trial, the panel will authorise the president of the panel or a judge member of the panel to do so.

The parties, defence counsel, injured party and professional consultant will be notified about the place and time of the performance of the evidentiary actions referred to in paragraphs 1 and 2 of this Article and advised that during their performance they are entitled to the rights referred to in Article 402 of this Code.

Inspecting the Content of Documents and Recordings

Article 405

Transcripts of a crime scene investigation away from the trial, searches of residences and other premises or persons, certificates of seized objects, as well as records serving as evidence, will be inspected, or, if the panel deems it necessary, the president of the panel will relate their content briefly, or read them out.

A video or audio recording or electronic recording which are being used as evidence will be played at the trial so that those present can be informed about their content.

If it is stipulated by this Code that testimony or other procedural actions are recorded and that alongside the recording a transcript is kept in which only specific data is entered, the examination of such evidence is performed in accordance with paragraphs 1 and 2 of this Article.

Objects which may serve to clarify matters will be shown at the trial to the defendant, witnesses or expert witnesses, and if the presentation has the significance of recognition action will be taken in accordance with Article 90 and Article 100 paragraphs 1 and 2 of this Code .

Records being used as evidence are if possible submitted in the original.

Inspecting the Content of Transcripts on Testimony

Article 406

Except in cases stipulated elsewhere in this Code, inspection of the contents of transcripts of the testimonies of witnesses, co-defendants or already convicted accomplices in a criminal offence, as well as transcripts of the findings and opinions of expert witnesses, may if so decided by the panel be performed by analogous application of Article 405 of this Code if:

1) the persons examined are deceased or mentally ill, or if their location is unknown, or their appearance before the court is impossible or would be substantially hampered by their advanced age, illness or other important reasons;

2) the parties are in agreement on such action, instead of direct examination of a witness or expert witness who is not present, irrespective of whether he was summoned or not;

3) the witness or expert witness was examined directly before the same president of the panel or in accordance with the provision of Article 404 of this Code;

4) the witness or expert witness refuses to testify at the trial without a legally valid reason;

5) what is concerned is the testimony of a co-defendant prosecuted in a severed criminal proceedings or criminal proceedings already concluded by a final conviction.

Transcripts of earlier examinations of persons released from the duty of testifying (Article 94 paragraph 1) may not be examined in accordance with the provisions of this Article if those persons were not summoned to the trial or have declared at the trial that they will not give testimony.

The reasons will be specified in the transcript of the trial due to which evidence is being examined in accordance with the provisions of paragraphs 1 and 2 of this Article, and the president of the panel will announce whether the witness or expert witness who testified had been sworn in.

Excluding Unlawful Evidence

Article 407

The panel will issue a ruling ordering the following to be excluded from the files and kept separately:

1) transcripts of earlier examinations of persons which may not be read out for the reasons specified in Article 406 paragraph 2 of this Code;

2) the transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code.

A special appeal is allowed against the ruling referred to in paragraph 1 of this Article.

Upon the finality of the ruling referred to in paragraph 2 of this Article, the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

If on the basis of examined evidence the panel finds that exclusion of evidence was not appropriate, it may until the conclusion of the evidentiary proceedings revoke the ruling referred to in paragraph 1 of this Article against which no appeal was filed and decide to examine the excluded evidence.

Amending and Concluding the Evidentiary Proceedings

Article 408

After examining the last item of evidence, the president of the panel will ask the parties, the defence counsel and the injured party whether they have any proposals to amend the evidentiary proceedings.

If no-one proposes amendment of the evidentiary proceedings or if the motion is denied, and the panel does not order any evidence examination, the president of the panel will declare the evidentiary proceedings concluded.

Altering an Indictment or Filing a New Indictment

Article 409

During the trial the prosecutor may, if he finds that the evidence examined indicates a state of facts different from the one presented in the indictment, alter the indictment or propose an adjournment of the trial for the purpose of preparing a new indictment.

If the panel adjourns the trial for the purpose of the preparation of a new indictment, it will specify a time limit in which the prosecutor must file a new indictment.

The court is required to deliver the new indictment to the defendant and his defence counsel and to give them enough time to prepare defence.

No response (Article 336) may be filed against the indictment referred to in paragraph 2 of this Article, nor may it be examined within the meaning of Article 337 of this Code.

If it deems it necessary, the court will, upon request of the defendant and his defence counsel provide them with sufficient time for preparing their defence, also in the case of an alteration of the indictment during the trial.

Amending the Indictment

Article 410

If a criminal offence committed by the defendant at an earlier time is uncovered during the trial, the panel will in accordance with an indictment of the authorised prosecutor, which may also be presented orally, expand the trial to include that offence, or decide that the earlier criminal offence should be adjudicated separately.

If the panel approves an amendment of the indictment, it will adjourn the trial and provide enough time for preparing a defence.

No response (Article 336) may be filed against an amended indictment.

If a court of higher instance is competent for adjudicating the offence referred to in paragraph 1 of this Article, the panel will decide whether it will also refer to that court the case it is adjudicating.

Supplementary Amendment of the Evidentiary Proceedings

Article 411

Following alteration of the indictment, the filing of a new indictment or an amendment of the indictment, the parties and the defence counsel may propose supplementing the evidentiary proceedings in respect to the facts which those charges contain and which were not the subject matter of evidentiary actions in the earlier course of the proceedings.

If no-one proposes an amendment of the evidentiary proceedings or the motion is denied, and the panel does not order any evidence examination, the president of the panel will declare the evidentiary proceedings concluded.

Order of Closing Arguments

Article 412

After declaring the evidentiary proceedings concluded, the president of the panel calls upon the prosecutor to make his closing argument first, followed by the injured party or his legal representative or proxy, followed by the defence counsel, and finally the defendant.

The prosecutor and the injured party or his legal representative or proxy are entitled to make a response to the closing argument of the defence counsel and defendant, and the defence counsel and defendant are entitled to comment on those responses.

The last word is always that of the defendant.

The president of the panel may, after the parties declare themselves, specify the duration of the closing arguments.

Content of Closing Arguments

Article 413

In his closing argument the prosecutor presents an assessment of the evidence examined at the trial, draws conclusions about facts of importance for the decision, indicates the provisions of criminal and other law which should be applied, cites mitigating and aggravating circumstances which should be taken into consideration in deciding on a criminal sanction, and proposes a type and extent of criminal sanction.

In the closing argument the injured party or his legal representative or proxy may substantiate the restitution claim and indicate the evidence proving that the defendant committed the criminal offence.

The defence counsel or the defendant himself may in their closing argument respond to the allegations made by the prosecutor and the injured party in their closing arguments and present their opinion on the issues referred to in paragraph 1 of this Article.

A defendant who has a defence counsel is entitled to declare at the end whether he approves the defence counsel's closing argument and to correct and amend it.

When more than one person is representing the prosecution or there is more than one defence counsel, the content of the closing arguments may not be repeated, and in order to respect this ban the representatives of the prosecution and the defence counsels are required to agree on a division of tasks and topics they will address.

The president of the panel may, after prior cautioning, interrupt a person giving a closing argument who has exceeded the approved time limit, or is insulting the public order and morals, or is insulting another person, or repeats himself or addresses issues clearly not connected to the case, and is required to state in the transcript of the trial whether and for what reason the closing argument was interrupted.

After all the closing arguments have been given, the president of the panel is required to ask whether any of the persons entitled to a closing argument has anything to add.

Resuming Evidentiary Proceedings

Article 414

After the closing arguments have been made, the panel may decide to resume the evidentiary proceedings for the purpose of examining additional evidence.

After the conclusion of the evidentiary proceedings, the president of the panel will act in accordance with the provision of Article 412 of this Code.

The persons entitled to closing arguments may only amend their closing arguments in connection with the evidence examined in the supplementary evidentiary proceedings.

Conclusion of the Trial

Article 415

If the panel does not decide to resume evidentiary proceedings after the closing arguments, the president of the panel will declare that the trial has been concluded.

After announcing that the trial has been concluded, the panel will retire for deliberation and voting for the purpose of rendering a decision.

If during the deliberation and voting the panel decides to re-open the trial and resume the evidentiary proceedings for the purpose of examining additional evidence, it will act in accordance with Article 414 of this Code.

d. Dismissing the Indictment

Reasons for Dismissing the Indictment

Article 416

During and after the conclusion of the trial the panel will issue a ruling dismissing the indictment if it determines that:

1) the court does not have substance matter jurisdiction;

2) the proceedings are being conducted without a request of an authorised prosecutor, without a motion by the injured party or the approval of the competent public authority, or there appear other circumstances temporarily precluding the conduct of criminal proceedings;

3) the defendant has come down with a mental illness or mental disturbance or other serious illness owing to which he permanently cannot participate in the proceedings.

The court will not deal with the principal matter in the substantiation of the ruling referred to in paragraph 1 of this Article, but will restrict itself to the grounds for dismissing the indictment.

Resuming Criminal Proceedings

Article 417

Criminal proceedings in which the indictment was dismissed by a ruling will be resumed at the request of the authorised prosecutor:

1) before a court with the proper substance matter jurisdiction if the indictment was dismissed due to the existence of the reasons referred to in Article 416 paragraph 1 item 1) of this Code;

2) when the reasons referred to in Article 416 paragraph 1 items 2) and 3) of this Code cease to exist, except if the competent public authority has withdrawn approval for criminal prosecution.

2. Judgment

Pronouncing the Judgment

Article 418

If it does not re-open the trial, the court will pronounce a judgment.

The judgment is pronounced and made public in the name of the people.

The summary judgment will always be read at a public session.

Factual Basis of the Judgment

Article 419

The court bases its judgment solely on evidence examined at the trial.

The court is required to draw a conclusion about the certainty of the existence of a certain fact on the basis of a conscientious assessment of every item of evidence, both individually and in connection with the other evidence.

Relationship of the Judgment to the Charges

Article 420

A judgment may relate only to the person charged and the offence which is the subject matter of the charges contained in a duly filed indictment or an indictment altered or amended at the trial.

The court is not bound by the prosecutor's proposals in respect of the legal qualification of the criminal offence.

Types of Judgments

Article 421

The judgment:

1) rejects the charges (a rejecting judgment);

2) pronounces the defendant not guilty of the charges (an acquittal);

3) pronounces the defendant guilty (a conviction).

If the charges include several criminal offences, the judgment will state whether and in connection with which criminal offence the charges are dismissed, or as to which charges the defendant is acquitted or convicted.

Rejecting Judgment

Article 422

The court will pronounce a rejecting judgment if:

1) in the period from the commencement until the conclusion of the trial the prosecutor abandoned the charges or the injured party abandoned his motion to prosecute;

2) the defendant has already been convicted with a final judgment for the same criminal offence, acquitted of the charges, or the charges against him were rejected with a final judgment, or the proceedings against him were discontinued by a final decision of the court;

3) the defendant has been released from criminal prosecution by an act of amnesty or a pardon, or prosecution cannot be undertaken due to an expiry of the statute of limitations or other circumstances permanently excluding prosecution.

Acquittal

Article 423

A judgment acquitting the defendant of the charges will be pronounced by the court if:

1) the offence with which he was charged is not a criminal offence, and the necessary conditions for applying a security measure do not exist;

2) it was not proved that the defendant had committed the criminal offence with which he was charged.

Conviction

Article 424

In a judgment pronouncing the defendant guilty, the court will state:

1) the offence of which the defendant is being pronounced guilty, specifying the facts and circumstances which represents the elements of a criminal offence, as well as those on which depends the application of a certain provision of criminal law;

2) the legal designation of the criminal offence and which provisions of criminal law were applied;

3) the penalty imposed on the defendant, or a release from punishment under the provisions of criminal law;

4) a decision on a suspended sentence, or revocation of a suspended sentence or release on probation;

5) a decision on a security measure, on forfeiture of proceeds from crime or forfeiture of assets derived from a criminal offence;

6) a decision on the restitution claim;

7) a decision on calculating time served into the penalty;

8) a decision on the costs of the criminal proceedings.

If the defendant has been sentenced to a prison sentence of up to one year, the judgment may specify that the prison sentence will be executed in the premises in which the defendant lives, with or without applying electronic surveillance.

If the defendant has been sentenced to pay a fine, it will be specified in the judgment if the fine was calculated and pronounced in daily amounts or in a specific amount, and the time limit for paying the fine, as well as the manner or substituting this penalty by a custodial penalty or community service in case the defendant does not pay the fine within the specified time period.

If the defendant has been sentenced to community service, the judgment shall specify the type and duration of the community service and the manner of substituting it by a custodial penalty in case the defendant does not perform the community service in full or in part.

If the defendant has been sentenced to a penalty of seizure of his driver's licence, the judgment shall specify the duration of the penalty and the manner of its substitution by a custodial penalty in case the defendant operates a motor vehicle during the term of the penalty of seizure of his driver's licence.

If the defendant has been sentenced to suspended sentence with protective supervision , the judgment shall specify the content, duration and consequences of failing to fulfil the obligation of protective supervision.

Proclaiming the Judgment

Article 425

After the court has pronounced the judgment, the president of the panel will immediately proclaim it.

If the court is unable to pronounce the judgment on the same day following the conclusion of the trial, it will postpone the proclamation of the judgment by not more than three days, and in particularly complex cases by not more than eight days, and determine a time and place where the judgment will be proclaimed.

The president of the panel will in the presence of the parties, their legal representatives, proxies and defence counsel read out publicly the summary judgment and briefly relate the reasons for the judgment.

A judgment will be proclaimed even when a party, legal representative, proxy or defence counsel is not present. The panel may order that the judgment be communicated orally by the president of the panel to a defendant who is absent, or that the judgment be delivered to him.

If the public was excluded from the trial, the summary judgment will always be read out in the presence of the public. The panel will decide whether to exclude the public during the proclamation of the reasons for the judgment.

All those present will rise to listen to the reading of the summary judgment.

Advising and Cautioning the Parties

Article 426

After proclaiming the judgment, the president of the panel will advise the parties on their right to appeal, and the right to respond to an appeal.

If a suspended sentence was imposed on a defendant, the president of the panel will caution him about the purpose of the suspended sentence and the conditions he will have to observe.

The president of the panel will caution the parties that until the final conclusion of the proceedings they must notify the court of every change of address.

Rendering the Judgment in Writing and Delivery

Article 427

A judgment which has been proclaimed will be rendered in writing and delivered within 15 days of the date of its proclamation, and in cases for which under a special law a prosecutor's office of special jurisdiction is responsible – within 30 days of the date of the proclamation.

By exception from paragraph 1 of this Article, in particularly complex cases the president of the panel may ask the president of the court to determine a time limit within which the judgment will be rendered in writing and delivered.

If the judgment is not rendered in writing and delivered within the time limit referred to in paragraphs 1 and 2 of this Article, the president of the panel is required to notify the president of the court in writing of the reasons thereof, and the president of the court will undertake necessary measures for the judgment to be rendered in writing and delivered as soon as possible.

The original judgment is signed by the president of the panel and record-keeper.

A certified copy of the judgment will be delivered to the prosecutor, the defendant and his defence counsel.

A certified copy of the judgment will be delivered by the court to an injured party who is entitled to file an appeal, to a person whose object has been seized or to a person from whom proceeds from crime or property deriving from a criminal offence have been forfeited.

If the court has by applying provisions on determining a single penalty for concurrent criminal offences pronounced a penalty also taking into consideration judgments issued by other courts, it will deliver a certified copy of its judgment to those courts.

Contents of a Judgment Done in Writing

Article 428

A judgment done in writing must correspond fully to the judgment which has been pronounced. The judgment must have the introduction, summary judgment and rationale.

The introduction of the judgment contains: the specification that the judgment is being pronounced in the name of the people, title of the court, names and surnames of the president and members of the panel and of the record-keeper, name and surname of the defendant, criminal offence with which he was charged and whether he was present at the trial, date of the trial and whether the trial was public, names and surnames of the prosecutor, the defence counsel, defendant's legal representative and proxy who were present at the trial, and date of

proclamation of the pronounced judgment as well as if the judgment was adopted unanimously or by the majority of votes.

The summary judgment contains the personal data of the defendant (Article 85 paragraph 1) and the decision rejecting the charges, acquitting the defendant or pronouncing the defendant guilty.

If the charges were dismissed or the defendant was acquitted of the charges, the summary judgment contains a description of the offence with which he was charged and a decision on the costs of the criminal proceedings and on the restitution claim, if one had been filed.

If the defendant was pronounced guilty, the summary judgment contains the data specified in Article 424 of this Code, and in the case of concurrent criminal offences, the summary judgment contains the penalties determined for each individual criminal offence and the aggregate penalty pronounced for the criminal offences in concurrence.

In the rationale of the judgment the court will present reasons for each item of the judgment.

If the charges were rejected, in the rationale of the judgment the court will limit itself to specifying the reasons for rejecting the charges (Article 422).

In the rationale of a judgment acquitting the defendant or pronouncing him guilty, the court will relate the facts it determined in the criminal proceedings (Article 83) and for which reasons it finds them proven or unproven, for which reasons it did not accept some motions by the parties, laying particular emphasis on assessment of the authenticity of controversial evidence, which reasons guided it in resolving legal issues, particularly in determining whether the defendant had committed the criminal offence, and in applying particular provisions of the law on the defendant and the criminal offence.

If the defendant has been acquitted of the charges, the reasons for the acquittal (Article 423) will be specified in the rationale of a judgment.

If the defendant has been pronounced guilty, the rationale will specify the facts the court took into consideration in determining the penalty, the reasons that guided it in finding that a penalty harsher than that prescribed should be pronounced, or that the penalty should be mitigated or that the defendant should be relieved of a penalty, or that a community service penalty or seizure of a driver's licence should be imposed, or that a suspended sentence or a judicial admonition or a security measure should be imposed, or the forfeiture of proceeds from crime or forfeiture of assets deriving from a criminal offence, or revocation of probation .

Lack of Rationale or Partial Rationale of the Judgment

Article 429

A judgment rendered in writing does not need to contain a rationale:

1) if the parties, defence attorney and the person referred to in Article 433 paragraphs 4 and 5 of this Code declared immediately after the judgment was proclaimed that they waive their right to an appeal, or

2) if a term of imprisonment of up to three years, fine, community service penalty, penalty of seizure of a driver's licence, suspended sentence or judicial admonition was imposed on the defendant, and the conviction was based on a confession of the defendant fulfilling the conditions referred to in Article 88 of this Code.

The parties, defence attorney and the person referred to in Article 433 paragraphs 4 and 5 of this Code may immediately upon the proclamation of the judgment referred to in item 2) of paragraph 1 of this Article request the delivery of a judgment done in writing and containing a rationale. In such case, the time limit for appealing against the judgment begins to run from the date of delivery of a copy of the reasoned judgment.

A judgment done in writing will be partially reasoned:

1) if the defendant confessed to committing the criminal offence – the rationale will be limited to the facts and reasons referred to in Articles 88 and 428 paragraph 10 of this Code, or

2) if a plea agreement has been accepted – the rationale will be limited to the reasons guiding the court to accept the agreement (Article 317 paragraph 2), or

3) if immediately after proclamation of the judgment the parties and the defence attorney declared that they waive the right to an appeal, and the person referred to in Article 433 paragraphs 4 and 5 of this Code did not waive that right – the rationale of the judgment will contain the reasons for the decision on the awarded restitution claim and on the costs of the criminal proceedings, or the reasons for the decision on the forfeiture of objects or proceeds from crime or assets deriving from a criminal offence.

Sending the Defendant to Serve a Custodial Sentence

Article 430

If a term of imprisonment was pronounced in the first-instance judgment, a defendant who is in detention may request to be sent to serve his sentence even before the judgment becomes final.

The request referred to in paragraph 1 of this Article may be submitted by the defendant orally for the record before the court or the institution where he is incarcerated immediately after the proclamation of the judgment, on which occasion he will be cautioned that during the service of the custodial penalty he will have the same rights and obligations as all other convicted persons. The institution will deliver the transcript to the court without delay.

If the president of the panel adopts by a ruling the request referred to in paragraph 1 of this Article, he will deliver the ruling to the defendant together with a certified copy of the judgment pronounced.

Correcting Errors in Judgments

Article 431

Errors in names and numbers, as well as all other obvious writing and calculation errors, shortcomings in form and discrepancies between the certified copy of the judgment and the original of the judgment will be corrected by the president of the panel by a special ruling, at the request of the parties or *ex officio*.

If there are discrepancies between the certified copy of the judgment and its original in respect of the data referred to in Article 424 of this Code, the ruling on the correction will be delivered to the persons referred to in Article 427 paragraphs 5 and 6 of this Code. In such case, the time limit for filing an appeal against the judgment begins to run from the date of delivery of that ruling, against which no special appeal is allowed.

Chapter XIX

LEGAL REMEDIES PROCEEDINGS

1. Ordinary Legal Remedies

a) Appeal against a First-Instance Judgment

a. Right to File an Appeal

Time Limits for Appeal and the Appeal's Effect in Staying Execution of the Judgment

Article 432

Authorised persons may file an appeal against a judgment issued in the first instance within 15 days of the date of the delivery of a copy of the judgment.

In especially complex cases, the parties and the defence counsel may immediately after the judgment is proclaimed request an extension of the time limit for filing an appeal.

The president of the panel decides immediately on the request referred to in paragraph 2 of this Article by a ruling which is not appealable. If he grants the request, the president of the panel may extend the time limit for filing an appeal by not more than 15 days.

A timely and admissible appeal against a judgment stays execution of the judgment.

Persons Authorised to File an Appeal

Article 433

The parties, the defence counsel and the injured party may file an appeal.

An appeal may also be filed on behalf of the defendant by his spouse, a person with whom he lives in a common law marriage or other permanent personal association, lineal consanguine relations, legal representative, adopter, adoptee, sibling and foster parent, and the time limit for filing an appeal begins to run from the date when a copy of the judgment was delivered to the defendant or his defence counsel.

The public prosecutor may file an appeal both to the detriment of the defendant and for his benefit.

An injured party may file an appeal only in connection with the court's decision on the costs of the criminal proceedings and the awarded restitution claim, and if the public prosecutor has assumed criminal prosecution from the subsidiary prosecutor (Article 62), the injured party may file an appeal in connection with all the grounds on which a judgment may be challenged.

An appeal may also be filed by a person whose object was seized or from whom proceeds from crime or assets deriving from a criminal offence were forfeited.

The defence counsel and the persons referred to in paragraph 2 of this Article may file an appeal without explicit authorisation by the defendant, but not against his will, except when the defendant was sentenced to a term of imprisonment of from thirty to forty years.

If the defendant's confession in respect of all the counts of the indictment fulfils the conditions referred to in Article 88 of this Code, the defendant, his defence counsel and the persons referred to in paragraph 2 of this Article may file an appeal in connection with incorrect or incomplete finding of fact only in respect of the facts on which depends the decision on the type and extent of the criminal sanction.

Waiving the Right to an Appeal and Abandoning an Appeal

Article 434

A defendant may waive the right to an appeal only after the judgment has been delivered to him, and before that only if the prosecutor and the injured party who may file an appeal on all grounds (Article 433 paragraph 4) had waived the right to appeal against a judgment of conviction under which a custodial penalty was not imposed on the defendant.

Until the issuance of a decision by a court of second instance, the defendant may abandon an appeal already filed, as well as an appeal filed by his defence counsel or the persons referred to in Article 433 paragraph 2 of this Code.

A defendant may not waive the right to an appeal or abandon an appeal already filed if he has been sentenced to a term of imprisonment of from thirty to forty years.

The prosecutor and injured party may waive the right to an appeal immediately after the proclamation of the judgment and until the expiry of the time limit for filing an appeal, and may abandon an appeal already filed until the issuance of a decision by a court of second instance.

A waiver of the right to an appeal or abandonment of an appeal may not be revoked.

Contents of an Appeal

Mandatory Elements of an Appeal

Article 435

An appeal should contain the:

1) designation of the judgment against which the appeal is being filed;
2) grounds for the appeal (Article 437);
3) rationale of the appeal;
4) motion for the challenged judgment to be fully or partially annulled or revised;
5) signature of the person filing the appeal.

Acting with disorderly appeals

Article 436

If an appeal has been filed by the defendant or another person referred to in Article 433 paragraph 2 of this Code, and the defendant has no defence counsel, or if an appeal was filed by an injured party who has no proxy, and the appeal is illegible or not composed in accordance with Article 435 of this Code, the court of first instance will order the appellant to put the appeal in order or amend it with a written submission within three days.

If the appellant does not act in accordance with the order referred to in paragraph 1 of this Article, the court will dismiss as disorderly an appeal which is illegible or does not contain the elements referred to in Article 435 items 3) to 5) of this Code, and will dismiss an appeal which does not contain the elements referred to in Article 435 item 1) of this Code only if it cannot establish to which judgment it relates. The court will deliver an appeal filed on behalf of the defendant to a court of second instance if it can be established to which judgment it relates, and will dismissed it if that fact cannot be established.

If the appeal was filed by the authorised prosecutor or the injured party who has a proxy, and the appeal is illegible or does not contain the elements referred to in Article 435 of this Code, the court will dismiss the appeal as disorderly. The court will deliver an appeal with these shortcomings filed on behalf of the defendant who has a defence counsel to a court of second instance if it can be established to which judgment it relates, and will dismiss it if that fact cannot be established.

Facts may be presented and new evidence proposed in an appeal, as well as evidence whose examination was denied by the court of first instance (Article 395 paragraph 4), but the appellant is required to specify the reasons why he had not presented them earlier, and is also required to specify evidence serving to prove the facts presented, and, citing proposed evidence, he is required to specify the facts he wishes to prove with the help of that evidence.

v. Grounds for an Appeal

Grounds for Filing an Appeal

Article 437

An appeal may be filed in connection with:
1) substantive violations of the provisions of criminal procedure;
2) violations of criminal law;
3) incorrect or incomplete finding of fact;
4) the decision on criminal sanctions and other decisions.

Substantive Violation of the Provisions of Criminal Procedure

Article 438

A substantive violation of the provisions of criminal procedure exists if:

1) the statute of limitations on criminal prosecution has expired, or prosecution is excluded due to an amnesty or pardon, or the matter has already been finally adjudicated, or there are other circumstances which permanently exclude criminal prosecution;

2) the judgment was issued by a court lacking substance matter jurisdiction, except if a judgment for a criminal offence for which a lower court has jurisdiction was issued by an immediately higher court;

3) the court was improperly composed or if a judge or lay judge who had not participated in the trial or had been recused by a final decision participated in pronouncing the judgment;

4) a judge or lay judge who should have been recused participated in the trial;

5) the trial was held without the presence of persons whose presence at the trial is mandatory, or if the defendant, defence counsel, injured party or private prosecutor was, contrary to his request, denied the right to the use of his own language at the trial and to follow the course of the trial in his own language;

6) the public was excluded from the trial in contravention of this Code;

7) the court violated provisions of criminal procedure in respect of the existence of charges of an authorised prosecutor, or authorisation of the competent authority;

8) the subject matter of the charges was not resolved in full by the judgment;

9) judgment went beyond the bounds of the charges;

10) the provision of Article 453 of this Code was violated by the judgment;

11) the summary judgment is incomprehensible.

A substantive violation of the provisions of criminal procedure also exists if:

1) the judgment is based on evidence on which under the provisions of this Code it may not be based, except if, in view of other evidence, it is obvious that the same judgment would have been issued even without that evidence;

2) the summary judgment contradicts itself or the reasons of the judgment contradict the summary judgment, or if the judgment has no reasons, or the reasons of the facts which are subject matter of evidentiary actions are not given in it, or those reasons are completely unclear or substantially contradictory, or if in respect of the facts which are subject matter of evidentiary actions there exists substantial contradiction between what is stated in the reasons of the judgment about the content of the records or transcripts of testimony given in the proceedings and those instruments or transcripts themselves, and it is for those reasons not possible to examine if the judgment is lawful and proper;

3) during the trial the court did not apply or improperly applied some provision of this Code and this had decisive importance for issuing a lawful and proper judgment.

Violation of Criminal Law

Article 439

A violation of criminal law exists if criminal law is violated in respect of whether:

1) the offence for which the defendant is prosecuted is a criminal offence;

2) a law which cannot be applied was applied in respect of the criminal offence which is the subject matter of the charges;

3) the law was violated by the decision on the criminal sanction or on the forfeiture of proceeds from crime or on a revocation of a release on probation;

4) provisions on counting into the total time served a ban on leaving a dwelling, detention or a penalty served, as well as any other form of deprivation of liberty in connection with a criminal offence, were violated.

Incorrect or Incomplete Finding of Fact

Article 440

A judgment may be challenged in connection with incorrect or incomplete finding of fact.

Incorrect finding of fact exists when the court incorrectly established a decisive fact which is the subject matter of evidentiary actions, and incomplete finding of fact exists when the court did not establish a decisive fact which is the subject matter of evidentiary actions.

Incorrect Decision on a Criminal Sanction and on Other Decisions

Article 441

A judgment may be challenged in connection with a decision on a penalty, suspended sentence or a judicial admonition when no violation of the law was made by that decision (Article 439 item 3)), but the court did not correctly admeasure the penalty in view of the facts affecting the extent of the penalty, as well as because the court incorrectly pronounced or did not pronounce a decision on a more lenient or a more severe penalty, remission of a penalty, suspended sentence , judicial admonition or revoking probation.

A decision on a security measure or confiscation of proceeds from crime may be challenged when no violation of the law was made by that decision (Article 439 item 3)) , but the court incorrectly pronounced or did not pronounce the decision on a security measure or the decision on confiscation of proceeds from crime from a person to whom they were transferred without compensation or with compensation not commensurate with the real value.

A decision on an awarded restitution claim or a decision on confiscation of assets deriving from a criminal offence may be challenged if the court violated provisions of the law by that decision.

A decision on the costs of criminal proceedings may be challenged if the court violated provisions of the law by the decision, as well as because the court incorrectly pronounced or did not pronounce a decision relieving the defendant of the duty to indemnify the costs of the criminal proceedings in full or in part.

g. Appellate Proceedings

Filing an Appeal

Article 442

An appeal is filed with the court which pronounced the first-instance judgment in a sufficient number of copies for the court, the opposing party, the defence counsel and the injured party.

Deciding on the Appeal by the First-instance Court

Article 443

An untimely (Article 432 paragraphs 1 and 2), inadmissible (Article 433) or untidy appeal (Article 436 paragraphs 2 to 4) will be dismissed by a ruling by the president of the panel of the court of first instance.

If facts were presented and new evidence proposed in the appeal which in the view of the president of the panel of the court of first instance may contribute to a comprehensive

consideration of the subject matter of the evidentiary actions, the panel will re-open the trial and resume evidentiary proceedings.

After concluding the evidentiary proceedings, the president of the panel will act in accordance with the provision of Article 412 of this Code. An appeal may be filed in accordance with the provisions of this Code against a new judgment of the court of first instance upholding or revising the earlier judgment.

If the president of the panel of the court of first instance finds that the facts presented and new evidence proposed in the appeal cannot contribute to a comprehensive consideration of the subject matter of the evidentiary actions, he will act in accordance with Article 444 of this Code.

Responding to an Appeal

Article 444

A copy of the appeal will be delivered by the court to the opposing party (Articles 246 and 247), which may within eight days of the date of reception of the appeal submit to the court a response to the appeal.

The court of first instance will deliver to the court of second instance the appeal and the response to the appeal, with all the case files, in a sufficient number of copies.

Actions Taken by the Court of Second Instance with the Files

Article 445

When the files reach the court of second instance in connection with an appeal, they are delivered to a reporting judge, and in particularly complex cases, several members of a panel may be reporting judges, which is decided upon by the president of the court.

If a reporting judge determines that the files contain the transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, he will issue a ruling excluding them from the files, against which a special appeal is not allowed. After the ruling becomes final, the reporting judge will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

If a criminal offence prosecuted at the request of the public prosecutor is concerned, the reporting judge delivers the files to the competent public prosecutor, who is required to examine the files, make a motion and return them to the court without delay and not later than within 15 days, and in the case referred to in Article 432 paragraphs 2 and 3 of this Code, within 30 days.

If the reporting judge determines that a judgment done in writing contains obvious errors, shortcomings or inconsistencies (Article 431), he will before the holding of a session of the second-instance panel return the files to the president of the first-instance panel to issue a ruling on rectifying the errors.

After the ruling on rectifying the errors referred to in Article 431 paragraph 1 of this Code becomes final, the files will be delivered to the court of second instance, and in the case of a rectification of inconsistencies between a judgment done in writing and its original, it will be acted in accordance with Article 431 paragraph 2 of this Code.

Deciding at a Session of the Panel or a Hearing

Article 446

The court of second instance issues a decision on an appeal at a session of the panel or on the basis of a hearing.

The panel of the court of second instance decides whether a hearing will be held.

The panel may decide that a hearing be held only in respect of certain parts of the first-instance judgment, if they can be separated without prejudice to proper adjudication. In respect of the parts of the judgments for which no hearing was ordered, a decision on the appeal is issued at a session of the panel.

If the panel decides to hold a hearing, the reporting judge is the president of the panel and if there are several reporting judges, the panel will appoint one reporting judge to be the president of the panel.

Scheduling a Session of the Panel and Notifying the Parties

Article 447

A session of the panel is scheduled upon a proposal of the reporting judge by the president of the panel, who notifies the public prosecutor thereof.

That defendant or his defence counsel, subsidiary prosecutor, private prosecutor or their proxy who requested within the time limit specified for filing an appeal or a response to an appeal to be notified about the session or proposed that a hearing be held before the court of second instance will be notified about the session of the panel.

The panel may decide to notify the parties about the session of the panel even if they did not request so, or that a party which did not request it also be notified of the session, if their presence would be of benefit for clarifying matters.

If a defendant who is in detention or serving a custodial criminal sanction is being notified about a session of the panel, and he has a defence attorney, the president of the panel will order that his presence is secured only if the panel finds it necessary for clarifying matters. When the panel finds that securing the presence of the defendant is aggravated by security or other reasons and where technical means make it possible, the defendant may participate in the session of the panel via an audio and video link.

The failure of parties duly notified to appear at the session of the panel does not preclude its holding.

The public may be excluded from a session of the panel attended by the parties and the defence counsel only under the conditions specified by this Code (Articles 362 to 365).

Course of the Panel Session

Article 448

The session of the panel commences with a report by the reporting judge on the state of the matter in the case files, and if the session of the panel is attended by the parties and the defence counsel, the reporting judge relates the contents of the judgment, and the parties and defence counsel present assertions made in the appeal and the response to the appeal in a period of time determined by the president of the panel of the court of second instance.

The panel may ask the parties and defence counsel attending the session to provide necessary explanations in connection with the appeal and the response to the appeal, and the parties may propose that in order to amend the report certain parts of the files be read out, and with the permission of the president of the panel necessary explanation of the position presented in the appeal and the response to an appeal may be provided, without repetition of what is already contained in the report.

A transcript is kept of the session of the panel and is attached to the files of the court of second instance.

The ruling referred to in Article 456 of this Code may also be issued without notifying the parties and the defence counsel about the session of the panel.

Hearing Before a Court of Second Instance

Article 449

A hearing before a court of second instance will be held if it is necessary because of incorrect or incomplete finding of fact to examine or to repeat evidence examined or denied by the court of first instance, and there are justified reasons for the case not to be returned to the court of first instance for re-trial.

The defendants and the defence counsel, the authorised prosecutor, the injured party, his legal representative and proxy, as well as those witnesses, expert witnesses and professional consultants whom the court decides to examine directly, are summoned to the hearing before the court of second instance, while review of the content of the other evidence examined is performed in accordance with the provisions of Articles 403, 405 and 406 of this Code.

In the summons, the defendant will be cautioned that the trial will be held in his absence if he is duly summoned and does not justify his absence. In this case, the court will appoint a defence attorney for a defendant who does not have a defence attorney (Article 74 item 9)).

If the defendant is in detention or serving a custodial criminal sanction, the president of the panel of the court of second instance will undertake the necessary actions to bring in the defendant to the hearing. When the panel finds that it would be difficult to secure the presence of the defendant because of security or other reasons and where technical means make it possible, the defendant may participate in the trial via an audio and video link.

Course of the Hearing Before a Court of Second Instance

Article 450

A hearing before a court of second instance commences with a report of the president of the panel (Article 446 paragraph 4) who relates the state of the matter without presenting an opinion on whether the appeal is justified.

Upon a motion of the parties and the defence counsel or a decision of the panel, the judgment or a part of the judgment to which the appeal refers will be read out, and if needed also the transcript of the trial or a part of the transcript and written evidence, and examination may also be made of other evidence to which the appeal relates. After taking statements from the parties, the panel may decide, instead of directly examining a witness or expert witness who is

not present, to examine the transcripts of their examination or, if the panel deems this necessary, to have the panel president present their contents in brief or read them out .

The appellant will thereafter be called upon to substantiate the appeal, and the opposing party to give a response, without repeating what is already contained in the report.

At the hearing the parties and the defence counsel may present facts and propose evidence specified in the appeal or connected with that evidence.

The authorised prosecutor may, in view of the results of the hearing, revise the indictment to the benefit of the defendant, or, if the defendant agrees, abandon the charges in full or in part. If the public prosecutor has abandoned the charges, the injured party is entitled to the rights referred to in Article 52 of this Code.

The provisions on a trial before a court of first instance will be applied accordingly to the trial before a court of second instance, unless this Code specifies otherwise.

d. Limits of Examining a First-instance Judgment

Scope of Examination

Article 451

The court of second instance examines the judgment within the framework of the grounds, the criminal offence and the direction of the challenge specified in the appeal.

In respect of an appeal filed on behalf of the defendant, the court of second instance will examine the decision on the criminal sanction *ex officio*:

1) if the appeal was filed because of an incorrect or incomplete finding of fact or a violation of criminal law;

2) if the appeal does not contain the elements referred to in Article 435 items 2) and 3) of this Code.

The court of second instance may in connection with a prosecutor's appeal to the detriment of the defendant revise the first-instance judgment also to the benefit of the defendant in respect of the decision on the criminal sanction.

Limits on Invoking Violations of the Law

Article 452

The appellant may invoke a violation of the law referred to in Article 438 paragraph 1 item 4) of this Code in his appeal only if he was not able to object to the violation during the trial, or did object to it, but the court of first instance did not take it into consideration.

Prohibition of Reversing to the Detriment of the Defendant

Article 453

If an appeal has been filed only on behalf of the defendant, the judgment may not be changed to his detriment in respect of the legal qualification of the criminal offence and the criminal sanction.

Privilege of Joinder

Article 454

If a court of second instance in connection with anyone's appeal determines that the reasons for which it issued a decision to the benefit of the defendant also benefit a co-defendant who did not file an appeal, or filed an appeal on other grounds, it will act *ex officio* as if such an appeal exists.

đ. Decisions of the Court of Second Instance

Deciding on an Appeal

Article 455

The court of second instance may at a session of the panel or on the basis of a hearing held earlier:

1) dismiss the appeal as untimely, inadmissible or untidy;

2) reject the appeal as unfounded and uphold the first-instance judgment;

3) grant the appeal and set aside the first-instance judgment and refer the case back to the court of first instance for re-trial, or grant the appeal and reverse the first-instance judgment;

The second instance court will issue its own judgment if in the same case a first-instance judgment has already been abolished once.

As a rule the court of second instance decides with a single decision on all appeals against the same judgment.

Ruling Dismissing an Appeal

Article 456

An appeal will be dismissed by a ruling as untimely if it is determined that it was filed after the legally-specified time-limit.

An appeal will be dismissed by a ruling as inadmissible if it is determined that the appeal was filed by a person not authorised to file an appeal or a person who had waived the right to an appeal, or if the appeal was desisted from, or that an appeal was filed again after being desisted from, or if an appeal is not allowed under the law.

An appeal will be dismissed by a ruling as untidy if it is illegible or incomplete (Article 436 paragraphs 2 to 4).

Judgment Rejecting an Appeal

Article 457

The court of second instance will reject an appeal by a judgment as unfounded and uphold the first-instance judgment if it determines that the reasons for which the appeal was filed do not exist, or that the reasons it examines pursuant to Article 451 paragraphs 2 and 3 of this Code do not exist.

Ruling Granting the Appeal

Article 458

The court of second instance will grant an appeal by a ruling and abolish a first-instance judgment and send the case back for re-trial if it determines that there exists a substantive violation of the provisions of criminal procedure, except for the cases referred to in Article 459 paragraph 1 of this Code, or if it finds that due to an incorrect or incomplete finding of fact indicated in the appeal a new trial should be ordered before a court of first instance.

The court of second instance may order a new trial before a court of first instance to be held before a completely changed panel.

The court of second instance may also partially abolish a first-instance judgment if certain parts of the judgment can be separated without prejudice to correct adjudication.

If the defendant is in detention, the court of second instance will examine if the reasons for detention still exist and issue a ruling extending or abolishing detention. This ruling is not appealable.

Judgment Granting the Appeal

Article 459

The court of second instance will grant an appeal by a judgment and reverse a first-instance judgment if it finds that in view of the finding of fact established in the first-instance judgment there exists a violation referred to in Articles 439 and 441 of this Code, and according to the state of the matter also in the case of the violation referred to in Article 438 paragraph 1 items 1), 7), 9) and 10) of this Code. The court of second instance will issue a judgment reversing the first-instance judgment also in the case where it is acting in accordance with Article 451 paragraphs 2 and 3 of this Code.

If the reversal of the first-instance judgment has created the necessary conditions for ordering or abolishing detention, the court of second instance will issue a separate ruling thereon which is not appealable.

Substantiation of the Decision of the Court of Second Instance

Article 460

In the substantiation of the judgment or ruling the court of second instance should make an assessment of the assertions made in the appeal and present the reasons it examined in accordance with Article 451 paragraphs 2 and 3 of this Code.

When a first-instance judgment is being abolished due to a substantive violation of the provisions of criminal procedure, the substantiation should specify the provisions which were violated and the nature of the violations.

When a first-instance judgment is being abolished due to an incorrect or incomplete finding of fact, the substantiation should specify the shortcomings in the finding of fact, or why the new evidence and facts are important and of influence for rendering a correct decision, and may also indicate the omissions of the parties which affected the decision of the court of first instance.

When a first-instance judgment is being abolished due to a violation of criminal law the substantiation will specify which provisions were violated and the nature of those violations, and if the judgment is being abolished because of an improper decision on a criminal sanction or other decisions, the substantiation will specify the facts by which the court of second instance was guided in pronouncing the decision, or the provisions which were violated.

Returning the Files to the Court of First Instance

Article 461

The court of second instance will return all files to the court of first instance with a sufficient number of certified copies of its decision, for the purpose of delivery to the parties and other persons who have a legal interest.

The court of second instance is required to deliver its decision with the files to the court of first instance within not later than four months, and if the defendant is in detention, not later than three months from the date the reporting judge received the files from that court together with the proposal of the public prosecutor.

In especially complex cases, the time limit referred to in paragraph 2 of this Article may be extended by not more than 60 days by a ruling of the president of the court of second instance, and if the defendant is in detention, by not more than 30 days.

New Trial Before a Court of First Instance

Article 462

The court of first instance to which a case has been referred for adjudication will base its work on the earlier indictment, and if the judgment of the court of first instance was abolished in part, the basis for the trial will be only the part of the charges relating to the part of the judgment which was abolished.

At the new trial, the parties may present new facts and examine new evidence.

The court of first instance is required to perform all procedural actions and discuss all disputed questions which the court of second instance indicated in its decision.

In pronouncing a new judgment, the court of first instance is bound by the prohibition prescribed by Article 453 of this Code.

If the defendant is in detention, the panel of the court of first instance is required to act in accordance with Article 216 paragraph 3 of this Code.

b)Appeal against a Second-Instance Judgment

Admissibility of an Appeal

Article 463

An appeal may only be filed against a judgment by which the court of second instance reversed a first-instance judgment, which acquitted the defendant of the charges, and pronounced a judgment finding the defendant guilty.

Analogous Application of Provisions on Procedure before a Court of Second Instance

Article 464

An appellate court adjudicates an appeal against a judgment of a court of second instance pursuant to the provisions of this Code applicable to second-instance proceedings.

The provisions of Article 454 of this Code will also be applied to a co-defendant who was not entitled to file an appeal against a second-instance judgment.

v) Appeal against a Ruling

Admissibility of an Appeal

Article 465

The parties, the defence counsel and persons whose rights were violated may file an appeal against rulings of the authority conducting proceedings issued in the first instance, whenever it is not explicitly stipulated by this Code that an appeal is not allowed.

A ruling of the panel issued during the investigation and the indicting procedure is not appealable, unless specified otherwise by this Code.

Rulings issued for the purpose of preparing and conducting the trial may only be challenged in the appeal against the judgment.

Rulings of the second instance court are not appealable, unless specified otherwise by this Code.

Rulings of the Supreme Court of Cassation are not appealable.

Time Limits for Appealing and the Suspenseful Effect of the Appeal

Article 466

An appeal is filed with the authority conducting proceedings who issued the ruling.

An appeal is filed within three days of the date of delivery of the ruling and stays its execution, unless specified otherwise by this Code.

Deciding on an Appeal

Article 467

The court examines the ruling within the framework of the grounds, the offence and the direction of the challenge specified in the appeal.

A court of second instance decides on an appeal against a ruling of the court of first instance at a session of the panel, unless specified otherwise by this Code. The parties may be notified about the session of the panel if the court finds their presence beneficial for clearing up the matter.

An appeal against a ruling of the judge for the preliminary proceedings shall be decided upon by the panel (Article 21 paragraph 4) of the same court, unless specified otherwise by this Code. The court may notify the parties about the panel session if it deems that their presence would be useful for the clarification of matters.

Deciding on an appeal, the court may dismiss the appeal as untimely, inadmissible or untidy, reject the appeal as unfounded, or grant the appeal and reverse or abolish the ruling, and, if needed, send the case back for a new decision-making.

The court is required to deliver the decision on the appeal with the files to the authority conducting proceedings who issued the ruling within 30 days of the date of receiving the files together with the proposal of the public prosecutor, unless specified otherwise by this Code.

Analogous Application of Provisions on an Appeal against a First-instance Judgment

Article 468

Unless it is specified otherwise by this Code, the provisions of Article 434 paragraph 5, Articles 435 to 442, Article 445 paragraphs 1 and 2, Article 454 and Article 458 paragraph 2 of this Code will be applied accordingly to the procedure on an appeal against a ruling.

Analogous Application of Provisions on an Appeal against a Ruling in Special Proceedings

Article 469

Unless it is specified otherwise by this Code, the provisions of Articles 465 to 468 of this Code are applied accordingly to rulings issued in special proceedings regulated by this Code.

2. Extraordinary Legal Remedies

a) Request for Reopening Criminal Proceedings

a. Basic provisions

Admissibility of Reopening Criminal Proceedings

Article 470

Criminal proceedings concluded by a final judgment may be reopened at the request of an authorised person under the conditions stipulated in this Code.

Persons Authorised to Submit a Request

Article 471

A request to reopen criminal proceedings may be submitted by the parties and the defence counsel, and after the death of the defendant by the public prosecutor and the persons referred to in Article 433 paragraph 2 of this Code.

A request to reopen criminal proceedings may also be submitted after the convicted person has served out the penalty, or the statute of limitations, an amnesty or a pardon have occurred.

The persons referred to in paragraph 1 of this Article may desist from their request to reopen criminal proceedings until the issuance of a decision of the court on the request.

Contents of the Request

Article 472

A request to reopen criminal proceedings must specify the reason for requesting that the criminal proceedings be repeated and the evidence substantiating the facts on which the request is founded. If the request does not contain these data, the court will instruct the applicant to amend the request with a written submission within a certain time limit.

The facts referred to in Article 473 paragraph 1 items 1) and 2) of this Code are to be substantiated with the final judgment that the persons referred to have been convicted in connection with the criminal offences referred to, and if proceedings cannot be conducted against them because they are deceased or there exist other circumstances which exclude their prosecution, the facts referred to in Article 473 paragraph 1 items 1) and 2) of this Code may also be substantiated by other evidence.

Reasons for Reopening Criminal Proceedings

Article 473

Criminal proceedings concluded with a final judgment may be repeated only to the benefit of the defendant:

1) if the judgment is founded on a forged instrument or a perjuries statement by a witness, expert witness, professional consultant, translator, interpreter or co-defendant (Article 406 paragraph 1 item 5));

2) if judgment was preceded by a criminal offence committed by the public prosecutor, judge, lay judge or person conducting evidentiary actions;

3) if new facts are presented or new evidence submitted which in themselves or in connection with earlier facts or evidence may lead to rejection of the charges or an acquittal or a conviction according to a more lenient criminal law;

4) if the defendant was tried several times for the same offence or was convicted together with other persons for a criminal offence which only one person or some of those persons could have committed;

5) if in the case of a conviction for a continued criminal offence, or for another criminal offence which under the law encompasses several actions of same or different kind, new facts are presented or new evidence submitted which indicate that he did not commit the action encompassed by the offence in the conviction, and the existence of these facts would lead to the application of a more lenient law or would substantially affect determination of the penalty;

6) if new facts are presented or new evidence submitted which did not exist when the prison sentence was pronounced or the court did not know of them although they did exist, and they would obviously have led to a more lenient criminal sanction;

7) if new facts are presented or if new evidence is filed proving that the defendant was not duly served the summons for the trial held in his absence (Article 449 paragraph 3).

A request to reopen criminal proceedings for the reasons specified in paragraph 1 item 6) of this Article may be submitted until the prison sentence is executed and the request for the reopening based on the reason referred to in paragraph 1 item 7) of this Article within six months after the appellate court renders its judgment.

Competence for Deciding on the Request

Article 474

The panel (Article 21 paragraph 4) of the court which tried the case in the first instance in the earlier proceedings decides on a request to reopen criminal proceedings and the panel of the court which adopted the decision after a trial held in the absence of the defendant decides on a request filed under Article 473 paragraph 1 item 7) of this Code.

In deciding on the request a judge who took part in rendering the judgment in the earlier proceedings will not be a member of the panel.

If the court referred to in paragraph 1 of this Article learns of the existence of a reason to reopen criminal proceedings (Article 473), it will notify thereof the defendant or the person authorised to submit a request on behalf of the defendant.

b. Actions Taken in Connection with the Request

Dismissing the Request

Article 475

The court will dismiss a request to reopen criminal proceedings with a ruling if:

1) the request was submitted by an unauthorised person;

2) the applicant did not act in accordance with Article 472 paragraph 1 of this Code;

3) the applicant has desisted from the request;

4) the legally-prescribed conditions for repeating proceedings do not exist;

5) the facts and evidence on which the request is based had already been presented in an earlier request to reopen criminal proceedings which was rejected with a final decision;

6) the facts and evidence are obviously not appropriate to allow a repetition of criminal proceedings based on them.

Acting on the Request

Article 476

If the court does not dismiss a request to reopen criminal proceedings, it will deliver a copy of the request to the opposing party, which is entitled to respond to the request within eight days.

When the response to the request is received by the court, or when the time limit for a response expires, the president of the panel may order examination of the facts and acquisition of the evidence cited in the request and in the response to the request.

After conducting the examinations, if criminal offence is prosecutable *ex officio*, the president of the panel will order the files delivered to the public prosecutor, who is required to return them, with his opinion, without delay, or within 30 days at most.

Deciding on the Request

Article 477

When it has conducted the actions referred to in Article 476 of this Code and if it does not order the examination to be amended or does not dismiss the request (Article 475 item 3)), the court will either grant or reject the request to reopen criminal proceedings by a ruling, depending on the results of the examination.

In a ruling granting the request and allowing criminal proceedings to be reopened the court will order the holding of a new trial, and if reopening of criminal proceedings was allowed based on the reasons referred to in Article 473 paragraph 1 item 6) of this Code, only the evidence on which the type and extent of the criminal sanctions depends will be examined at the new trial.

If the court finds that the reasons based on which it allowed reopening of criminal proceedings also exist for a co-defendant who has not submitted such a request, it will act *ex officio* as if such a request had been submitted.

If the court finds, taking into consideration the evidence submitted, that the convicted person could in reopened proceedings be convicted to such a penalty that with time served he should be released, or could be acquitted of the charges, or that the charges could be rejected, it will order the execution of the penalty to be deferred or discontinued.

When the ruling allowing reopening of criminal proceedings becomes final, the execution of the penalty will be discontinued, but the court may order detention, acting on a motion by the public prosecutor, if the reasons referred to in Article 211 of this Code exist.

Acting in Reopened Criminal Proceedings

Article 478

In the new proceedings, conducted on the basis of a ruling allowing a reopening of criminal proceedings, the court is not bound by rulings issued in the criminal proceedings conducted earlier.

If the new proceedings are discontinued before the commencement of the trial, the court will abolish the earlier judgment by a ruling on discontinuing proceedings.

When the court issues a judgment in the new proceedings:
1) it will pronounce that the earlier judgment is abolished in part or in full or that it remains in force;
2) it will calculate time served by the defendant into the penalty imposed by the new judgment, and if reopening of criminal proceedings was ordered for only some of the criminal offences of which the defendant was convicted, it will pronounce a new single penalty according to the provisions of criminal law.

In pronouncing a new judgment, the court is bound by the prohibition stipulated by Article 453 of this Code.

v. Repetition of Criminal Proceedings against a Person Convicted *in Absentia*

Admissibility of Reopening Criminal Proceedings

Article 479

Criminal proceedings in which a defendant was convicted *in absentia* (Article 381) will be repeated without fulfilling the conditions prescribed in Article 473 of this Code if the possibility arises that a trial is conducted in his presence.

Persons Authorised to Submit a Request

Article 480

A request to reopen criminal proceedings for the reasons stipulated in Article 479 of this Code may be submitted by the defendant and his defence counsel within six months of the date when the possibility arose of putting the defendant on trial in his presence.

At the expiry of the time limit referred to in paragraph 1 of this Article, a reopening of the proceedings is allowed only for the reasons stipulated in Article 473 of this Code.

Acting in Reopened Criminal Proceedings

Article 481

In the ruling allowing a reopening of criminal proceedings according to Article 479 of this Code, the court will order the indictment and ruling on confirming the indictment to be delivered to the defendant, unless they were delivered to him earlier.

In repeated proceedings an accomplice of the defendant who has already been convicted cannot be questioned or confronted with the defendant, but the presentation of the content of the testimony of the convicted accomplice is performed in accordance with Article 406 paragraph 1 item 5) of this Code, where the judgment may not be based only or to a decisive extent on such evidence.

In pronouncing a new judgment, the court is bound by the prohibition stipulated by Article 453 of this Code.

b) Request for the Protection of Legality

a. Basic Provisions

Admissibility of Submitting a Request

Article 482

An authorised person may submit in accordance with conditions prescribed in this Code a request for the protection of legality against a final decision of the public prosecutor or the court or for a violation of provisions of the procedure which preceded its issuance.

A request for the protection of legality is not allowed against a decision on the protection of legality or violation of provisions of the procedure before the Supreme Court of Cassation which preceded its issuance.

Persons Authorised to Submit a Request

Article 483

A request for the protection of legality may be submitted by the Republic Public Prosecutor, the defendant and his defence counsel.

The Republic Public Prosecutor may submit a request for the protection of legality both to the detriment and for the benefit of the defendant. A request may be submitted even after the defendant is encompassed by an act of amnesty or a pardon, or the statute of limitations has expired, or the defendant has died, or the penalty has been served in full.

A request for the protection of legality may be submitted by a defendant only through his defence counsel.

The persons referred to in paragraph 1 of this Article may desist from the request until the issuance of a decision of the court on the request for the protection of legality.

Contents of the Request

Article 484

A request for the protection of legality must specify the reasons for its submission (Article 485 paragraph 1), and in the case referred to in Article 485 paragraph 1 items 2) and 3) of this Code, a decision of the Constitutional Court or of the European Court of Human Rights must also be submitted.

Reasons for Submitting a Request

Article 485

A request for the protection of legality may be submitted if by a final decision or decision in the procedure which preceded its issuance:

1) the law was violated;

2) a law was applied which was by a decision of the Constitutional Court found not to comply with the Constitution, universally accepted principles of international law and ratified international agreements;

3) a human right or freedom of a defendant or other participant in proceedings guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols was violated or denied, as determined by a decision of the Constitutional Court or the European Court of Human Rights.

A violation of the law within the meaning of paragraph 1 item 1) of this Article exists if a provision of criminal procedure was violated by a final decision or in the procedure which preceded its issuance, or if the law was applied incorrectly to the finding of fact determined in the final decision.

A request for the protection of legality for the reasons stipulated in paragraph 1 items 2) and 3) of this Article may be submitted within three months of the date when the person (Article 483 paragraph 1) was delivered the decision of the Constitutional Court or the European Court of Human Rights.

A defendant may submit a request for the protection of legality in connection with violations of this Code (Article 74, Article 438 paragraph 1 items 1) and 4), and item 7) to 10), and paragraph 2 item 1), Article 439 items 1) to 3), and Article 441 paragraphs 3 and 4) made in the first-instance proceedings and the proceedings before the appellate court , within 30 days from the date of the delivery of the final decision, provided that he has used an ordinary legal remedy against that decision.

Competence for Deciding on the Request

Article 486

The Supreme Court of Cassation decides on a request for the protection of legality.

The Supreme Court of Cassation decides on a request for the protection of legality submitted in connection with a violation of the law (Article 485 paragraph 1 item 1)) only if it finds that it concerns an issue of importance for correct or uniform application of the law.

b. Procedure Regarding the Request

Ruling Dismissing the Request

Article 487

The Supreme Court of Cassation sitting in panel will dismiss a request for the protection of legality by a ruling:

1) if it was not submitted within the time limit referred to in Article 485 paragraph 3 and 4 of this Code;

2) if it is inadmissible (Article 482 paragraph 2, Article 483 and Article 485 paragraph 4)

3) if it lacks the prescribed contents (Article 484);

4) if it was submitted in connection with a violation of the law which is not of importance for the correct or uniform application of the law (Article 486 paragraph 2).

The ruling referred to in paragraph 1 of this Article does not need to contain substantiation.

Actions Taken in Connection with the Request

Article 488

If the Supreme Court of Cassation does not dismiss the request, the reporting judge will deliver a copy of the request to the public prosecutor or the defence counsel, and may if needed obtain information about the reasons specified referred to in Article 485 paragraph 1 items 1) to 3) of this Code.

If the Supreme Court of Cassation deems the presence of the public prosecutor and defence counsel is of importance for rendering a decision, it will notify them about the session.

The Supreme Court of Cassation may, in view of the contents of the request, order the execution of a final judgment to be deferred or discontinued.

The Supreme Court of Cassation will deliver its decision with the files to the public prosecutor, a court of first instance, or an appellate court not later than six months from the date of the submission of the request.

Limitations of Examining the Request

Article 489

The Supreme Court of Cassation examines a final decision or the proceedings which preceded its issuance within the framework of the grounds (Article 485 paragraph 1), the criminal offence and the direction of the challenge specified in the request for the protection of legality.

If the Supreme Court of Cassation finds that the reasons why it issued a decision in favour of the defendant also exist for a co-defendant in respect of whom no request for the protection of legality was submitted, it will act *ex officio* as if such a request did exist.

The Supreme Court of Cassation may in connection with a request for the protection of legality submitted by a public prosecutor abolish or reverse a decision only in favour of the defendant.

Deciding on the Request

Article 490

If the Supreme Court of Cassation does not dismiss the request for the protection of legality (Article 487), sitting in session it will either reject or grant the request.

Judgment Rejecting the Request

Article 491

The Supreme Court of Cassation will dismiss a request for the protection of legality by a judgment as unfounded if it determines that the reason cited by the applicant in the request does not exist.

If a request was submitted in connection with a violation of the law (Article 485 paragraph 1 item 1)) which was specified without foundation in the ordinary legal remedy proceedings, and the Supreme Court of Cassation accepts the reasons given by the appellate court , the substantiation of the judgment will limit itself to an indication of those reasons.

Judgment Granting the Request

Article 492

The Supreme Court of Cassation will after granting a request for the protection of legality issue a judgment in which it will according to the nature of the violation:

1) abolish in full or in part the first-instance decision and a decision issued in ordinary legal remedy proceedings, or only the decision issued in ordinary legal remedy proceedings and send the case for a new decision to the authority conducting proceedings or for trial by a court of first instance or an appellate court, where it may order that new proceedings be held before a completely changed panel;

2) reverse in full or in part the first-instance decision and the decision issued in ordinary legal remedy proceedings or only the decision issued in ordinary legal remedy proceedings;

3) limit itself to establishing a violation of the law.

If the authority conducting proceedings which issued the decision on the ordinary legal remedy was not authorised under the provisions of this Code to rectify the violation made in the decision which was challenged or in the proceedings which preceded its issuance, and the Supreme Court of Cassation after granting the request for the protection of legality submitted to the benefit of the defendant finds that the request is well-founded and that the challenged decision should be abolished or reversed in order to rectify the violation of the law which was made, it will also abolish or reverse the decision issued in ordinary legal remedy proceedings although the law was not violated by that decision.

Determining Judgment

Article 493

The Supreme Court of Cassation will determine by a judgment that a violation of the law exists without going into the finality of the decision if it grants a request for the protection of legality submitted at the detriment of the defendant.

Actions Taken at the New Trial

Article 494

If a final judgment was abolished and the case sent for retrial, the earlier indictment or the part of it which relates to the part of the judgment which was abolished will be taken as the basis.

The court is required to perform all procedural actions and to examine the questions which the Supreme Court of Cassation indicated to it.

Before a court of first instance or an appellate court, the parties may present new facts and submit new evidence.

In pronouncing a new judgment, the court is bound by the prohibition prescribed by Article 453 of this Code.

Part Three

SPECIAL PROCEEDINGS

Chapter XX

SUMMARY PROCEEDINGS

1. General Provisions

Applicable Provisions of the Code

Article 495

The provisions of Articles 496 to 520 of this Code will be applied in proceedings for criminal offences for which a fine or a term of imprisonment of up to eight years is prescribed as the principal penalty, and unless something is specified otherwise in these provisions, the other provisions of this Code will be applied accordingly.

Assessment of Territorial Jurisdiction

Article 496

After scheduling a trial or a hearing for pronouncing a criminal sanction, the court may not declare that it has no territorial jurisdiction, nor may the parties object to a lack of territorial jurisdiction of the court.

Desisting from Criminal Prosecution or the Charges by the Public Prosecutor

Article 497

The public prosecutor may desist from criminal prosecution until the scheduling of a trial or a hearing for pronouncing a criminal sanction, and may desist from the charges – from the scheduling until the conclusion of the trial or a hearing for pronouncing a criminal sanction.

If the public prosecutor desists from the charges in accordance with paragraph 1 of this Article, the injured party is entitled to the rights determined by the provisions of this Code (Articles 51 and 52).

Detention

Article 498

Detention may be ordered against a person for whom there exists grounded suspicion that he has committed a criminal offence if there exists any of the reasons referred to in Article 211 paragraph 1 items 1) to 3) of this Code, or if the defendant has been sentenced to a term of imprisonment of five or more years and if it is justified by the especially serious circumstances of the criminal offence.

Before the submission of the motion to indict, detention may last for only as long as it is needed to conduct evidentiary actions, but not more than 30 days. If the proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment or five or more years, detention may, acting upon a reasoned motion by the public prosecutor, be extended by another 30 days at most for the purpose of collection of evidence which has not been collected for justified reasons.

An appeal may be submitted to the panel (Article 21 paragraph 4) against the ruling of an individual judge referred to in paragraph 2 of this Article, but it does not stay execution of the ruling.

The provisions of Article 216 of this Code are applied accordingly in respect of detention from the filing of the charges until the pronouncement of a first-instance judgment, with the proviso that the panel (Article 21 paragraph 4) is required to examine once every month whether reasons for detention exist.

The provisions of Article 211 paragraph 3 of this Code will be applied accordingly also in respect of deciding on detention after the pronouncement of the judgment.

a) Filing charges

Charging Documents

Article 499

Summary proceedings are instituted on the basis of a motion to indict of the public prosecutor or on the basis of a private prosecution, when there is justified suspicion that a certain person has committed a criminal offence.

Before deciding whether to file a motion to indict or to dismiss a criminal complaint, the public prosecutor may in the shortest possible period of time conduct certain evidentiary actions.

If the criminal complaint was submitted by the injured party, and the public prosecutor within six months of the date of receiving the complaint does not file a motion to indict or does not notify the injured party that he has dismissed the complaint, the injured party is entitled to the rights referred to in Article 51 of this Code.

A motion to indict and a private prosecution are submitted in a number of copies necessary for the court and for the defendant.

Contents of a Charging Document

Article 500

A motion to indict, or a private lawsuit, contains the following:

1) first name and surname of the defendant with personal data, if known;

2) brief description of the offence;

3) statutory name of the criminal offence;

4) name of the court before which the trial is to be held;

5) proposal of the evidence to be presented at the trial, specifying the facts which are to be proved and with which of the proposed pieces of evidence;

6) proposal of the type and severity of the criminal sanction and measure whose imposition is being sought.

A motion to indict, or a private lawsuit may contain a motion to place the defendant in detention, and if the defendant was in detention during the implementation of evidentiary actions, the motion to indict shall specify the time spent in detention.

If on the basis of collected evidence the public prosecutor deems that a trial is unnecessary, he may request in the motion to indict that a hearing for the imposition of a criminal sanction (Article 512) be scheduled.

Examining a Charging Document

Article 501

Immediately upon receiving a charging document a single judge shall examine whether it has been composed properly, and if not, he shall return it to the prosecutor to rectify the shortcomings within three days. At the request of the prosecutor, the judge may extend this time limit for justified reasons.

If the public prosecutor misses the time limit referred to in paragraph 1 of this Article, the judge shall issue a ruling dismissing the motion to indict, and if the private prosecutor misses the aforesaid time limit, it shall be deemed that he has waived prosecution and the private lawsuit shall be rejected by a ruling.

If the charging document has been composed properly, the judge shall examine if the court has jurisdiction, if a better clarification of the matter is required in order to examine the justification of the charging document, and whether there are reasons to dismiss or reject the motion to indict or the private lawsuit.

If the judge determines that another court is competent to adjudicate the case, he will declare himself incompetent and refer the case to that court when the ruling becomes final.

If the judge determines that a better clarification of the matter is required in order to examine the justification of the charging document, he shall order certain evidentiary actions to be conducted or certain evidence collected.

The authorised prosecutor shall undertake certain actions or collect certain evidence within 30 days of the date of being notified of the decision. At the request of the prosecutor the judge may extend this time limit for justified reasons.

If the public prosecutor misses the time limit referred to in paragraph 6 of this Article, he is required to notify the immediately superior public prosecutor of the reasons thereof, and if the private prosecutor misses the aforesaid time limit, it will be deemed that he has waived prosecution and the lawsuit shall be rejected by a ruling.

Dismissing a Charging Document

Article 502

If the judge determines that a request by an authorised prosecutor, the requisite motion or approval of criminal prosecution is lacking, or that there are other circumstances temporarily preventing prosecution, he shall issue a ruling dismissing the motion to indict or private lawsuit.

Rejecting a Charging Document

Article 503

The judge will reject a motion to indict or a private lawsuit by a ruling if he determines that the charges are unwarranted due to the existence of the reasons referred to in Article 338 paragraph 1 of this Code.

The ruling, with a brief substantiation, is delivered to the public prosecutor or the private prosecutor, as well as to the defendant.

b) Trial

Scheduling a Trial

Article 504

If the judge does not issue any of the rulings referred to in Article 501 paragraphs 2, 4 and 7 and Articles 502 and 503 of this Code, he shall issue an order setting the date, time and place of holding of a trial within not more than 30 days, and if detention has been ordered, within 15 days, counting from the date of service on the defendant of the motion to indict, or the private lawsuit.

Once a trial has been scheduled, the court may not declare *ex officio* its lack of territorial jurisdiction.

An objection challenging the territorial jurisdiction of the court may be filed by the commencement of the trial at the latest.

Actions Taken with a Private Lawsuit

Article 505

Before scheduling a trial in connection with criminal offences which are prosecutable by private prosecution, the judge shall summon the private prosecutor and the defendant to the court on a certain date to be informed about the possibility of being referred to a mediation procedure. A copy of the private lawsuit is served on the defendant together with the summons.

If the private prosecutor and the defendant reconcile and if the restitution claim is settled in the mediation procedure , the private lawsuit shall be deemed withdrawn and the judge shall issue a ruling rejecting the private lawsuit, and if the mediation procedure fails, upon receiving the notification thereof the judge shall schedule a trial (Article 504 paragraph 1).

If the private prosecutor and the defendant do not agree to a mediation procedure, the judge shall take their statements and invite them to submit their motions in respect of obtaining evidence, where they must specify which facts are to be proved and with which of the proposed pieces of evidence.

If the judge deems that evidence need not be obtained, and there are no other reasons to schedule a trial at another date, he may immediately issue a ruling to hold a trial and at its conclusion issue a decision on the private lawsuit. The private prosecutor and the defendant will be especially advised about this during the service of the summons.

If a private prosecutor does not respond to a duly served summons referred to in paragraph 1 of this Article and does not justify his absence, the judge shall issue a ruling rejecting the private lawsuit.

If the defendant does not respond to a duly served summons referred to in paragraph 1 of this Article or if the service of the summons could not take place due to his failure to notify the court of a change of address or place of temporary or permanent residence, the single judge shall schedule a trial (Article 504 paragraph 1).

Summoning and Presence at the Trial

Article 506

The judge summons to the trial the defendant and his defence counsel, the prosecutor, the injured party and their legal representatives and proxies, witnesses, expert witnesses, professional consultant, translator and interpreter.

It shall be specified in the summons served on the defendant that he may come to the trial with the evidence in his defence or that he should in due time propose evidence which should be obtained for the purpose of being presented at the trial, where he must specify which facts are to be proved and with which of the proposed pieces of evidence.

The defendant will be advised in the summons that he is entitled to take a defence counsel, but that in the case where defence is not mandatory the trial will not have to be adjourned if a defence counsel fails to appear at the trial or a defence counsel is retained at the trial itself.

The defendant will be cautioned in the summons that the trial shall be held even in his absence if the statutory requirements exist (Article 507 paragraph 2).

A summons must be served on the defendant in such a way as to leave enough time for the preparation of defence and no less than eight days between the dates of service and trial. With the consent of the defendant this time limit may be shortened.

Exceptionally, a trial may be held in the absence of the summoned parties if the judge deems that, in view of the evidence contained in the files, a ruling dismissing the charges (Article 416 paragraph 1) or a dismissing judgment would obviously have to be issued.

Course of the Trial

Article 507

The trial commences with the declaration of the main content of the motion to indict or the private lawsuit and if possible concludes without interruption.

If a duly summoned defendant who is tried in connection with a criminal offence for which a fine or a term of imprisonment of up to three years are prescribed as the principal penalty does not appear at the trial, the judge may decide, after taking a statement from the prosecutor, to hold the trial in the absence of the defendant provided that his presence is not necessary and that he was interrogated beforehand.

If during the trial the judge finds that a panel is competent to adjudicate the case, a panel shall be formed and the trial shall commence anew, and if he determines that any of the reasons referred to in Article 416 paragraph 1 of this Code exists, the judge shall dismiss the charges by a ruling.

At the conclusion of the trial, the judge shall render a judgment immediately and declare it with substantive reasons. A judgment shall be made in writing and dispatched within 15 days of the date of declaration.

Defendant's Confession at the Trial

Article 508

If the defendant at the trial makes a confession that fulfils the requirements referred to in Article 88 of this Code, the judge may, after taking statements from the parties, start with the presentation of evidence on which the decision on the type and severity of the criminal sanction depends.

Under the conditions referred to in paragraph 1 of this Article, in case of criminal offences punishable by a fine or a term of imprisonment of up to five years as the principal penalty the judge may impose a term of imprisonment of up to three years, and in case of criminal offences punishable by a term of imprisonment of up to eight years, he may impose a term of imprisonment of up to five years.

v) Appellate Proceedings

Time Limit for Filing an Appeal

Article 509

An appeal against a judgment may be filed within eight days of the delivery of a certified copy of the judgment.

In complex cases, the parties and the defence counsel may request an extension of the time limit for filing an appeal immediately after the judgment is proclaimed.

A single judge decides immediately on the request referred to in paragraph 2 of this Article by a ruling which may not be appealed. If he grants the request, the judge may extend the time limit for filing an appeal to no more than 15 days.

Waiving the Right to an Appeal

Article 510

The parties and the injured party may waive their right to an appeal immediately after the pronouncement of the judgment.

Notification about a Panel Session or a Trial

Article 511

When a court of second instance decides on an appeal against a judgment imposing a prison sentence, the parties and the defence counsel will be notified about the panel session within the meaning of Article 447 paragraph 2 of this Code, and in other cases, only if the panel president or the panel deems the presence of the parties beneficial for clarifying the matter.

A trial may also be held in the absence of a duly summoned defendant under the conditions referred to in Article 507 paragraph 2 of this Code.

2. Hearing for the Imposition of a Criminal Sanction

Requirements for Holding a Hearing

Article 512

For criminal offences punishable by a fine or a term of imprisonment of up to five years as the principal penalty, the public prosecutor may in his motion to indict request the holding of a hearing for the imposition of a criminal sanction.

The public prosecutor may make the request referred to in paragraph 1 of this Article if he deems the holding of a trial unnecessary because of the complexity of the case and the evidence collected, and especially because the defendant was arrested during the commission of the criminal offence or has confessed the criminal offence.

If the public prosecutor acts in accordance with paragraph 2 of this Article, he may propose that the court impose on the defendant:

1) a term of imprisonment of up to two years, a fine of up to two hundred and forty daily amounts or up to five hundred thousand dinars or probation with the ordering of incarceration of up to one year or a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars and a probation period of up to five years – if the defendant has confessed to the commission of a criminal offence punishable by a term of imprisonment of up to five years;

2) a term of imprisonment of up to one year, a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars, up to two hundred and forty hours of community service , revocation of the driver's licence for up to one year, probation with the ordering of incarceration of up to one year or a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars and a probation period of up to three year , with a possibility of placing the defendant under protective supervision or imposing a judicial admonition – if the defendant has committed a criminal offence punishable by a fine or a term of imprisonment of up to three years as the principal penalty.

Examining the Request for Holding a Hearing

Article 513

If he does not issue any of the rulings referred to in Article 504 paragraph 1 of this Code, the judge shall immediately upon receiving the motion to indict examine whether the request for the holding of a hearing for the imposition of a criminal sanction has been submitted in accordance with the requirements referred to in Article 512 of this Code.

After examining the request, the judge shall schedule a trial or a hearing for the imposition of a criminal sanction.

Scheduling a Trial

Article 514

The judge determines in his order the date, time and place of holding of a trial:

1) if the motion does not concern a criminal offence referred to in Article 512 paragraph 1 of this Code;

2) if a penalty or criminal sanction not allowed under Article 512 paragraph 3 of this Code or under criminal law has been proposed in the motion;

3) if the complexity of the case and the evidence collected indicate a need to hold a trial.

Together with the summons for the trial the judge will have a copy of the motion to indict , without the request for holding a hearing for the imposition of a criminal sanction, served on the defendant and his defence counsel.

Scheduling a Hearing

Article 515

If he agrees with a request for holding a hearing for the imposition of a criminal sanction, the judge shall issue an order determining the date, time and place of holding of the hearing. The hearing is held within 15 days of the date of issuance of the order.

The parties and the defence counsel are summoned to the hearing, and the motion to indict is served on the defendant and his defence counsel together with the summons. The defendant shall be cautioned in the summons that the hearing shall be held in case of his absence if he was duly summoned, or, when defence is not mandatory, in case of failure of the defence counsel to appear at the hearing.

The summons must be served on the defendant so as to leave at least five days between the date of service of the summons and the date of the hearing.

Course of the Hearing

Article 516

A hearing for the imposition of a criminal sanction commences with a brief exposition of the public prosecutor about the evidence at his disposal and about the type and severity of the criminal sanction whose imposition he is proposing.

The judge then calls on the defendant to state his view on all facts and cautions him of the consequences of agreeing with the claims of the public prosecutor, and especially that he may not submit an objection and file an appeal against a first-instance judgment.

Decisions Concluding a Hearing

Article 517

Immediately upon the conclusion of a hearing for the imposition of a criminal sanction the judge shall render a judgment of conviction or issue an order scheduling a trial.

A judgment of conviction is pronounced if the defendant:

1) has agreed with the proposal of the public prosecutor presented at the hearing;

2) has not responded to the summons for the hearing.

If the defendant has not agreed with the proposal of the public prosecutor or if the judge has not accepted the proposal of the public prosecutor at the hearing, the judge shall issue an order scheduling the date, time and place of the trial.

Objection to a Judgment

Article 518

A judgment of conviction is served on the parties and the defence counsel.

The defendant and his defence counsel may within eight days of the date of service submit an objection to the judgment of conviction issued pursuant to Article 517paragraph 2 item 2) of this Code.

If the judge does not issue a ruling dismissing the objection as untimely or impermissible, he shall issue an order determining the date, time and place of the trial based on the public prosecutor's indicting proposal. At the trial the judge is not bound by the public prosecutor's proposal in respect of the type and severity of the criminal sanction (Article 500 paragraph 1 item 6)), or by the prohibition referred to in Article 453 of this Code.

The panel (Article 21 paragraph 4) decides on an appeal against the ruling referred to in paragraph 3 of this Article.

If no objection to the judgment referred to in paragraph 2 of this Article is filed, the judgment becomes final.

3. Special Provisions on the Imposition of Judicial Admonition

Pronouncement of a Judgment

Article 519

A judgment imposing judicial admonition is pronounced immediately after the conclusion of the trial or hearing for the imposition of a criminal sanction, with substantive reasons for pronouncing it.

During the pronouncement of the judgment the judge shall caution the defendant that no penalty is being imposed on him for the criminal offence he committed, because judicial

admonition is expected to influence him sufficiently to deter him from committing criminal offences in future.

Contents of a Judgment Done in Writing

Article 520

In the reasoning of the judgment imposing judicial admonition the judge shall state the reasons that guided him to impose judicial admonition.

If the judgment was pronounced in the absence of the defendant, the caution referred to in Article 519 paragraph 2 of this Code shall be entered in the reasoning.

Chapter XXI

PROCEEDINGS FOR THE IMPOSITION OF SECURITY MEASURES

Applicable Provisions of the Code

Article 521

The provisions of Articles 522 through 536 of this Code shall apply in proceedings for the imposition of security measures, and unless something special is prescribed in these provisions, the other provisions of this Code shall apply *mutatis mutandis*.

1. Proceedings for the Imposition of the Security Measure of Compulsory Psychiatric Treatment

Motion for the Imposition of a Security Measure

Article 522

If a defendant commits an unlawful act designated by law as a criminal offence in a state of mental incompetence, the public prosecutor shall submit a motion to the court to impose on the defendant a security measure of compulsory psychiatric treatment and confinement in a medical institution, i.e. a motion for compulsory psychiatric treatment at liberty, if the requirements envisaged in the Criminal Code for the imposition of such measure exist.

The security measures referred to in paragraph 1 of this Code may also be imposed when the public prosecutor modifies the indictment or motion to indict during the trial by submitting a motion for the imposition of these measures.

After the submission of the motion referred to in paragraph 1 of this Article the defendant must have a defence counsel (Article 74 item 7)).

Jurisdiction for Deciding on the Motion

Article 523

The court which has jurisdiction in the first instance shall decide after the holding of the trial on the motion for the imposition of a security measure of compulsory psychiatric treatment and confinement in a medical institution, or a motion for compulsory psychiatric treatment.

Detention

Article 524

In addition to the grounds referred to in Article 211 of this Code, the public prosecutor may also propose in the motion for the imposition of a security measure of compulsory psychiatric treatment the imposition of detention on a defendant who is at liberty if there exists a justifiable danger that he might commit a criminal offence as a result of mental incompetence.

Before it decides on the imposition of detention, the court shall obtain the opinion of an expert witness.

After the issuance of a ruling ordering detention the defendant shall be placed in an appropriate medical institution or premises suitable for his medical condition until the conclusion of proceedings before a first instance court.

If the defendant was in detention when the motion for the imposition of a security measure of compulsory psychiatric treatment was filed, the court shall act in accordance with paragraphs 2 and 3 of this Article.

Presence at the Trial

Article 525

In addition to the persons who must be summoned to the trial, an expert witness from the medical institution which was entrusted with the expert analysis of the mental competency of the defendant shall also be summoned.

The defendant shall be summoned if his medical condition makes it possible for him to attend the trial. Before issuing a decision, the panel president shall, if necessary, examine the expert witness who conducted the psychiatric examination of the defendant, and the defendant shall be examined if his condition permits.

If the defendant is incapable of attending the trial, it shall be deemed that he is challenging the content of the charges.

The legal representative of the defendant shall be notified about the trial, and if the defendant has none, the defendant's spouse or another person referred to in Article 433 paragraph 2 of this Code shall be notified.

Deciding on the Motion

Article 526

Upon the conclusion of the trial, the court shall render a decision immediately and pronounce it together with substantive reasons.

If the court determines that the reasons referred to in Articles 422 and 423 of this Code exist, it shall issue a judgment of dismissal or acquittal.

If the court determines that the defendant was not in a state of mental incompetence at the time of commission of the criminal offence, it shall issue a ruling discontinuing the proceedings for the imposition of a security measure.

If based on the presented evidence the court determines that the defendant has committed a certain unlawful act designated by law as a criminal offence and that he was mentally incompetent at the time of commission, it shall issue a ruling imposing on the defendant a security measure of compulsory psychiatric treatment and confinement in a medical institution, or compulsory psychiatric treatment at liberty.

In deciding which security measure to impose, the court is not bound by the public prosecutor's motion.

In the ruling imposing a security measure, the court shall also decide on the restitution claim under the conditions prescribed by this law.

New Charges

Article 527

Immediately after the issuance of a ruling on the termination of proceedings for the imposition of a security measure, the public prosecutor may make an oral statement waiving his right to an appeal and file an indictment or motion to indict for the same criminal offence.

The trial shall be held before the same panel or single judge, and the previously presented evidence shall not be presented again, unless the court determines otherwise.

Persons Authorised to File an Appeal

Article 528

The persons referred to in Article 433 paragraphs 1 and 2 of this Code may appeal against the ruling pronouncing a security measure of compulsory psychiatric treatment within eight days after the date of receipt of the ruling.

Imposition of a Security Measure together with a Penalty

Article 529

When a court imposes a penalty on a defendant who committed a criminal offence in a state of substantially diminished mental capacity, in the same judgment it shall impose a security measure of compulsory psychiatric treatment and confinement in a medical institution, if it determines that the relevant statutory conditions exist.

Deciding on Declaration of Incapacity

Article 530

The final decision imposing a security measure of compulsory psychiatric treatment and confinement in a medical institution, or compulsory psychiatric treatment at liberty (Article 526

paragraph 4 and Article 529) shall be delivered to the court competent for deciding on the declaration of incapacity.

The competent social service shall also be notified of the decision.

Discontinuing the Application of a Security Measure

Article 531

Acting on a proposal of a medical institution, competent social service or defendant on whom a security measure has been imposed, or *ex officio* once in nine months, the court which adjudicated in the first instance in which a security measure was imposed shall examine if the need for treatment and confinement in a medical institution has ceased.

After taking a statement from the public prosecutor, the court shall issue a ruling discontinuing the measure and order the defendant released from the medical institution if based on the opinion of a physician it determines that the need for treatment and confinement in the medical institution has ceased, and may also order his compulsory psychiatric treatment at liberty.

If the proposal to discontinue the measure referred to in paragraph 1 of this Article is rejected, it may be submitted again after the expiry of six months from the date of issuance of the ruling.

When a defendant whose mental capacity was substantially diminished is released from a medical institution, and the duration of the prison sentence to which he was sentence exceeds the time he spent in that institution , the court shall decide in the ruling on release whether the defendant will serve the rest of his sentence or be released on parole. A measure of compulsory psychiatric treatment at liberty may also be imposed on a defendant who is being released on parole, if statutory conditions for this exist.

Substitution of an Imposed Security Measure

Article 532

Acting *ex officio,* or acting on a proposal by the medical institution where a defendant is being treated, or should have been treated, the court (Article 531 paragraph 1) may impose a security measure of compulsory psychiatric treatment and confinement in a medical institution on a defendant on whom the security measure of compulsory psychiatric treatment at liberty was imposed.

The court issues the decision referred to in paragraph 1 of this Article after taking a statement from the public prosecutor if it determines that the perpetrator has not undergone medical treatment or has left it wilfully or that he has remained so dangerous for his environment despite the treatment that his confinement and treatment in a health care institution is necessary.

Before issuing the decision the court shall question the expert witness who performed the psychiatric examination of the defendant, and the defendant shall be examined if the state of his medical condition permits this. The court will inform the public prosecutor and the defence attorney about the hearing for the questioning of the expert witness.

2. Proceedings for the Imposition of a Security Measure of

Mandatory Treatment of Alcohol or Drug Addiction

Findings and Opinion of an Expert Witness

Article 533

The court decides on the imposition of a security measure of compulsory treatment of alcohol addiction or security measure of compulsory treatment of drug addiction after obtaining the findings and opinion of an expert witness.

The expert witness should also state his opinion about the possibilities for treating the defendant.

Enforcement of an Imposed Security Measure

Article 534

If treatment at liberty has been ordered within probation, and the convicted person has failed to undergo treatment or has left it wilfully, the court may revoke probation or order the enforcement of the imposed measure of compulsory treatment of the alcohol addiction or security measure of compulsory treatment of drug addiction in a medical or another specialised institution.

The decision referred to in paragraph 1 of this Article is issued by the court *ex officio* or acting on a proposal of the institution where the convicted person was or should have been treated.

Before making a decision the court shall take statements from the public prosecutor and the convicted person, and if necessary it shall also examine a physician from the institution where the convicted person was or should have been treated.

3.Proceedings for the Imposition of a Security Measure of Confiscation of Objects

Ruling on the Confiscation of Objects

Article 535

Objects whose confiscation is necessary under the criminal law for the purpose of protecting the interests of general security or for reasons of morality shall be confiscated even when criminal proceedings are not concluded with a judgment finding the defendant guilty or with a ruling imposing the security measure of compulsory psychiatric treatment.

The ruling on the confiscation of the objects referred to in paragraph 1 of this Article is issued by the court which has jurisdiction for the first-instance trial.

A ruling on the confiscation of objects is also issued by the court when due to an omission no such decision was issued in a judgment pronouncing the defendant guilty or a ruling on the imposition of the security measure of compulsory psychiatric treatment.

Service of the Ruling and the Right to an Appeal

Article 536

A certified copy of a ruling on the confiscation of an object shall be served on the owner of the object, if the owner is known.

The owner of the object has the right to appeal against the ruling referred to in Article 535 paragraphs 2 and 3 of this Code.

Chapter XXII

PROCEEDINGS FOR CONFISCATION OF PROCEEDS FROM CRIME

Applicable Provisions of the Code

Article 537

The provisions of Articles 538 through 543 of this Code shall apply in the proceedings for the confiscation of proceeds from crime, and unless these provisions specify something special, the other provisions of this Code shall apply *mutatis mutandis*.

Duty to Determine the Proceeds from Crime

Article 538

The proceeds from crime are determined in criminal proceedings *ex officio*.

The authority conducting proceedings is required to collect evidence and examine circumstances of importance for determining the proceeds from crime during the proceedings.

If an injured party has submitted a restitution claim whose subject matter excludes the confiscation of proceeds from crime, the proceeds from crime shall be determined only in the part which is not encompassed by the restitution claim.

Confiscating Proceeds from Crime from Other Persons

Article 539

When the confiscation of proceeds from crime from other persons may be considered, the person to whom proceeds from crime were transferred free of charge or with compensation obviously not commensurate with the true value, or a representative of a legal person, shall be summoned for questioning in the preliminary proceedings and at the trial. This person shall be cautioned in the summons that the proceedings shall be conducted even in his absence.

The representative of a legal person shall be examined at the trial after the defendant. The same procedure shall apply to the other person referred to in paragraph 1 of this Article, unless he has been summoned as a witness.

The person referred to in paragraph 1 of this Article, i.e. the representative of a legal person, is authorised to propose evidence in connection with the determination of the proceeds from crime, and to examine the defendant, witness, expert witness and professional consultant with the permission of the panel president.

The exclusion of the public from the trial does not relate to the person referred to in paragraph 1 of this Article, i.e. the representative of a legal person.

If the court determines only during the trial that proceeds of crime may be confiscated, it shall adjourn the trial and summon the person referred to in paragraph 1 of this Article, i.e. the representative of a legal person.

Temporary Measures for Securing Claims

Article 540

When proceeds from crime may be confiscated, the court shall order temporary measures of securing claims, acting *ex officio*, according to the provisions of the law which regulates the proceedings of enforcement and securing claims. In this case, the provisions of Article 257 paragraphs 2 to 4 of this Code shall apply *mutatis mutandi*s.

Decision of the Confiscation of Proceeds from Crime

Article 541

The court may impose the confiscation of proceeds from crime in the judgment of conviction or in a ruling on the imposition of the security measure of compulsory psychiatric treatment.

The court shall evaluate the proceeds from crime at its discretion, if its determination would cause disproportionate difficulties or considerably delay the proceedings.

The court shall specify in the summary judgment or ruling which object or amount of money is being confiscated.

A certified copy of the judgment, or ruling, is also delivered to the person referred to in Article 539 paragraph 1 of this Code, as well as the representative of a legal person, if the court has imposed the confiscation of proceeds from crime from that person, or legal person.

Analogous Application of Provisions on the Appeal against a First Instance Judgment

Article 542

The provisions of Article 434 paragraphs 4 and 5, Article 444 and Article 449 of this Code shall apply *mutatis mutandis* in respect of an appeal against a decision on the confiscation of proceeds from crime.

Motion to Reopen Criminal Proceedings

Article 543

A physical person or a representative of a legal person (Article 539 paragraph 1) may submit a motion for the reopening of criminal proceedings in respect of the decision on the confiscation of proceeds from crime.

Chapter XXIII

PROCEEDINGS FOR REVERSING A FINAL JUDGMENT

Applicable Provisions of the Code

Article 544

The provisions of Articles 545 through 561 of this Code shall apply in the proceedings for the reversal of a final judgment, and unless these provisions envisage something special, the other provisions of this Code shall apply accordingly.

1. Proceedings for Revoking Probation

Instituting Proceedings

Article 545

Proceedings for revoking probation are instituted at the request of an authorised prosecutor before the court which adjudicated in the first instance:

1) if it was said in the judgment in which probation was imposed that the penalty would be enforced if the convicted person failed to return the proceeds from crime, indemnify the damage he had caused by the criminal offence or fulfil other obligations stipulated by the criminal law within a specified time limit;

2) if a convicted person on whom protective supervision has been imposed does not fulfil the obligations ordered by the court.

Preliminary Examinations

Article 546

Immediately after receiving a request to revoke probation a single judge may conduct necessary examinations in order to establish facts and collect evidence of importance for the decision.

Scheduling a Hearing

Article 547

The judge issues an order determining the date, time and place for holding a hearing for the revocation of probation.

The parties and the defence counsel are summoned to the hearing referred to in paragraph 1 of this Article. In the case referred to in Article 545 paragraph 1 item 1) of this Code the injured party is also summoned to the hearing, and in the case referred to in Article 545 paragraph 1 item 2) of this Code, also the officer in charge of enforcing supervised probation.

The defendant shall be cautioned in the summons that the hearing shall be held even if does not appear, or, in cases where defence is not mandatory, if his defence counsel does not appear at the hearing.

The summons must be delivered to the defendant in such a way as to leave at least eight days between the date of service and the date of the hearing.

Course of the Hearing

Article 548

A probation revocation hearing commences with a presentation by the authorised prosecutor of the reasons for the revocation of probation.

If proceedings for revoking probation were instituted pursuant to Article 545 paragraph 1 item 1) of this Code, the judge shall call on the injured party to declare himself on the reasons referred to in paragraph 1 of this Article.

The judge thereafter calls on the defendant to state his position in regard of the request of the authorised prosecutor.

If the proceedings for the revocation of probation were instituted based on Article 545 paragraph 1 item 2) of this Code, the judge shall examine the officer who was responsible for the enforcement of supervised probation.

Decisions Concluding the Hearing

Article 549

Immediately after concluding the probation revocation hearing the judge shall issue a judgment rejecting or granting the motion for the revocation of probation.

Rejecting the Motion

Article 550

The judge shall reject the motion for the revocation of probation by a judgment if he determines that there are no grounds for the revocation of probation.

In the judgment the judge may decide *ex officio*:

1) to extend the time limit for fulfilling the obligation within the probation period, or, if the convicted person is unable to fulfil the imposed obligation for justified reasons, to release him from the fulfilment of that obligation or to replace it with another appropriate obligation (Article 545 paragraph 1 item 1));

2) to admonish the convicted person, who does not fulfil the obligations of protective supervision, or to extend the duration of protective supervision within the probation period, or to replace previous obligations with different ones (Article 545, paragraph 1, item 2)).

Revoking Probation

Article 551

The judge shall issue a judgment granting the motion for revoking probation and impose the penalty determined in the judgment of probation:

1) due to a failure to fulfil the obligation referred to in Article 545 paragraph 1 item 1) of this Code;

2) due to a failure to fulfil the obligation of protective supervision referred to in Article 545 paragraph 1 item 2) of this Code.

2. Proceedings for Reversing a Decision on a Penalty

a Proceedings for Pronouncing an Aggregate Sentence

Instituting Proceedings

Article 552

Proceedings for the imposition of an aggregate sentence are instituted at the request of the public prosecutor or the defendant and his defence counsel:

1) if several penalties were pronounced against the same defendant in two or more judgments, and provisions on the imposition of an aggregate penalty for concurrent criminal offences were not applied;

2) if during the pronouncement of an aggregate penalty, through the application on provisions on concurrence, a penalty that had already been included in the penalty imposed under the provisions on concurrence was taken as established;

3) if a final judgment pronouncing an aggregate penalty for several criminal offences could not be executed in part due to amnesty or a pardon.

Competence for Deciding on the Motion

Article 553

The motion for pronouncing an aggregate penalty is decided by the court:

1) which adjudicated in the first instance in the matter in which the harshest type of penalty was pronounced, and in case of penalties of the same type – the court which pronounced the harshest penalty, and if the penalties are equal – the last court to pronounce a penalty (Article 552 item 1));

2) which adjudicated in the first instance and in pronouncing a penalty erroneously took into consideration a penalty already encompassed by an earlier judgment (Article 552 item 2));

3) which adjudicated in the first instance (Article 552 item 3)).

Deciding on the Motion

Article 554

The court decides on a motion for pronouncing an aggregate penalty at a panel session.

Before making a decision the court shall take a statement from the opposing party.

The court shall issue a judgment rejecting or granting a motion for pronouncing an aggregate penalty.

Rejecting the Request

Article 555

The court shall issue a judgment rejecting a motion for pronouncing an aggregate penalty if it determines that the reasons referred to in Article 552 of this Code do not exist.

Granting the Motion

Article 556

In the judgment granting a motion for pronouncing an aggregate penalty the court shall:

1) reverse previous judgments in respect of the decisions on penalty and pronounce an aggregate penalty (Article 552 item 1));

2) reverse a judgment in respect of a pronounced aggregate penalty in which a penalty already encompassed by an earlier judgment was erroneously taken into consideration (Article 552 item 2));

3) reverse a judgment in respect of the penalty and pronounce a new penalty, or determine how much of the penalty imposed by an earlier judgment must be enforced (Article 552 item 3)).

If judgments issued by other courts were taken into consideration during the pronouncement of the penalty in the cases referred to in paragraph 1 items 1) and 2) of this Article, a certified copy of the new final judgment shall also be delivered to those courts.

b. Proceedings for the Mitigation of Penalty

Instituting the Proceedings

Article 557

Proceedings for the mitigation of a penalty are instituted at the request of the public prosecutor with special jurisdiction if the cooperating convicted person testified in the proceedings concluded with a final judgment of conviction in accordance with the agreement referred to in Article 327 paragraph 1 of this Code.

A motion for the mitigation of a penalty is submitted within 30 days of the date of when the judgment referred to in paragraph 1 of this Article became final.

Competence for Deciding on the Motion

Article 558

The court which tried the convicted cooperating witness in the first instance decides on the request for the mitigation of the penalty.

Deciding on the Motion

Article 559

A motion for the mitigation of a penalty is decided by the court in a panel session.

Before making a decision the court shall take a statement from the cooperating convicted person , and examine the ruling on accepting the convicted person's cooperation agreement.

The court shall issue a judgment rejecting or granting the motion for the mitigation of a penalty.

Rejecting the Motion

Article 560

The court shall issue a judgment rejecting a motion for mitigating a penalty if it determines that the cooperating convicted person did not fulfil completely all the obligations contained in the cooperation agreement.

Granting the Request

Article 561

The court shall issue a judgment granting a motion for the mitigation of a penalty and reverse the final judgment of conviction in respect of the decision on the penalty and pronounce a penalty to the cooperating convicted person in accordance with Article 330 of this Code.

Chapter XXIV

PROCEEDINGS FOR REALISING THE RIGHTS OF A CONVICTED PERSON

Applicable Provisions of the Code

Article 562

The provisions of Articles 563 to 582 of this Code shall apply in the proceedings for realising the rights of a convicted person, and unless these provisions envisage something special, the other provisions of this Code shall apply *mutatis mutandis*.

1. Proceedings for the Release on Parole

Instituting Proceedings

Article 563

A convicted person who has served two-thirds of the imposed prison sentence or his defence counsel may submit a petition for release on parole.

The panel (Article 21 paragraph 4) of the court which adjudicated in the first instance decides on the petition.

Preliminary Examinations

Article 564

Immediately upon receiving a petition for the release on parole the panel shall examine if all statutory requirements for submitting the petition are fulfilled and shall dismiss the petition with a ruling if it determines:

1) that it was submitted by an unauthorised person;

2) that the convicted person has not served two-thirds of his prison sentence;

3) that the convicted person tried to escape or did escape from the custodial institution while he was serving his prison sentence.

If it does not issue the ruling referred to in paragraph 1 of this Article, the panel shall request a report from the custodial institution in which the convicted person is serving his prison sentence about his conduct and other circumstances indicating whether the purpose of the penalty has been fulfilled, as well as a report of the official of the administrative body in charge of enforcing criminal sanctions.

Scheduling a Hearing for Deciding on the Petition

Article 565

The panel president issues an order scheduling the date, time and place of holding of a hearing for deciding on a petition for the release on parole.

The panel president summons to the hearing the convicted person, if he deems his presence necessary, the defence counsel of the convicted person, if he has one, the public prosecutor acting before the court deciding on the petition, and, if the report is positive, a representative of the custodial facility where the convicted person is serving his sentence.

The defence counsel shall be cautioned in the summons that the hearing shall be held even if he fails to appear at the hearing.

The summons must be served on the persons referred to in paragraph 2 of this Article in such a way as to leave at least eight days between the date of service of the summons and the date of the holding of the hearing.

Course of the Hearing

Article 566

A hearing for deciding on a petition for the release on parole commences with the presentation of the reasons for the release on parole by the defence counsel, and if the defence counsel is absent, the panel president shall briefly present the reasons for submitting the petition.

If the convicted person is attending the hearing, the panel president shall take a statement from him, and then call on the public prosecutor to present his position on the convicted person's petition.

If a representative of the custodial facility where the convicted person is serving his sentence has been invited to the hearing, the panel president shall examine the representative about the conduct of the convicted person during the service of the sentence, execution of work duty, in view of the convicted person's capacity for work, as well as other circumstances which would indicate that the purpose of the punishment has been achieved.

Decisions Concluding the Hearing

Article 567

Immediately after the end of the hearing, the panel shall issue a ruling rejecting or granting the petition for release on parole, and shall particularly take into account an estimate of the risk posed by the convicted person, his success in the execution of the action programme, prior convictions, personal circumstances, and the expected effect of the release on parole on the convicted person.

The panel may determine in the ruling on release on parole that the convicted person is required to fulfil certain obligations stipulated by criminal law, and may also decide to place the convicted person on parole under electronic surveillance.

The ruling on the release on parole is served on the convicted person and his defence counsel, public prosecutor, custodial facility where the convicted person is serving his sentence, court which sent the convicted person to serve the sentence, judge in charge of the enforcement of criminal sanctions whose territorial jurisdiction covers the permanent residence of the convicted person, police authority, officer from the administrative body in charge of enforcing criminal sanctions and social service centre in the area where the convicted person has permanent residence.

The public prosecutor, convicted person and his defence counsel may appeal against the ruling referred to in paragraph 1 of this Article.

Proceedings for Revoking the Parole

Article 568

The provisions of Articles 545 to 551 of this Code apply *mutatis mutandis* to the proceedings for the revocation of parole.

2. Proceedings for Rehabilitation and Termination of Security Measures or the Legal Consequences of Conviction

a) Rehabilitation Proceedings

a. Legal Rehabilitation Proceedings

Instituting Proceedings

Article 569

Proceedings for the legal rehabilitation of a person who had no convictions before the conviction to which the rehabilitation relates or who is deemed under the law to have had no prior conviction are instituted *ex officio* by the authority in charge of keeping criminal records.

Preliminary Examinations

Article 570

Before deciding whether the legal requirements for granting legal rehabilitation are fulfilled, the authority referred to in Article 569 of this Code shall conduct the necessary inquiries, in particular:

1) whether the secondary penalty has been executed or the security measures are still in effect;

2) whether criminal proceedings are in progress against the convicted person in connection with a new criminal offence committed before the expiry of the time limit prescribed for legal rehabilitation.

Deciding on Rehabilitation

Article 571

After conducting the inquiries within the meaning of Article 570 of this Code, the authority in charge of keeping criminal records shall issue:

1) a ruling declaring that the conditions for legal rehabilitation do not exist;

2) a ruling on legal rehabilitation.

The convicted person may lodge an appeal against the ruling referred to in paragraph 1 item 1) of this Article which shall be decided by the judge in charge of enforcement of criminal sanctions.

Rehabilitation request by a Convicted Person

Article 572

If the authority in charge of keeping criminal records does not issue a ruling that legal rehabilitation has taken place, a convicted person may request that it be determined that rehabilitation has occurred by force of law.

If the competent authority takes no action on the request of the convicted person within 30 days of the date of receipt of the request, the convicted person may request that the court which pronounced the judgment in the first instance issue a ruling on rehabilitation.

The decision on the request of the convicted person is issued by the panel (Article 21 paragraph 4), after taking a statement from the public prosecutor.

Judicial Rehabilitation Proceedings

Instituting Proceedings

Article 573

Judicial rehabilitation proceedings are instituted on the basis of a petition submitted by the convicted person or his defence counsel.

The petition referred to in paragraph 1 of this Article is decided by the panel (Article 21 paragraph 4) of the court which adjudicated in the first instance.

Preliminary Examinations

Article 574

Immediately upon receiving a petition for judicial rehabilitation the panel shall examine whether the necessary legal requirements for submitting the petition have been fulfilled and shall dismiss the petition by a ruling if it determines:

1) that it has been submitted by an unauthorised person;

2) that the convicted person has been sentenced to a term of imprisonment of more than five years ;

3) that the convicted person committed a new criminal offence within ten years of the date of the served, lapsed or remitted term of imprisonment of more than three and up to five years.

If it does not issue the ruling referred to in paragraph 1 of this Article, the panel may conduct necessary examinations, establish the facts invoked by the convicted person and obtain evidence about all circumstances of importance for the decision, in particular the conduct of the convicted person, and whether he has according to the best of his abilities indemnified the damage caused by the criminal offence.

The panel may seek a report on the conduct of the convicted person from the police within whose jurisdiction the convicted person stayed after serving his penalty, and may also seek such a report from the custodial facility where the convicted person served his penalty.

Scheduling a Hearing for Deciding on the Petition

Article 575

The president of the panel issues an order setting the date, time and place of the holding of a hearing for deciding on a petition for judicial rehabilitation.

The convicted person and his defence counsel, if he has one, and the public prosecutor acting before the court deciding on the petition are summoned to the hearing, and if the report is positive, a representative of the custodial facility where the convicted person has served his term of imprisonment may also be summoned.

The convicted person shall be cautioned in the summons that the hearing shall be held even if he or his defence counsel fails to appear.

The summons must be served on the persons referred to in paragraph 2 of this Article in such a way as to leave at least eight days between the date of service of the summons and the date of the hearing.

Course of the Hearing

Article 576

The hearing for deciding on a petition for judicial rehabilitation commences by a presentation of the reasons by the convicted person or his defence counsel, and if they are absent, the panel president shall briefly present the reasons for submitting the petition.

The president of the chamber then calls on the public prosecutor to present his position on the convicted person's petition.

If a representative of the custodial facility where the convicted person has served his sentence has been summoned to the hearing, the panel president shall examine the representative about the conduct of the convicted person during the service of the penalty, execution of work duty, in view of the convicted person's capacity for work, as well as other circumstances of importance for granting rehabilitation.

Decisions Concluding the Hearing

Article 577

Immediately after the conclusion of the hearing the panel shall issue a ruling rejecting or granting the petition for rehabilitation.

The convicted person and his defence counsel, as well as the public prosecutor may appeal against the ruling referred to in paragraph 1 of this Article.

If the panel rejects the petition because the conduct of the convicted person does not merit rehabilitation, the convicted person may repeat the petition at the expiry of one year from the date of finality of the ruling.

b) Proceedings for Terminating a Security Measure or the Legal Consequence of Conviction

Instituting Proceedings

Article 578

Proceedings for the termination of a security measure of a prohibition of engaging in a profession, occupation or a duty or measures of prohibition of operating a motor vehicle, or proceedings for the termination of the legal consequence of conviction concerning a prohibition of acquiring a certain right, are instituted on the basis of a petition submitted by a convicted person or his defence counsel.

The petition referred to in paragraph 1 of this Article is decided by the panel (Article 21 paragraph 4) of the court which adjudicated in the first instance.

Preliminary Examinations

Article 579

Immediately on receiving a petition for terminating a security measure or the legal consequence of conviction the panel shall examine whether the necessary legal requirements for submitting the petition have been fulfilled and dismiss the petition by a ruling if it determines:

1) that it has been submitted by an unauthorised person;

2) that a period of three years has not elapsed from the date of application of the security measure or the date of a served, lapsed or remitted penalty.

If it does not issue the ruling referred to in paragraph 1 of this Article, the chamber may conduct necessary examinations, establish the facts invoked by the petitioner and collect evidence on all circumstances of importance for the decision, in particular whether the convicted person indemnified the damage caused by the criminal offence and returned the proceeds from crime.

The panel may seek a report on the conduct of the convicted person from the police in whose area of jurisdiction the convicted person stayed after a served, lapsed or remitted penalty, and may also seek such a report from the custodial facility where the convicted person has served his sentence.

Ordering a Hearing for Deciding on the Petition

Article 580

The panel president shall issue an order setting the date, time and place of holding of a hearing for deciding on a petition for terminating a security measure or the legal consequence of conviction.

The convicted person and his defence counsel, if he has one, and the public prosecutor acting before the court deciding on the petition are summoned to the hearing, and if necessary also a representative of the custodial facility where the convicted person has served his sentence .

The convicted person will be cautioned in the summons that the hearing shall be held even if he or his defence counsel fail to appear.

The summons must be served on the persons referred to in paragraph 2 of this Article in such a way as to leave at least eight days between the date of service of the summons and the date of the hearing.

Course of the Hearing

Article 581

The hearing for deciding on a petition for terminating a security measure or the legal consequence of conviction commences by a presentation of the reasons by the convicted person or his defence counsel, and if they are absent, the panel president shall briefly present the reasons for submitting the petition.

The panel president then calls on the public prosecutor to present his position on the convicted person’s petition.

If a representative of the custodial facility where the convicted person has served his sentence has been summoned to the hearing, the panel president shall examine the representative about the conduct of the convicted person during the service of the penalty, execution of work duty, in view of the convicted person's capacity for work, as well as other circumstances indicating whether a termination of a security measure or the legal consequences of conviction is justified.

Decisions Concluding the Hearing

Article 582

Immediately on concluding the hearing the panel shall issue a ruling rejecting or granting the petition for terminating a security measure or the legal consequence of conviction.

The convicted person and his defence counsel as well as the public prosecutor may appeal against the ruling referred to in paragraph 1 of this Article.

If the panel rejects a petition for terminating a security measure or the legal consequence of conviction, a new petition may be submitted at the expiry of one year from the date of finality of the ruling.

Chapter XXV

PROCEEDINGS FOR THE REALISATION OF RIGHTS OF A PERSON WRONGFULLY DEPRIVED OF LIBERTY OR WRONGFULLY CONVICTED

1. General Provisions

Applicable Provisions of the Code

Article 583

The provisions of Articles 584 through 595 of this Code shall apply in proceedings for the realisation of the right to restitution and other rights of a person wrongfully deprived of liberty or wrongfully convicted, and unless something special is prescribed in these provisions, the other provisions of this Code shall apply accordingly.

Person Wrongfully Deprived of Liberty

Article 584

A person is deemed wrongfully deprived of liberty in the following cases:

1) when he was deprived of liberty and no proceedings were instituted, or the proceedings were terminated by a final ruling, or the charges were rejected, or the proceedings were concluded with a final judgment of rejection of acquittal;

2) when he served a prison sentence, and in connection with a request for the reopening criminal proceedings or a request for the protection of legality he was sentenced to a term of imprisonment of shorter duration than that he served, or he was sentenced to a criminal sanction

that does not include the deprivation of liberty, or he was declared guilty but his penalty was remitted;

3) when he was deprived of liberty for a period longer than the duration of the criminal sanction consisting of deprivation of liberty to which he was sentenced;

4) when he was deprived of liberty due to a mistake or unlawful work of the authority conducting proceedings, or the deprivation of liberty lasted longer, or the person was kept for a longer time in a facility for the enforcement of a criminal sanction consisting of deprivation of liberty.

A person who caused the deprivation of liberty by his impermissible actions is not entitled to restitution. In the cases referred to in paragraph 1 item 1) of this Article, the right to restitution is also excluded if the circumstances referred to in Article 585 paragraph 2 item 2) of this Code existed, of if the proceedings were terminated as a result of the defendant's death (Article 20).

The provisions of Articles 588 through 591 of this Code shall apply *mutatis mutandis* in the restitution procedure in the cases referred to in paragraph 1 of this Article.

Wrongfully Convicted Person

Article 585

A person on whom a criminal sanction was imposed by a final decision or was declared guilty but whose penalty was remitted, and upon a request for an extraordinary legal remedy new proceedings were terminated by a final decision, or the charges were rejected by a final decision, or the proceedings were concluded by a final acquittal, is deemed wrongfully convicted.

The convicted person referred to in paragraph 1 of this Article is not entitled to restitution:

1) if he deliberately caused his own conviction by a false confession or in another manner, unless he was coerced into it;

2) if proceedings were terminated or charges rejected because in new proceedings the subsidiary prosecutor, or the private prosecutor, waived prosecution, or the injured party abandoned his motion, and the abandonment resulted from an agreement with the defendant.

In the case of a conviction for concurrent criminal offences, the right of restitution may also refer to individual criminal offences in respect of which requirements for awarding damages are fulfilled.

Ruling Annulling the Registration of a Wrongful Conviction

Article 586

The court which adjudicated in the first instance in criminal proceedings will *ex officio* issue a ruling annulling the entry of a wrongful conviction in the criminal records.

The ruling is delivered to the authority in charge of keeping criminal records.

Data from the criminal records about an annulled registration may not be divulged to any person.

Prohibition of Using Data from the Files

Article 587

A person who is under the provisions of this Code allowed to review and copy files relating to wrongful deprivation of liberty or wrongful conviction may not use data from those files in a way that would be detrimental to the realisation of the rights of a wrongfully arrested or wrongfully convicted person.

The chief judge is required to caution thereof the person who has been allowed to review the files, which caution shall be recorded on the file, with a signature of that person.

2. Proceedings for Realising the Right to Restitution

Restitution Claim

Article 588

Before submitting a restitution claim to the court, the injured party is required to submit the request to the ministry in charge of judicial affairs for the purpose of reaching a settlement on the existence of damage and the type and amount of restitution.

The restitution claim is decided by a restitution commission whose composition and manner of operation is governed by a regulation of the minister in charge of judicial affairs.

Civil Claim for Restitution

Article 589

If the restitution claim is not accepted or the commission does not rule on the claim within three months of the date when it was submitted, the injured party may file with the competent court a civil action for restitution.

If a settlement has been reached only in respect of a part of the claim, the civil action for restitution may be submitted in respect of the remainder of the claim.

While the proceedings referred to in paragraph 1 of this Article are in progress, the statute of limitations referred to in Article 591 of this Code does not run.

A civil action for restitution is brought against the Republic of Serbia.

Rights of the Heirs of the Injured Party

Article 590

The heirs inherit only the injured party's right to the compensation of property damage, and if the injured party has already filed a claim, the heirs may resume the proceedings only within the limits of the already filed claim for the compensation of property damage.

The injured party's heirs may after his death continue the restitution proceedings or institute proceedings if the injured party died before the expiry of the statute of limitations and did not waive his claim, in accordance with rules on restitution prescribed by the Law on Contracts and Torts.

Expiry of the Statute of Limitations of the Right to Restitution

Article 591

The statute of limitations for the right to restitution expires three years from the date of finality of the first instance judgment of rejection or acquittal , or the finality of the first instance ruling terminating the proceedings or rejecting the charges, and if an appellate court decided on an appeal – from the date of receipt of the appellate court decision.

3. Proceedings for Realising the Right to Moral Satisfaction

Prerequisites for Realising the Right

Article 592

If a case to which a wrongful deprivation of liberty or wrongful conviction of a person is related was presented in the media and thereby damaged the reputation of that person, the court shall at his request publish in the media a statement on the decision declaring that the deprivation of liberty, or conviction was wrongful.

If the case was not presented in the media, such a statement shall at the request of that person be delivered to a state and other authority, enterprise and other legal or natural person who employs the person who was wrongfully deprived of liberty or wrongfully convicted.

Following the death of the convicted person, his spouse, person with whom he lived in a common-law marriage or other permanent personal association, children, parents or siblings are entitled to submit the request referred to in paragraphs 1 and 2 of this Article.

The request referred to in paragraphs 1 and 2 of this Article may also be submitted if no restitution claim (Article 588 paragraph 1) has been filed.

Irrespective of the requirements referred to in Article 585 of this Code, the request referred to in paragraphs 1 and 2 of this Article may also be submitted when in connection with an extraordinary legal remedy the legal qualification of the criminal offence was altered, if the convicted person's reputation was substantially damaged due to the legal qualification in the earlier conviction.

Proceedings for Realising the Right

Article 593

The request for realising the right to moral satisfaction is submitted within six months (Article 591) to the court which adjudicated the case in the first instance.

The request is decided by the panel (Article 21 paragraph 4).

The provisions of Article 584 paragraph 2 and of Article 585 paragraph 2 item 1) and paragraph 3 of this Code are applied *mutatis mutandis* in deciding on the request.

4.Proceedings for Realising the Right to the Recognition of Years of Service or Social Insurance

Prerequisites for Realising the Right

Article 594

A person whose employment or social insurance were terminated due to a wrongful deprivation of liberty or wrongful conviction shall have the same [pensionable] years of service or years of social insurance recognised as if he had been employed during the period when he was deprived of the benefits due to a wrongful deprivation of liberty or wrongful conviction.

The period of unemployment caused by the wrongful deprivation of liberty or wrongful conviction is also calculated into the years of service or social insurance, unless it resulted from a fault of that person.

Proceedings for Realising the Right

Article 595

Whenever deciding on a right affected by the years of service or social insurance, the competent authority or organisation shall take into account the years recognised under Article 594 of this Code.

If the authority or organisation referred to in paragraph 1 of this Article does not take into account the recognised years, the injured party may request that the competent court (Article 589 paragraph 1) determine that the recognition of that period has occurred by force of law.

A civil action is brought against the authority or organisation contesting the recognised years of service of social insurance and against the Republic of Serbia.

At the request of the authority or organisation where the right to years of service or of social insurance is being realised, the prescribed contributions for the period for which the years of service or social insurance have been recognised will be paid from budget funds (Article 594).

The years of insurance recognised in accordance with Article 594 of this Code are calculated in full into the pensionable years of service.

Chapter XXVI

PROCEEDINGS FOR ISSUANCE OF A WANTED NOTICE OR NOTICE ASKING INFORMATION

Applicable Provisions of the Code

Article 596

The provisions of Articles 597 through 601 of this Code shall apply in proceedings for issuing a wanted notice or notice asking information, and unless something special is envisaged under these provisions, the other provisions of this Code shall apply *mutatis mutandis*.

Determining the Defendant's Address

Article 597

If the permanent or temporary residence of the defendant is not known, where required by the provisions of this Code the public prosecutor or the court shall request from the police to look for the defendant and to notify them of his address.

Issuing a Wanted Notice

Article 598

The issuance of a wanted notice may be ordered if a defendant against whom criminal proceedings have been instituted in connection with a criminal offence which is prosecutable *ex officio* is in flight, and there exists an order for him to be brought in or a ruling ordering detention.

The issuance of the wanted notice is ordered by the court conducting the criminal proceedings.

The issuance of the wanted notice shall also be ordered in the case of the flight of the defendant from the facility where he is serving a criminal sanction consisting of a deprivation of liberty, and the order is issued by the institution's warden.

The order of the court or the institution's warden for issuing a wanted notice is delivered to the police authorities for execution.

Issuing a Notice Asking Information

Article 599

If information about certain objects or persons connected to a criminal offence is needed, or those objects or persons should be found, especially if it is necessary for the purpose of establishing the identity of an unidentified corpse, the authority conducting proceedings will order the issuance of a notice asking information.

A police authority may also publish photographs of cadavers and missing persons if there are grounds for suspicion that the death, or disappearance of those persons resulted from a criminal offence.

Posting a Wanted Notice or Notice Asking Information

Article 600

A wanted notice or notice asking information is issued by the police whose jurisdiction covers the territory of the court before which the criminal proceedings are being conducted, or the institution from which a person serving a criminal sanction consisting of a deprivation of liberty has escaped.

The media may also be used to inform the public about the wanted notice or notice for information.

If it is probable that the person for whom a wanted notice or notice for information has been issued is abroad, the ministry in charge of internal affairs may also issue an international wanted notice, with the approval of the ministry in charge of judicial affairs.

At the request of a foreign authority, the ministry in charge of internal affairs may:

1) issue a wanted notice for a person suspected of being in the Republic of Serbia, if a declaration is made in the request that in case he is located his extradition would be requested;

2) issue a notice for the collection of necessary information about certain objects or persons connected to a criminal offence, or for their finding, especially if it is necessary for the purpose of establishing the identity of an unidentified corpse , if there exists suspicion that they are located on the territory of the Republic of Serbia.

Withdrawing a Wanted Notice or Notice Asking Information

Article 601

The authority which ordered the issuance of a wanted notice or notice asking information is required to withdraw it immediately after the wanted person or object is found, or when the statute of limitation for criminal prosecution or for the execution of criminal sanctions expires, or other reasons appear making the wanted notice or notice asking information no longer necessary.

Chapter XXVII

TRANSITIONAL AND FINAL PROVISIONS

Calculation of Time Limits which are Already Running

Article 602

If a time limit was running on the date marking the beginning of implementation of this Code, that time limit will be calculated in accordance with the provisions of this Code, except if it was longer according to the provisions of the Criminal Procedure Code (*Official Gazette of the FRY* No. 70/01 and 68/02 and *Official Gazette of the RS* No. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 122/08, 20/09 – other law, 72/09 and 76/10) .

Application of the Code in the Previously Commenced Proceedings

Article 603

An investigation which is underway on the date marking the beginning of implementation of this Code will be completed under the provisions of the Criminal Procedure Code (*Official Gazette of the FRY,* Nos. 70/01 and 68/02 and *Official Gazette of the RS,* Nos. 58/04, 85/05, 85/05 – other law 115/05, 49/07, 20/09 – other law, 72/09 and 76/10) and the rest of the proceedings will be implemented according to the provisions of this Code.

Legality of Undertaken Actions

Article 604

The legality of actions undertaken before the beginning of implementation of this Code will be assessed in accordance with the provisions of the Criminal Procedure Code (*Official Gazette of the FRY*, No. 70/01 and 68/02 and *Official Gazette of the RS*, No. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 122/08, 20/09 – other law, 72/09 and 76/10).

If in the proceedings in connection with criminal offences in which a prosecutor's office of special jurisdiction acts in accordance with a special law, which started under the provisions of this Code before January 15 2013, it is determined in a ruling that the special department of the competent higher court is incompetent, the legality of the undertaken actions will be assessed under the provisions of this Code.

Application of the Code on Persons who Were Granted the Cooperating Witness Status

Article 605

The legal provisions on the cooperating witness which applied when the status of cooperating witness was granted will continue to apply on the persons who received this status before the date when this Code took effect.

Issuing By-Laws

Article 606

The by-laws prescribed by this Code shall be issued within six months of the effective date of this Code.

Revocation of the Previous Criminal Procedure Code and Provisions of the Other Law

Article 607

The Criminal Procedure Code (*Official Gazette of the FRY,* Nos. 70/01 and 68/02 and *Official Gazette of the RS,* Nos. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 20/09 – other law, 72/09 and 76/10) is revoked by the entry into force of this Code

The provision of Article 15a and articles 15h to 15o of the Law on the Organization and Competence of State Authorities in Combating Organized Crime, Corruption and Other Specially Serious Criminal Offences (*Official Gazette of the RS* No. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04 – other law, 45/05, 61/05 and 72/09 and 72/11-other law) and articles 13, 13a, 13b, 14, 15 and 16 of the Law on the Organization and Competence of State Authorities in Combating War Crimes (*Official Gazette of the RS* No. 67/03, 135/04, 61/05, 101/07 and 104/09) are revoked on January 15, 2012.

Entry into Force and Beginning of Implementation of the Code

Article 608

This Code enters into force on the eighth day from the date of its publication in the *Official Gazette of the Republic of Serbia* and will be implemented as of January 15, 2013, except in the proceedings in connection with criminal offences in which a prosecutor's office of special jurisdiction acts in accordance with a special law, in which case its implementation will begin as of January 15, 2012.

Separate articles of the Law on amendments and supplements of the Criminal Procedure Code
(Official Gazette of RS, no. 101/22011)

Article 6

An investigation in connection with criminal offences in which a prosecutor's office of special jurisdiction acts in accordance with a special law, which is underway on the date of entry into force of this Law, shall be completed under the provisions of the Criminal Procedure Code (*Official Gazette of the FRY,* Nos. 70/01 and 68/02 and *Official Gazette of the RS,* Nos. 58/04, 85/05, 85/05 – other law 115/05, , 49/07, 20/09 – other law, 72/09 and 76/10) and provisions of the Law on the Organization and Competence of State Authorities in Combating Organized Crime, Corruption and Other Specially Serious Criminal Offences (*Official Gazette of the RS* No. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04 – other law, 45/05, 61/05 and 72/09 and 72/11-other law) and the Law on the Organization and Competence of State Authorities in Combating War Crimes (*Official Gazette of the RS* No. 67/03, 135/04, 61/05, 101/07 and 104/09), which have been applicable until the date of entry into force of this Law.

Article 7

This Law enters into force on January 15, 2012.

THE CRIMINAL PROCEDURE CODE

(Official Gazette of the FRY, Nos. 70/2001 and 68/2002 and the Official Gazette of the RS", Nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010)

Part I
GENERAL PROVISIONS

Chapter I
BASIC PRINCIPLES

Article 1

(1) The present Code contains rules whose aim is that no innocent person is convicted and that perpetrators of criminal offences are sanctioned in accordance with requirements provided by the Criminal Code and based on the lawfully conducted proceedings.

(2) Prior to rendering a final judgment or ruling on punishment, the rights of the accused person and his freedom may be limited only under conditions stipulated by this Code.

Article 2

Criminal sanctions against perpetrators of a criminal offences may be imposed only by a competent court and in proceedings instigated and conducted in accordance with this Code.

Article 3

1) Everyone is considered innocent until proven guilty by a final decision of a competent court.

(2) Government authorities, the information media, citizens' associations, public figures and other persons are required to adhere to the rules defined in paragraph 1 of the present Article, as well as to refrain from violating with public statements on the ongoing criminal proceeding other rules of the proceeding, rights of the accused person and aggrieved party, the independence, authority and the impartiality of the court.

Article 4

1) Any accused person or suspect is entitled:

1) to be informed about the offence with which he is charged, as soon as possible and no later than at the first interrogation, in detail and in a language he understands, about the nature and grounds for the accusation and the evidence collected against him;

2) to defend himself alone or with the professional assistance of a defence counsel of his own choosing from list of lawyers;

3) to have his defence counsel present at his interrogation;

4) to be brought before the court as soon as possible and tried in an impartial and fair manner and within a reasonable period of time;

5) to be provided enough time and facilities to prepare his defence;

6) to declare himself on all the facts and evidence against him and to present facts and evidence in his favour, either alone or through his counsel, to question prosecution witnesses and request that defence witnesses are questioned under the same conditions as the prosecution witnesses, in his presence;

7) to be provided with a translator and interpreter if he does not understand and speak the language used in the proceedings.

(2) The court or other state authority is required to:

1) To ensure that an accused person or suspect exercises all his rights, as provided for in paragraph 1 of the present Article;

2) Prior to the first interrogation, to warn the accused person or suspect that any statement he makes may be used as evidence against him and instruct him about the right to engage a defence counsel and the right to have the defence counsel attend his interrogation.

(3) If the accused person or the suspect does not engage a defence counsel, the court shall appoint him a defence counsel where so prescribed by this Code.

(4) An accused person who cannot afford a counsel, shall be, at his request, assigned a defence counsel at the expense of the Court's budget in accordance with this Code.

(5) An accused person that is accessible to the court can be tried only in his presence, except where *in absentia* trials are explicitly permitted by this Code.

(6) An accused person who is accessible to the court cannot be punished if he is not allowed to be heard and to defend himself.

Article 5

(1) A person deprived of liberty without a court decision shall immediately be advised that he is not obliged to make any statement, that any statement he makes may be used as evidence against him, and that he has the right to be interrogated in presence of a defence counsel who shall be appointed at the expense of budget funds, if he cannot afford one.

(2) Any person deprived of liberty without a court decision, must, without delay and not later than within 48 hours, be handed over to the competent Investigating judge, failing which he shall be released.

(3) In addition to the rights pertaining to accused persons and suspects pursuant to Article 4 of this Code, a person deprived of liberty shall have the following additional rights:

1) that at his request the time, location and any change of location of deprivation of liberty is communicated without delay to a family member or another person close to him, as well as to a diplomatic-consular representative of the state whose citizen he is, i.e. an international organisation representative if the person is a refugee or a person without citizenship;

2) to have undisturbed communication with his defence counsel, diplomatic-consular representative, representative of international organisation and the Protector of Citizens (Ombudsman);

3) to be examined, at his own request and without delay, by a physician of his own choosing, and if that is not possible, by a physician designated by the authority in charge of deprivation of liberty, or the investigating judge;

4) to initiate proceedings before a court or lodge an appeal with a court, which is required to decide without delay on the legality of his detention.

(4) any violence against persons deprived of liberty or persons with limited freedom is prohibited and punishable. Such persons must be treated humanly, respecting the dignity of their person.

Article 6

(1) No one shall be prosecuted and sanctioned for a criminal offence for which he has already been acquitted or convicted by a final judgment, or for which criminal proceedings have been discontinued by a final decision, or the charges have been thrown out by a final decision.

(2) In criminal proceedings in connection with an extraordinary judicial remedy a final court judgment cannot be revised to the detriment of the accused person.

Article 7

(1) The official language in criminal proceedings is the Serbian language and the Cyrillic script. Other languages and alphabets are officially used pursuant to the Constitution and the law.

(2) In courts whose territorial jurisdictions cover areas national minorities, their languages and scripts are also in official use in criminal proceedings, in accordance with the Constitution and the law.

Article 8

(1) Complaints, appeals and other submissions to the court shall be written in the official language in use in that court.

(2) Foreign nationals deprived of liberty may lodge submissions with the court in his own language.

Article 9

(1) Criminal proceedings are conducted in the language in official use in the court.

(2) Parties, witnesses and other persons participating the proceedings are entitled to use their own languages in the proceedings. If the proceedings are not being conducted in the language of such persons, the court shall make available interpretation, payable from budget funds, of statements made by such persons or other persons, as well as translations of documents and other written evidentiary materials.

(3) Persons referred to in paragraph 2 of this Article shall be instructed about the right to interpretation/translation and may waive that right if they know the language in which the proceedings are being conducted. The record shall reflect that such instruction was made, and the participant's statement.

(4) Interpretation/translation services shall be performed by professional interpreters/translators.

Article 10

(1) Summons, decisions and other briefs sent by the court shall be in the Serbian language.

(2) Where the language of a national minority is also in official use in a court, the court shall serve court briefs in that language to persons who are members of the minority and used their language in the proceedings. Such persons may request that briefs are served to them in the language in which are proceedings are being conducted.

(3) Accused persons in detention, serving a sentence or committed to a health-care institution for the execution of a security measure shall be served translations of the briefs referred to in paragraph 1 of this Article in the language they used in the proceedings.

Article 11

Correspondence between courts and mutual legal assistance shall be conducted in the language in official use in the respective courts. Where a brief is done in a national minority language and is destined for a court where that language is not in official use, a Serbian translation shall be attached to it.

Article 12

Any form of violence and extortion of confessions or other statement from an accused person or other persons participating in proceedings is prohibited and punishable.

Article 13

(Erased)

Article 14

Persons unjustifiably convicted of a criminal offence or unjustifiably deprived of liberty shall be entitled to rehabilitation, the right to indemnification from the state, and other rights established by law.

Article 15

The court and other government authorities participating in the proceedings shall in due time advise the accused person or other participants in proceedings, who are likely to omit to perform an action or fail to exercise their rights, of the rights to which they are entitled under this Code as well as the consequences of such omission.

Article 16

(1) Courts are required to conduct proceedings without delay, and to prevent any abuses of the rights enjoyed the participants in the proceedings.

(2) The duration of detention shall be limited to the shortest necessary period of time.

Article 17

(1) The court and the public authorities participating in criminal proceedings are required to truthfully and fully establish the facts essential for rendering a lawful decision.

(2) The court and public authorities are required to afford equal treatment in examining and establishing both incriminating and exculpatory facts.

Article 18

(1) Evidence which has been adduced and is of significance for rendering a decision shall be assessed by the court freely. The court shall base its judgements or decisions corresponding to judgements solely on those facts of whose certainty it is completely convinced.

(2) Courts may not base their decisions on evidence which is *per se* or by the method of its collection contrary to the provisions of the Constitution or ratified international treaties, or is explicitly prohibited by this Code or other law.

(3) Where there exists doubt in respect of decisive facts which represents elements of a criminal offence or on which depends the application of another provision of the Criminal Code, in its judgement or decision corresponding to a judgement the court shall rule in favour of the accused.

Article 19

(1) Criminal proceedings shall be initiated and conducted on the request of an authorized prosecutor.

(2) For criminal offences prosecutable *ex officio* the authorized prosecutor is the public prosecutor, and for criminal offences prosecuted on the basis of a private prosecution the authorized prosecutor is a private prosecutor.

(3) Where the Public Prosecutor finds that there are no grounds for initiating or continuing criminal proceedings, an aggrieved party may assume his role as a subsidiary prosecutor, under conditions regulated by this Code.

Article 20

Unless provided for otherwise by this Code, the public prosecutor is required to institute criminal prosecution where there is reasonable suspicion that a certain person has committed a criminal offence prosecutable *ex officio*.

Article 21

(1) Courts shall sit in chambers in criminal proceedings .

(2) In first-instance courts, a single judge shall sit where so prescribed by this Code.

Article 22

Except as otherwise provided by law, when the institution of criminal proceedings entails restricting certain rights, such restriction shall take effect when the indictment assumes legal force, and for criminal offences punishable as a principal penalty with a fine or imprisonment of less than three years, from the date of a conviction, whether or not it is final.

Chapter II
THE JURISDICTION OF COURTS

1. Material jurisdiction and composition of the courts

Article 23

Courts shall adjudicate all cases within the limits of their material jurisdictions prescribed by law.

Article 24

(1) First-instance courts sit in chambers composed of two judges and three lay judges when adjudicating criminal offences punishable by a term of imprisonment of thirty years or more, and in chambers of one judge and two lay judges when considering criminal offences punishable by a more lenient punishment. First-instance courts sit in chambers composed of three judges where so prescribed by this Code or other law. Where summary proceedings provisions are applicable, a single judge shall adjudicate in the first instance.

(2) Second-instance courts sit in chambers composed of three judges.

(3) Third-instance courts sit in chambers composed of five judges.

(4) Investigatory activities are conducted by investigating judges of first-instance courts.

(5) The court president and the chamber's president shall decide in cases where it is so defined in this Code.

(6) First instance courts sit in chambers of three judges when deciding on appeals against rulings of the investigating judge and other rulings when so prescribed by this Code, render decisions in the first instance outside the trial and make motions in cases as provided by this Code or other law.

(7) Courts shall decide on requests for the protection of legality in chambers consisting of three judges, and in chambers consisting of five judges when deciding on requests for the protection of legality against a decision of the chamber of that court due to a violation of the law.

(8) Unless specified otherwise by this Code, higher-instance courts sit in chambers composed of three judges in cases not envisaged in the preceding paragraphs of this Article.

Articles 25 and 26

(Erased)

2. Territorial jurisdiction

Article 27

(1) As a rule, territorial jurisdiction is held by the court within whose territory a criminal offence was committed or attempted.

(2) If a criminal offence is committed within the territory of several courts or on their border, or if it is uncertain within which territory the offence was committed, the court which at the request of authorized prosecutor first instituted proceedings shall have jurisdiction, and if proceedings have not yet been instituted - the court to which the request to institute proceedings was first submitted shall have jurisdiction.

Article 28

Where a criminal offence was committed on a domestic vessel or domestic aircraft while in a domestic harbour or aerodrome, it shall fall under the jurisdiction of the court of the territory of the harbour or aerodrome. In other cases when the criminal offence is committed on a domestic vessel or domestic aircraft, it shall fall under the jurisdiction of the court of the territory of the home port of the ship or the home aerodrome of the aircraft, or the domestic harbour or aerodrome where the vessel first stops or lands.

Article 29

(1) Where a criminal offence has been committed through the press, it shall fall under the jurisdiction of the court of the territory on which the text was printed. If the place is unknown or if the text was printed abroad, it shall fall under the jurisdiction of the court of the territory on which the printed text is being distributed.

(2) Where under the law the author of the text is responsible, the court of the territory on which the author has domicile shall have jurisdiction, or the court of the territory on which the event that the text refers to occurred.

(3) The provisions of paragraphs 1 and 2 of this Article shall apply accordingly where a text or statement was made public on the radio, television and other public information media.

Article 30

(1) If the location of the commission of the criminal offence is not known or if it is outside the territory of the Republic of Serbia, it falls under the jurisdiction of the court of the territory where the accused has abode or permanent residence.

(2) Where the court on the territory where the accused has abode or permanent residence has already initiated proceedings, it shall retain jurisdiction even after the location of the commission of the criminal offence becomes known.

(3) Where the location of the commission of the criminal offence, of the abode or permanent residence of the accused, are not known, or both lie outside the territory of Serbia, jurisdiction shall rest with the court of the territory where the accused is deprived of liberty or surrenders.

Article 31

Where a person commits criminal offences both in Serbia and abroad, jurisdiction shall rest with the court competent for the criminal offence committed in the Republic of Serbia.

Article 32

If it cannot be determined under the provisions of this Code which court has territorial jurisdiction, the Supreme Court of Cassation shall determine one the courts with material jurisdiction to conduct the proceedings.

3. Joinder and severance of proceedings

Article 33

(1)) If the same person is accused of several criminal offences, jurisdiction for some resting with a lower-instance court and for others with a higher-instance court, then the higher court shall be deemed to have jurisdiction, and if courts of the same type are competent, than the court which first instituted proceedings based upon a request of an authorized prosecutor shall have jurisdiction of the case. If the proceedings have not yet been instituted, then the court which first received a request to institute proceedings shall have jurisdiction.

(2) The provisions of paragraph 1 of this Article shall apply in determining jurisdiction where an aggrieved party had committed a criminal offence against the accused person.

(3) The court that that shall have jurisdiction over accomplices shall as a rule be any court that as having jurisdiction over one of them first instituted proceedings.

(4) The court that has jurisdiction over a perpetrator of a criminal offence shall as a rule also have jurisdiction over accomplices, accessories after the fact, aiders and abettors, as well as over the persons who failed to report the preparation of the criminal offence, the commission of the criminal offence, or the perpetrator.

(5) In all the cases referred to in the preceding paragraphs, as a rule joint proceedings shall be held and a single judgement rendered.

(6) The court may decide to conduct joint proceedings and to pass a single judgment also in cases when several persons are charged for several criminal offences, but only provided that a link exists between the committed criminal offences as well as the same evidence. If lower courts have jurisdiction over some of these criminal offences, and higher courts over others, then only the higher instance court shall have jurisdiction to conduct joint proceedings.

(7) The court may decide to conduct joint proceedings and issue a single judgement where separate proceedings are pending before the same court against the same person in connection with several criminal offences, or against several persons in connection with the same criminal offence.

(8) Decisions on joinder of proceedings shall be made by the court which is competent to conduct joint proceedings. Decisions to join proceedings or refusing a motion to join proceedings are not appealable.

Article 34

(1) The court that has jurisdiction pursuant to Article 32 of this Code may upon the proposal of the parties or *ex officio*, for important reasons or reasons of expediency and until the end of the trial, decide to sever the proceeding for certain criminal offences or against certain accused persons and separately complete the proceedings, or to refer them to another court having jurisdiction.

(2) Decisions to sever proceedings or refusing a motion to sever proceedings are not appealable.

4. Transfer of territorial jurisdiction

Article 35

(1) When the court that has jurisdiction is prevented from conducting criminal proceedings due to legal or factual reasons, it is required to notify thereof the immediately higher court, which shall in turn designate another court that has material jurisdiction on its territory.

(2) This decision is not appealable.

Article 36

(1) The Supreme Court of Cassation may determine another materially competent court to conduct the proceedings if it is obvious that this would make conduct of the proceedings easier, or if other important reasons exist.

(2) The ruling referred to in paragraph 1 of this Article may be issued by the court acting on a motion of the investigating judge, a single judge, the presiding judge of a chamber or the competent public prosecutor.

5. Assessment and conflict of jurisdiction

Article 37

(1) The court is required to look after its material and territorial jurisdiction, and as soon as it determines that it is not competent it shall declare its lack of jurisdiction and after the ruling becomes final shall refer the case to the court with the proper jurisdiction.

(2) Where after a trial has been initiated the court determines that a lower court is competent, it shall not refer the case to the lower court, but complete the proceedings and render a decision.

(3) After an indictment takes legal effect, a court may not declare lack of territorial jurisdiction, nor may parties in proceedings challenge the court’s territorial jurisdiction.

(4) Courts which lack territorial jurisdiction are is required to conduct those activities in the proceedings for which there is a danger of deferrals.

Article 38

(1) If a court to which a case has been referred as the court with the proper jurisdiction considers that the court that referred the case or another other court has jurisdiction, it shall initiate a procedure for resolving the conflict of jurisdictions.

(2) Where in connection with an appeal against a decision of a court of first instance declaring its lack of jurisdiction a court of second instance renders a decision, this decision shall also be binding with respect to jurisdiction for the court to which the case has been referred, if the second-instance court has jurisdiction for resolving jurisdictional disputes between the courts involved.

Article 39

(1) Jurisdictional disputes between courts shall be decided by the court immediately superior to the courts involved.

(2) Before rendering a ruling on a jurisdictional dispute, the court shall ask the opinion of the public prosecutor representing the prosecution before that court in cases when criminal proceedings are conducted on his request.

(3) Rulings on jurisdictional disputes are not appealable.

(4) If the conditions referred to in Article 34 of this Code are fulfilled, the court may concurrently with the decision on jurisdictional dispute also render *ex officio* a decision on the transfer of territorial jurisdiction.

(5) Until jurisdictional disputes between courts are resolved, each of the courts involved are is required to undertake procedural actions with respect to which there is a danger of deferrals.

Chapter III
RECUSAL

Article 40

A judges or lay judge may not perform judicial duty:

1) where he was aggrieved by the criminal offence;

2) where the judge is the spouse or relative by blood to any degree, or collaterally to the fourth degree, and by marriage to the second degree, of the accused person, his defence counsel, the prosecutor, aggrieved parties, their legal representatives or proxies;

3) where the judge is a foster-parent or foster-child, adopter or adoptee, guardian or ward of the accused person, his defence counsel, the prosecutor or aggrieved parties;

4) where in the same criminal proceedings the judge had performed investigatory actions, or had taken part in the proceedings as a prosecutor, defence counsel, legal

representative or proxy of an aggrieved party or of the prosecutor, or was heard as a witness or an expert witness;

5) where in the same case the judge had taken part in rendering a decision of a lower-instance court or had in the same court taken part in the issuance of a decision which is being appealed;

6) where there exist circumstances to doubt the judge's impartiality.

Article 41

(1) Upon learning of the existence of any of the grounds referred to in Article 40 paragraph 1 items 1) to 5) of this Code, a judge or lay judge is required to immediately suspend all work on the case and notify thereof the president of the court, who will assign a substitute. Where the recusal of the president of a court is concerned, he will be replaced by the judge of the court with the longest seniority in that court, and where that is not possible, a substitute shall be designated by the president of the immediately higher court.

(2) Where a judge or lay judge deems that there exist other circumstances justifying his recusal (Article 40 paragraph 1 item 6), he shall notify the president of the court thereof.

Article 42

(1) Recusal may be sought by the defence counsel and the parties.

(2) Motions to recuse a judge or lay judge may be filed by the parties or the defence counsel prior to the commencement of the trial, and where they learn of grounds for recusal at a later date, such motions shall be filed immediately upon becoming aware of those grounds.

(3) Motions to recuse a president of the court on the grounds referred to in Article 40 paragraph 1 item 6 may be filed by defence counsel and parties no later than five days from receiving summons for the trial.

(4) Motions to recuse judges of higher courts may be filed by parties and defence counsel in appeals and in responses to appeals.

(5) The parties and defence counsel may seek the recusal only of a specific judge or lay judge involved in the proceedings.

(6) The parties and defence counsel are required to substantiate in their motion the circumstances which led them to believe in the existence of any of the grounds for recusal provided by law. Grounds listed in earlier recusal motions which were denied may not be specified again in new recusal motions.

Article 43

(1) The president of the court rules on motions for recusal referred to in Article 42 of this Code.

(2) Where the recusal is sought of a president of the court, or a president of the court and a judge or lay judge, the recusal ruling will be rendered by the president of the immediately higher court, and where the recusal of the president of the Supreme Court of Cassation is sought, the ruling will be delivered by a general session of the judges of that court.

(3) Before a ruling is issued on a motion to recuse, statements shall be taken from the judge, lay judge, or president of the court, and other actions shall be taken as required.

(4) Rulings upholding a motion to recuse are not appealable. Rulings denying a motion to recuse may be challenged by a special appeal, and where the ruling was issued after the issuance of the indictment, only in appeals against judgements.

(5) Where a motion to recuse was filed in contravention of the provisions of Article 42 paragraphs 2, 3, 5 and 6 of this Code, or is clearly intended to prolong the proceedings, the motion shall be denied in full or in part. Rulings denying the motion are not appealable. Rulings denying motions to recuse are issued by the president of the court, and from the date of the opening of the session – the chamber. The judge whose recusal is being requested may take part in rendering such a ruling from the opening of the session.

Article 44

When a judge or lay judge learns that a motion for his recusal has been filed, he is required to immediately suspend all work on the case, and where recusal referred to in Article 40 paragraph 1 item 6 of this Code is concerned, may until the rendering of a ruling on the motion conduct only activities for which there exists a danger of deferrals.

Article 45

(1) The provisions on the recusal of judges and lay judges shall be applied accordingly to public prosecutors and persons authorised by law to represent the public prosecutor in the proceedings, record-keepers, interpreters and other professionals, as well as expert witnesses, unless specifically provided for elsewhere (Article 116).

(2) Public prosecutors rule on motions for the exclusion of persons authorised by law to represent the public prosecutor in criminal proceedings. Motions to exclude a public prosecutor shall be ruled on by the immediately superior public prosecutor. Motions to exclude the Republican Public Prosecutor are subject to the application of provisions of specific laws.

(3) Motions to exclude record-keepers, interpreters, professionals or expert witnesses shall be ruled on by the chamber, president of the chamber or a judge.

(4) Where authorised officers of the Ministry of Internal Affairs – police – undertake investigatory actions pursuant to this Code, motions for their exclusion shall be ruled on

by the investigating judge. If a record-keeper participates in the performance of such actions, motions to exclude the record-keeper shall be ruled on by the official performing the action.

Chapter IV
PUBLIC PROSECUTOR

Article 46

(1) The basic right and the basic duty of the public prosecutor is to prosecute criminal offences.

(2) In the case of criminal offences prosecutable *ex officio,* the public prosecutor shall be empowered to:

1) conduct pre-trial proceedings in criminal proceedings;

2) request initiation of investigations and direct the course of the pre-trial proceedings in accordance with this Code;

3) to file indictments and represent the prosecution, i.e., the motion to indict, before the competent court;

4) to file appeals against court rulings which are not yet enforceable, and to submit extraordinary legal remedies against final court decisions.

5) to conduct other actions as prescribed by this Code.

(3) For the purpose of the exercise of the competences referred to in paragraph 2 item 1 of this Article, all authorities participating in pre-trial proceedings are required to notify the competent public prosecutor about all actions undertaken. The Ministry responsible for Internal affairs – the police (hereinafter: internal affairs authority) and all other public authorities responsible for detecting criminal offences are required to act in accordance with every request of the competent public prosecutor.

(4) Where an internal affairs authority or other public authority does not act in accordance with the request of the public prosecutor referred to in paragraph 3 of this Article, the public prosecutor shall notify the senior officer in command of the said authority, and if needed may also notify the competent government minister, the government, or the competent parliamentary body.

Article 47

Public prosecutors shall proceed before competent courts in accordance with the law.

Article 48

The territorial jurisdiction of the public prosecutor is determined according to the provisions which apply to the jurisdiction of the court in whose territory the public prosecutor was appointed.

Article 49

Where there is a danger of deferrals, procedural actions may also be undertaken by a public prosecutor who is not competent, who has a duty to immediately notify the competent public prosecutor thereof.

Article 50

Public prosecutors undertake procedural actions directly or through persons authorised to by law to represent them.

Article 51

Conflicts of jurisdiction between public prosecutors shall be settled jointly by the immediately higher public prosecutor.

Article 52

Public prosecutors may drop requests for criminal prosecution until the conclusion of the trial before the court of first instance, and before higher courts - in cases provided for by this Code.

Chapter V
THE AGGRIEVED AND THE PRIVATE PROSECUTOR

Article 53

(1) For criminal offences prosecuted on the basis of a request of an aggrieved party, or a private prosecution, the request or the motion shall be submitted within three months of the date the authorised person learned about the criminal offence and the perpetrator.

(2) Where a motion for private prosecution has been filed in connection with the criminal offence of insult, the accused person may until the conclusion of the trial file an action against the prosecutor who insulted him on the same occasion (counter-suit). In this case the court shall render a single judgement.

Article 54

(1) Requests for criminal prosecution are submitted to the competent public prosecutor, and requests for private prosecution are submitted to the competent court.

(2) Where aggrieved parties submit criminal complaints or claims for indemnification in criminal proceedings, it shall be deemed that they thereby also submitted requests for prosecution.

(3) If the aggrieved party has submitted a criminal complaint or motion for prosecution, and during the proceedings it is determined that a criminal offence subject to private prosecution is involved, the criminal complaint or motion shall be considered to be filed in a timely fashion if they were filed within the time limit prescribed for submitting private actions. The private prosecution submitted in a timely manner shall be considered to be a motion of the aggrieved party submitted in a timely manner, if it is determined during the proceedings that a criminal offence which is subject to prosecution based upon a motion is involved.

Article 55

(1) For minors and persons fully deprived of their legal capacity, the request or motion for private prosecution shall be submitted by their legal representatives.

(2) A minor who has turned sixteen can submit the request or motion for private prosecution by himself.

Article 56

If an aggrieved party or a private prosecutor should die during the period prescribed for submitting requests or motions for private prosecution, or during the course of the proceedings, their spouses, common-law spouses or other persons with whom such persons live in extramarital or other lasting associations, children, parents, adopters, adoptees and siblings may file within three months of the person's death requests of motions for private prosecution, or state for the record that they shall continue the proceedings.

Article 57

Where more than one person suffered damage from a criminal offence, prosecution shall be effected or continued on a request or motion of private prosecution by any one of the aggrieved parties.

Article 58

Aggrieved parties and private prosecutors may by a statement given to the court in which the proceedings are being conducted drop their requests or motions for private prosecution by the end of the trial. In such case they forfeit the right to re-submit requests or motions for private prosecution.

Article 59

(1) Where a private prosecutor fails to appear at the trial although duly summoned or if the summons could not have been served due to his failure to inform the court of the change of address or abode, it shall be deemed that he has withdrawn the request, unless stipulated otherwise by this Code (Article 445).

(2) The president of the chamber shall allow restitution to private prosecutors unable to appear at the trial or to notify the court in a timely manner of a change of abode or

temporary residence on justifiable grounds, if within eight days of the termination of the obstruction he files a request for restitution.

(3) Restitution may not be sought at the expiry of a period of three months of the date of failure to act.

(4) Rulings allowing restitution are not appealable.

(5) The ruling on terminating the proceedings issued in the case referred to in paragraph 1 of this Article takes legal effect at the expiry of the time limits referred to in paragraphs 2 and 3 of this Article.

Article 60

(1) Aggrieved parties and private prosecutors are entitled to point to all facts during the investigation and to propose evidence they deem are of significance for the criminal matter and their indemnification claims.

(2) Aggrieved parties and private prosecutors shall be entitled during the trial to offer evidence, question the defendant, witnesses and expert witnesses, make objections and explanations in connection with their statements, and to make other statements and proposals.

(3) Aggrieved parties, aggrieved parties acting as prosecutors and private prosecutors are entitled to examine documentation and objects collected as evidence. Aggrieved parties may be barred from examining documentation until they are heard as witnesses.

(4) Investigating judges and chamber presidents shall inform aggrieved parties and private prosecutors about the rights specified in paragraphs 1 to 3 of this Article.

Article 61

(1) When the public prosecutor finds that that there are no grounds for instituting prosecution for criminal offences prosecutable *ex officio,* or when he assesses that there is no case against any of the known accomplices, he is required to notify aggrieved parties of his decision within a time limit of eight days and advise aggrieved parties of their right to assume private prosecution. This shall also be done by the court which rules to stay proceedings after the public prosecutor drops the charges.

(2) Aggrieved parties shall also be entitled to undertake or continue prosecution, within eight days of the receipt of the notice referred to in paragraph 1 of this Article.

(3) Where the public prosecutor drops the charges, in taking over prosecution aggrieved parties may maintain the charges already filed, or file new charges.

(4) Aggrieved parties who were not informed that the public prosecutor failed to institute prosecution or dropped the charges may file with the competent court a statement on instituting or taking over proceedings within three months of the date when the public

prosecutor dropped the complaint, or of the date when the ruling staying the proceedings was issued.

(5) Where a public prosecutor or the court notifies aggrieved parties that they may assume prosecution, they shall communicate to them instruction on the actions required for exercising that right.

(6) Where an aggrieved party acting as a prosecutor dies during the periods prescribed for undertaking criminal prosecution or during the proceedings, his spouse, common-law spouse or other person with whom the aggrieved lived in an extramarital or other lasting association, his children, parents, adoptees, adopters and siblings may within three months of the date of his death assume prosecution, or give a formal statement that they continue the proceedings.

(7) The ruling staying the proceedings after the public prosecutor drops the charges assumes legal force at the expiry of the time limits referred to in paragraphs 2 and 4 of his Article.

Article 62

(1) Where the public prosecutor drops the charges during the trial, aggrieved parties are required to declare immediately, or no later than eight days thereafter in writing, whether they wish to continue the prosecution. If the aggrieved party is not present at the trial, and has been duly summoned, or if the summons could not be served due to a failure to inform the court of the change of permanent residence or abode, it shall be deemed that the aggrieved party does not wish to continue with the prosecution.

(2) The president of the chamber of the court of first instance shall allow restitution to aggrieved parties not duly summoned, or duly summoned but failing to appear, on justifiable grounds, at the trial at which a judgment was rendered to dismiss charges because the public prosecutor had cropped the charges, if the aggrieved party within eight days from the receipt of the judgment submits a request for restitution and if in that request he declares that he is continuing the prosecution. In this case a new trial date shall be set and the previous judgment shall be overturned by the judgment rendered at the new trial. If the duly summoned aggrieved party does not appear at the new trial the prior judgment shall remain in force. The provisions of Article 59 paragraphs 3 and 4 of this Code shall also be applied in this case.

(3) The judgement dismissing the charges pronounced in the case referred to in paragraph 1 of this Article becomes final at the expiry of all time limits for submitting requests for restitution.

Article 63

(1) Where aggrieved parties fail within the legally-prescribed time limits to initiate or continue prosecution, or where aggrieved parties as subsidiary prosecutors fail to attend the trial although properly summoned, or where the summons could not be served due to a failure to communicate to the court changes in abode or permanent residence, it shall be deemed that the aggrieved partied dropped prosecution .

(2) In the case of a failure of aggrieved partied as subsidiary prosecutors to attend the trial although properly summoned, the provisions of Article 59 paragraphs 2 to 5 of this Code shall be applied.

Article 64

(1) Aggrieved parties as prosecutors are entitled to all the rights exercised by public prosecutors, except for those to which public prosecutors is entitled in their capacity of public authorities.

(2) In proceedings conducted on a request of aggrieved parties as subsidiary prosecutors, the public prosecutor is entitled, until the conclusion of the trial, to take over criminal prosecution and representation of the prosecution.

Article 65

(1) Where aggrieved parties are minors or persons totally devoid of the capacity to act, their legal representatives are authorised to issue all statements and perform all actions to which the aggrieved party is entitled under this Code.

(2) Aggrieved parties over the age of 16 are authorised to make their own statements and performs actions in the proceedings.

Article 66

(1) Private prosecutors, aggrieved parties and aggrieved parties acting as subsidiary prosecutors, as well as their legal representatives, may exercise all their procedural rights via a proxy.

(2) Where proceedings are being conducted upon the request of an aggrieved party as a subsidiary prosecutor, for a criminal offence punishable by law by more than five years' imprisonment, a proxy may be appointed for the subsidiary prosecutor on his own request if it is in the interest of achieving the aim of the criminal prosecution, and if the subsidiary prosecutor is owing to his financial status unable to cover the costs of representation. Rulings on the request shall be issued by the investigating judge, or the president of the chamber, and the proxy shall be appointed by the president of the court from the ranks of lawyers.

Article 67

Private prosecutors, subsidiary prosecutors and aggrieved parties, as well as their legal representatives and proxies, are required to notify the court of every change of abode or permanent residence.

Chapter VI
DEFENCE COUNSEL

Article 68

(1) Accused persons may retain defence counsel for the duration of the criminal proceedings.

(2) A defence counsel may be retained for the accused person by his legal representative, spouse, lineal relation by blood, adopter, adoptee, sibling and foster-parent, as well as a common-law spouse or other person with whom accused lives in an extramarital or other lasting association.

(3) Only lawyers may be retained as defence counsel, and may be replaced by a trainee lawyer where proceedings concern a criminal offence punishable by imprisonment of up to five years. Defence counsel before the Supreme Court of Cassation may only be lawyers.

(4) Defence counsel are required to submit powers of attorney to the authority before which the proceedings are being conducted. Accused persons may also issue defence counsel verbal powers of attorney, that shall be officially recorded at the authority where the proceedings are being conducted.

Article 69

(1) Several accused persons may have a joint defence counsel only where that would not be contrary to the interests of their defence.

(2) A single accused person may retain a maximum of five defence counsel in one proceedings, and it shall be deemed that defence exists where only one defence counsel is present at any one time during the proceedings.

Article 70

(1) Co-accuse, aggrieved parties, spouses of aggrieved parties or the prosecutor, of their lineal relations by blood to any degree, in the collateral line to the fourth degree, or up to the second degree by marriage, may not be defence counsel.

(2) Persons summoned to the trial as witnesses may also not act as defence counsel, except if under this Code they are relieved of the duty to give evidence and made given formal statements that they will not give evidence.

(3) Persons who had in the same case served as judges or public prosecutors, or undertaken actions in pre-trial proceedings, may also not be defence counsel.

Article 71

(1) Where an accused person is mute, deaf or unable to conduct his own defence successfully, or where the proceedings concern a criminal offence punishable by a term of imprisonment of over ten years, the accused person must have a defence counsel during the very first interrogation.

(2) Accused persons remanded in custody must have defence counsel while in detention.

(3) Accused persons tried *in absentia* (Article 304) must have defence counsel as soon as a ruling is issued on a trial *in absentia*.

(4) Where accused persons in the cases of obligatory defence referred to in the preceding paragraphs do not retain a defence counsel, the president of the court shall assign to them a defence counsel *ex officio* for the further course of the criminal proceedings until the judgement becomes final, and where a term of imprisonment of forty years has been pronounced, also for extraordinary legal remedy proceedings. When a defence counsel is assigned to an accused person *ex officio* after the indictment is filed, he shall be notified thereof together with being served the indictment. Where in the cases of obligatory defence a defendant is left without a defence counsel during the proceedings, and does not retain another defence counsel, the president of the court where the proceedings are being conducted shall assign a defence counsel *ex officio*.

(5) Assignment of defence counsel shall take place from a list of lawyers, submitted to the president of the court of first instance by the local bar association, in accordance with the order of names on that list. The names on the list of the bar association are listed in the order of the Serbian Alphabet. In assigning a defence counsel *ex officio,* the court is required to abide by the sequence of names on the list.

Article 72

(1) Where the necessary conditions do not exist for obligatory defence, and the proceedings concern a criminal offence punishable by a term of imprisonment of over three years, and in other cases where it is required by the interests of fairness, the accused person shall at his request be assigned a defence counsel, if his financial status makes him unable to bear the costs of his defence.

(2) Rulings on such requests shall be rendered by the investigating judge, the president of a chamber, or an individual judge, and the defence counsel shall be assigned by the president of the court. The provision of Article 71 paragraph 5 of this Code shall be applied in respect of determining a defence counsel.

Article 73

(1) Accused persons may retain a different defence counsel instead of the one assigned to them (Articles 71 and 72). In that case the defence counsel assigned shall be relieved of that duty.

(2) Defence counsel assigned in accordance with the provision of Article 71 paragraph 2 of this Code shall be relieved of that duty after rulings on discontinuing detention become final.

(3) Defence counsel who have been assigned to accused persons may request to be relieved of that duty only on justifiable grounds.

(4) Before the trial, rulings on the relief of a defence counsel from duty shall be rendered by the investigating judge or chamber president, at he trial by the chamber, in the

appeals procedure by the president of the first-instance chamber, or the chamber responsible for ruling in appeals proceedings. These rulings are not appealable.

(5) The president of the court may relieve of duty an assigned defence counsel who is performing his duties in an unorderly manner. The president of the court shall replace the relieved defence counsel with another defence counsel. The bar association shall be notified of the relief of duty of the defence counsel.

Article 74

(1) After a ruling on conducting an investigation or immediately following the issuance of the indictment (Article 244), and even prior to them, if the suspect has been interrogated in accordance with provisions relating to the interrogation of accused persons, the defence counsel shall be entitled to examine case documentation and objects collected which will serve as evidence.

(2) Immediately prior to the first interrogation of a suspect, the defence counsel shall be entitled to read the criminal complaint, the record of the crime scene inspection, the findings and opinions of expert witnesses, and the request to conduct an investigation.

Article 75

(1) Where a suspect is in detention, his defence counsel may correspond with him and talk to him.

(2) Defence counsel are entitled to conduct confidential conversations with suspects deprived of liberty even before they have been interrogated, as well as with accused persons who are in detention. Only visual control of such conversations before the first interrogation and during the investigation is permitted, while aural control is not permitted.

(3) Defence counsel may not confer with accused persons on how the latter should reply to questions he has already been asked.

Article 76

(1) Defence counsel shall have authority to conduct for the benefit of the accused person all actions which the accused person can perform.

(2) Defence counsel’s rights and duties are terminated if an accused person revokes the power of attorney, as well as when they are relieved of duty.

Chapter VII
EVIDENTIARY ACTIONS

1. Searches of abode, other premises and persons

Article 77

(1) Searches of the abode and other premises of accused persons or other persons may be conducted only where it is probable that the search will lead to the capture of the accused person or the detection of evidence of a criminal offence or objects of importance for criminal proceedings.

(2) A search of a law office may be conducted only in respect of a certain object, file or document.

(3) Searches of persons may be conducted where it is probable that the search will lead to the detection of evidence or objects of importance for criminal proceedings.

Article 78

(1) Searches shall be ordered by a court by way of a written and substantiated search warrant.

(2) Search warrants shall be served before the commencement of the search to the persons whose premises or whose persons will be searched. Before the search, the person to whom the search warrant relates shall be called to surrender voluntarily the person or objects being searched for. That person shall be instructed that he or she is entitled to have a lawyer or defence counsel present at the search. Where the person to whom the search warrant relates requests the presence of a lawyer or defence counsel, the commencement of the search shall be postponed until their arrival, but by no more than three hours.

(3) Searches may be commenced without the service of a search warrant or issuance of a call to a person to surrender persons or things, or the instruction on the right to a lawyer or defence counsel, where armed resistance or other form of violence is expected, or where it is obvious that preparations have begun for or the destruction has begun of evidence of the criminal offence or objects of importance for the criminal proceedings.

(4) Searches are as a rule conducted in the daytime. Searches may also be conducted at night, if so ordered in the search warrant, as well as when a search was begun in the daytime and was not completed by nightfall, or where there exist the grounds specified in Article 81 paragraph 1 of this Code.

Article 79

(1) The holder of an abode or other premises shall be invited to attend the search, and if not present, his representative, or an adult member of the household or an adult neighbour.

(2) Locked premises, furniture or other objects shall be opened by force only where their holder is not present or refuses to open them of his own free will. In opening the foregoing efforts shall be made to avoid unnecessary damage.

(3) Searches of abode or persons shall be attended by two adults as witnesses. The person performing the search and the witnesses present at the scene shall be of the

same sex as the person being searched. Before the commencement of the search the witnesses shall be instructed to observe the course of the search, as well as that they are entitled to enter their objections to the record of the search if they believe that its contents are not accurate.

(4) Where the premises of public authorities, enterprises and other legal persons are being searched, their managing official shall be summoned to attend the search.

(5) Where a law office is being searched, in accordance with paragraph 2 of this Article or in the absence of the lawyer to whom the office belongs, a representative of the competent bar association shall be summoned, and if that is not possible, another lawyer who is a member of the same bar association.

(6) Searches and inspections of military premises shall be implemented on the basis of authorisation issued by the competent armed forces officer.

(7) Searches of abode or persons shall be conducted with care and respect for the dignity of the person and right to privacy, and without unnecessarily disturbing the peace.

(8) A record shall be made of every search of abode or persons and signed by the person whose premises or person were being searched, and the persons whose presence is mandatory. Only objects connected to the purpose of the search shall be seized. The objects and documents being seized shall be entered and accurately designated in the search record, which facts shall also be entered in the receipt which shall immediately be served to the person from whom the objects and/or documents were seized.

(9) Video and audio recordings may be made of the course of the search, and objects found during the search may be photographed separately. These recordings shall be attached to the search records.

Article 80

Where during searches of abodes or persons objects are found not linked to the criminal offence in connection with which the search was ordered but indicating the existence of another criminal offence prosecutable *ex officio*, these shall be described in the search record and seized, and a receipt of the seizure shall be issued immediately. A public prosecutor shall promptly be notified of the foregoing for the purpose of initiating criminal proceedings. The objects shall be returned immediately if the public prosecutor finds no grounds for instituting criminal proceedings, and there exists no other legal foundation for confiscating the objects.

Article 81

(1) Authorised officers of the Ministry of Internal Affairs may enter abodes or premises without a warrant issued by the court and where required by exigency conduct searches without the presence of witnesses, if the holder of the abode so requests, if someone is calling for assistance, in order to enforce a court decision to place a person in detention

or bring in an accused person, in order to deprive of liberty the perpetrator of a criminal offence or to eliminate a direct and serious threat to persons and property. The reasons for conducting a search without a warrant shall be specified in the record.

(2) The holder of the abode, if present at the scene, is entitled to object to the actions of the authorities referred to in paragraph 1 of this Article. The authorised officer of the Ministry of Internal Affairs shall instruct the holder of the abode of this right and enter his objection in the certificate on entering the premises and in the record of the search.

(3) In the cases referred to in paragraph 1 of this Article no record shall be made, no record shall be made, but the holder of the abode shall immediately be issued a certificate specifying the grounds for entering the premises and the objections of the holder of the premises. If a search was also conducted in premises belonging to another, the provisions of Article 79 paragraphs 3 and 7 of this Code shall be applied.

(4) Authorised officers of the Ministry of Internal Affairs may without a search warrant and without the presence of witnesses perform personal searches during the enforcement of arrest warrants or during deprivation of liberty, where there exists suspicion that the person possesses an offensive weapon or implement, or if there exists suspicion that he will discard, conceal or destroy objects which should be seized from him as evidence in criminal proceedings.

(5) Where authorised officers of the Ministry of Internal Affairs conduct searches without search warrants, they are required to promptly file a report thereof to the investigating judge, and if no proceedings have yet been instituted – to the competent public prosecutor.

2. Seizure of objects

Article 82

(1) Objects which must be seized under the Criminal Code, or which may serve as evidence in criminal proceedings, shall be seized and placed with the court for safekeeping, or their safekeeping will be secured in another way.

(2) The objects referred to in paragraph 1 of this Article include automatic data processing devices and equipment on which electronic records are kept or may be kept. Where so ordered by the court, persons using these devices and equipment shall make them accessible to the authority conducting the proceedings and provide information required for their use. Before seizing such objects, the authority conducting the proceedings shall in the presence of an expert conduct an inspection of the devices and equipment and make a record of their contents. If the user is attending the aforesaid activity, he may enter his objections.

(3) Anyone holding such objects is required to surrender them when so ordered by the court. Persons who refuse to surrender the objects may be fined up to 100,000 RSD, and if after paying the fine they once again refuse to surrender the objects, they may again be fined in the same manner. These provisions shall also be applied to officials and responsible persons in public organs of authority, enterprises or other legal persons.

(4) Decisions on appeals against the ruling ordering the fine shall be rendered by a chamber (Article 24 paragraph 6).

(5) Authorised officers of the Ministry of Internal Affairs may seize the objects referred to in paragraph 1 of this Article when acting pursuant to Articles 225 and 238 of this Code or enforcing an order issued by a court.

(6) During the seizure of the objects the location where they were found and their description shall be noted, and, if necessary, establishment of their identicalness shall be secured in another way. A receipt shall be issued for the objects seized.

Article 83

(1) Public authorities may refuse to disclose or surrender their files and other documents if they deem that making their contents public would cause damage to the public interest. Where disclosure or surrender of files and other documents has been refused, the final decision shall be issued by a chamber (Article 24 paragraph 6).

(2) Enterprises and other legal persons may request that data related to their activities not be made public. Rulings on the request shall be rendered by a chamber (Article 24 paragraph 6).

Article 84

(1) Documents seized which may serve as evidence shall be inventoried. If that is not possible, they shall be placed in a cover and sealed. The documents' owner may place his own seal on the cover.

(2) The person from whose the documents were seized shall be summoned to attend the opening of the cover. If that person fails to comply with the summons or is absent, the cover shall be opened, the documents examined and inventoried in his absence.

(3) During the examination of the documents due care shall be taken to prevent unauthorised persons from learning about their contents.

Article 85

(1) An investigating judge may, acting independently or on a proposal of a public prosecutor, order postal, telecommunications and other enterprises, companies and persons duly registered for the transfer of information to retain letters, telegrams and other communications dispatched to an accused person or sent by an accused person and to hand them over to the investigating judge, with a confirmation of receipt, where there exist circumstances leading to reasonable expectation that the communications will serve as evidence in proceedings.

(2) The communications shall be opened by the investigating judge in the presence of two witnesses. Due care shall be taken in this process not to damage seals, and the covers and addresses shall be kept. A record shall be made of the opening.

(3) Where the interests of the proceedings so allow, the accused person or the person to whom the communication was sent may be informed about its contents, in full or in part, and the communication may even be handed over to the accused person. If the accused person is absent, the communication shall be returned to the sender if it would not be contrary to the interests of the proceedings.

(4) The measures referred to in paragraph 1 of this Article shall be reviewed once every three months, and their total duration may not exceed nine months. The implementation of the measures shall be terminated as soon as the reasons for their application cease to exist.

Article 86

Objects seized during criminal proceedings shall be returned to their owners, or holders, if the proceedings are suspended and there exist no grounds for their confiscation (Article 512). Objects shall be returned to their owners, or holders, even before the completion of criminal proceedings, where the reasons for their seizure cease to exist.

3. Taking action with suspicious objects

Article 87

(1) Where an object is found with a suspect of accused person that is not theirs and its owner is not known, the authority conducting the proceedings shall make a description of the object and post it on the notice board of the municipal assembly where they are resident and where the criminal offence was committed. In the notice the owner of the object shall be summoned to appear within one year of the date of its posting, failing which the object would be sold. The proceeds form the sale shall go towards the budget of the judiciary.

(2) Where items of substantial value are concerned, notices may also be published in daily newspapers.

(3) Where objects are perishable and their keeping would involve substantial costs, they shall be sold pursuant to provisions applying to enforcement proceedings, and the proceeds placed in a court deposit.

(4) The provisions of paragraph 3 of this Article shall also be applied if the object belongs to a fugitive offender or to an unknown offender.

Article 88

(1) If no one appears to claims objects or proceeds from their sale within one year’s time, a ruling shall be issued under which the objects shall become the property of the state, or the proceeds shall go towards the budget of the judiciary.

(2) An object’s owner is entitled to file a civil suit for the return of that object or the proceeds from its sale. The prescription period of this entitlement shall begin to run on the date of publication of the notice.

4. Interrogation of accused persons

Article 89

(1) When a accused person is being interrogated for the first time, he shall be asked to state his first name and surname, his personal ID number, nicknames, if any, the first names and surnames of his parents, his mother's maiden name, his place of birth, his residence, date of birth, citizenship, occupation, family circumstances, literacy status, professional qualifications, whether he served in the armed forces and where, whether he is a junior officer or officer in the armed forces reserve, or a military clerk, whether he is registered with the armed forces registry and with which authority responsible for defence affairs, whether he was ever decorated, his financial standing, whether he was ever convicted of any offence, what offence, and where, whether he served any sentence pronounced against him, and whether proceedings are being conducted against him in connection with another criminal offence.

(2) The accused person shall be informed of his duty to respond to summons and promptly make notification of a change of address or any intention to change abode, and shall be cautioned of the consequences of failing to act accordingly. The accused person shall then be informed about his rights proceeding from Article 4 paragraph 2 item 2) of this Code, what he is being accused of, the grounds of the suspicion against him, that he is not required to present a defence or to answer any questions, and he shall be invited to present his defence if he so wishes.

(3) It shall be made possible for suspects who so request to read, immediately before their first interrogation, the criminal complaint, the record of the crime scene inspection, the findings and opinions of experts witnesses, and the request for the conduct of an investigation.

(4) Accused persons are interrogated verbally. Accused persons are entitled to use their notes during interrogation.

(5) During the interrogation it should be made possible to the accused person to declare himself without being interrupted on all the circumstances against him and the facts which support his defence.

(6) After an accused person has completed his statement, if necessary he shall be questioned for the purpose of filling in any gaps in his statement, clarifying it, or eliminating discrepancies.

(7) Accused persons ate interrogated in a cultured manner and with full respect for their person.

(8) The use of force, threats, deception, impermissible promises, coercion, exhaustion or other similar means may not be used against accused persons (Article 131 paragraph 4) in order to obtain statements or confessions or actions which could be used against him as evidence.

(9) Accused persons may be interrogated without a defence counsel being present only where they had explicitly waived that right, where defence is not mandatory, where the

defence counsel is not present although informed about the interrogation (Article 251), and there is no possibility of the accused person retaining another defence counsel, or if the accused person has not secured the presence of a defence counsel for his first interrogation within 24 hours of the time when he was instructed of that right (Article 4 paragraph 2 item 2)), except in the case of mandatory defence.

(10) Where there has been contravention of the provisions of paragraphs 8 and 9 of this Article or the accused person was not instructed about the rights referred to in paragraph 2 of this Article, or where the accused person's statements referred to in paragraph 9 of this Article about the presence of a defence counsel were not entered in the record, the court's decision may not be founded on the accused person's statement.

Article 90

(1) Questions should be posed to the accused person in a clear, intelligible and unambiguous manner so that he can understand them fully. It may not be proceeded in interrogations from an assumption that the accused person has admitted to something to which he has not admitted, and neither may questions be asked which already contain an answer.

(2) Where subsequent statements made by an accused person differ from those made earlier, and especially where an accused person recants his confession, the court may instruct him to present his reasons for making different statements or to explain why he recanted his confession.

Article 91

(1) Accused persons may be confronted with witnesses or other accused persons, if their statements are not in agreement in respect of important facts.

(2) The persons confronted shall be placed face to face and asked to repeat to each other their statements in respect of every disputed circumstance and to discuss the veracity of what they had stated. The court shall enter in the record the course of the discussion and the final versions to which the persons confronting each other adhered.

Article 92

Objects connected to a criminal offence or serving as evidence shall be shown to the accused person for the purpose of recognition, after he had previously described them. If the objects cannot be brought in, the accused person may be taken to their location.

Article 93

(1) Accused persons' statements are entered in the record in the form of a narrative, and the questions asked and answers received shall be entered only if they related to the criminal matter.

(2) Dec may be allowed to dictate their statements into the record.

Article 94

Where an accused person confesses to the commission of a criminal offence, the authority conducting the proceedings is required to continue gathering evidence about the criminal offence only where if exists reasonable doubt about the veracity of the confession, if there are contradictions or ambiguities, and if the confession is not supported by other evidence.

Article 95

(1) Interrogations of accused persons shall be conducted with the help of interpreters where so provided for by his Code.

(2) If the accused person is deaf, he shall be questioned in writing, and if he is mute, he shall be called to answer in writing. If interrogation cannot be performed in this manner, a person with whom the accused person can communicate shall be called in as an interpreter.

(3) If the interpreter has not previously taken an oath, he shall swear that he shall faithfully communicate the questions asked of the accused person and the statements he makes.

(4) The provisions of this Code relating to expert witnesses shall apply accordingly to interpreters.

5. Examination of witnesses

Article 96

(1) Persons who are likely to have knowledge and to be able to provide information about the criminal offence and the perpetrator and other important circumstances shall be summoned as witnesses.

(2) Aggrieved parties, subsidiary prosecutors and private prosecutors may be questioned as witnesses.

(3) All persons summoned as witnesses have an obligation to respond to the summons, and, unless specified otherwise by this Code, to give testimony.

Article 97

The following may not be examined as witnesses:

1) persons who would by their statements violate the duty to preserve a state, military or official secret, unless a competent authority releases them from that obligation;

2) the accused person’s defence counsel, in connection with what he was told by the accused person;

3) persons who would by their statements violate the duty of maintaining confidentiality of information acquired in a professional capacity (religious confessors, lawyers, physicians, midwives, etc.), unless released from such obligation by a special regulation or a statement of the person for whose benefit the confidentiality was established;

4) authorised officers of the Ministry of Internal Affairs in respect of the notices received within the meaning of Article 226 and Article 235 paragraph 2 of this Code.

Article 98

(1) The following shall be exempt from the duty to give evidence:

1) the accused person's spouse or common-law spouse or other person with whom the accused lives in an extramarital or other lasting association;

2) the accused person's lineal relatives by blood, collateral relatives up to the third degree, and relations by marriage to the second degree;

3) adopter and adoptees of the accused person.

(2) The court conducting the proceedings is required to notify the persons referred to in paragraph 2 of this Article, before they are questioned or as soon as it learns about their relationship with the accused person, that they do not have to testify. The caution and the response shall be entered in the record.

(3) Juveniles who are in view of their age and mental development not capable of understanding the significance of the right not to have to testify may not be questioned as witnesses, except where the accused person so demands.

(4) Persons with valid grounds to decline to testify in connection with one of the accused persons shall be relieved of the duty to testify in connection with all the other accused persons, if by the nature of things their testimony cannot be limited only to the other accused persons.

Article 99

Where a person who cannot be questioned as a witness (Article 97) or a person who does not have to testify (Article 98) has been questioned, and had not been cautioned accordingly and had not waived the respective right, or where the caution and waiver had not been entered in the record, or where a juvenile who cannot understand the significance of the right not to have to testify has been questioned, or where testimony of witnesses has been obtained by the use of force, threats and other similar prohibited means (Article 131 paragraph 4), the court may not base its decision on such testimony.

Article 100

Witnesses are not required to answer certain questions where it is likely that they would thereby expose themselves or the persons referred to in Article 98 paragraph 1 of this Code to acute disgrace, substantial material damages or criminal prosecution.

Article 101

(1) Witnesses shall be summoned by the serving of a written summons which shall contain the first name and surname and occupation of the person being summoned, the time and place where they should appear, the criminal case in connection with which they are being summoned, an indication that they are being summoned as witnesses and a caution about the consequences of unjustifiable absence (Article 108).

(2) Witnesses who had while giving testimony at an earlier date confirmed that they possess technical capacities ensuring such summoning may also be summoned by electronic mail or other electronic communication medium, provided that this method of delivering summons provides for the court data confirming that the witness has received the summons.

(3) Summoning juveniles under the age of sixteen shall be performed via their parents or legal representatives, unless prevented by exigency or other circumstances.

(4) Witnesses who due to their advanced age, poor state of health or serious physical deficiencies cannot respond to summons may be questions in their abodes.

Article 102

(1) Witnesses shall be questioned individually and without the presence of the other witnesses. Witnesses are required to provide their replies verbally.

(2) Before giving testimony witnesses shall be cautioned that they are required to tell the truth and the whole truth, and that perjury constitutes a criminal offence. Witnesses shall also be instructed that they not required to answer the questions referred to in Article 100 of this Code, and the caution shall be entered in the record.

(3) The witnesses shall then be asked to provide their first name and surname, name of father or mother, occupation, address, place and year of birth and information about their relationships with the accused person and aggrieved party. Witnesses shall be cautioned that they are required to notify the court of every change of abode or permanent residence.

(4) In questioning juveniles, especially if they were aggrieved by the criminal offence, due care shall be taken to avoid the question having a detrimental effect on the mental state of health of the juvenile. Where necessary, questioning juveniles shall be conducted with the help of a teacher or other relevant expert.

Article 103

(1) Following the general questions, witnesses shall be called to present everything they know about the case, and shall then be asked questions for the purpose of confirmation, amendment and clarification. In questioning witnesses it is not permitted to employ deception or pose questions which already contain an answer.

(2) Witnesses shall always be asked for the origin of the knowledge they are presenting as their testimony.

(3) Witnesses may be confronted if their testimonies clash in respect of important facts. Only two witnesses at a time may be confronted. Such confrontation shall be subject to the application of the provisions of Article 91 paragraph 2 of this Code.

(4) When questioned as witnesses, aggrieved parties shall be asked whether they intend to press for damages in the criminal proceedings.

Article 104

(1) Where it is necessary to establish whether a witness recognises a certain person or object he had previously described, he shall be shown that person together with other persons unknown to him having personal characteristics similar to those he had described, or the aforesaid object together with objects of the same or similar type, and shall then be asked to declare whether he can identify the person or recognise the object with certainty or a certain degree of probability, and, if the answer if positive, to point to the person or object recognised.

(2) In the pre-trial and preliminary criminal proceedings, identification of persons shall be performed in a manner ensuring that the person being identified cannot see the witness, and neither can the witness see that person before the identification procedure is commenced.

(3) In the pre-trial proceedings identification of persons shall be conducted in the presence of the public prosecutor.

Article 105

Where questioning of witnesses is being conducted via an interpreter or where the witness if deaf or mute, his examination shall be performed in the manner prescribed by Article 95 of this Code.

Article 106

(1) Witnesses shall be asked to take an oath before testifying.

(2) Prior to the trial, witnesses may be asked to take oaths only where there exists a danger that ill health of other reasons could prevent them from attending the trial. The reason for the taking of the oath at that time shall be entered in the record.

(3) The oath reads as follows: "I hereby swear to tell the truth about everything I will be asked before the court and that I will not omit any of the facts known to me."

(4) Oaths are taken by witnesses verbally, by reading out their texts, or by giving an affirmative response after being read out the text of the oath by a judge or an officer of the court duly authorised by the judge. Mute witnesses who can read and write shall sign

the text of the oath, and deaf or mute witnesses who can neither read nor write, shall take the oath with the help of an interpreter.

(5) Any refusals by witnesses to take the oath and their grounds for doing so shall be entered in the record.

Article 107

The following may not take oaths:

1) persons who have not reached the age of majority;

2) persons for whom it has been proven or there exists reasonable suspicion that they had committed or participated in the commission of the criminal offence in connection with which they are being questioned;

3) who due to their mental state of health cannot comprehend the significance of the oath.

Article 108

(1) Where witnesses duly summoned fail to appear and fail to justify their absence, or without authorisation or a justifiable reason leave the location where they were to be questioned, may be ordered brought in by force, and may also be punished with a fine of up to 100,000 RSD.

(2) Witnesses who do appear and after being cautioned about the consequences refuse to testify without legal justification, may be punished with a fine of up to 100,000 RSD, and if still refusing to testify, may be punished again with the same sanction.

(3) Rulings on appeals against the order on the fine shall be rendered by a chamber (Article 24 paragraph 6).

Article 109

(1) The court is required to protect witnesses and aggrieved parties from insults, threats and any other form of attack.

(2) The court shall duly caution or punish with a fine any participants in the proceedings or other persons in court who insult witnesses or aggrieved parties, threaten them or endanger their safety. In the event of violence or a serious threat, the court shall notify the public prosecutor for the purpose of instituting criminal prosecution. In respect of fines, the provisions of Article 108 of this Code shall be applied accordingly.

(3) Acting on a proposal of the investigating judge or the president of the chamber, the president of the court or public prosecutor may ask interior ministry officials to undertake special measures to protect witnesses and aggrieved parties.

Article 109a

(1) Where there exist circumstances indicating that the lives and limb, health, liberty or property to a substantial degree of witnesses or persons close to them would be threatened by their testimony in public, especially where criminal offence of organised crime, corruption or other extremely serious criminal offences are concerned, the court may issue a ruling authorising special protective measures for the witness (protected witness).

(2) Special protective measures for witnesses include their questioning in a manner ensuring that their identities are not revealed, and physical security measures during the proceedings.

Article 109b

(1) Rulings on special witness protection may be issued by the court *ex officio, o*r at the request of the parties, or the witness himself.

(2) The ruling referred to in paragraph 1 of this Article shall contain the following: data on the criminal offence about which the witness is being examined, the witness's personal data, the facts and evidence indicating that in the event of testifying in public there is a serious and real danger for the lives, limb, health, liberty or property of the witness and persons close to the witness, and a description of the circumstances to which the testimony relates.

(3) Requests shall be filed in sealed covers carrying the inscription "witness protection – official secret" and submitted during the investigation stage to the investigating judge, and after the indictment assumes legal force, to the president of the chamber.

(4) Where a witness during questioning by the investigating judge declines to provide information about himself, answers to certain questions, or testimony in its entirety, pointing to the existence of the circumstances referred to in 109a paragraph 1 of this Code, it shall be deemed that he has submitted a request for special protective measures, following which the investigating judge, if he finds the danger to be well-founded, shall call him to act within a period of three days in accordance with the provisions of paragraphs 2 and 3 of this Article. Where the investigating judge finds that withholding of data, responses to questions or testimony is obviously unjustified, or the witness fails to act in accordance with the provisions of paragraphs 2 and 3 of this Article within the prescribed time limit, the provisions of Article 108 paragraph 2 of this Code shall be applied.

Article 109v

(1) Rulings on special witness protection measures are rendered during the investigation stage by the investigating judge, and after the indictment takes legal effect the trial chamber, if in session, or the chamber referred to in Article 24 paragraph 6 of this Code if the trial chamber is not in session. In ruling on special witness protection measures, the trial chamber shall exclude the public (Article 292 and Article 293 paragraph 1), without the exceptions prescribed in Article 293 paragraph 2 of this Code.

(2) Where the investigating judge is not satisfied with the request referred to in Article 109b of this Code, the investigating judge shall ask the chamber (Article 24 paragraph 6)

to rule on it. The chamber shall issue a decision within three days of receiving the case files.

(3) Where the investigating judge or chamber accept the request referred to in Article 109b of this Code, they shall issue a ruling containing the following: a code-name to replace the witness's real name, an order for the erasure from the files of the name of the protected witness and other data from which his identity could be established, the manner in which the questioning will be undertaken, and the measures required to prevent disclosure of the identity of the witness, his abode or residence, and those of persons close to him.

(4) Rulings referred to in paragraph 3 of this Article may be appealed by parties and the witness. Rulings on the appeals shall be rendered by the chamber referred to in 24 paragraph 6 of this Code, and by a court of second instance after the indictment assumes legal force. The chamber shall render a decision on the appeal within a period of three days, and the second-instance court within eight days of receiving the files.

Article 109g

(1) After the ruling on special witness protection measures become legally binding, the court shall issue a special order classified as an official secret in which it will notify the parties and the witness in a confidential manner about the date, time and location of the examination of the witness.

(2) Before commencing the questioning the witness shall be informed that he will be questioned under special security measures, about the specifics of the measures, and that his identity shall not be divulged to anyone except the judges adjudicating the case, and, one month before the commencement of the trial, also the parties and the defence counsel shall also be informed.

(3) The examination of protected witnesses may be performed in one or more of the following manners: by excluding the public from the trial, by concealing the witness's appearance, and by giving testimony from a separate room through voice and image transmission equipment using voice- and image-alteration.

(4) Data on the identity of the witness and persons close to him and about other circumstances which may lead to disclosure of his identity shall be sealed by the investigating judge or chamber referred to in Article 109v of this Code in a separate cover which shall be delivered for safekeeping to the witness-protection unit. Such sealed covers may only be opened by second-instance chambers ruling on appeals against the judgement. On the cover shall be specified the date and time of the opening of the cover, as well as the names of the members of the chamber who were informed about the contents of the data, following which the cover shall be re-sealed and returned to the witness-protection unit.

Article 109d

Judgements may not be based solely on statements made by protected witnesses.

Article 109đ

The court is required to inform all persons attending the questioning of protected witnesses that data about the witness or persons close to him, their abodes or residences, their transfers, guarding and the location and manner of questioning the protected witness shall be treated by them as confidential and that their disclosure represents a criminal offence.

6. Crime scene inspection

Article 110

Crime scene inspections are conducted by the court where establishment or clarification of an important fact in the proceedings requires on-site inspection.

Article 111

(1) For the purpose of confirming evidence which has been presented or establishing facts which are of significance for clarifying various matters, the authority conducting the proceedings may order a reconstruction of the event, which is performed by a repetition of the actions and situations in the conditions in which according to the evidence adduced the event had taken place. Where actions and situations were described differently by various witnesses and accused persons, as a rule reconstruction of the event shall be performed separately with each of them.

(2) Reconstruction may not be performed in a manner obstructing law and order or violating standards of morality, or causing a threat to people's lives and health.

(3) During the reconstruction, if so required, certain evidence may be adduced again.

Article 112

(1) The authority performing the crime scene inspection or reconstruction may request the assistance of experts in the fields of forensics, traffic and other professions, who will as required undertake action to detect, secure and describe traces, make requisite measurements and recordings, render sketches, and collect other data.

(2) Expert witnesses may be called to attend crime scene inspections or reconstructions if their presence would be of benefit for providing findings and opinions.

7. Expert Analyses

Article 113

Expert analyses shall be ordered where establishment or assessment of important facts requires findings or opinions of persons with the requisite professional knowledge.

Article 114

(1) Expert analyses shall be ordered by the issuance of a written order by the authority conducting the proceedings. The order shall specify the facts in connection with which the expert analysis is being performed and to whom it is being entrusted. The order shall also be served to the parties.

(2) Where there exists a professional institution competent for performing a certain type of expert analysis, or where expert analyses may be performed within a public authority, such expert analyses, especially where they are of a complex nature, shall as a rule be entrusted to such institutions or authorities. The institution or public authority shall designate one or more of its experts to perform the analysis.

(3) Where expert witnesses are designated by the authority in charge of the proceedings, as a rule that authority shall designate one expert witness, and where the expert analysis is of a complex nature - two or more expert witnesses.

(4) Where there exist permanent court-appointed expert witnesses for certain types of expert analyses, other expert witnesses may only be assigned where there exists a danger of deferrals, or where the permanent expert witnesses are unavoidably detained, or where other circumstances so demand.

Article 115

(1) Persons called in as expert witnesses shall respond to the summons and provide their findings and opinions within the time limits specified in the orders. At the request of an expert witness citing justifiable grounds, the time limit specified in the order may be extended.

(2) Where expert witnesses duly called in fail to justify their absence, or refuse to provide expert testimony, or fail to provide findings and opinions within the time limit specified in the order, may be punished with a fine of up to 100,000 RSD, which fine can be up to 500,000 RSD in the case of professional institutions. In the case of an unjustifiable absence, expert witnesses may also be brought in forcibly.

(3) Rulings on appeals against the order on the fine shall be rendered by a chamber (Article 24 paragraph 6).

Article 116

(1) Persons who cannot be questioned as witnesses (Article 97) may not be designated as expert witnesses. Persons relieved of the duty of giving testimony (Article 98) and the person against whom the criminal offence was committed may also not be designated as expert witnesses, and where one has been designated, the court’s judgement cannot be founded on his findings and opinion.

(2) A reason for excluding an expert witness (Article 45) also exists in respect of a person employed by an aggrieved party or accused person, or is together with them or some of them engaged with another employer.

(3) As a rule, persons questioned as witnesses shall not be designated as expert witnesses.

(4) Where a special appeal against a ruling denying a request for the exclusion of an expert witness is allowed (Article 43 paragraph 4), the appeal stays enforcement of the expert analysis, unless there is a danger of deferrals.

Article 117

(1) Before an expert analysis is performed, the expert witness shall be called to carefully examine the object of the analysis, to state clearly what he has seen and found, and to present his opinion impartially and in accordance with the rules of science or profession. The expert witness shall be especially cautioned that perjury is a criminal offence.

(2) Expert witnesses shall take an oath before testifying. Permanently-assigned expert witnesses shall only be advised that they are already under their oath.

(3) Before the trial expert witnesses may take oaths only before a court, if there exists a fear that poor health or other reasons could prevent them from attending the trial. The reason why the oath was taken at that time shall be noted in the record.

(4) The following oath is taken: "I hereby swear that I shall perform my expert analyses in a conscientious and impartial manner and to the best of my knowledge, and that I shall present my findings and opinions accurately."

(5) The authority in charge of the proceedings shall manage the expert analysis, exhibit to the expert witness the objects he will examine, pose questions, and, if required, ask for explanations in connection with the findings and opinions given.

(6) Expert witnesses may be provided with clarifications, and also be allowed to examine case files. Expert witnesses may also propose that evidence be adduced or objects and data of importance for providing findings and opinions obtained. Where they are attending crime scene inspections, reconstructions or other investigatory actions, expert witnesses may propose that certain circumstances be clarified and that certain questions be put to persons being interrogated or questioned.

Article 118

(1) Expert witnesses examine the objects of expert analyses in the presence of the authority in charge of the proceedings and a record-keeper, except where expert analyses require lengthy research or are performed in institutions or public authorities, or where the rules of morality so require.

(2) Where an expert analysis requires that a substance be examined, if possible the expert witness shall be provided by a sample of the substance, and the remainder shall be retained, if any subsequent analyses prove necessary.

Article 119

Expert witnesses' finding and opinions shall be entered in the record promptly. Expert witnesses may be allowed to submit written findings and opinions at a later date, within a time limit determined by the authority in charge of the proceedings.

Article 120

(1) Where a professional institution or public authority are commissioned to perform expert analyses, the authority in charge of the proceedings shall issue a caution that the persons referred to in Article 116 of this Code, or persons for whom grounds exist for exclusion from conducting expert analyses specified in this Code, may not take part in providing findings and opinions, and about the consequences of perjury in their testimony.

(2) The professional institution or public authority shall be provided with the materials required for conducting expert analyses, and, if required, the provisions of Article 117 paragraph 6 of this Code shall be applied.

(3) The professional institution or public authority shall submit written findings and opinions signed by the persons who had conducted the expert analysis.

(4) Parties to the proceedings may ask the managing official of the professional institution or public authority to supply the names of the experts who had performed the expert analysis.

(5) The provisions of Article 117 paragraphs 1 to 5 of this Code shall not be applied where professional institutions or public authorities have been commissioned to perform expert analyses. The authority in charge of the proceedings may ask the professional institution or public authority to provide explanations in connection with the findings and given.

Article 121

(1) The record of the expert analysis, or the written findings and opinions, shall contain the names of the experts who had performed the expert analysis, as well as the occupations, professional qualifications and specialities of the expert witnesses.

(2) Following completion of the expert analysis, which the parties did not attend, they shall be notified that the expert analysis had been performed and that they may examine the record of the expert analysis, or the written findings and opinions.

Article 122

Where there are substantial contradictions in expert witnesses' data in their findings or if the findings are unclear, incomplete, contradict themselves or are in opposition with the circumstances, and the shortcomings cannot be rectified by questioning the expert witnesses again, a new expert analysis shall be done, with new expert witnesses.

Article 123

Where expert opinions contain contradictions of deficiencies, or there appears reasonable suspicion about their accuracy, and the deficiencies and suspicions cannot be eliminated by questioning the expert witnesses again, the opinions of other expert witnesses shall be sought.

Article 124

(1) Post-mortem examinations and autopsies shall always be performed where there exists any suspicion in a case of death, or where it is obvious that the death was caused by a criminal offence or was connected to the commission of a criminal offence. Where the body has already been buried, exhumation shall be ordered so the cadaver can be examined and autopsied.

(2) All necessary measures to identify the body shall be carried out during the autopsy, to which end data about the cadaver's external and internal characteristics shall be described in detail.

Article 125

(1) Where an expert analysis is being performed outside a professional institution, the cadaver shall be examined and autopsied by one, and if required two or more physicians, who should as a rule be in the forensic profession. The investigating judge is in charge of that expert analysis and shall enter into the record the findings and opinions of the expert witnesses.

(2) The physician who had treated the deceased cannot be designated an expert witness. During an autopsy, for the purpose of clarifications in connection with the course and circumstances of the illness, the physician who had treated the deceased may be questioned as a witness.

Article 126

(1) In giving their opinions, expert witnesses shall especially indicate the immediate cause of death, what brought it about, and the time of death.

(2) Where an injury is found on a cadaver, it shall be determined whether it was caused by another person, and if it was, with what, in what manner it was inflicted, how long before death had occurred, and whether it had caused the death. Where more than one injury is found, it shall be determined whether each of them was inflicted by the same instrument and which of them had caused the death, and where there were several injuries that were lethal, which single injury, or which of them acting together, had caused the death.

(3) In the case referred to in paragraph 2 of this Article, it shall be established in particular whether death was caused by the type and general nature of the injury, or by a personal characteristic or particular condition of the deceased's body, or by accidental circumstances or the circumstances in which the injury was inflicted. It shall also be established whether assistance rendered in a timely manner could have prevented death from occurring.

(4) Expert witnesses are required to afford due attention to any biological materials found (blood, saliva, semen, urine, etc.), provide a description and preserve the materials for a biological analysis, if one is ordered.

Article 127

(1) In the examination and autopsy of a foetus, its age, ability for extrauterine survival and the cause of death should be established in particular.

(2) In the examination and autopsy of a newborn, it shall be established in particular whether it was delivered alive or dead, its capacity for survival, its total lifespan, and the time and cause of death.

Article 128

(1) Where there is suspicion that death occurred by the administration of a poison, suspicious materials found in the cadaver and elsewhere shall be sent for an expert analysis to an institution performing toxicological research.

(2) In analysing suspicious substances the expert witness shall in particular establish the type, quantity and effects of the poison found, and where materials taken from a cadaver are concerned, if possible also the quantity of poison administered.

Article 129

(1) As a rule expert analyses of bodily injuries shall be performed by examining the injured person, and where it is not possible or necessary – based on medical documentation or other data in the files.

(2) After the expert witness describes the injuries accurately, he shall provide his opinion, in particular in connection with the type and seriousness of each individual injury and their aggregate effect, in view of their nature or specific circumstances of the case, what effect such injuries usually produce, and what effects they had produced in the particular case, how the injuries had been inflicted and by what instrument.

(3) In performing the expert analysis, the expert witness is required to act pursuant to the provision of Article 126 paragraph 4 of this Code.

Article 130

(1) Where suspicion appears that due to a mental illness, arrested mental development or other mental disorder the accused person had diminished capacity or was incompetent, an expert analysis shall be ordered in the form of a psychiatric examination of the accused person.

(2) Where in the opinion of an expert witness a lengthy examination period is required, the accused person shall be sent to an appropriate health-care institution for observation. Rulings thereof shall be rendered by the investigating judge, individual judge or chamber. The observation period may be extended beyond two months only on

the basis of a substantiated proposal by the managing official of the health-care institution, following the rendering of an opinion by an expert witness, but may under no circumstances last longer than six months.

(3) Where expert witnesses establish that the mental health of the accused person is deficient, they shall determine the nature, type, degree and duration of the disorder and provide opinions on the effect the mental condition had and still has on the accused person's perception and actions, as well as whether and to what extent the disturbed mental health existed at the time of the commission of the criminal offence.

(4) If an accused person who is in detention is being sent to a health-care institution, the investigating judge, individual judge or president of the chamber shall inform the institution about the grounds on which detention had been ordered, so that appropriate measures ca be taken for ensuring the purpose of the detention.

(5) The time spent in the health-care institution shall count towards the total time spent in detention or service of a custodial sanction, if one is pronounced.

Article 131

(1) Body searches of suspects or accused persons shall be conducted even without their consent where it is necessary to establish facts of importance for criminal proceedings. Body searches of other persons may be conducted without their consent only where it is necessary to establish whether their bodies contain specific traces or consequences of a criminal offence.

(2) Taking of samples of blood, and performance of other medical activities which as a rule of the medical profession necessary for the purpose of analysing and establishing other facts of importance for the criminal proceedings, may be conducted even without the consent of the person being examined, except where the activities result in any detrimental effect to their healths.

(3) The actions referred to in paragraphs 1 and 2 of this Article shall be conducted only on the basis of an order issued by a competent court, except in cases referred to in Article 238 paragraph 3 of this Code.

(4) No medical interventions may be conducted or substances administered to suspects, accused persons or witnesses which would affect their consciousness mental condition and will during the giving of testimony.

Article 132

(1) Where a forensic audit of books and records is required, the authority in charge of the proceedings is required to instruct the forensic accountants about the direction and the scope of the required expert analysis, and which facts and circumstances need to be established.

(2) Where a forensic audit of books and records of an enterprise, other legal person or entrepreneur requires that the books are first put in order, the costs of this procedure shall be borne by the holder of the books.

(3) The authority in charge of the proceedings is responsible for issuing rulings on putting books in order, based on a substantiated written report by the forensic accountant commissioned to audit the books. The ruling shall designate an amount of money an enterprise, other legal person or entrepreneur shall deposit with the court as an advance payment for the costs of putting in order their books. The ruling is not appealable.

(4) After the books are put in order, the authority in charge of the criminal proceedings shall based on the forensic accountant's report issue a ruling establishing the true amount of the costs of the procedure and determining that the amount shall be paid by the person whose books were being put in order. That person is entitled to appeal against the ruling in respect of the grounds for issuing the ruling and the amount of the costs. Rulings on appeals shall be rendered by a chamber of the court of first instance (Article 24 paragraph 6).

(5) Unless costs and fees were paid in advance, they shall be collected and transferred to the authority who had previously paid the out to the forensic accountants.

Article 132a

(1) Photographs or audio and video recordings of actions performed in accordance with this Code may be used as evidence and the court may base its decision on them.

(2) Where audio recordings are used as evidence in criminal proceedings, they must be transcribed and entered in the file of the criminal case.

(3) Photographs or audio and video recordings not encompassed by the provision of paragraph 1 of this Article may be used as evidence in criminal proceedings if their authenticity has been established and the possibility excluded of deliberate alterations of photographs and video recordings and if the photograph or video recording were made with the tacit or explicit consent of the suspect or accused person, where his image is on the photograph or his voice is on the recording.

(4) Photographs, audio recording, or audio and video recordings made against the wishes of the suspect of accused person, if his image is on a photograph or his voice is on a recording, may be used as evidence in criminal proceedings if the photograph or audio or audio and video recording contains another person, or the voice of that person, who tacitly or explicitly agreed to the making of the photograph, audio, or audio and video recording.

(5) Where photographs, audio recording, or audio and video recordings contain only objects or events or persons who do not have the capacity of suspect or accused person, the photographs, audio recording, or audio and video recordings may be used as evidence, provided they were not the result of the commission of a criminal offence.

(6) Photographs, audio recording, or audio and video recordings made without the tacit or explicit consent of a suspect of accused person but who are in them or whose voice is audible in them, may be used as evidence in criminal proceedings, if the photographs, audio recording, or audio and video recordings were recorded as part of general security measures undertaken in public areas – streets, squares, parking lots, schoolyards, the compounds of various institutions and other similar public areas, in public facilities and premises – buildings housing public authorities, institutions, hospitals, schools, airports, bus and railway stations, sports stadiums and halls and other such public premises and attached open areas, as well as in shops, stores, banks, currency exchange offices, commercial facilities and other similar facilities where recording is regularly performed for security reasons.

(7) Photographs, audio recording, or audio and video recordings made without the tacit or explicit consent of a suspect of accused person but who are in them or whose voice is audible in them, may be used as evidence in criminal proceedings, if the photographs, audio recording, or audio and video recordings were recorded as part of general security measures undertaken by the holders of dwellings and other premises, or by other persons at the instructions of holders of dwellings and other premises, which also includes building compounds and other similar open spaces.

(8) Where photographs, audio recording, or audio and video recordings were made pursuant to paragraph 1 and paragraphs 3 to 7 of this Article, parts of photographs or recordings extracted by appropriate technical processes, as well as photographs made from single frames in video recordings, may also be used as evidence in criminal proceedings.

(9) Where photographs, audio recording, or audio and video recordings were made pursuant to paragraph 1 and paragraphs 3 to 7 of this Article, sketches or drawings based on photographs or video recordings may also be used as evidence in criminal proceedings, provided that they were made to clarify a detail of a photograph or recording and that the photograph or recording is contained in the evidentiary materials.

Chapter VIII
MEASURES TO SECURE THE PRESENCE OF ACCUSED PERSONS AND THE UNOBSTRUCTED CONDUCT OF CRIMINAL PROCEEDINGS

1. General provisions

Article 133

(1) Measures which may be undertaken towards accused persons in order to secure their presence and for the purpose of conducting criminal proceedings without obstruction are serving summons, bringing in the accused person, issuance of bans on leaving abodes, ordering bail, and detention.

(2) In deciding which measure to apply, the competent court shall abide by the requirements determined for the application of each of the measures and avoid the

application of a more severe measure where the same purpose can be served by a more lenient one.

(3) These measures shall also be repealed *ex officio* when the reasons for their application cease to exist, or shall be replaced by a more lenient measure when the necessary conditions are fulfilled.

(4) The provisions of Articles 134, 135 and Article 136 paragraph 9 shall apply accordingly to suspects.

2. Summons

Article 134

(1) The presence of accused persons in criminal proceedings shall be secured by serving them summons. Summons are issued to accused persons by courts.

(2) Accused persons shall be summoned by serving them a sealed written summons containing the name of the court which issued the summons, the accused person's first name and surname, the legal designation of the criminal offence with which the accused person is charged, the place to which the accused person is being summoned, the date and time when the accused person should appear, information that the accused person is being summoned in the capacity of accused person and a caution that in case the accused person fails to appear he will be brought in forcibly, the official seal and the first name and surname of the judge who issued the summons.

(3) Where an accused person is being summoned for the first time, he shall be informed in the summoned about his right to a defence counsel and that the defence counsel is entitled to attend his interrogation.

(4) Accused persons are required to promptly notify the court of any change of address or intention to change their abode. Accused persons shall be instructed about this obligation at their first interrogation, or when they are served an indictment without the conduct of any prior investigation (Article 244 paragraph 6), a motion to indict, or a private prosecution, as well as the consequences prescribed by this Code.

(5) Where accused persons are unable to respond to a summons due to illness or other unavoidable impediment, they shall be interrogated wherever they are located, or transported to the court or other location where an action is being performed.

3. Bringing in accused persons

Article 135

(1) Where detention has been ordered, or where an accused person duly served a summons fails to appear, or where summons could not be duly served and the circumstances lead to an obvious conclusion that the accused person is avoiding reception of the summons, the court may issue an order to have the accused person brought in.

(2) The order to have the accused person brought in shall be executed by the police.

(3) The order to have the accused person brought in is issued in writing. The order shall contain the first name and surname of the accused person who is to be brought in, place and date of birth, the legal designation of the criminal offence with which the accused person is charged and specification of the relevant provision of the criminal code, the grounds on which the order was issued, the official seal and the signature of the judge who ordered the accused person to be brought in.

(4) The person instructed to execute the order shall serve the order to the accused person and invite the accused person to accompany him. Where an accused person refuses, he shall be brought in by force.

(5) Orders for bringing in military personnel, police officers or warders in institutions where persons deprived of liberty are held shall be executed by their command or their institution.

4. Bans on leaving abodes or other locations

Article 136

(1) Where there are circumstances indicating that an accused person could abscond, go into hiding, move to an unknown destination or a foreign country, the court may issue a substantiated order barring him from leaving his abode or location without permission.

(2) Together with the measure referred to in paragraph 1 of this Article, accused persons may also be barred from visiting certain locations, meeting certain persons, or approaching certain persons, or may be ordered to periodically appear before a specified public authority, or be temporarily deprived of their travel documents or driver's licences.

(3) The measures referred to in paragraphs 1 and 2 of this Article may not restrict the right of the accused person to live in his own dwelling, to meet without obstruction with family members and close relatives, unless those persons are included in the measure referred to in paragraph 2 of this Article, and to meet his defence counsel.

(4) In the ruling ordering the measures referred to in paragraphs 1 and 2 of this Article, the accused person shall be cautioned that he could be remanded in detention if he violates the prohibitions ordered against him.

(5) The court may order travel documents returned to an accused person with an urgent need to travel to a foreign country, provided the accused person names a proxy to receive mail in the Republic of Serbia, and promises to respond to every summons of the court, and posts bail.

(6) During the investigation, the measures referred to in paragraphs 1 and 2 of this Article shall be imposed and repealed by the investigating judge, and after the indictment has been filed, the president of the chamber, or the chamber. Where a measure has not been proposed by the public prosecutor, and the proceedings are being conducted in

connection with a criminal offence prosecutable *ex officio*, before issuing a ruling ordering or vacating a measure, the court shall ask the public prosecutor for an opinion.

(7) The duration of the measures referred to in paragraphs 1 and 2 of this Article may be for as long as they are necessary, but no longer than the date when the judgement becomes final. The investigating judge, president of the chamber, or the chamber shall examine once every two months whether measure applied is still necessary.

(8) Parties may appeal against rulings ordering, extending the duration of or vacating the measures referred to in paragraphs 1 and 2 of this Article, and the public prosecutor may also appeal against a ruling denying his proposal for the application of a measure. Rulings on appeals shall be rendered by a chamber (Article 24 paragraph 6) within three days of the receipt of the appeal. Appeals do not stay execution of rulings.

(9) Temporary seizures of driver's licences may be ordered as independent measures where the proceedings are being conducted in connection with a criminal offence of endangering traffic safety which resulted in serious consequences or was committed with premeditation. The provisions of paragraphs 5 to 8 of this Article shall also be applied in this case. The period when the driver's licence of a suspect of accused person not in custody was temporarily seized shall count towards the duration of the penalty of deprivation of a driver's licence or security measure of prohibition of operating a motor vehicle.

(10) The court may order the application against an accused person subject to the application of one of the measures referred to in paragraphs 1 and 2 of this Article of electronic surveillance for the purpose of controlling observance of the restrictions imposed on the accused person, provided the accused person's health would not be harmed thereby. The device for monitoring the accused person's location (transponder) shall be attached to the wrist or ankle or other place on the accused person by an expert who shall instruct the accused person in detail about the device's operation. The expert shall also operate the equipment used to track the movements and his location remotely (transceiver). Electronic surveillance shall be conducted by the internal affairs authority, the Security and Information Agency or other public authority.

(11) The measures referred to in paragraphs 2 and 10 of this Article may also be ordered as independent measures, where they are necessary for the purpose of protecting an aggrieved party or a witness, preventing accused persons from influencing accomplices or concealers, or where there is a danger that the accused person completes a criminal offence that has been initiated, repeats the criminal offence, or perpetrates a criminal offence he has threatened to commit.

5. Bail

Article 137

(1) Accused persons who should be detained, or accused persons already placed in detention due to the existence of circumstances indicating a risk of flight, or on the grounds defined in Article 142 paragraph 1 item 4) of this Code may be left at liberty or may be released from detention if they personally or another for them offers a guarantee that they will not abscond until the end of criminal proceedings, and the accused persons

themselves make a promise before the court ruing on the bail that they will not go into hiding or leave their abode without permission.

(2) Bail can also be determined as a measure securing observance of the restrictions referred to in Article 136 paragraphs 2 and 10 of this Code.

Article 138

(1) Bail shall always be set in a pecuniary amount which the court determines taking into consideration the gravity of the criminal offence, the personal and family circumstances of the accused person, and the financial status of the person posting the bail.

(2) Bail shall consist of a deposit of cash money, securities, valuables or other moveable items of substantial value which are easy to keep and covert into cash, or of the mortgaging in the amount of the bail of the immovables of the person posting the bail, or of a personal obligation of one or more citizens that in the even of the accused person absconding they will pay the amount of the bail which has been set.

(3) If the accused person absconds, it shall be determined by a ruling that the assets given as bail shall be turned over to the budget of the judiciary.

Article 139

(1) Accused persons for whom bail has been posted due to a flight risk shall be placed in detention if after being duly served a summons they fail to appear without providing a valid explanation for their absence, or where while they are at liberty other legal grounds appear for ordering detention.

(2) Accused persons for whom bail has been posted due to the detention grounds prescribed by Article 142 paragraph 1 item 4) of this Code shall be placed in detention if after being duly served the first subsequent summons for attending a trial hearing they fail to appear, without providing a valid explanation for their absence.

(3) In the case referred to in paragraphs 1 and 2 of this Article, bail shall be repealed. The posted pecuniary amounts, valuables, securities or other moveable items shall be returned and the mortgage lifted. The same shall be done after criminal proceedings are concluded by a final ruling staying the proceedings or a final judgement.

(4) Where a custodial penalty has been imposed, bail shall be repealed only after the convicted person begins to serve his sentence.

Article 140

(1) Rulings on bail shall before and during the investigation be rendered by the investigating judge. After the indictment is filed, rulings on bail shall be rendered by the president of the chamber, and at the trial, by the chamber.

(2) Rulings ordering bail and vacating bail shall be rendered after obtaining the opinion of the public prosecutor, if the proceedings are being conducted at his request.

6. Detention

Article 141

(1) Detention may be ordered only by a court decision made pursuant to the requirements prescribed in this Code and if detention is necessary for the purpose of conducting criminal proceedings and where the same purpose cannot be achieved by another measure.

(2) All authorities participating in the criminal proceedings and authorities rendering them legal assistance have a duty to limit the duration of the detention to the shortest possible period and to act with particular exigency where the accused person is in detention.

(3) Detention shall be repealed at any time during the entire duration of the proceedings when the grounds for ordering it cease to exist.

Article 142

(1) Detention may be ordered against persons reasonably suspected of having committed a criminal offence if:

1) they are in hiding or their identity cannot be established, or if there exist other circumstances indicating a flight risk;

2) there exist circumstances indicating that they will destroy, conceal, change or forge evidence or traces of a criminal offence or if particular circumstances indicate that they will disrupt the proceedings by exerting influence on witnesses, expert witnesses, accomplices or concealers;

3) particular circumstances indicate that they will commit a criminal offence again, or complete a criminal offence already commenced, or perpetrate a criminal offence they have threatened to commit;

4) in the capacity of a defendant once duly served a summons obviously avoids coming to the trial;

5) the criminal offence with which he is charged is punishable by a term of imprisonment of more than ten years, or more than five years in the case of a criminal offence with an element of violence and where it is justified by the particularly serious circumstances of the criminal offence;

6) by a judgement of a court of first instance the person has been sentenced to serve a custodial penalty of five years or more and where it is justified by the particularly serious circumstances of the criminal offence.

(2) In the case referred to in item 1) of paragraph 1 of this Article, detention ordered due to a failure to identify a person shall last until the identity is established. In the case referred to in item 2) of paragraph 1 of this Article, detention shall be repealed as soon

as the evidence due to which it was ordered is secured. Detention ordered pursuant to item 4) of paragraph 1 of this Article may last until the pronouncement of the judgement.

Article 142a

(1) The investigating judge or chamber shall rule on detention after the interrogation of the accused person. The ruling ordering or vacating detention shall be rendered at a meeting of the chamber, except in the case referred to in Article 145 of this Code.

(2) The interrogation referred to in paragraph 1 of this Article may be attended by the public prosecutor and the accused person's defence counsel.

(3) The court is required to notify in an appropriate manner the public prosecutor and the accused person's defence counsel about the time and place of the interrogation of the accused person referred to in paragraph 1 of this Article. The interrogation may also be conducted in the absence of the persons who have been thus notified.

(4) A special record of the interrogation or session at which the chamber rules on detention shall be kept and attached to the case file.

(5) By exception from paragraph 1 of this Article, a detention order may also be issued without an interrogation of the accused person if the summons for interrogation could not be served due to the accused person's unavailability or failure to give notice of a change of address, or if there is a danger of deferrals.

Article 143

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

(2) The detention order shall contain the first name and surname of the person being placed in detention, the criminal offence with which the person is charged, the legal grounds for the detention, the duration of detention, the time of deprivation of liberty, an instruction about the right to appeal, substantiation of the grounds and reasons for ordering detention, the official seal and the signature of the judge ordering detention.

(3) The detention order shall be served to the person whom it concerns at the moment of deprivation of liberty, and no later than 12 hours after deprivation of liberty or the time the person was brought before the investigating judge. The date and time of the deprivation of liberty and service of the order shall be recorded in the files.

(4) Parties may file appeals against detention orders to the chamber (Article 24 paragraph 6). The appeal, detention order and other documentation shall promptly be served to the chamber. Appeals do not stay execution of rulings.

(5) Where the investigating judge does not agree with the public prosecutor's proposal for ordering detention, the judge will ask the chamber to rule thereon (Article 24 paragraph 6). Parties may appeal against the ruling of the chamber ordering detention, but it does not stay execution of the order. The provisions of paragraphs 3 and 4 of this Article shall apply in respect of serving rulings and lodging appeals.

(6) In the cases referred to in paragraphs 4 and 5 of this Article, the chamber ruling on the appeal shall render and serve a decision within 48 hours.

(7) Where a detention order was issued without interrogating the accused person, within 48 of depriving the accused person of liberty the court shall act in accordance with Article 142a paragraphs 1 to 4 of this Code.

Article 144

(1) The accused person may on the basis of a detention order issued by the investigating judge be kept in detention for no more than one month from the date of being deprived of liberty. After that date, the accused person may be kept in detention only on the basis on a ruling remanding him in detention for a further period of time.

(2) Detention ordered by a chamber (Article 24 paragraph 6) may be extended for no more than two months. Appeals against the chamber's ruling may be submitted, but do not stay its execution.

(3) Where proceedings concern a criminal offence punishable by a custodial penalty of five years or longer, the chamber of the immediately lower court may, acting on a substantiated proposal of the investigating judge or public prosecutor, extend detention by a period not longer than three months. Appeals against the ruling may be submitted, but do not stay its execution.

(4) Where no indictment is filed by the expiry of the time limits referred to in paragraphs 2 and 3 of this Article, the accused person shall be released from custody.

Article 145

(1) During the investigation, the investigating judge may repeal the detention order with the consent of the authorised prosecutor. Where there is agreement of the investigating judge and the authorised prosecutor, the investigating judge shall ask the chamber to rule thereon, which shall render a decision within 48 hours.

(2) Where the detention order is repealed after the expiry of the detention time limit, the ruling thereon shall be issued by the investigating judge.

Article 146

(1) Following the formal indictment and until the conclusion of the trial, decisions ordering, extending or staying detention shall be rendered pursuant to Article 142a of this Code.

(2) The chamber shall even without motions by parties examine the existence of grounds for detention and issue orders extending or staying detention, at the expiry of each period of thirty days before the indictment becomes effective, and at the expiry of each two-month period after it has become legally effective.

(3) An appeal against the ruling referred to in paragraphs 1 and 2 of this Article does not stay execution of the ruling.

(4) Chamber rulings denying motions to order or stay detention are not appealable.

Article 147

(1) The police or the court is required to promptly notify of a deprivation of liberty the family of the person deprived of liberty, common-law spouse or other person with whom that person lives in an extramarital or other lasting association, unless the person deprived of liberty is explicitly opposed to such notification.

(2) The police or the court is required to promptly notify the competent bar association about a deprivation of liberty of a lawyer.

(3) The competent social-care institution shall promptly be notified about a deprivation of liberty when measures are required for take care of the children and other members of the family who are ordinarily in the care of the person deprived of liberty.

7. Rules of detention

Article 148

(1) The person and dignity of detainees may not be violated during a period of detention.

(2) Only such restrictions as are required to prevent flight, incitement of third persons to destroy, conceal, alter or forge evidence or traces of a criminal offence, or direct and indirect contacts between detainees aimed at exerting influence on witnesses, accomplices and concealers, may be applied against detainees.

(3) Persons of different sexes may not be detained in the same room. As a rule, persons reasonably suspected of having taken part in the commission of the same criminal offence or persons serving a penalty may not be detained in the same room as detainees. Persons reasonably suspected of being repeat offenders shall if possible not be detained in the same room as other persons deprived of liberty on whom they could exert a harmful influence.

Article 149

(1) Detainees are entitled to an uninterrupted nightly rest period of at least eight hours every day.

(2) Outdoor activities shall be secured for detainees in a duration of at least two hours every day.

(3) Detainees are entitled to wear their own clothing, to use their own bedding, and to purchase from their own funds and consume and use food, books, professional publications, newspapers, implements for writing and drawing and other items which are

appropriate for their normal needs, except for objects suitable for inflicting injuries, causing harm to human health or preparing an escape.

(4) For the duration of the investigation, the investigating judge may temporarily deny or restrict detainees' access to the press, where it would be detrimental for the successful conduct of the proceedings. Appeals are allowed against rulings of investigating judge and shall be submitted to the chamber referred to in Article 24 paragraph 6 of this Code.

(5) Detainees may be placed under an obligation to perform chores needed for keeping their rooms clean. Where a detainee so requests, the investigating judge, or the president of the chamber, may agree with the prison's management to allow the detainee to perform within the prison work which corresponds to the detainee's mental and physical properties, provided it would not be detrimental to the conduct of the proceedings. The detainee shall be paid for his work a sum determined by the prison warden.

Article 150

(1) With the permission of the investigating judge and under his supervision, or the supervision of a person designated by the investigating judge, in full observance of the institution's house rules and regulations, detainees may receive visits from close relatives, and at their request also physicians and other persons. Certain visits may be prohibited if they could cause detriment to the conduct of the proceedings. Detainees may appeal against rulings of the investigating judge banning certain visits, but appeals do not stay their execution.

(2) Diplomatic and consular representatives of foreign states and signatories to certain international conventions have a right to, with the knowledge of the investigating judge, visit detainees who are their nationals and hold unsupervised conversations with them. The investigating judge shall notify the warden of the institution where the accused person is detained about the visit by a diplomatic or consular representative.

(3) The Ombudsman, a commission of the National Assembly, pursuant to the law, and an international organisation, pursuant to ratified international treaties, are entitled to pay unobstructed visits to detained persons and to talk to them without the presence of other persons.

(4) Detainees may maintain correspondence with persons outside the prison with the knowledge of the investigating judge and under his supervision. The investigating judge may prohibit the mailing and reception of letters and other communications detrimental to the conduct of the proceedings. Detainees may file appeals against the ruling of the investigating judge, but appeals do not stay execution of the ruling.

(5) The ban referred to in paragraph 4 of this Article does not include detainees' correspondence with their defence counsel, except where prescribed otherwise by this Code, as well as letters detainees send to international courts, international organisations involved in the protection of human rights, the Ombudsman and domestic legislative, judicial and executive authorities, and letters received from the same by the detainees.

(6) The dispatch of a request, complaint or appeal by a person deprived of liberty and a person in detention may not be banned. Documents of this type shall be sent and received in sealed covers, which shall be sealed and opened before the detainee, and solely for the purpose of examining the contents of the cover rather than the contents of the documents.

(7) After the indictment is filed and until the judgement becomes final, the president of the chamber shall be responsible for performance of the authorisations referred to in paragraph 1, 2 and 4 of this Article.

Article 151

(1) The investigating judge, or the president of the chamber, may impose on detainees disciplinary sanctions of restricting visits. The restriction does not include a detainee's communication with his defence counsel. Detainees may not be punished before being informed about the disciplinary transgressions of which they are accused, before they are given an opportunity to present their defence, and before the case has been carefully examined by a court.

(2) Appeals against the ruling on a penalty imposed pursuant to paragraph 1 of this Article may be filed with the chamber (Article 24 paragraph 6) of the competent court within 24 fours of the moment of receiving the ruling. Appeals do not stay execution of rulings. The chamber shall rule on appeals within eight days of receiving them.

Article 152

(1) Supervision of detainees is performed by the president of the court duly authorised.

(2) The president of the court or a judge designated by the president is required to visit detainees at least once every week and, if he finds it necessary, without the presence of the warden and warders inform himself about how the detainees are being fed and provided with other necessities, and how they are treated. The president or the duly designated judge is required to promptly notify the ministry responsible for the judiciary about the irregularities detected during the visit of the prison, and the ministry is required to within 15 days from receiving the notification notify the president of the court or the judge about measures taken to rectify them. The designated judge may not be an investigating judge.

(3) The president of the court and the investigating judge may visit all detainees at any time, talk to them and receive complaints from them.

Article 153

More detailed regulations on detention shall pursuant to the provisions of this Code be issued by the Minister of Justice.

Chapter IX
RENDERING AND PRONOUNCING DECISIONS

Article 154

(1) Decisions in criminal proceedings are issued in the form of judgements, rulings and orders.

(2) Judgements may only be issued by courts, while rulings and orders may also be issued by other authorities taking part in the criminal proceedings .

Article 155

(1) Court chambers shall render decisions after oral deliberation and voting. A decision is deemed rendered when a majority of the chamber's members voted for it.

(2) The president of the chamber shall chair the deliberation and voting, ensure that all questions are examined comprehensively and thoroughly, and shall be the last to vote.

(3) Where in respect of certain issues put to a vote the votes are divided so that no opinion has a majority, the issues shall be divided and the voting shall continue until a majority is achieved. If no majority can be achieved in this way, a decision shall be rendered so that the votes most unfavourable for the accused person shall be added to those votes which are less unfavourable, until the necessary majority is achieved.

(4) Members of chambers may not abstain from voting on issues presented by the president of the chamber, but a chamber member who voted for an acquittal or for repealing a judgement and was left in a minority is not required to vote on the penalty. If he does not vote, it shall be deemed that he concurs with the vote most favourable for the defendant.

Article 156

(1) in the deliberation, the first vote shall concern the issue of the court's jurisdiction, then whether the proceedings need to be amended, and other preliminary issues. After decisions are taken on the preliminary issues, the court shall deliberate the main matter.

(2) In deliberating on the main matter, it shall first be voted on whether the defendant committed the criminal offence, and the following votes shall concern the penalty, other criminal sanctions, the costs of the criminal proceedings, indemnification claims and other issues on which decisions are required.

(3) Where the same person is charged with several criminal offences, votes shall be taken on penalties for each of the offences, and then on an aggregate penalty for all the offences.

Article 157

(1) Deliberation and voting takes place in closed session.

(2) Only the chamber's members a record-keeper may be present in the room where the deliberation and voting are taking place.

Article 158

(1) Unless prescribed otherwise by this Code, decisions are communicated orally to persons having a legal interest, if they are present, and if they are not, by the service of certified copies.

(2) Where a decision has been communicated orally, it shall be so noted in the record or file, and persons who are entitled to appeal shall confirm this with their signatures. Where any such person states that he will not appeal, he shall not be served a certified copy of the decision, unless specified otherwise by this Code.

(3) Copies of decision which are appealable shall be served with instructions on the right to an appeal. Appeals filed for the benefit of the accused person shall be deemed timely if filed within the time limit specified in the instruction on the right to appeal, where a time limit longer than the statutory one is specified in the instruction.

Chapter X
SERVICE OF DOCUMENTS AND EXAMINATION OF FILES

Article 159

(1) As a rule documents are served by an official of the authority which issued the decision or at the seat of the authority, and may also be sent through the post, other legal person registered to serve documents, the police, local government authorities or by a letter rogatory through another authority.

(2) Summons for trial hearings and other summons may also be communicated orally to persons before the court, with an instruction about the consequences of failing to appear. This summons shall be noted in a record which the person summoned shall sign, except where the summons is noted in the trial record. It shall be deemed that a summons was duly served in this manner.

Article 160

(1) Where personal service of a document is prescribed by this Code, the document shall be served directly to the person to be served. If the person who is to be served a document is not present at the location where the service shall be performed, the process server shall inquire where and when the person can be found and shall leave with one of the persons referred to in Article 161 of this Code written notification that the person should be in his abode or workplace at a certain and date for the purpose of receiving the document. If after this the process server still fails to find the person who is to be served the document, he shall act pursuant to the provision of Article 161 paragraph 1 of this Code, and the service shall be deemed performed thereby.

(2) By exception from paragraph 1 of this Article, a document which shall pursuant to this Code be served in person shall be deemed duly served if it has been delivered to the address communicated to the court by the person to whom the document is to be

served, or if it is delivered to an address at which at least one successful service had previously been performed, and the person to whom the document is being served has not communicated a change of address.

Article 161

(1) Documents which pursuant to this Code do not have to be served personally shall also be served personally, but such documents, where the recipient is not found at his abode or place of work, may be served to an adult member of the household, who is required to receive the document. Where no adult members are found at the abode, the document shall be served to the building's janitor or a neighbour, if they agree to receive it. Where the service is conducted at the workplace of the person to whom the document is to be served, and the person is not present, the service may be effected to the person responsible for receiving mail, who has an obligation to receive the document, or a person employed at the same location, if that person agrees to receive the document.

(2) Where it is established that the person to whom the document is to be served is absent and that due to that fact the persons referred to in paragraph 1 of this Article cannot deliver the document to him in due time, the document shall be returned with an indication of the location of the absent person.

Article 162

(1) Summons for the first interrogation in the preliminary proceedings and summons for the trial shall be served to accused persons personally.

(2) The indictment, motion to indict or private prosecution, the judgement and other decisions from whose time of delivery the time limit for appeals begins to run, as well as appeals by the adverse party delivered for a response, shall be delivered personally to accused persons who have no defence counsel. Where an accused person requests that the summons referred to in paragraph 1 and documents referred to in this paragraph are served to a person he designates, service shall be effected to that person and shall be deemed performed to the accused person.

(3) Where an accused person who has no defence counsel is to be served a judgement in which an unconditional custodial penalty has been pronounced, and service to the address he had hitherto used cannot be performed, the court shall appoint a defence counsel for the accused person *ex officio* who shall perform the duty until the new address of the accused person is located. The appointed defence counsel shall be given a time limit for examining the files, after which the judgement shall be served to the appointed defence counsel and the proceedings resumed. Where another decision from whose moment of service an appeal time limit begins to run, or an appeal by the adverse party being served for a response, is concerned, and the process server could not locate the accused person's new address, the decision or the appeal shall be posted on the notice board of the court and deemed duly served at the expiry of a period of eight days from the date of the posting.

(4) Where the accused person has a defence counsel, the indictment, motion to indict, private prosecution and all decisions from the moment of whose service begins to run the time limit for filing an appeal or an objection, as well as appeals of the adverse party

being served for a response, shall be served to the defence counsel and the accused person pursuant to the provisions of Article 161 of this Code. In that case, the time limit begins to run from the date of serving the document to the accused person or the defence counsel. If a decision or appeal cannot be served to the accused person because he had not communicated a change of address to the court, the document shall be posted on the notice board of the court and deemed duly served at the expiry of a period of eight days from the date of the posting.

(5) Where a document is to be served to the accused person's defence counsel, and the accused person has more than one defence counsel, it is sufficient that it be served to one of them.

Article 163

(1) A summons for initiating private prosecution or indictment, as well as summons for the trial hearing, shall be served to private prosecutors and subsidiary prosecutors, or to their legal representatives, personally (Article 160), and to their proxies, in accordance with Article 161 of this Code. Decisions from the date of whose service begins to run the time limit for appeals and appeals by the adverse party being served for a response shall also be served in this manner.

(2) Where the persons referred to in paragraph 1 of this Article or aggrieved parties cannot be served at their hitherto addresses, the court shall post the summons or appeal on the notice board of the court and they shall be deemed duly served at the expiry of a period of eight days from the date of the posting.

(3) Where an aggrieved party, a subsidiary prosecutor or a private prosecutor has a legal representative or proxy, the service shall be effected to that person, and if there are more representatives or proxies, to only one of them.

Article 164

(1) Documents are served in sealed covers.

(2) Pro of service (service receipt) shall be signed by the recipient and the process server. The recipient shall designate on the service receipt the date of the reception.

(3) Where a recipient is illiterate or not able to sign his name, it shall be signed by the process server, who shall also specify the date of reception and the reason why he signed *in lieu* of the recipient.

(4) Where a recipient refuses to sign a service receipt, the process server shall so note on the service receipt and note the date of service, whereby the service is deemed performed.

Article 165

Where a recipient or adult member of the recipient's household refuses to receive a document, the process server shall note on the service receipt the date, time and reason

for the refusal of reception, and leave the document in the recipient's abode or workplace, whereby the service is deemed performed.

Article 166

(1) Summons for military personnel, warders in custodial institutions and persons employed in road, railway, riverine, marine and air traffic shall be served through their command or immediate superior, and if so required, other documents may also be served to them in this manner.

(2) Documents shall be served to persons deprived of liberty in the court or through the institution where they are accommodated.

(3) Documents shall be served to persons who enjoy immunity in Serbia through the ministry responsible for foreign affairs, unless specified otherwise by international agreements.

(4) Documents shall be served to Serbian citizens in foreign countries through a diplomatic or consular representation of Serbia in that country, provided the foreign country does not oppose that form of service and that the person being served agrees to receive the document of his own free will. An authorised officer of diplomatic or consular representation shall sign the receipt of service in a capacity of process server, if the document is served in the representation, and if the document was delivered by mail shall make a note of this on the service receipt.

Article 167

(1) Decisions and other documents shall be served to public prosecutors by serving them to the clerk's office of the public prosecution.

(2) Where decisions from whose date of delivery a time limit begins to run are being served, the date of service of the document to the clerk's office of the public prosecution shall be deemed the date of service.

(3) Upon a request of the public prosecutor, the court shall deliver to the prosecutor the criminal case for his examination. Where a time limit for filing a legal remedy is running, or where other interests of the proceedings so demand, the court may also determine a time limit for the public prosecutor to return the files.

Article 168

In cases not regulated by this Code service shall be effected in accordance with provisions which apply to civil litigation.

Article 169

(1) Summons and decisions issued until the conclusion of the trial for persons participating the proceedings, except the accused person, may be give to a participant in

the proceedings who agrees to deliver them to the intended recipient, if the authority holds that in such a manner their reception has been ensured.

(2) The persons referred to in paragraph 1 of this Article may be informed about summons for trial or another summons, as well as decisions to postpone a trial or other scheduled actions, by telegram or by telephone, by electronic mail or other electronic message-transmission medium, provided that the means of communication can provide for the authority issuing the summons feedback information that the person has received the summons or notice, if it can be assumed in view of the existing circumstances that the notification effected in this manner will be received by the intended recipient.

(3) An official note shall be made in the files about the summons and service of a decision effected in the manner referred to in paragraphs 1 and 2 of this Article.

(4) Detrimental consequences prescribed for omission may take effect against a person who has pursuant to paragraph 1 or paragraph 2 of this Article been notified, or to whom the decision was addressed, only when it is established that that person received the summons or decision in due time and had been instructed of the consequences of omission.

Article 170

(1) Examination, transcription, copying, and recording of particular criminal files may be allowed to any having a justified interest.

(2) When proceedings are pending the authority conducting them is responsible for issuing permission for the actions referred to in paragraph 1, and after the proceedings are concluded, the president of the court or an official designated by the president. If the files are held by the public prosecutor, actions referred to in paragraph 1 of this Article shall be permitted by the public prosecutor.

(3) If the public is excluded from the trial or the right to privacy would be grossly violated, the actions referred to in paragraph 1 may be denied or made conditional on a ban on the public use of the names of the parties to the proceedings. Appeals against denying access may be filed, but they do not stay execution.

(4) The provisions of Article 60 and Article 74 of this Code also apply to actions referred to in paragraph 1 in respect of private prosecutors, subsidiary prosecutors, the aggrieved and defence counsel.

(5) Accused persons or suspects interrogated pursuant to the provisions of this Code on interrogation and the defence counsel are entitled to examine files and objects serving as evidence.

Chapter XI
BRIEFS AND RECORDS

Article 171

(1) Private prosecutions, indictments and motions to indict by subsidiary prosecutors, proposals, legal remedies and other affidavits and statements shall be submitted in writing or given orally for the record.

(2) The briefs referred to in paragraph 1 of this Article must be comprehensible and contain everything necessary for them to be acted on.

(3) Unless prescribed otherwise in this Code, the court shall invite persons submitting briefs which are not comprehensible or do not include everything required for them to be acted upon to rectify their briefs or amend them, and if they fail to do so by a prescribed time limit, the brief shall be dismissed by the court.

(4) The court's instruction for rectification of the brief shall contain a caution about the consequences of non-compliance.

(5), The court may in accordance with the Rules of Court allow parties, aggrieved parties and other participants to submit to the court their briefs, legal remedies, other affidavits and statements in electronic form.

(6) The records and documents referred to in paragraph 5 of this Article are also kept in the court in electronic form, in accordance with the Rules of Court.

Article 172

Briefs which are pursuant to this Code served to the adverse party shall be delivered to the court in a number of copies sufficient for the court and the other party. Where such briefs have not been delivered to the court in a sufficient number of copies, the court shall make additional copies at the expense of the submitting party.

Article 173

(1) The court is required to protect its own reputation and those of parties and other participants in proceedings from insults, threats or any other assaults.

(2) The court shall impose a fine of up to 100,000 RSD on a defence counsel, proxy, legal representative, aggrieved party, private prosecutor or subsidiary prosecutor who in a brief or verbally offends the court or a person participating in the proceedings. Rulings on the penalty shall be issued by the investigating judge, or the chamber before which the statement was made, and if it was made in a brief – the court that is to decide on the brief. Appeals may be filed against the ruling. Where a public prosecutor or person representing the public prosecutor offends another, the competent public prosecutor shall be notified thereof. The bar association shall be notified of penalties imposed on lawyers or trainee lawyers.

(3) The fines imposed under paragraph 1 of this Article in no way affect prosecution and pronouncement of penalties for a criminal offence committed by an insult.

Article 174

(1) A record shall be kept of every action conducted during criminal proceedings as it is being performed, and when that is not possible, immediately following the action.

(2) The record shall be made by a recorder. Only in the cases of searches of abodes or persons, or actions conducted outside the official premises of the authority when a recorder cannot be secured, the record may be made by person performing the action.

(3) Where a recorder is making the record, the record is made by the person performing the action stating aloud to the recorder what to enter in the record.

(4) Persons being interrogated may be allowed to dictate their responses for the record. In cases of abuses of this right, it may be denied.

Article 175

(1) The record shall contain the name of the public authority before which the action is being performed, the location where the action is being performed, the date and the time of commencement and conclusion of the action, the first names and surnames of the persons present and their capacities, and an indication of the criminal case in connection with the action is being performed.

(2) The record shall contain essential data about the course and contents of the actions performed. Only the essence of all statements and testimony given shall be entered in the record, in narrative form. Questions posed shall be entered only if is required to clarify the answers given. When it is deemed necessary or at the request of parties or defence counsel, the question asked and the answer given shall be entered in the record verbatim. In cases this right is abused, it may be denied. Where during the performance of an action objects and documents are seized, it shall be so entered in the record, and the items seized shall be attached to the record or the record shall contain the location where they are being kept.

(3) The court of trial hearings may also be recorder by a stenographer. Stenographic notes shall within 48 hours be transcribed, inspected, signed by the stenographer and attached to the files.

(4) During the performance of actions such as a crime scene inspections, searches of abodes or persons, or identifications of persons or objects (Article 104), other data shall be entered in the record which are important in view of the nature of the action or for the purpose of identifying certain objects (description, dimensions and sizes of the objects or traces, placement of markings on objects etc.), a where sketches and drawings, plans, photographs, video recordings etc. have been made – that shall be entered in the record and attached to the record.

Article 176

(1) Records shall be kept in an orderly manner. There may be no erasures, additions or changes in records. Everything that has been crossed out must remain clear.

(2) All changes, corrections and amendments shall be entered at the end of the record and duly certified by the persons signing the record.

Article 177

(1) Interrogated or questioned persons, persons whose presence is mandatory in the proceedings, as well as parties, defence counsel and the aggrieved party, if they are present, are entitled to read the record or to demand that it be read to them. The person conducting the action shall notify them of this right, and it shall be noted in the record whether such information was provided and whether the record was read. The record shall always be read if no recorder was present, which shall also be stated in the record.

(2) Interrogated or questioned persons shall sign the record. Where the record consists of several leaves, the interrogated or questioned person shall sign every leaf. Where an interrogated or questioned person refuses to sign the record or to leave a fingerprint on it, it shall be so noted in the record, as well as the reasons for the refusal.

(3) The interpreter, if any, and witnesses whose presence is mandatory in the performance of investigatory actions shall sign the record last, and during searches also the person who is being searched personally or his abode is being searched. Where the record is not being made by a recorder (Article 174 paragraph 2), the record shall be signed by the persons attending the action. If there are no such persons, or if they are not able to understand the contents of the record, the record shall be signed by two witnesses, except where it is not possible to secure their presence.

(4) Instead of a signature illiterate persons shall make a print of the thumb of their right hand, and the record shall sign the person's first name and surname under the print. Where it is not possible to obtain a print from the right hand thumb, a print of any other finger on any hand shall be made, and it shall be noted in the record which finger and which hand were concerned.

(5) Where the interrogated or questioned person has no hands – he shall read the record, and if the person is also illiterate – he shall have the record read to him, and that action shall be noted in the record.

(6) If the action could not be completed without an interruption, the time and date of the interruption shall be noted in the record, as shall the date and time when the action was resumed.

(7) Where there were objections in respect of the contents of the record, the objections shall also be entered in the record.

(8) The last to sign the record shall be the person who had undertaken the action and the recorder.

Article 178

(1) Where it is specified in this Code that a court's decision cannot be based on statements made by the accused person, witnesses or expert witnesses, the

investigating judge shall *ex officio* or acting on a proposal by the parties issue a ruling on the exclusion of these statements from the files immediately, and no later than the conclusion of the investigation, or the issuance of the consent of the investigating judge for an indictment to be filed without the conduct of an investigation (Article 244 paragraph 1). A special appeal against this ruling is allowed.

(2) After the ruling becomes final, the excluded records shall be sealed in a separate cover and kept by the investigating judge apart from the other files, and may not be examined or used in the proceedings.

(3) After the completion of the investigation, and the issuance of the consent for an indictment to be filed without the conduct of an investigation (Article 244 paragraph 1), the investigating judge shall act pursuant to the provisions of paragraphs 1 and 2 of this Article also in respect of all information which was within the meaning of Article 235 paragraph 2 and Article 226 paragraph 1 of this Code provided to the public prosecutor and the police by citizens, except the record referred to in Article 226 paragraph 9 of this Code. Where the public prosecutor files an indictment without the conduct of an investigation (Article 244 paragraph 6), ha shall deliver files containing such information to the investigating judge, who shall act in accordance with the provisions of this Article.

Article 179

(1) The investigating judge may order the conduct of an investigatory action recorded by audio or video recording equipment. The investigating judge shall previously notify thereof the person being interrogated or questioned.

(2) Video recordings may not be made at trials, except where especially permitted for individual trial hearings by the President of the Supreme Court of Cassation. Where recording at the trial has been authorised, the chamber may decide on justifiable grounds that certain parts of the hearing may not be recorded.

(3) The recording shall contain the data referred to in Article 175 paragraph 1 of this Code, data needed to identify the person whose statement is being recorded and data on the capacity in which that person is being interrogated or questioned. Where statements made by several persons are being recorded, the recording shall be made so that it can be clearly seen from it who gave which statement.

(4) At the request of the interrogated or questioned person, the recording shall be played back immediately, and any corrections and clarifications made by that person shall be recorded.

(5) The record of the investigatory action or the trial shall contain the fact that recording was made, the identity of the person who made it, that the person being interrogated or questioned had previously been informed about the recording, that the recording was played back and where it is kept, unless it has been attached to the case file.

(6) The investigating judge or the president of the chamber may order the recording transcribed in full or in part. In such case the transcript shall be examined, certified and attached to the record on the conduct of the investigatory action.

(7) The recording shall be kept in the court for as long as the criminal file is kept.

(8) The investigating judge may allow participants in the proceedings who have a justifiable interest to make an audio recording of the conduct of the investigatory action.

(9) The recordings referred to in the preceding paragraphs of this Article may not be shown in public without written authorisation of the parties and participants in the recorded action.

Article 180

Provisions of Articles 312 to 315 of this Code shall also apply to the record of the trial.

Article 181

(1) A separate record shall be made of the deliberation and voting.

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

(3) This record shall be signed by all the members of the chamber and the recorder. Dissenting opinions shall be attached to the record of the deliberation and voting, unless they are entered in the record.

(4) The record of the deliberation and voting shall be sealed in a separate cover. This record may be examined only by a higher court ruling on a legal remedy which is in that case required to seal the record again in a separate cover and specify on the cover that it had examined the record.

Chapter XII
TIME LIMITS

Article 182

(1) Time limits prescribed by this Code may not be extended, except where explicitly allowed by this Code. Where a time limit prescribed by this Code for the purpose of protecting the rights of the defence and the other procedural rights of the accused person is concerned, such time limit may be shortened if the accused person so requests in writing or states so orally for the record before the court.

(2) Where a statement must be given within a prescribed time limit, it shall be deemed made if it is delivered to the person authorised to receive it before the expiry of the time limit.

(3) Where a statement is sent through the post by registered mail or by telegraph, the date of delivery to the post office is deemed the date of delivery to the person to whom it was addressed. Delivery to a military post office in places where there exists no regular post office is deemed as delivery to the post office by registered mail.

(4) Accused persons in detention may give statements subject to a time limit orally for the record at the court conducting the proceedings or deliver them to the prison administration, and persons serving custodial sentences or those institutionalised for the implementation of a security measure or a correctional measure may deliver such statements to the administrations of the institutions where they are accommodated. The date when such a statement is made, or when the statement was delivered to the administration of the institution is deemed the date of its delivery to the authority responsible for receiving it. The prison or institution administration shall issue to persons deprived of liberty receipts of the delivery of their statements.

(5) Where a brief subject to a time limit is due to the ignorance or obvious omission of the sender delivered or sent to a court which is not competent before the expiry of the time limit, and is received by the competent court after the expiry of the time limit, it shall be deemed timely.

Article 183

(1) Time limits are calculated in hours, days, months and years.

(2) The hour or the day when a delivery or a statement was made, or the hour or day of the event from which the calculation of the time limit commences, shall not count towards the time limit, but the first following hour or day shall be taken as the beginning of the time limit. One day is counted as 24 hours, and months are calculated as calendar months.

(3) Time limits prescribed in months or years expire on the termination of that day of the last month or year whose number corresponds to the day when time limit commenced to run. If there is no such day in the last month, the time limit expires on the last day of that month.

(4) Where the last day of a time limit falls on a national holiday or a Saturday or Sunday or other day when the public authority is closed, the time limit shall expire on the termination of the first following workday.

Article 184

(1) Accused persons who on justifiable grounds miss time limits for filing appeals against judgements or appeals against rulings on the implementation of a security measure or seizure of proceeds from crime, or time limits for submitting objections against rulings on penalties, shall be allowed restitution by the court to lodge their appeals or objections, if within a time limit of eight days after the expiry of the reasons for missing the time limit they submit requests for restitution and together with them also their appeals or objections.

(2) Restitution may not be sought at the expiry of a period of three months following the date of missing the time limit.

Article 185

(1) Decisions on restitution shall be rendered by the president of the chamber which issued the judgement of ruling challenged by the appeal.

(2) Rulings permitting restitution are not appealable.

(3) Where accused persons appeal against rulings denying restitution, the court is required to deliver such appeals, together with appeals against judgements or appeals against rulings on the implementation of a security measure or seizure of proceeds from crime, or objections against rulings on penalties, as well as responses to appeals and all files, to the immediately higher court, for a decision.

Article 186

As a rule, requests for restitution do not stay enforcement of the judgement, or rulings on penalties or implementation of security measures or on seizure of proceeds from crime, but the court responsible for ruling on the request may decide to stay enforcement until it rules on the request.

Chapter XIII
ENFORCEMENT OF DECISIONS

Article 187

(1) Judgements shall be deemed final when they are no longer appealable or where appeals are not allowed.

(2) Final judgements shall become enforceable from the day of service, unless there exist legal obstacles for enforcement. Where no appeal has been filed or the parties waive that right or withdraw an appeal, the judgement shall become enforceable by the expiry of the time limit for appeals, or from the date of the waiver or withdrawal of an appeal which had been filed.

(3) If the court which issued a judgement in the first instance is not competent for its enforcement, it shall deliver a certified copy of the judgement with a certificate of enforceability to the court which has jurisdiction to enforce.

(4) Where a penalty has been imposed on an armed forces reserve junior officer or officer, the court shall deliver a certified copy of the final judgement to the authority responsible for defence affairs which keeps a registry in which the convicted person is registered.

Article 188

(1) Enforcement of the judgement in respect of the costs of the criminal proceedings, seizure of proceeds from crime and indemnification claims shall be conducted by a competent court pursuant to provisions relating to enforcement proceedings.

(2) The costs of criminal proceedings shall be collected *ex officio* by force for the benefit of the budget. The costs of the forcible collection shall be paid out in advance from budget funds.

(3) Where a measure of confiscation of objects has been pronounced in the judgement, the court which pronounced the penalty in the first instance shall decide whether to sell such objects pursuant to provisions on enforcement proceedings, or to transfer them to a criminology museum or other institution, or to destroy them. Proceeds of any sales shall go towards the budget of the judiciary.

(4) The provision of paragraph 3 of this Article shall be applied accordingly in respect of decisions on the confiscation of objects pursuant to Article 512 of this Code.

(5) Final decisions on confiscation of objects may be changed in civil litigation if a dispute appears concerning ownership of objects, apart from the case of reopening criminal proceedings or a request for the protection of legality or a request to review the legality of a final judgement.

Article 189

(1) Unless specified otherwise by this Code, rulings shall be executed when they become final. Orders shall be executed immediately unless the authority which issued them decides otherwise.

(2) Rulings become final when they are not appealable or where no appeal is allowed.

(3) Rulings and orders, unless specified otherwise, are executed by the authorities which issued them. Where a court has decided on the costs of criminal proceedings by a ruling, the costs shall be collected pursuant to the provisions of Article 188 paragraphs 1 and 2 of this Code.

Article 190

(1) Decisions on cases where doubt appears about the permissibility of the execution of a court decision or on the calculation of a penalty, or where a final judgement has no provision for counting in time spent in detention or time served, or the calculation has not been performed correctly, shall be rendered by a special ruling by the president of the chamber of the court which adjudicated in the first instance. Appeals do not stay execution of rulings, unless specified otherwise by the court.

(2) Where during an execution doubts appear in connection with the interpretation of a court decision, the president of the chamber which rendered the final decision shall rule thereon.

Article 191

When an indemnification claim decision becomes final, the aggrieved party may request the court which adjudicated in the first degree to issue him a certified copy of the decision specifying that the decision is enforceable.

Article 192

Regulations on the manner of keeping criminal records shall be issued by the government.

Chapter XIV
COSTS OF CRIMINAL PROCEEDINGS

Article 193

(1) The costs of criminal proceedings are the expenses incurred in connection with the criminal proceedings from its institution to its conclusion, and expenses incurred in connection with investigatory actions conducted before the investigation.

(2) The costs of criminal proceedings include the following:

1) witnesses', expert witnesses', interpreters' and professionals', and crime scene inspection costs;

2) costs of transportation of accused person;

3) costs of bringing in the accused person;

4) travel costs of officials;

5) costs of medical treatment of the accused person while in detention, as well as child delivery costs, except for those which are collected from the health insurance fund;

6) costs of technical inspections of vehicles, medical and biological analyses and transportation of cadavers to autopsy sites;

7) the fees and necessary expenses of defence counsel, necessary expenses of private prosecutors and subsidiary prosecutors and their legal representatives, as well as the fees and necessary expenses of their proxies;

8) necessary expenses of aggrieved parties and their legal representatives, as well as the fees and necessary expenses of their proxies;

9) a lump sum for expenses not included in the preceding items.

(3) The lump sum shall be determined in accordance with the duration and complexity of the proceedings and the financial standing of the person who is under obligation to pay the sum.

(4) The costs referred to in items 1) to 6) of paragraph 2 of this Article, as well as the necessary expenses of court-appointed defence counsel and proxies of subsidiary prosecutors (Articles 72 and 198), in proceedings in connection with criminal offences

criminally prosecutable *ex officio*, shall be paid out in advance from the resources of the authority conducting the criminal prosecution, and shall later be collected from persons required to compensate them pursuant to the provisions of this Code. The authority in charge of the criminal proceedings is required to specify all expenses paid out in advance in an inventory which shall be attached to the files.

(5) Interpretation and translation costs shall not be collected from the persons who are pursuant to the provisions of this Code required to compensate criminal prosecution costs.

(6) The costs of the pre-trial proceedings concerning the fee and necessary expenses of the defence counsel assigned by the internal affairs authority shall be paid by that authority.

Article 194

(1) Every judgement and ruling imposing a penalty, ruling imposing a judicial admonition, and ruling discontinuing criminal proceedings shall contain a decision on who will bear the costs of the proceedings and their amount.

(2) If data on the amount of costs is not available, a separate ruling on the costs shall be issued by the investigating judge, single judge or the president of the chamber after the data is obtained. Data on costs and requests for their compensation may be submitted no later than one year from the date when the judgement or ruling referred to in paragraph 1 of this Article becomes final.

(3) Where the decision on the costs of criminal proceedings is made by a separate ruling, appeals against that ruling shall be decided by the chamber (Article 24 paragraph 6).

Article 195

(1) Accused persons, aggrieved parties, subsidiary prosecutors, private prosecutors, defence counsel, legal representatives, proxies, witnesses, expert witnesses, interpreters and professionals (Article 251), irrespective of the outcome of the criminal proceedings, shall bear the costs of being brought in, postponements of investigatory actions or the trial, and other procedural costs for which they were responsible, as well as proportional amounts in the lump sum.

(2) A separate ruling shall be issued on the costs referred to in paragraph 1 of this Article, unless the costs borne by the private prosecutor and the accused person are decided on in the decision on the principal matter.

(3) Rulings on the special appeals referred to in paragraph 2 of this Article shall be rendered by the chamber referred to in Article 24 paragraph 6 of this Code.

Article 196

(1) Where a court convicts an accused person, it shall state in the judgement that the accused person is required to pay the costs of the criminal proceedings.

(2) Persons charged in connection with several criminal offences shall not be convicted to pay costs in respect of the charges of which they were acquitted, if it is possible to calculate a specific amount in the total amount of the costs.

(3) In judgements in which several accused persons were convicted, the court shall determine the proportion of the total costs that shall be paid by each of them, and if that is not possible, shall find them jointly liable for the costs. Lump sum payments shall be determined for each accused person separately.

(4) In the decision in which it rules on costs, the court may relieve an accused person of the duty to pay the full costs or partial costs of criminal proceedings referred to in Article 193 paragraph 2 items 1) to 6) and 9) of this Code, if that payment would jeopardise the livelihood of the accused person or the support of a person or persons the accused person is required to support. Where these circumstances are determined after the issuance of a decision on costs, the president of the chamber may issue a separate ruling relieving the accused person of the duty to compensate the costs of criminal proceedings.

Article 197

(1) Where criminal proceedings are discontinued, where the accused person is acquitted of the charges or where the charges are dismissed, it shall be stated in the ruling or judgement that the costs of the criminal proceedings referred to in Article 193 paragraph 2 items 1) to 6) of this Code, as well as the necessary expenses of the accused person and the necessary expenses and fee of the defence counsel shall be paid from budget funds, except in the cases referred to in the following paragraphs.

(2) Under a separate ruling persons convicted by a final judgement of the criminal offence of false reporting shall bear the costs of the criminal proceedings they caused. The chamber referred to in Article 24 paragraph 6 of this Code Acting shall render this ruling upon a motion of the public prosecutor.

(3) Private prosecutors are required to pay the costs of the criminal proceedings referred to in Article 193 paragraph 2 items 1) to 6) and 8) of this Code, necessary expenses of the accused person, and the necessary expenses and fee of his defence counsel, if the proceedings are concluded by a judgement acquitting the accused person, or a judgement dismissing the charges, or a ruling discontinuing the proceedings, except where the proceedings were discontinued or a judgement issued dismissing the charges due to the death of the accused person or because criminal prosecution has lapsed owing to extensive delays of the proceedings for which the private prosecutor cannot be held responsible. Where proceedings were discontinued by a withdrawal of the charges, the accused person and private prosecutor may reach a settlement of mutual expenses. Where there is more than one private prosecutor, they shall be jointly liable for the costs.

(4) Aggrieved parties who withdraw their motions to prosecute shall bear the costs of the criminal proceedings unless the accused person has declared that he will bear them.

(5) Where a court finds it does not have jurisdiction and dismisses charges, the decision on costs shall be rendered by the competent court.

(6) Where a request for indemnification of necessary expenses and fee referred to in paragraph 1 is not approved, or the court does not rule on it within three months of the date of submission of the request, the accused person and defence counsel are entitled to file a civil claim against the Republic of Serbia.

Article 198

(1) The fees and necessary expenses of the defence counsel and proxies of private prosecutors or aggrieved parties shall be paid by the person being represented, irrespective of the party liable for the costs of the criminal proceedings under the court's decision, except where pursuant to the provisions of this Code the fees and necessary expenses of defence counsel are paid from budget funds. Where a defence counsel was appointed for an accused person, and the payment of a fee and necessary expenses would threaten the livelihood of the accused person or the support of a person or persons the accused person is obliged to support, the fee and necessary expenses of the defence counsel shall be paid from budget funds. This shall also be done where a proxy was appointed for a subsidiary prosecutor.

(2) Proxies who are not lawyers or trainee lawyers are not entitled to a fee, but only to compensation of necessary expenses.

Article 199

Decisions on costs incurred before a higher court shall be rendered by that court pursuant to the provisions of Articles 193 to 198 of this Code.

Article 200

A more detailed regulation on compensation of costs of criminal proceedings and the amount of the lump sum shall be issued by the Government.

Chapter XV
INDEMNIFICATION CLAIMS

Article 201

(1) Indemnification claims arising out of the commission of a criminal offence shall be considered in criminal proceedings on a motion of authorised persons, unless it would unduly prolong the proceedings.

(2) Indemnification claims may relate to compensation of damage, recovery of objects or annulment of a certain legal transaction.

Article 202

(1) Motions for asserting indemnification claims in criminal proceedings may be submitted by persons authorised to realise such claims in civil litigation.

(2) Where damage occurs due to the commission of a criminal offence to state-owned or socially-owned assets, the authority authorised by law to look after the protection of such assets may participate in criminal proceedings in accordance with the powers he possesses under that statute.

Article 203

(1) Motions for asserting an indemnification claim in criminal proceedings shall be submitted to the authority to whom the criminal complaint was submitted or to the court conducting the proceedings.

(2) Motions may be submitted no later than the conclusion of the trial before a court of first instance.

(3) Persons authorised to file the motion shall specify the claim and submit supporting evidence.

(4) Where authorised persons have not submitted motions for asserting indemnification claims in criminal proceedings by the issuance of the indictment, they shall be notified that they are entitled to file such claims by the end of the trial. Where the criminal offence resulted in damage to state-owned, or socially-owned assets, and no motion has been filed, the court shall notify thereof the authority referred to in Article 202 paragraph 2 of this Code.

Article 204

(1) Authorised persons (Article 202) may until the conclusion of the trial withdraw their motions for asserting indemnification claims in criminal proceedings and assert them in civil litigation. Where such a motion has been withdraw, it may not be submitted again.

(2) Where an indemnification claim has after the filing of the motion and before the conclusion of the trial been transferred to another person, pursuant to the rules of property law, the said person shall be summoned to declare himself on whether he still intended to pursue his claim. Where a duly summoned persons fails to appear, it shall be deemed that her has abandoned his action.

Article 205

(1) The court conducting the proceedings shall question the accused person on the facts specified in the motion and explore the circumstances for determining the indemnification claim. The court is required to collect necessary evidence and explore actions necessary for deciding on the motion even before such a motion has been filed.

(2) Where exploration of indemnification claims would substantially prolong criminal proceedings, the court shall limit itself to the collection of facts whose establishment would not be possible at a later date, or would be much more difficult.

Article 206

(1) Indemnification claims shall be decided by courts.

(2) In a judgement convicting the accused person, the court may satisfy the authorised person's property law in full, or in part, and refer the authorised person to civil litigation for the remainder. Where the data of criminal proceedings provide no reliable basis for full or partial adjudication, the court shall direct the authorised person to assert his indemnification claim in full in civil litigation.

(3) Where a court acquits the accused person of charges, or issues a judgement dismissing the charges, or issues a ruling discontinuing the criminal proceedings, it shall direct aggrieved parties to pursue their indemnification claims in civil litigation.

(4) Where a court declares itself incompetent for conducting criminal proceedings, it shall direct authorised persons to file their indemnification claims in the criminal proceedings which will be instituted or continued by a competent court.

Article 207

Where indemnification claims concern recovery of objects, and the court determines that an object is the property of an aggrieved party and is currently held by the accused person or another participant in the criminal offence or a person to whom they had given it for safekeeping, in its judgement the court shall order the object handed over to the aggrieved party.

Article 208

Where indemnification claims relate to annulment of certain legal transactions, and the court finds a claim justified, it shall pronounce in its judgement a full of partial annulment of that legal transaction, with the consequences deriving therefrom, without affecting the rights of third parties.

Article 209

(1) Courts may alter final judgements in criminal proceedings in which it was decided on an indemnification claim only in connection with the reopening of criminal proceedings, a request to protect legality or a request for examining the legality of the final judgement.

(2) Except for the case referred to in paragraph 1 of this Article, accused persons or their heirs may only demand in civil litigation the alteration of a final judgement of a criminal court in which an indemnification claim was decided, and if there exist the necessary circumstances for reopening the proceedings according to the provisions applying to civil litigation.

Article 210

(1) On a motion of authorised persons (Article 202), temporary measures for securing indemnification claims arising out of the commission of a criminal offence may be

ordered in criminal proceedings pursuant to provisions which apply to enforcement proceedings.

(2) The ruling referred to in paragraph 1 of this Article shall during the investigation stage be issued by the investigating judge. After the issuance of the indictment, the ruling shall be rendered by the president of the chamber outside the trial, and at the trial by the chamber.

(3) Rulings against chambers' decision on temporary security measures are not appealable. In other cases decisions on appeals shall be rendered by the chamber referred to in Article 24 paragraph 6. Appeals do not stay execution of rulings.

Article 211

(1) Where objects are concerned that are indubitably the property of the aggrieved, and have not been entered as evidence in criminal proceedings, they shall be delivered to the aggrieved even before the completion of the proceedings.

(2) Where several aggrieved parties are in dispute in connection with the ownership of one or more objects, they shall be referred to civil litigation, and in the criminal proceedings the court shall only order the objects to be safeguarded as a temporary security measure.

(3) Objects serving as evidence shall be seized and returned to their owners at the conclusion of the proceedings. If such an object is urgently needed by the owner, it may be returned even before the completion of the proceedings, and the owner shall declare an obligation to bring in the object when necessary.

Article 212

(1) Where an aggrieved party has a claim against a third party because that person holds objects acquired by the commission of the criminal offence, or has acquired material gains by the commission of the criminal offence, the court may in criminal proceedings, acting on a motion by authorised persons (Article 202) and pursuant to provisions applicable to enforcement proceedings, order temporary security measures against such third person. The provisions of Article 210 paragraphs 2 and 3 of this Code shall also apply in this case.

(2) In judgements convicting accused persons, the court shall revoke the measures referred to in paragraph 1 of this Article, if they had not repealed earlier, or shall refer aggrieved parties to civil litigation, with the proviso that the measures will be repealed if civil litigation is not initiated within a time limit determined by the court.

Chapter XVI
PREJUDICIAL ISSUES

Article 213

(1) Where the application of criminal law depends on a prior ruling on a legal issue for whose determination jurisdiction rests with a court in another proceedings or a different public authority, the court adjudicating the criminal case may rule on that question pursuant to provisions applying to adducing testimony in criminal proceedings. The resolution of this legal issue has effect only for the criminal case before that court.

(2) Where a decision on that issue has already been rendered by a court in another proceedings or by another public authority, the criminal court shall not be bound by such decision in its assessment whether a certain criminal offence has been committed.

Chapter XVII
DEFINITIONS OF LEGAL TERMS AND OTHER PROVISIONS

Article 214

(1) Where it is prescribed by law that prosecution of certain individuals and criminal offences requires prior permission from a competent public authority, the public prosecutor may not request the conduct of the investigation or issue an indictment or motion to indict directly unless he submits proof that such permission has been granted.

(2) Where a criminal offence is being prosecuted on the basis of private prosecution, or on a motion by a subsidiary prosecutor, permission shall be obtained by the court.

(3) Persons who enjoy immunity from prosecution may invoke that right by the commencement of the trial. Where a defendant acquires immunity following the commencement of the trial, he may invoke that immunity immediately, but no later than the conclusion of the trial.

(4) The authorities referred to in paragraphs 1 and 2 of this Article may ask a competent public authority permission to institute criminal prosecution even before a person enjoying an immunity right invokes it.

Article 215

Where proceedings for a criminal offence depend on a motion by an aggrieved party, the public prosecutor may not request the conduct of an investigation or issue an indictment or a motion to indict until the aggrieved has filed his motion.

Article 216

Within three days of placement in detention, the effectiveness of the indictment, or a conviction in connection with a criminal offence prosecutable on the basis of a motion to indict, the court shall notify the authority of employer where the accused person is employed.

Article 217

Where it is established during criminal proceedings that the accused person has died, the criminal proceedings shall be discontinued by a ruling of the investigating judge, individual judge or the president of the chamber.

Article 218

(1) For the duration of the proceedings, the court may order the following to pay fines of up to 100,000 RSD: the defence counsel, proxy, legal representative, aggrieved parties, subsidiary prosecutors or private prosecutors – if the obvious aim of their actions was to delay the criminal proceedings.

(2) The bar association shall be notified on the imposition of a fine on a lawyer or trainee lawyer.

(3) Where the public prosecutor does not submit motions to the court in a timely manner or conducts other procedural actions with substantial delays, causing the proceedings to be prolonged, a higher public prosecutor shall be notified thereof.

Article 219

(1) Rules of international law shall be applied in respect of the exclusion from criminal proceedings of foreign nationals who enjoy immunity rights in Serbia.

(2) Where there is doubt about the fact that such persons are concerned, the court shall approach the ministry responsible for foreign affairs for clarification.

Article 220

All public authorities are required to render all necessary assistance to courts and the public authorities participating in criminal proceedings, especially in respect of the detection of criminal offences and their perpetrators.

Article 221

The terms used in this Code shall mean the following:

1) A suspect is a person against whom before institution of criminal proceedings a competent public authority had undertaken certain action in connection with the existence of reasonable suspicion that that person had committed a criminal offence.

2) An accused person is a person against whom has been rendered or filed a ruling on the conduct of an investigation, an indictment, a motion to indict, or private prosecution.

3) A defendant is a person against him the indictment has acquired legal force.

4) A convicted person is a person determined by a final judgement or a final ruling on a penalty to have committed a certain criminal offence.

5) Convicted persons, accused persons and indicted persons may all be called defendants.

6) Aggrieved parties ate persons whose one or more personal or property right or rights have been violated or threatened by a criminal offence.

7) The prosecutor is the public prosecutor, private prosecutor and subsidiary prosecutor.

8) The term public prosecutor also refers to deputy public prosecutors.

9) The parties are the prosecutor or prosecutors and the defendant.

Part two
COURSE OF PROCEEDINGS

A. PRE-TRIAL PROCEEDINGS

Chapter XVIII
CRIMINAL COMPLAINTS AND THE POWERS OF THE AUTHORITIES OF PRE-TRIAL PROCEEDINGS

Article 222

(1) All public authorities, territorial autonomy authorities and local self-government authorities, public enterprises and institutions are required to report all criminal offences prosecutable *ex officio* of which they were informed or of which they learn in other manner.

(2) The submitters of the criminal complaint referred to in paragraph 1 of this Article shall state the evidence known to them and implement measures aimed at preserving the traces of the criminal offence, objects against which or with the help of which the criminal offence was committed, and other evidence.

Article 223

(1) Everyone should report a criminal offence prosecutable ex officio.

(2) The cases in which failure to report a criminal offence represents a criminal offence are prescribed by the Criminal Code.

Article 224

(1) Criminal complaints shall be submitted to the competent public prosecutor in writing or orally.

(2) Where a criminal offence is being reported orally, the submitter shall be cautioned about the consequences of false reporting. A record shall be made of the oral criminal report, and where it was made by telephone, an official note shall be made.

(3) Where a criminal complaint is submitted to a court, internal affairs authority or a public prosecutor who is not competent, they shall receive the complaint and promptly deliver it to a competent public prosecutor.

Article 225

(1) Where there exist grounds to suspect the commission of a criminal offence prosecutable *ex officio*, the internal affairs authorities are required to undertake measures required to detect the perpetrator of the criminal offence, to prevent the perpetrator or accomplice from going into hiding or absconding, to detect and secure evidence of the criminal offence and objects which may serve as evidence, and to collect all information which might be of use for the successful conduct of criminal proceedings.

(2) For the purpose of fulfilling the duty specified to in paragraph 1 of this Article, the internal affairs authorities may seek necessary information from citizens; perform requisite inspections of motor vehicles, passengers and luggage; restrict all movements within a certain area for a necessary period of time; undertake requisite measures in connection with the identification of persons and objects; issue warrants for the arrest and recovery of persons and objects being sought; inspect in the presence of responsible persons certain facilities and premises of public authorities, enterprises, shops and other legal persons, gain insight into their documentation and if needed seize it, and perform other necessary measures and actions. Records or official notes shall be made of the facts and circumstances established during the performance of certain actions which may of interest for criminal proceedings, as well as of the objects found and seized.

(3) In the course of an official inspection in connection with a criminal offence against the safety of public traffic reasonably suspected of having caused serious consequences or of having been premeditated, the internal affairs authorities may seize a suspect’s driver’s licence, but for no more than three days.

(4) Persons subject to any of the measures or actions referred to in paragraph 2 and 3 of this Article are entitled to file complaints to the competent public prosecutor.

Article 226

(1) Internal affairs authorities may also summon citizens to provide information. The grounds for the summons shall be specified in it, as shall the capacity in which the citizen is being summoned. Persons not responding to the summons may be brought in by force only where the summons contained a caution to that effect.

(2) In acting pursuant to the provisions of this Article, internal affairs authorities may not interrogate citizens, or questions them in a capacity of accused persons, witnesses or expert witnesses, except in the case referred to in paragraph 9 of this Article.

(3) Collection of information from one person may last for as long as necessary to acquire the required information, but no longer than four hours.

(4) No coercion may be used in collecting information from citizens.

(5) An official note or record of the information provided shall be read out to the person who had provided it. The person may make objections, which the internal affairs authority is required to enter in the official note or record. A copy of the official note or record of the information provided shall be issued to the citizen at his request.

(6) Citizens may be summoned again for the purpose of collecting information about the circumstances of another criminal offence or offender, but may not be brought in by force again for the collection of evidence about the same criminal offence.

(7) Where an internal affairs authority is collecting information from a person reasonably suspected of being the perpetrator of the criminal offence, or is performing against that person the actions in the pre-trial proceedings prescribed by this Code, the authority may summon the person in a capacity of suspect. The suspect shall be cautioned in the summons that he is entitled to retain a lawyer.

(8) If the internal affairs authority in the collection of information finds that the citizen summoned may be deemed a suspect, the authority is required to immediately inform the citizen about the offence of which he is suspected and the grounds for the suspicion, about the right to take a defence counsel who will attend his further interrogation, that he is not required to answer any question without his defence counsel being present, and, in case he is retained in custody (Article 229), inform him about the rights prescribed by Article 5 of this Code and make possible the exercise of the rights prescribed by Article 228 paragraph 1 of this Code.

(9) Where a suspect agrees to make a statement with a lawyer being present, the internal affairs authority shall interrogate the suspect pursuant to the provisions of this Code on the interrogation of suspects. The internal affairs authority shall notify about the interrogation of the suspect the competent public prosecutor, who may attend the interrogation. The record of the interrogation shall not be excluded from the files and may be used as evidence in criminal proceedings.

(10) Where duly authorised by the investigating judge or president of the chamber, internal affairs authorities may collect information from persons who are in detention, if it is necessary for the detection of other criminal offences and offenders. Such information shall be gathered in the institution in which the accused is being held in detention, at a time determined by the investigating judge or the president of the chamber, and in his presence, or the presence of a judge designated by him. If the detainee so requests, collection of this information may also be attended by the defence counsel of the accused.

(11) Based on the information gathered, the internal affairs authority shall draft a criminal complaint in which he shall specify the evidence of which he learnt during the collection of information. The criminal complaint shall not contain the contents of statements given by citizens during the collection of information, except for statements given within the meaning of paragraph 9 of this Article. To the criminal complaint shall be attached

objects, sketches, photographs, reports obtained, documents on measures and actions undertaken, official notes, statements and other materials which may be of use for the successful conduct of the proceedings. If after filing the criminal complaint the internal affairs authorities learn of new facts, evidence or traces of the criminal offence, they are required to gather all necessary information and submit a report thereof to the public prosecutor as an appendix to the criminal complaint.

Article 227

(1) Authorised officers of the Ministry of Internal Affairs may deprive a person of liberty where there exists any of the grounds referred to in Article 142 of this Code for ordering detention, but are required to promptly escort such persons to the competent investigating judge, except in the case referred to in Article 229 of this Code. When bringing in the person the authorised officer of the internal affairs authority shall inform the investigating judge about the reasons for and the time of deprivation of liberty.

(2) Persons deprived of liberty must be informed about their rights, as prescribed by the provisions of Article 5 of this Code.

(3) Where due to unforeseeable circumstances the internal affairs authority took longer than eight hours to bring in the person deprived of liberty, he shall be in duty bound to substantiate the delay to the investigating judge, of which the investigating judge shall make a note or a record. In that record the investigating judge shall also enter a statement made by the person deprived of liberty about the time and place of the deprivation of liberty.

Article 228

(1) The investigating judge is required to immediately inform a person deprived of liberty brought before him that he is entitled to a defence counsel, and make it possible for that person to, in the presence of the judge, by using a telephone, telegraph or other electronic communicating device notify a defence counsel directly or via members of his family or a third person, whose identity must be disclosed to the investigating judge, and if necessary also help the person to find a defence counsel.

(2) Where a person deprived of liberty does not secure the presence of a defence counsel within 24 hours when that possibility was provided to him within the meaning of paragraph 1 of this Article, of declares that he does not wish to have a defence counsel, the investigating judge is required to interrogate him without delay.

(3) If in the case of mandatory defence (Article 71 paragraph 1) a person deprived of liberty does not retain a defence counsel within 24 hours of the time of being instructed about that right, or declares that he does not wish to retain a defence counsel, a defence counsel shall be assigned to him *ex officio*.

(4) Immediately following the interrogation, the investigating judge shall decide whether to release the person deprived of liberty or to order detention.

(5) If during the interrogation the public prosecutor does not file a request for the conduct of an investigation, and fails to do so within the following 24 hours from the hour when detention was ordered, the investigating judge shall release the person detained.

(6) If within 48 hours of the submission of a request for the conduct of an investigation the investigating judge does not issue a ruling on an investigation, he is required to release the detained person.

(7) After a person deprived of liberty is brought before an investigating judge, that person, his defence counsel, a member of the family, common-law spouse or other person with whom the accused lives in an extramarital or other lasting association may request that the investigating judge order a physician to examine the person. Such a request may also be submitted by the public prosecutor. If a request has been made, the investigating judge shall issue a ruling designating the physician who shall perform the examination. The investigating judge shall attach that ruling and the record of interrogation of the physician to the investigation file.

Article 229

(1) Persons deprived of liberty pursuant to Article 227 paragraph 1, as well as suspects referred to in Article 226 paragraphs 7 and 8, may by exception be retained in the custody of the internal affairs authority for the purpose of collecting information (Article 226 paragraph 1), or interrogation, no longer than 48 hours following the time of deprivation of liberty, or the time of response to a summons.

(2) The internal affairs authority shall immediately or no later than two hours following the detainment in its custody issue a ruling on the detainment and deliver it to the person concerned. The ruling shall contain a designation of the offence the suspect allegedly committed, the grounds for suspicion, the date and time of deprivation of liberty, or response to summons, and the time of commencement of the detainment in custody.

(3) The suspect and defence counsel may appeal against the ruling on detainment in custody, which shall immediately be delivered to the investigating judge. The investigating judge is required to rule on the appeal within four hours of its reception. An appeal does not stay execution of the ruling.

(4) The internal affairs authority is required to promptly notify the investigating judge of the detainment in custody. The investigating judge may request that the internal affairs authority escort the person retained to him immediately.

(5) Suspects are entitled to the rights prescribed by Article 226 paragraph 8 of this Code.

(6) Suspects must have defence counsel as soon as the internal affairs authority issues a ruling on detainment in custody. Where a suspect does not retain a defence counsel by himself, the internal affairs authority shall provide one *ex officio*, in accordance with the order of names on a list submitted by the respective bar association. Suspects' interrogations shall be postponed until the arrival of their defence counsel, but by no more than eight hours. If the presence of a defence counsel cannot be secured by that time limit, the internal affairs authority shall release the suspect or promptly escort him to the competent investigating judge.

(7) The lawyers' list referred to in paragraph 6 of this Article shall be compiled by the bar association in a Serbian Cyrillic alphabet order of lawyer's surnames. Where a defence counsel is appointed *ex officio*, the internal affairs authority is required to abide by the order of names on the list. An internal affairs authority deviating from the order of names on the lawyers' list is required to make an official note of the reasons for the deviation.

(8) The lawyers' list referred to in paragraph 6 of this Article shall be posted on the bar association's internet site and shall contain data on the lawyers' engagement.

Article 230

Persons found committing a criminal offence which is prosecutable *ex officio* may be deprived of liberty by anyone. Persons deprived of liberty must be immediately handed over to an investigating judge or internal affairs authority, and if that is not possible, one of those authorities must be notified. The internal affairs authority shall act in accordance with Article 227 of this Code.

Article 231

(1) Authorised officers of the Ministry of Internal Affairs are entitled to send persons found at the site of the commission of a criminal offence to the investigating judge or to retain them at the site until the arrival of the investigating judge if such persons could provide information of importance for the conduct of criminal proceedings and if it is probable that questioning them at a later date would either not be possible or would entail long delays or other difficulties. Such persons may not be retained at the site of the commission of a criminal offence for longer than six hours.

(2) Where necessary for identification purposes or in other cases of interest for the successful conduct of the proceedings, internal affairs authorities may, with the prior approval of the investigating judge, photograph the suspect, take his fingerprints, make the suspect's photograph public, and perform other actions required for establishing identity.

(3) Where it is necessary to establish the identity of a person or persons who left fingerprints on certain objects, the internal affairs authorities may, with the prior approval of the public prosecutor, fingerprint persons who could have come into contact with those objects.

(4) Persons against whom any of the actions referred to in this Article were undertaken are entitled to lodge complaints to the competent public prosecutor or the immediately superior internal affairs authority.

Articles 232 and 233

(erased)

Article 234

(1) The public prosecutor may request that a competent public authority, a bank or other financial organisation perform a control of the commercial operations of persons suspected of having committed criminal offences punishable with custodial penalties of at least four years, and to deliver to him documentation and data which may serve as evidence of a criminal offence or proceeds from crime, as well a information about suspicious financial transactions within the meaning of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism. The public prosecutor is required to notify the investigating judge promptly about the request and the data collected.

(2) Acting upon a written and substantiated request of the public prosecutor, under the conditions referred to in paragraph 1 of this Article, the investigating judge may order a competent authority or organisation to temporarily suspend a specific financial transaction, payment or issuance of suspicious cash money, securities or objects suspected of being derived from the proceeds from crime or profits obtained from crime, or intended for the commission or concealment of a criminal offence.

(3) The investigating judge's decision referred to in paragraph 2 of this Article shall be rendered in the form of a ruling. The owner of the funds may appeal against the ruling of the investigating judge. A ruling on the appeal shall be rendered by the chamber referred to in Article 24 paragraph 6 of this Code.

(4) In the request referred to in paragraph 2 of this Article the public prosecutor shall explain in more detail the contents of the measure or action he is requesting.

(5) Where the public prosecutor does not institute criminal proceedings within six months of the date of being informed about the data collected by the implementation of the measures referred to in paragraphs 1 and 2 of this Article, or declares that he does not intend to use the data in the proceedings, or that he will not request institution of proceedings against the suspect, all the data obtained shall be destroyed under the supervision of the investigating judge, of which the investigating judge shall make a record.

Article 235

(1) The public prosecutor shall dismiss a criminal complaint where it proceeds form its contents that the act reported does not constitute a criminal offence or a criminal offence prosecutable *ex officio*, where the statutory limit for prosecution has lapsed, or the offence is encompassed in an amnesty or pardon or where there are other circumstances which exclude proceedings or there is no reasonable suspicion that the suspect committed a criminal offence. The public prosecutor shall notify the aggrieved about the dismissal of the complaint and the reasons for doing so within eight days (Article 61), and where a criminal complaint was submitted by an internal affairs authority, that authority shall also be notified.

(2) Where the public prosecutor is not able to conclude from the complaint that it is probably accurate or where the data in the complaint do not provide sufficient foundation for the prosecutor to decide whether to request the conduct of an investigation, or where the public prosecutor has only heard that a criminal offence has been committed, and especially where the perpetrator's identity remains unknown, the public prosecutor shall

gather the requisite information on his own or with the help of other authorities. The public prosecutor may summon citizens under the conditions referred to in Article 226 paragraphs 1 to 6 of this Code. If the public prosecutor is not able to perform the actions on his own, he shall request the internal affairs authorities to collect the requisite information and undertake other measures to detect the criminal offence and the perpetrator (Articles 225, 226 and 231).

(3) The public prosecutor may always request to be informed by the internal affairs authorities about measures they undertake. The internal affairs authorities are required to reply promptly.

(4) If even after the conduct of the actions referred to in paragraphs 2 and 3 of this Article some of the circumstances referred to in paragraph 1 of this Article are evident, the public prosecutor shall dismiss the complaint.

(5) The public prosecutor and other public authorities, enterprises and other legal persons are required in the process of collecting information or provision of data to act with due care, making certain that they do not tarnish the honour and reputation of the person to whom the data relate.

Article 236

(1) The public prosecutor may defer criminal proceedings for criminal offences punishable by a fine or a term of imprisonment of up to three years, if the suspect agrees to carry out one or more of the following measures:

1) rectify the detrimental consequence resulting from the criminal offence and compensate the damage caused,

2) pay a certain amount of money to a humanitarian organisation, foundation or a public institution,

3) perform certain public service work or humanitarian work,

4) fulfil pending support obligations,

5) undergo treatment for alcohol or narcotics addiction,

6) undergo psycho-social therapy,

7) fulfil an obligation determined by a final decision of a court, or observe a restriction determined by a final decision of a court,

8) pass a driver’s examination, perform supplementary driving training or complete another appropriate course.

(2) With the approval of the chamber referred to in Article 24 paragraph 6 of this Code, the public prosecutor may also defer criminal proceedings for criminal offences punishable by terms of imprisonment of over three years, and up to five years.

(3) Suspects are required to fulfil the obligation they have accepted within a term no longer than six months.

(4) If the suspects fulfil the obligation referred to in paragraph 1 items 1) and 4) of this Article, and, with the consent of the aggrieved, the obligation referred to in paragraph 1 items 2) and 3) of this Article within the time limit prescribed in the preceding paragraph of this Article, the public prosecutor shall dismiss the criminal complaint, and the provisions of Article 61 of this Code shall not be applied.

(5) Where the public prosecutor finds that an aggrieved who has been fully indemnified for reasons which are obviously unjustifiable does not agree that the suspect perform the obligations referred to in paragraph 1 items 2) and 3) of this Article, and the public prosecutor finds the performance of such obligations appropriate, the public prosecutor shall ask the chamber referred to in Article 24 paragraph 6 of this Code to issue a ruling authorising the performance of those obligations. If the chamber referred to in Article 24 paragraph 6 of this Code approves the performance of the obligations referred to in paragraph 1 items 2) and 3) of this Article, and the suspect fulfils the obligations in full, the provisions of Article 61 of this Code shall not be applied.

(6) The public prosecutor may, with the approval of the trial court and until the conclusion of the trial conducted in connection with criminal offences punishable by fines of terms of imprisonment of up to three years, discontinue criminal prosecution, if the suspect satisfies one or more of the measures specified in paragraph 1 of this Article. In respect of the measures referred to in paragraph 1 items 2) and 3) of this Article, the consent of the aggrieved is also required, or the rule referred to in paragraph 5 of this Article shall be applied.

(7) The public prosecutor may also act pursuant to paragraph 6 of this Article when the proceedings concern a criminal offence punishable by a term of imprisonment of over three years and up to fie years, if the chamber referred to in Article 24 paragraph 6 of this Code approves it by a ruling.

(8) Where a judgement dismissing the charges is issued after the public prosecutor discontinues criminal prosecution pursuant to paragraphs 6 and 7 of this Article, the provisions of Article 62 of this Code shall not be applied.

(9) Where a criminal compliant is submitted in connection with a criminal offence for which the principal statutory penalty is a fine or a term of imprisonment of up to three years, the public prosecutor is required, before submitting a motion to indict, or before submitting a request for the conduct of an investigatory action before the motion to indict, to examine possibilities for deferring criminal prosecution, for which reason he may question the suspect and the aggrieved and other persons, and collect all necessary data, of which he shall make an official note.

Article 237

In the case of the criminal offences referred to in Article 236, the public prosecutor may dismiss the criminal complaint where the suspect has due to genuine repentance , prevented the occurrence of damage or has already indemnified the damage in full, and the public prosecutor, according to the circumstances of the case, finds that imposing a

criminal sanction would not be fair. In this case the provisions of Article 61 of this Code shall not be applied.

Article 238

(1) Before the institution of an investigation, the internal affairs authorities may also seize objects pursuant to the provisions of Article 82 of this Code, where there is a danger of deferrals, and search the abodes and persons under the conditions specified in Article 81 of this Code.

(2) Internal affairs authorities are required to promptly return any objects they seized to their owners or holders, in case criminal proceedings are not initiated, or if within three months they do not submit a criminal complaint to the competent public prosecutor.

(3) For criminal offences punishable with terms of imprisonment of up to ten years, the internal affairs authorities may conduct the crime scene inspection and order forensic activities which may not be delayed, except for autopsies and exhumations of cadavers, if the investigating judge is not able to appear on the scene promptly. Where the investigating judge arrives during the crime scene inspection, he may take over the management of the activities.

(4) The internal affairs authorities or the investigating judge shall promptly notify the public prosecutor about the actions referred to in paragraphs 1 to 3 of this Article.

Article 239

(1) Where the identity of the perpetrator of the criminal offence is not known, the public prosecutor may propose that the investigating judge perform specific investigatory actions, if under the circumstances of the case it is necessary or opportune to perform them before initiating an investigation. Where the investigating judge opposes the proposal, he shall ask the chamber (Article 24 paragraph 6) to rule on the matter.

(2) Records of all investigatory actions performed shall be submitted to the public prosecutor.

Article 240

(1) The investigating judge of the competent court, as well as the investigating judge of a court of lower instance in whose territory of jurisdiction the criminal offence was committed, may before issuing a ruling on the conduct of an investigation perform certain investigatory actions for which there exists a danger of deferrals, but in case shall notify the competent public prosecutor of everything that was done.

(2) The investigatory actions being performed pursuant to paragraph 1 of this Article may be attended by the public prosecutor acting before the respective court.

(3) In respect of issuing summons to the defendant, his defence and interrogation, provisions on issuing summons to, the defence and interrogation of the defendant shall be applicable.

B. PRELIMINARY PROCEEDINGS

Chapter XIX
THE INVESTIGATION

Article 241

(1) An investigation shall be instituted against a certain person if reasonable suspicion exists that that person has committed a criminal offence.

(2) Evidence and data shall be collected during the investigation that are required for deciding whether an indictment may be issued or the proceedings discontinued. Evidence shall be collected during the investigation for which there exists a danger that it might not be possible to adduce that evidence during the trial, or that its adduction would be rendered more difficult, as well as other evidence that might be of benefit to the proceedings, and whose adduction, in view of the circumstances of the case, appears appropriate.

Article 242

(1) Investigations shall be conducted on a request of the public prosecutor.

(2) Requests for conducting an investigation shall be submitted to the investigating judge of the competent court.

(3) The request shall contain the following: the person data of the suspect, the description of the act from which proceed the legal elements of a criminal offence, the legal designation of the criminal offence, the circumstances leading to reasonable doubt that the person committed the criminal offence, and the existing evidence.

(4) Requests for conducting an investigation may contain proposals for examining certain circumstances, for conducting certain actions and for questioning certain persons in connection with certain issues, and the prosecutor may also propose that the suspect be placed in detention.

(5) The public prosecutor shall submit to the investigating judge the criminal complaint and all files and records already undertaken. At the same time the public prosecutor shall may also submit to the investigating judge objects which may serve as evidence, or may specify the locations of such objects.

Article 243

(1) When the investigating judge receives a request for conducting an investigation, he shall examine the files and if he agrees with the request, issue a ruling on the conduct of an investigation which shall contain the data referred to in Article 242 paragraph 3 of this Code. The ruling shall be delivered to the public prosecutor and the accused.

(2) Before issuing his ruling the investigating judge shall interrogate the suspect, except where is a danger of deferrals.

(3) The investigating judge may, before ruling on the public prosecutor's request, ask the public prosecutor and the suspect to come to the court on a specified date if it is necessary that they declare themselves on circumstances which may be of importance for rendering a decision on the request or where the investigating judge holds that for other reasons their oral declarations would be more appropriate. On this occasion the public prosecutor and the suspect may make oral proposals, and the public prosecutor may alter or amend the request for conducting an investigation, and may also propose that proceedings be conducted directly based on an indictment (Article 244).

(4) In respect of issuing summons to, the defence and interrogation of the suspect against whom an investigation is being requested, provisions of this Code on issuing summons to, the defence and interrogation of the accused persons shall be applicable. Suspects summoned pursuant to paragraph 3 of this Article shall be instructed by the investigating judge within the meaning of Article 89 paragraph 2 of this Code.

(5) The accused person may appeal against the ruling of the investigating judge on the conduct of an investigation. Where the ruling was conveyed orally, the appeal may be declared for the record on the same occasion.

(6) The investigating judge is required to deliver the appeal immediately to the chamber (Article 24 paragraph 6), which shall rule on its within 48 hours. Appeals do not stay execution of rulings.

(7) Where the investigating judge does not agree with the request of the public prosecutor for the conduct of an investigation, he shall ask the chamber (Article 24 paragraph 6) to issue a ruling. The ruling of the chamber may be appealed against by the accused, the public prosecutor and aggrieved, but the appeal does not stay execution of the ruling.

(8) If only an aggrieved part has lodged an appeal against the chamber's ruling, and the appeal is upheld, it shall be deemed that by lodging an appeal the aggrieved has taken over prosecution.

(9) In the cases referred to in paragraphs 6 and 7 of this Article, the chamber shall render a decision within 48 hours.

(10) In deciding on the request for the conduct of an investigation, the chamber is not bound by the legal qualification of the offence cited by the public prosecutor.

Article 244

(1) The investigating judge may agree the public prosecutor‘s proposal for an investigation not to be conducted if the data collected about the criminal offence and perpetrator provide sufficient grounds for issuing an indictment.

(2) The investigating judge may also issue the consent referred to in paragraph 1 of this Article if he has only interrogated the suspect against whom an indictment is to be issued. In respect of issuing summons to, the defence and interrogation of suspects provisions on issuing summons to, the defence and interrogation of accused persons shall be applied. The investigating judge shall deliver the notice on his consent to the public prosecutor and the suspect.

(3) The time limit for issuing an indictment is eight days.

(4) The public prosecutor may also make the proposal referred to in paragraph 1 of this Article after the submission of a request for conducting an investigation, until a ruling on the request is issued.

(5) Where the investigating judge finds that the requirements for issuing an indictment without the conduct of the investigation have not been fulfilled, or where the public prosecutor does not issue an indictment within the time limit specified in paragraph 3 of this Article, the investigating judge shall act as if a request for conducting an investigation has been submitted.

(6) Where a criminal offence is punishable by a custodial penalty of up to eight years, the public prosecutor may, irrespective of the requirements specified in paragraphs 1 to 5 of this Article, issue an indictment without the conduct of an investigation if the data collected in connection with the criminal offence and the perpetrator provide sufficient grounds for issuing an indictment.

(7) The provisions of paragraphs 1 to 6 of this Article shall also be applied where criminal prosecution is being undertaken at the request of a subsidiary prosecutor.

(8) Together with the proposal referred to in paragraph 1 of this Article and the indictment issued in accordance with paragraph 6 of this Article, the public prosecutor shall submit the criminal complaint and all files and records of actions performed, as well as all objects which may serve as evidence, or a specification of their locations.

Article 245

(1) Investigations are conducted by the investigating judge of the competent court.

(2) Legal provision may also be made for a single court to conduct investigations for several courts (investigatory centre).

(3) As a rule an investigating judge conducts investigatory actions only on the territory where his court has jurisdiction. Where the interests of an investigation so require, he may perform certain investigatory actions outside the territory of his court, but is required to notify thereof the court on his territory of jurisdiction he is performing investigatory actions.

Article 246

(1) During the investigation the investigating judge may entrust the performance of certain investigatory actions, except interrogation of the accused, to an investigating judge of a court in whose territory the actions should be performed, and where a single court has been designated for the territories of several courts for the purpose of rendering legal assistance – to that court.

(2) The public prosecutor acting before the court which has been entrusted with the performance of an investigatory action may attend the action, unless the competent public prosecutor declares that he will attend.

(3) The investigating judge may entrust to an authority of internal affairs the execution of orders on the search of abodes or persons and the seizure of objects, in the manner prescribed by this Code.

(4) At the request of the investigating judge or upon the approval of investigating judge, the internal affairs authorities may photograph or fingerprint the accused person, where so required by the needs of the criminal proceedings.

Article 247

(1) The investigating judge entrusted with the performance of certain investigatory actions shall as required perform other investigatory actions connected with the foregoing or proceeding from the foregoing.

(2) If the investigating judge entrusted with the performance of certain investigatory actions is not competent for performing them, he shall deliver the case to the competent court and notify the investigating judge who had delivered the case to him thereof.

Article 248

(1) Investigations shall be conducted only in respect of that criminal offence and that accused person to whom the ruling on the conduct of the investigation refers.

(2) If during the investigation it turns out that the proceedings should be expanded to include another criminal offence or other person or persons, the investigating judge shall notify the public prosecutor thereof. In that case undeferrable investigatory actions may be performed, and the public prosecutor shall be notified about everything undertaken.

(3) The provisions of Articles 242 and 243 of this Code shall apply to the expansion of the investigation.

Article 249

After the ruling on the conduct of the investigation is issued, the investigating judge shall conduct even without motions from the parties actions he deems necessary for the successful conduct of the proceedings.

Article 250

(1) During the investigation parties and aggrieved persons may make proposals to the investigating judge for the performance of certain actions. If the investigating judge does not agree with a proposal of the public prosecutor for the performance of certain investigatory actions, he shall ask the chamber (Article 24 paragraph 6) to rule thereon.

(2) Parties and aggrieved persons may also make the proposals referred to in paragraph 1 of this Article to the investigating judge entrusted with the performance of certain investigatory actions. If the investigating judge does not agree with the proposal, he shall notify thereof the proposer, who may make the proposal again to the investigating judge of the competent court.

Article 251

(1) The interrogation of an accused person may be conducted only in the presence of the public prosecutor. Subsidiary prosecutors, private prosecutors, defence counsel and the accused person interrogated and his defence counsel may attend the interrogation of the accused person.

(2) The prosecutor, the aggrieved, the accused person and defence counsel may attend crime scene inspections and the questioning of expert witnesses.

(3) The prosecutor and defence counsel may attend searches of abodes.

(4) The prosecutor, the accused person, defence counsel and aggrieved persons may attend the questioning of witnesses.

(5) The investigating judge is required to notify in an appropriate manner the prosecutor, defence counsel, aggrieved persons and the accused person of the time and location of the performance of investigatory actions which they may attend, except where there is a danger of deferrals. If the accused person has a defence counsel, the investigating judge shall as a rule notify only the defence counsel. If the accused person is in detention, and the investigatory action is being performed outside the seat of the court, the investigating judge shall decide whether the presence of the accused person is necessary.

(6) If persons sent notices of an investigatory action are not present, the action may also be performed in their absence. If the public prosecutor or person representing him does not attend a duly scheduled interrogation of the accused person, the interrogation shall be postponed, unless the time limit referred to in Article 228 paragraph 2 of this Code would expire. The investigating judge shall notify the competent public prosecutor about the failure of the public prosecutor or person representing the public prosecutor to be present.

(7) Persons attending investigatory actions may propose that the for the purpose of clarifying matters the investigating judge pose certain questions to the accused, witness or expert witness, and if so permitted by the investigating judge, may ask such questions directly. These persons are entitled to request that their objections in respect of the performance of certain actions be noted in the record, and may also propose that certain evidence be adduced.

(8) For the purpose of clarifying certain technical or other professional questions asked in connection with the evidence collected and during interrogation of the accused person or the performance of other investigatory actions, the investigating judge may ask persons from appropriate professions to provide the necessary explanations about such questions. If during such clarifications the parties are present, they may ask that person to provide clarifications. If so required, the investigating judge may seek information from a respective professional institution.

(9) The provisions of paragraphs 1 to 8 of this Article shall also apply to investigatory actions performed before the issuance of a ruling on the conduct of an investigation.

Article 252

(1) The investigating judge shall issue a ruling suspending the investigation if after the commission of the criminal offence the accused person develops a mental illness or a mental disorder or other serious illness which prevents him from participating in the proceedings or there appear circumstances which temporarily preclude prosecution (if there are no motions or approvals for prosecution or requests by authorised prosecutors).

(2) If the abode of the accused person is not known, the investigation may be suspended, or where the accused person is at large, or otherwise inaccessible to the public authorities, the investigation shall be suspended only on a motion by the public prosecutor, if the proceedings are being conducted at his request.

(3) Before the investigation is suspended, all evidence on the criminal offence of the accused person which can be obtained shall be collected.

(4) After the obstacles which caused the suspension cease to exist, the investigating judge shall resume the investigation.

Article 253

The investigating judge shall issue a ruling terminating the investigation when the public prosecutor during the investigation or after its conclusion declares that he will abandon prosecution. The investigating judge shall notify the aggrieved about the termination within the following eight days (Article 61).

Article 254

(1) The investigation shall be terminated by a ruling by the chamber (Article 24 paragraph 6) which decides on any issue in the course of the investigation in the following cases:

1) if the offence with which the accused is being charged is not a criminal offence, and the necessary requirements for ordering a security measure do not exist;

2) if the statutory limit for prosecution has lapsed or the offence is included in an amnesty or pardon, or where there are other circumstances that permanently bar prosecution;

3) if there is no evidence that the accused person committed the criminal offence.

(2) If the investigating judge finds the grounds for terminating the investigation referred to in paragraph 1 of this Article, he shall notify the public prosecutor thereof. If the public prosecutor does not notify the investigating judge within eight days that he is abandoning prosecution, the investigating judge shall ask the chamber to rule on the termination of the investigation.

(3) The ruling on the termination of the investigation shall be delivered to the public prosecutor, the aggrieved and the accused person, who shall immediately be released, if he is in detention. The public prosecutor and the aggrieved may appeal against the ruling.

(4) If the aggrieved was the only one to file an appeal against the ruling on the termination of the investigation, and the appeal is upheld, it shall be deemed that by lodging his appeal the aggrieved has taken over prosecution.

(5) Where it finds that only temporary obstacles for prosecuting the accused person exist (Article 252 paragraph 1), the chamber shall issue a ruling suspending the investigation.

(6) When the reasons which led to the suspension cease to exist, the investigating judge shall resume the investigation.

Article 255

(1) The investigating judge shall before concluding the investigation obtain data on the accused person specified in Article 89 paragraph 1 of this Code, if they are missing or need to be checked, as well as data about earlier conviction of the accused, and if the accused is still serving a penalty or other sanction which involves deprivation of liberty – data on his conduct during the service of the penalty or other sanction. If required, the investigating judge shall obtain data about the past life of the accused person and his personal circumstances, as well as on other circumstances relating to his personality. The investigating judge may order medical or psychological examinations of the accused person, if needed to amend data on the personality of the accused person.

(2) If there exist the necessary conditions for pronouncing an aggregate penalty which will include penalties from earlier convictions or rulings on punishment, the investigating judge shall ask for the files of the cases in which the aforesaid decisions were pronounced, or certified copies of such final decisions.

Article 256

(1) Where before concluding the investigation the investigating judge finds that it would be in the best interest of the parties and defence counsel to be informed about important

evidence collected in the investigation, he shall notify them that within a specified period of time they may view the objects and documents relating to that evidence and may offer their proposals for adducing new evidence.

(2) When the specified period expires, or a motion to adduce new evidence is not approved, the investigating judge shall act according to 257 of this Code.

Article 257

(1) The investigating judge concludes the investigation when he finds that the case has been sufficiently clarified in the investigation.

(2) On concluding the investigation, the investigating judge delivers the files to the public prosecutor, who is required to submit within 15 days a proposal for amending the investigation, issue an indictment, or declare that he is abandoning prosecution. The chamber (Article 24 paragraph 6) may on a motion by the public prosecutor extend this time limit, but no longer than another 15 days.

(3) If the investigating judge does not accept the public prosecutor's proposal for the investigation to be amended, he shall ask the chamber (Article 24 paragraph 6) to rule thereon. If the chamber rules against the public prosecutor's proposal, the time limit referred to in paragraph 2 of this Article shall begin to run from the date when the public prosecutor was notified about the chamber's decision.

(4) Where the public prosecutor fails to act within the time limit referred to in paragraphs 2 and 3 of this Article, he is required to notify a higher public prosecutor of the reasons thereof.

Article 258

(1) Where an investigation is not concluded within six months, the investigating judge is required to notify the president of the court about he reasons for not concluding the investigation.

(2) If required, the president of the court shall implement measures to conclude the investigation.

Article 259

(1) Subsidiary prosecutors and private prosecutors may submit to investigating judges of competent courts requests for the conduct of investigations or proposals for amending investigations. During the investigation they make other proposals to the investigating judge.

(2) In respect of institution, implementation, suspension and discontinuation of investigations, the provisions of this Code which concern the institution and conduct of investigations on a request of the public prosecutor shall apply accordingly.

(3) When the investigating judge finds that the investigation has been completed, he shall notify thereof the subsidiary prosecutor or the private prosecutor and caution them that they need to file an indictment or private prosecution within fifteen days, and if they fail to do so, it shall be deemed that they have abandoned prosecution, and the proceedings shall be terminated by a ruling. The investigating judge is also required to issue this caution when the chamber (Article 24 paragraph 6) rules against a proposal by the subsidiary prosecutor or private prosecutor for amendment of the investigation because it holds that the case has been clarified sufficiently.

Article 260

Where an investigating judge requires the assistance of internal affairs authorities (crime laboratory and other assistance) or of other public authorities in connection with the conduct of the investigation, they shall be obligated to render the required assistance. At the request of the investigating judge, enterprises or other legal persons are required to render assistance for the performance of investigatory actions which may not be deferred.

Article 261

When so required by the interests of morality, law and order, national security, the protection of minors or the private lives of participants in proceedings, or where it is necessary in view of particular circumstances due to which public exposure could be detrimental to the interests of justice, officials performing certain investigatory actions shall order persons being interrogated or questioned, or those attending investigatory actions or examining the files of the investigation, to maintain the confidentiality of certain facts or data of which they learnt on the occasion, and instruct them that divulging secrets represents a criminal offence. This order shall be shall be entered in the record of the investigatory action, or designated on the files being examined, with the signature of the person instructed.

Article 262

Where the chamber is deciding during the investigation, it may seek necessary explanations from the investigating judge, the parties and defence counsel, and may summon them to state their positions orally at a session of the chamber.

Article 263

(1) The investigating judge may order persons who disturb law and order during the conduct of an investigatory action even after being cautioned to pay fines of up to 500,000 RSD each. Where the participation of such persons is not necessary, they may be removed from the location of the investigatory action.

(2) Accused persons may not be fined.

(3) Where the public prosecutor is violating law and order, the investigating judge shall act pursuant to the provision of Article 299 paragraph 10 of this Code.

Article 264

(1) The parties and aggrieved persons may at any time file complaints with the president of the court before which the proceedings are being conducted in connection with excessive delays of the proceedings and other irregularities during the investigation.

(2) The president of the court shall examine the claims made in the complaints, and if requested by the complainant, shall notify him what had been undertaken.

Chapter XX
THE INDICTMENT AND OBJECTIONS AGAINST THE INDICTMENT

Article 265

(1) After the investigation has been concluded, as well as when pursuant to this Code an indictment may be issued without the conduct of an investigation (Article 244), proceedings before the court may only be conducted on the basis or an indictment issued by the public prosecutor, or subsidiary prosecutor.

(2) Provisions on the indictment and the objection against the indictment shall apply accordingly to private prosecution, except where one has been filed in connection with a criminal offence subject to summary criminal proceedings.

Article 266

(1) The indictment shall contain the following:

1) the first name and surname of the accused person and personal data (Article 89) and data on whether and from which date the person has been in detention or whether he is at large, and if he had been released before the issuance of the indictment, how long he had spent in detention;

2) a description of the act from which proceed the legal elements of a criminal offence, the time and place of the commission of the criminal offence, the object on which the criminal offence was committed and the means used to commit it, as well as other circumstances required for qualifying the criminal offence as precisely as possible;

3) the statutory designation of the criminal offence, with a specification of the provisions of laws which the prosecutors proposes shall be applied;

4) a designation of the court before which the trial shall be held;

5) a proposal for the evidence to be adduced at the trial, designating the names witnesses and expert witnesses, the documents to be read and the objects serving as evidence;

6) a statement of reasons indicating the state of the matter according to the results of the investigation, the evidence on which the decisive facts are determined, presenting the defence of the accused person and the prosecutor's position on the accounts of the defence.

(2) If the accused person is at large, the indictment may contain a motion to order detention, and if the accused is in detention, a motion for his release may also be made.

(3) A single indictment may encompass several criminal offences or several accused persons only if pursuant to the provisions of Article 33 of this Code a single proceedings may be conducted and a single judgement rendered.

Article 267

(1) The indictment shall be submitted to competent court in as many copies as there are accused persons and their defence counsel (Article 69 paragraph 2) and one copy for the court.

(2) Immediately upon receiving the indictment, the president of the chamber before which the trial will be held shall examine whether the indictment has been drawn up properly (Article 266), and if he established that it has not, he shall return it to the prosecutor to rectify the shortcomings within three days. On justifiable grounds, at the request of the prosecutor, the chamber may extend the time limit. Where a subsidiary prosecutor or private prosecutor miss the aforesaid time limit, it shall be deemed that they have abandoned prosecution, and the proceedings shall be terminated.

Article 268

(1) Where a subsidiary prosecutor submits an indictment without the conduct of an investigation (Article 244 paragraph 6), or where a private prosecution has been instituted in connection with a criminal offence for which no investigation was conducted, except where private prosecution has been instituted for a criminal offence subject to summary proceedings, the president of the first-instance chamber shall, if he finds no grounds for prosecution due to the existence of the circumstances referred to in Article 274 paragraph 1 items 1) and 2) of this Code, seek a decision from the chamber (Article 24 paragraph 6).

(2) Where a subsidiary prosecutor, in contravention of the provisions of Article 244 paragraphs 1 and 2 of this Code, files an indictment without the conduct of an investigation in connection with a criminal offence punishable by a term of imprisonment of over five years, it shall be deemed that he has submitted a request for the conduct of an investigation.

(3) Subsidiary prosecutors and private prosecutors are entitled to file appeals against the ruling of the chamber.

Article 269

(1) Where the indictment contains a motion for the accused person to be remanded in detention or released, that motion shall be ruled on immediately by the chamber (Article 24 paragraph 6), and no later than within a time limit of 48 hours.

(2) Where the accused person is in detention, a there is no motion in the indictment for his release from detention, the chamber referred to in paragraph 1 of this Article shall *ex officio*, within three days of receiving the indictment, examine the existence of reasons for continuing detention and issue a ruling extending the detention or setting the accused free. Appeals against this ruling do not stay its execution.

Article 270

(1) The indictment shall promptly be served to the accused person who is at large, and where the accused is in detention, within 24 of its reception.

(2) Where detention of the accused has been ordered by a ruling issued by the chamber (Article 269), the indictment shall be served to the accused during his deprivation of liberty together with the ruling ordering detention.

(3) Where an accused person deprived of liberty is not in the prison of the court where the trial is to be held, the president of the chamber shall order the accused person brought into the aforesaid prison immediately and served the indictment.

Article 271

(1) Accused persons are entitled to file objections against the indictment within eight days of being served. Instructions about this right shall be served to the accused person while being served the indictment.

(2) Objections against the indictment may also be filed by defence counsel, without a specific authorisation of the accused, but not against his wishes.

(3) Accused persons may waive the right to file objections against the indictment.

Article 272

(1) Objections against the indictment submitted in an untimely manner or by persons lacking due authority shall be denied by a ruling issued by the president of the chamber before which the trial is to be held. Appeals against these rulings shall be rendered by a chamber (Article 24 paragraph 6).

(2) If the president of the chamber under the provision of paragraph 1 of this Article does not deny the objection, he shall deliver it together with the files to the chamber (Article 24 paragraph 6) which shall rule on the objection in a session.

(3) The chamber may invite parties and defence counsel to declare their positions verbally at the session, except in the case to in Article 282v paragraph 5 of this Code.

Article 273

(1) If the chamber does not deny the objection as untimely or impermissible, it shall examine the indictment.

(2) If the chamber establishes in connection with the objection the existence of errors or shortcomings in the indictment (Article 266) or the entire proceedings, or that a better clarification of the state of the matter is required in order to examine the justifiability of the charges, it shall return the indictment in order for the shortcomings detected to be rectified, or for the investigation to be amended, or conducted. The prosecutor is required to within three days of being told the decision of the chamber submit a corrected indictment of submit a request for amendment of the investigation, or a request for the conduct of an investigation. The chamber may extend this time limit if the prosecutor provides justifiable reasons. Where a subsidiary prosecutor or private prosecutor miss the aforementioned time limit, they shall be deemed to have abandoned prosecution, and the proceedings shall be discontinued. Where the public prosecutor misses the time limit, he is required to inform a higher public prosecutor about the reasons for his omission.

(3) If the chamber establishes that a different court has jurisdiction for the criminal offence in connection with which the indictment was issued, it shall declare the court to which the indictment was filed incompetent, and when its ruling becomes final, refer the case to the competent court.

(4) If the chamber establishes that records and statements referred to in Article 178 of this Code are contained in the file, it shall issue a ruling on their exclusion from the file. A special appeal may be filed against that ruling. After the ruling becomes final, before the case is referred to the president of the chamber for the purpose of setting a date for the trial, the president of the chamber referred to in Article 24 paragraph 6 of this Code shall ensure that the excluded records and statements are sealed under separate cover for the purpose of being kept away from the other files. The excluded records and statements may not be examined or used in the proceedings.

Article 274

(1) In ruling on the objection against the indictment, the chamber shall rule that the charges are inadmissible and the criminal proceedings shall be discontinued if it determines one or more of the following:

1) that the act in connection with charges were filed is not a criminal offence, and the necessary conditions for applying a security measure do not exist;

2) if the statutory limit for prosecution has lapsed or the offence is included in an amnesty or pardon, or where there are other circumstances that permanently bar prosecution;

3) if there is no evidence that the accused person may be reasonably suspected of having committed the criminal offence.

(2) If the chamber establishes that there are no proposals by authorised prosecutors or the requisite motions of authorisation for criminal prosecution, or that there exist other

circumstances which temporarily bar prosecution, it shall dismiss the indictment by a ruling.

Article 275

(1) In its determination on the objection against the indictment of the public prosecutor submitted pursuant to Article 244 paragraph 6 of this Code or on the request made by the president of the chamber in connection with that indictment (Article 281), or when it rules in connection with the objections the president of the chamber of first instance has to the indictment of the subsidiary prosecutor or private prosecutor in the cases referred to in Article 268 paragraph 1, or paragraph 2 of that Article, the chamber shall dismiss the indictment or private prosecution by a ruling, if it determines the existence of reasons referred to in Article 274 paragraph 1 items 1) and 2) of this Code, and where investigatory actions have been conducted - also the reasons specified in item 3) of paragraph 1 of Article 274.

(2) If an investigation (Article 273 paragraph 2) has been conducted in connection with the objections against the indictment of the public prosecutor referred to in paragraph 1 of this Article or at the request of the president of the chamber in connection with that indictment (Article 281) and after the investigation the chamber finds the existence of the reasons referred to in Article 274 paragraph 1 of this Code, it shall issue a ruling proclaiming the indictment inadmissible and discontinuing the criminal proceedings.

Article 276

In rendering the ruling referred to in Article 273 paragraph 3 and Articles 274 and 275 of this Code, the chamber is not bound by the legal qualification of the offence given in the in the indictment by the prosecutor.

Article 277

(1) If it issues none of the rulings referred to in Articles 273, 274 and 275 of this Code, the chamber shall dismiss the objection as unfounded.

(2) In the same ruling the chamber shall also rule on motions to join proceedings or to separate proceedings.

Article 278

If in a group of accused only some submit objections against the indictment, and the reasons due to which the court determines that the indictment is inadmissible are also of benefit to some of those accused who have not submitted objections, the chamber shall act as if they had submitted objections.

Article 279

All decisions of the chamber issued in connection with objections against the indictment must be substantiated, but in such a way that this does not prejudice the resolution of the issues which will be discussed at the trial.

Article 280

(1) Decisions of the chamber referred to in Article 273 paragraph 3 of this Code are appealable, while the prosecutor and the aggrieved may appeal against the decisions referred to in Articles 274 and 275 of this Code. Other decisions issued by the chamber in connection with objections against the indictment are not appealable.

(2) If only the aggrieved appealed against a decision of the chamber and the appeal is upheld, it shall be deemed that by submitting an appeal the aggrieved took over the prosecution.

Article 281

(1) Where an objection against the indictment was not submitted or was dismissed, at the request of the president of the chamber before which the trial is to be held, the chamber (Article 24 paragraph 6) may rule on any issue on which rulings in connection with objections shall be rendered pursuant of this Code.

(2) The president of the chamber is entitled to file the request referred to in paragraph 1 of this Article until the setting of a trial date, but no later than 30 days following the reception of the indictment by the court.

(3) The provisions of Article 272 paragraph 2 and Articles 273 to 276, Articles 279 and 280 of this Code shall apply accordingly in taking decisions in connection with the request referred to in paragraph 1 of this Article.

Article 282

The indictment assumes legal force when the objection is denied, when no objection was submitted or when one has been dismissed – on the date when the chamber, ruling on a request of the president of the chamber (Article 281), upholds the indictment, and where there was no such request – the date when the president of the chamber sets the trial date, or at the expiry of the time limit referred to in Article 281 paragraph 2 of this Code.

Chapter XXa
PLEA AGREEMENTS

Article 282a

(1) Where criminal proceedings are being conducted for a single criminal offence or for a concurrence of criminal offences punishable by terms of imprisonment of up to 12 years, the public prosecutor may offer the accused person and his defence counsel the conclusion of an agreement on the admission of guilt, or the accused person and his defence counsel may propose the conclusion of such an agreement to the public prosecutor.

(2) Where the proposal referred to in paragraph 1 of this Article is made, the parties and the defence counsel may negotiate on the conditions of admitting guilt for a criminal offence or criminal offences which the accused is charged.

(3) Agreements on the admission of guilt must always be made in writing and may be submitted no later than the conclusion of the first trial hearing.

(4) Where an indictment has not yet been filed, agreements on the admission of guilt shall be submitted to the president of the chamber referred to in Article 24 paragraph 6 of this Code, and following the filing of the indictment, agreements on the admission of guilt shall be submitted to the president of the chamber.

(5) The accused and his defence counsel may also cite an agreement on the admission of guilt in their objection against the indictment.

Article 282b

(1) In the agreement on the admission of guilt the accused person fully admits the commission of the criminal offence with which he is charged, of confesses to one or more of the concurrent criminal offences which are included in the indictment, and the accused person and the public prosecutor shall agree on the following:

1) the type and length of the penalty, or other criminal sanction to be imposed on the accused;

2) the abandonement by the public prosecutor of criminal prosecution for the criminal offences not included in the agreement on the admission of guilt;

3) the costs of the criminal proceedings and the indemnification claim;

4) on the parties' and defence counsel's waiver of the right to appeal against a decision of the court issued on the basis of an agreement on the admission of guilt, where the court has accepted the agreement in full.

(2) In the agreement on the admission of guilt the public prosecutor and the accused person may agree on the imposition on the accused of a penalty which may as a rule not be below the statutory minimum for the criminal offence with which the accused is charged.

(3) By exception, where it is obviously justified by the significance of the confession of the accused person for clearing up the criminal offence with which he is charged and where proving the offence without such confession would be impossible or very difficult, or for the prevention, detection or successful prosecution of other criminal offences, or due to the existence of the especially extenuating circumstances referred to in Article 54 paragraph 2 of the Criminal Code, the public prosecutor and the accused person may agree that the accused be imposed a more lenient penalty, within the bounds prescribed by Article 57 of the Criminal Code.

(4) In the agreement on the admission of guilt the accused may promise to fulfil the obligations referred to in Article 236 paragraph 1 of this Code, provided their nature makes their fulfilment possible for the accused person until the submission of the agreement on the admission of guilt to the court, or to begin fulfilment of the obligations by the date of submitting the agreement on the admission of guilt to the court.

(5) In the agreement on the admission of guilt the accused may accept an obligation to return within a specified period of time the proceeds from the commission of the criminal offence, or to return the object of the criminal offence.

Article 282v

(1) The court shall decide on the agreement on the admission of guilt, and may issue a ruling dismissing, upholding or rejecting the agreement.

(2) Where an agreement on the admission of guilt is submitted before the indictment is filed, it shall be ruled on by the president of the chamber referred to in Article 24 paragraph 6 of this Code.

(3) Where the agreement on the admission of guilt is submitted after the indictment is filed, or if the accused or his defence counsel cite such an agreement in their objection against the indictment, it shall be ruled on by the president of the chamber.

(4) The president of the chamber may dismiss the agreement on the admission of guilt if it is submitted after the conclusion of the first trial hearing. Rulings dismissing agreements on the admission of guilt are not appealable.

(5) The court shall rule on an agreements on the admission of guilt at a hearing which shall be attended by the public prosecutor, the accused and defence counsel, and the aggrieved and his proxy shall be notified about the hearing. Where an accused person does not retain a defence counsel, one shall be assigned by the court *ex officio*, no less than eight days before the scheduled date of the hearing, and a defence counsel appointed in this manner shall perform his duty until the ruling referred to in paragraph 9 of this Article becomes effective, or until the rendering of the judgements referred to in Article 282d of this Code.

(6) The hearing referred to in paragraph 5 of this Article is public (Article 291), and the public may by a ruling of the court be excluded from the entire hearing or a part of the hearing only if there exist any of the reasons referred to in Article 292 of this Code, applying accordingly the provisions of Article 293 and Article 294 paragraph 4 of this Code.

(7) The court shall reject an agreement on the admission of guilt by a ruling if the duly summoned accused fails to attend the hearing. Rulings rejecting agreements on the admission of guilt are not appealable. The hearing referred to in paragraph 5 of this Article may also be held in the absence of a duly summoned public prosecutor, of which the court shall notify the public prosecutor’s immediate superior public prosecutor.

(8) The court shall issue a substantiated ruling upholding an agreement on the admission of guilt and issue a decision corresponding to the contents of the agreement if it establishes the following:

1) that the accused person has knowingly and wilfully confessed to the commission of the criminal offence or criminal offences with which he was charged, and that the possibility of a misguided confession by the accused person is excluded;

2) that then agreement was concluded pursuant to the provisions of Article 282b paragraphs 2 and 3 of this Code;

3) that the accused person is fully aware of all the consequences of the agreement (Article 282b paragraph 1), in particular that he fully understands that he waives the right to be tried and to lodge an appeal against the decision of the court issued on the basis of the agreement;

4) tat there exists other evidence supporting the confession of the accused person;

5) that the agreement on the admission of guilt does not violate the rights of the aggrieved or is contrary to the reasons of fairness.

(9) Where one or more of the conditions referred to in paragraph 8 of this Article has not been fulfilled, or where the penalty or other criminal sanction determined in the agreement on the admission of guilt obviously does not correspond to the gravity of the criminal offence whose commission the accused person admitted, the court shall issue a substantiated ruling rejecting the agreement on the admission of guilt, while the confession of the accused person given in the agreement may not serve as evidence in criminal proceedings.

(10) When the ruling referred to in paragraph 9 of this Article becomes effective, the agreement and all documents connected to it shall be destroyed before the court, of which an official note shall be made, and the judge who issued the ruling referred to in paragraph 9 of this Article may not participate in the rest of the proceedings.

(11) Te court’s ruling on the agreement on the admission of guilt shall be served to the public prosecutor, the accused, defence counsel, the aggrieved and his proxy.

Article 282g

(1) The public prosecutor, the accused person and his defence counsel may appeal against the ruling of the court rejecting the agreement on the admission of guilt within eight days of the delivery of the ruling to them.

(2) The aggrieved and his proxy may appeal against the ruling of the court upholding the agreement on the admission of guilt within the time limit referred to in paragraph 1 of this Article.

(3) Rulings on appeals referred to in paragraphs 1 and 2 of this Article shall be rendered by a chamber referred to in Article 24 paragraph 6 of this Code, which shall not include the judge who issued the ruling which is being challenged.

(4) The chamber deciding on appeals against rulings on the agreement on the admission of guilt may dismiss the appeal if submitted after the expiry of the time limit referred to in paragraph 1 of this Article, uphold it, or reject it as unfounded.

(5) Rulings referred to in paragraph 4 of this Article are not appealable.

Article 282d

(1) When the ruling upholding the agreement on the admission of guilt becomes effective, it shall be deemed an integral part of the indictment, if one has already been filed, or the public prosecutor shall within three days draw up an indictment which includes the agreement on the admission of guilt, where an indictment had previously not been filed, and the president of the chamber shall promptly issue a judgement convicting the accused and pronouncing a sentence, or other criminal sanction, and deciding on the other issues envisaged by the agreement on the admission of guilt (Article 282b).

(2) Besides the contents of the agreement on the admission of guilt (Article 282b), the judgement referred to in paragraph 1 of this Article shall accordingly also contain the data referred to in Article 356 of this Code.

(3) The judgement referred to in paragraph 1 of this Article shall be served to the persons referred to in Article 360 paragraphs 3 to 5 of this Code, with an instruction that it is not appealable.

(4) If the agreement on the admission of guilt envisages the abandonment of criminal prosecution by the public prosecutor in connection with criminal offences not included in the agreement on the admission of guilt (Article 282b paragraph 1 item 2), in respect of those criminal offences the court shall issue the judgement referred to in Article 354 of this Code, and the aggrieved does not have the right referred to in Article 61 of this Code.

V. THE TRIAL AND THE JUDGEMENT

Chapter XXI
PREPARATIONS FOR THE TRIAL

Article 283

(1) The president of the trial chamber shall issue an order setting the date, hour and place of the trial.

(2) The president of the trial chamber shall order the trial to be held no later than two months from the date of receiving the indictment in the court, and if the request referred

to in Article 281 of this Code is filed – as soon as the trial can be scheduled, in view of the decision of the trial chamber. If he does not set a trial date within this time limit, the president of the trial chamber shall notify the president of the court and the president of the immediately higher court about the reasons for not ordering a trial to be held. The president of the court and the president of the next higher court shall if need undertake measures to set a date for the trial.

(3) If the president of the trial chamber establishes that the files contain the records or statements referred to in Article 178 of this Code, he shall issue a ruling on their exclusion before setting a trial date, and after the ruling becomes effective shall separate them into a special cover and deliver them to the investigating judge for keeping apart from the other files.

Article 284

(1) The trial shall be held in the seat of the court in the court building.

(2) Where in individual cases the premises in the court building are unsuitable for holding a trial, the president of the court may order the trial to be held in another building.

(3) The trial may also be held at another location within the territorial jurisdiction of the competent court, if the president of a higher court approves a substantiated proposal of the president of the trial court.

Article 285

(1) The following shall be summoned to the trial: the defendant and his defence counsel, the prosecutor and the aggrieved and their legal representatives and proxies, as well as an interpreter. Witnesses and expert witnesses proposed by the prosecutor in the indictment and the accused person in the objection against the indictment shall be summoned to the trial, except for those for whom the president of the trial chamber deems that their questioning at the trial is not needed.

(2) In respect of the content of the summons for the defendant and witnesses shall be applied the provisions of Articles 134 and 101 of this Code. Where defence is not mandatory, the defendant shall be instructed in the summons that he may retain a defence counsel, but that the trial will not have to be adjourned because a defence counsel fails to appear at the trial or because the defendant retains a defence counsel only after the commencement of the trial.

(3) The summons shall be served to the defendant so as to give him sufficient time between the service and the trial date to prepare his defence, in any case not less than eight days. In respect of criminal offences punishable with terms of imprisonment of ten years or more, the time for preparing a defence shall be at least 15 days. At the request of the defendant, or at the request of the prosecutor, with the consent of the defendant, these periods may be shortened.

(4) Aggrieved parties summoned as witnesses shall be informed by the court in the summons that he trial would be held even without their presence, but that their statements on indemnification claims would be read out. The aggrieved shall also be cautioned that if he fails to appear it shall be deemed that he is not willing to continue prosecution if the public prosecutor abandons the indictment.

(5) Subsidiary prosecutors and private prosecutors shall be cautioned in their summons that if they or their proxies fail to appear at the trial it shall be deemed that they abandoned their charges.

(6) Defendants, witnesses and expert witnesses shall be cautioned in their summons about the consequences of not appearing at the trial (Articles 304 and 307).

Article 286

(1) The parties and the aggrieved may request even after a trial date is set that new witnesses or expert witnesses are summoned to the trial or new evidence adduced. The parties shall specify in their substantiated requests what facts would have to be proved and by means of which proposed evidence.

(2) The president of the trial chamber may order collection of new evidence for the trial even without a request from the parties.

(3) The parties shall be notified before the commencement of the trial of the decision ordering collection of new evidence.

Article 287

If it appears probable that the trial could be of significant duration, the president of the trial chamber may ask the president of the court to designate one or two judges, or lay judges, to attend the trial as replacements for any members of the trial chamber who are unavoidably detained.

Article 288

(1) Where it is learned that a witness or expert witness summoned to the trial and not yet examined will not be able to attend the trial due to lengthy illness or other problem, they may be examined wherever they are located.

(2) Witnesses or expert witnesses shall be examined and sworn in by the president of the trial chamber or a judge member of the trial chamber, or their examination will be performed by the investigating judge of the court within whose territorial jurisdiction the witness of expert witness is located.

(3) If possible in view of the expediency of the proceedings, the parties and aggrieved shall be notified of the time and place of the examination. If the defendant is in detention, the president of the trial chamber shall decide whether he needs to be present at the examination. Where the parties and the aggrieved are attending examination, they are entitled to the rights specified in Article 251 paragraph 7 of this Code.

Article 289

The president of the trial chamber may order continuance of the trial for important reasons, on a motion by the parties, or *ex officio*.

Article 290

(1) If the prosecutor abandons the indictment before the commencement of the trial, the president of the trial chamber shall notify thereof all persons summoned to the trial. The aggrieved shall be especially instructed about his right to continue prosecution (Articles 61 and 63).

(2) If the aggrieved does not continue prosecution, the president of the trial chamber shall issue a ruling discontinuing the criminal proceedings and communicate the ruling to the parties and the aggrieved.

Chapter XXII
THE TRIAL

1. The public nature of the trial

Article 291

(1) The trial is public.

(2) The trial may be attended by adults.

(3) No person attending a trial may carry a weapon or a dangerous implement, except for the guard of the accused person, who may be armed.

Article 292

From the opening of the trial hearing to the conclusion of the trial, the trial chamber may at any time, *ex officio* or on motions by parties, but always after taking statements from them, exclude the public for the duration of the trial or part of it, if it is required by the interests of the protection of morality, protection of law and order, protection of national security, protection of minors and the protection of the private lives of the participants in the proceedings, or where in the opinion of the court it would be necessary in view of the particular circumstances due to which publicity could jeopardise the interests of justice.

Article 293

(1) Exclusion of the public does not include the parties, the aggrieved, their representatives and the defence counsel.

(2) The trial chamber may allow certain officials and scientists and scholars to attend a trial session from which the public has been excluded, and may at the request of the

aggrieved also allow the attendance of his spouse, close relations and other person with whom the accused lives in an extramarital or other lasting association.

(3) The president of the chamber shall caution persons attending a trial from which the public has been excluded that they are required to maintain the confidentiality of everything they learn at the trial and that divulging secrets represents a criminal offence.

Article 294

(1) Decisions on the exclusion of the public shall be rendered by the chamber by a ruling, which must be substantiated and made public.

(2) Rulings on the exclusion of the public may only be challenged in appeals against judgements.

2. Conduct of the trial

Article 295

(1) The chamber's president and its members, the recorder and supplementary judges, must be present at the trial at all times.

(2) The president of the chamber has a duty to establish whether the chamber has been composed in accordance with this Code and whether there exist reasons for excluding members of the chamber and the recorder (Article 40 items 1) to 5).

Article 296

(1) The president of the chamber conducts the trial, interrogates the defendant, questions witnesses and expert witnesses and gives the floor to members of the chamber, parties, the aggrieved, legal representatives, proxies, defence counsel, and expert witnesses.

(2) The president of the chamber has a duty to ensure that the case is examined comprehensively, that the truth is found, and that everything that delays the proceedings and does not serve to clarify matters is eliminated.

(3) The president of the chamber rules on parties' motions, unless the entire chamber rules on them.

(4) The chamber shall rule on motions for which the parties are not in agreement and on those where they are in agreement but are not approved by the president. The chamber shall also rule objections against measures ordered by the president of the chamber concerning the conduct of the trial.

(5) The chamber's rulings are always made public, are with brief substantiations placed in the trial record.

Article 297

The course of the trial shall follow the order specified in the Code, but due to specific circumstances, in particular the number of defendants, number of criminal offences and volume of evidence, the chamber may order deviations from the regular course of the trial.

Article 298

(1) The court is required to protect its reputation, the reputations of the parties and other participants in the proceedings from insults, threats and any other form of attack.

(2) The president of the chamber is responsible for maintaining law and order in the courtroom. The president may order persons attending the trial to be searched, and shall immediately after the opening of the hearing caution those present to behave in an orderly manner and to refrain from obstructing the work of the court.

(3) The chamber may order that all persons attending the trial as viewers be removed from the hearing if the measures for maintaining law and ordered provided in this Code could not ensure the unobstructed conduct of the trial.

Article 299

(1) Where the defendant, defence counsel, the aggrieved, legal representative, proxy, witness, expert witness, interpreter or other person attending the trial disturbs the work and dignity of the court, or disobeys orders of the president of the chamber to keep the order, the president of the chamber may caution that person, order that person removed from the courtroom, or impose a fine of up to 500.000 RSD on that person.

(2) Where a person referred to in paragraph 1 of this Article, except the defendant and defence counsel, continues to disturb order or disobey orders of the president of the chamber for maintenance of law and order by exhibiting gross disrespect for the court and seriously disrupting the trial, after being pronounced the sanctions referred to in paragraph 1 of this Article, the president of the chamber shall make a special record in which he shall enter the statements made by that person and a description of his behaviour, which he shall together with a copy of the record of the trial, if needed also with a copy of the other documentation, communicate to the president of the court. The president of the court may within 15 days issue a ruling imposing on the person referred to in paragraph 1 of this Article a fine of up to 500.000 RSD, or a term of imprisonment of up to 15 days, or both penalties.

(3) Appeals against the ruling on punishment referred to in paragraphs 1 and 2 of this Article may be filed with the chamber referred to in Article 24 paragraph 6 of this Code. Appeals do not stay execution of rulings, nor shall represent a reason for adjourning or postponing the trial. The president of the chamber, or the president of the court, shall submit the copy of the trial record, and if needed also copies of other documentation, to the chamber ruling on the appeal.

(4) By exception, the chamber may repeal the ruling on punishment referred to in paragraph 1 of this Article if the person punished apologises to the court and promises to abstain from violating law and order in the courtroom in the future.

(5) Other decisions in connection with the maintenance of order and conduct of the trial are not appealable.

(6) The punishment referred to in paragraphs 1 and 2 of this Article does not exclude criminal prosecution of the person punished, if his action also represented a criminal offence, in which case Article 301 of this Code shall be applied.

(7) If the defendant has been removed from the courtroom, the president of the chamber shall order him returned immediately after the conclusion of the action during which he was removed. If the defendant continues to disturb the order in the courtroom, the chamber shall issue a ruling on his removal for a certain period of time, and where the defendant has already been questioned at the trial, removal for the entire duration of the evidentiary proceedings. Before the conclusion of the evidentiary proceedings, the president of the chamber shall secure the presence of the defendant, notify the defendant about the course of the trial, inform him about the testimonies of criminal offence-defendants previously questioned, or make it possible for the defendant to read the records of such testimony, if so desired by the defendant, and ask to defendant to declare himself on the charges, if he has not done so earlier. Defendants who continue to disturb the order and violate the dignity of the court may again be removed from the hearing by the chamber, in which case the trial shall be concluded without their presence, and their judgements shall be communicated to them by the president of the chamber or a judge-member of the chamber, in the presence of the recorder.

(8) Defence counsel or proxies who continue to disturb the order after being punished may be denied the right to defend or represent their clients at the trial, in which case the party shall be invited to retain another defence counsel or proxy. Where a defendant who has not yet been questioned is not able to do so, or in the case of mandatory defence, the court cannot appoint a new defence counsel without harming the defence, and the trial shall be recessed or adjourned, and defence counsel shall be obliged to bear the costs of such recess or adjournment. Where a private prosecutor or a subsidiary prosecutor do not obtain a new proxy, the chamber may decide that he the trial shall be continued without proxies, if it finds that their presence would not damage the interests of the parties they represented, and if a hearing is recessed or adjourned where it cannot be continued without proxies being present, the proxies shall be obliged to bear the costs of such recess or adjournment. Rulings thereon, with substantiation, shall be attached to the trial record. These rulings are not appealable.

(9) Where the court removes from the courtroom a subsidiary prosecutor or private prosecutor or their legal representatives, the trial shall continue in their absence.

(10) Where a public prosecutor or person deputising for the public prosecutor disturbs the order, violates the dignity of the court or disobeys order issued by the president of the chamber on the maintenance of law and order, the president of the chamber shall caution him, enter the caution in the trial record and notify thereof the competent public prosecutor and immediately higher public prosecutor. The president of the chamber may also adjourn the trial and ask the competent public prosecutor to designate another person to represent the prosecution.

(11) When the president of the chamber or the chamber punishes a lawyer or trainee lawyer disturbing the order, violating the dignity of the court or disobeying orders issued

by the president of the chamber in connection with the maintenance of order, the president of the chamber shall notify thereof the competent bar association, which is required to notify the president of the chamber and the president of the court within two months of receiving the notice of the measures it has implemented.

Article 300

(1) Rulings on penalties are appealable, but the chamber may repeal its ruling.

(2) Other decisions relating to the maintenance of order and conduct of the trial are not appealable.

Article 301

(1) Where a defendant commits a criminal offence at the trial, the provisions of Article 342 of this Code shall be applied.

(2) If another person commits a criminal offence during a trial hearing, the chamber may adjourn the trial and on the basis of verbal charges presented by the prosecutor adjudicate the criminal offence immediately, and may prosecute the criminal offence after the conclusion of the trial which has commenced.

(3) Where there are grounds to suspect that a witness or expert witness committed perjury during the trial, that criminal offence is not prosecutable immediately. In such case the president of the chamber may order a special record made of the testimony of the witness or expert witness and delivered to the public prosecutor. The record shall be signed by the witness or expert witness who had testified.

(4) Where it is not possible to try the perpetrator of a criminal offence which is prosecutable *ex officio* immediately, or where a higher court has the necessary jurisdiction, the competent public prosecutor shall be notified thereof for further action.

3. Preconditions for holding trials

Article 302

The president of the chamber shall open the trial hearing and announces the case being processed and the composition of the chamber. The president shall then establish whether all the persons summoned are present, and if some are not, whether they were duly served summons and whether they have justified their absences.

Article 303

(1) Where a public prosecutor or person deputising for the public prosecutor fails to appear at a trial scheduled on the basis of the public prosecutor’s indictment, the court shall order a continuance. The president of the chamber shall notify the competent public prosecutor thereof.

(2) Where a subsidiary prosecutor or private prosecutor fail to appear at the trial, in spite of duly summoned, or their proxy, the chamber shall issue a ruling discontinuing the proceedings.

Article 304

(1) Where a defendant is duly summoned but fails to appear at the trial or to justify his absence, the chamber shall order the defendant brought in by force. It this could not be done immediately, the chamber shall decide that the hearing not be held and order the defendant brought in to the next hearing by force. If the defendant justifies his absence until the date of the hearing, the president of the chamber shall repeal the order to bring in the defendant forcibly.

(2) Defendants may be tried *in absentia* only if they are at large or otherwise not accessible to the public authorities, and there are particularly important reason to try them, although they are absent.

(3) Ruling on *in-absentia* trials of defendants shall be issued by the chamber on a motion by the prosecutor. Appeals do not stay execution of rulings.

Article 305

(1) Where a defence counsel duly summoned to the trial fails to appear and fails to notify the court about the reason for his absence as soon as he learns of that reason, or where a defence counsel leaves the trial without permission, the defendant shall be called to retain another defence counsel immediately. If the defendant does not do so, the chamber may decide that the trial be held without a defence counsel being present. In the case of mandatory defence a possibility does not exist of the defendant retaining another defence counsel immediately, or of the court appointing one without harming the interests of the defence, a continuance of the trial shall be ordered.

(2) Duly summoned defence counsel whose unjustified absence led to continuance of the trial shall be fined 50.000 RSD by the chamber and ordered to pay the costs of the continuance of the trial. A ruling thereon, with a brief substantiation, shall be attached to trial record.

Article 306

Where pursuant to the provisions of Articles 299, 304 and 305 of this Code there exist the necessary grounds for continuance of the trial due to the failure of the defendant to appear, or the failure of the defence counsel to appear, the chamber may decide to hold the trial if the evidence in the files makes obvious that a judgement dismissing the charges or the ruling referred to in Article 349 of this Code must be rendered.

Article 307

(1) Where a witness or expert witness fail to appear without justification in spite of being duly summoned, the chamber may order them brought in by force immediately.

(2) The trial may commence even in the absence of duly summoned witness or expert witness, in which case the chamber shall decide during the trial hearing whether to recess or adjourn the trial owing to the absence of the witness of expert witness.

(3) Witnesses or expert witnesses duly summoned but unjustifiably absent from the trial may be fined up to 100.000 RSD by the chamber, which may also order them brought in by force to a new hearing. In justifiable cases the chamber may repeal the order on the penalty.

4. Trial adjournments and recesses

Article 308

(1) Except for cases especially provided for in this Code, trials shall be adjourned by a ruling of the chamber where it is necessary to obtain new evidence whose acquisition requires a longer period time or where during the trial it is determined that following the commission of the criminal offence the defendant has come down with mental illness or mental disorder or where there are other obstacles to the successful conduct of the trial.

(2) As a rule, the ruling adjourning the trial shall set a date and hour when the trial shall resume. In the same ruling the chamber may order collection of evidence that may be lost with the passage of time.

(3) The rulings referred to in paragraph 2 of this Article are not appealable.

Article 309

(1) Adjourned trials may re-commence anew where the composition of the chamber was altered, with the proviso that the chamber may rule, after hearing the parties, that witnesses and expert witnesses are not examined again, but that their testimony given at earlier trial hearings be read out.

(2) Trials which were adjourned and are being held before the same chamber shall be continued, and the president of the chamber shall briefly recount the course of the earlier trial hearings, with the proviso that even in this case the chamber may rule to order a new trial.

(3) Trials which were adjourned and are being held before a new president of the chamber must commence anew and all the evidence shall be adduced again.

(4) By exception from paragraph 3 of this Article, the president of the chamber may, after hearing the parties, ask the chamber referred to in Article 24 paragraph 6 of this Code to rule that certain evidence does not need to be adduced again.

(5) Where the chamber referred to in Article 24 paragraph 6 of this Code finds that due to the passage of time, the protection of witnesses or other important reasons it would be justified that certain witnesses and expert witnesses are not examined again, it shall issue a ruling ordering that records of their testimony given at the earlier trial be read out. These rulings are not appealable.

(6) The president of the chamber is required to notify the president of the court about all adjournments lasting more than two months.

Article 310

(1) Besides the cases specified in this Code, the president of the chamber may adjourn the trial for the purpose of obtaining certain evidence within a short period of time, for the purpose of preparing the prosecution or defence, for a recess or end of office hours.

(2) As a rule, a trial that has been adjourned shall be continued on the next workday.

(3) A trial that has been adjourned shall always be continued before the same chamber.

(4) Where a trial cannot be continued before he same chamber or the adjournment lasted more than eight days, the provisions of Article 309 of this Code shall be applied.

Article 311

If during the trial before a chamber composed of one judge and two lay judges it should be established that the facts on which the charges are founded indicate the commission of a criminal offence which shall be tried by a chamber made up of two judges and three lay judges, the chamber shall be expanded accordingly and the trial shall commence anew.

5. The trial record

Article 312

(1) A record shall be kept of the trial which shall in its essence contain a summary of the work and the entire course of the trials.

(2) The provisions of Article 179 of this Code shall be applied accordingly to audio recording of the course of the trial. Permission to make an audio recording shall be issued by the president of the chamber.

(3) The president of the chamber may, on a motion by a party or *ex officio*, order the statements he deems particularly important to be entered in the record verbatim.

(4) If necessary, and especially where the statements of a person are entered in the record verbatim, the president of the chamber may order that part of the record to be read out immediately, and it shall always be read out when requested so by a party, defence counsel or the person whose statement has been entered in the record.

Article 313

(1) The record must be completed by the end of the hearing. The record shall be signed by the president of the chamber and the recorder.

(2) The parties are entitled to examine the completed record and its supplements, to make objections in connection with its contents and to request alterations of the record. Parties who so request are entitled to copies of the record after the conclusion of the hearing.

(3) Corrections of incorrectly inscribed names, numbers and other obvious writing errors may be ordered by the president of the chamber on a motion by a party, or the person questioned, or *ex officio.* Other corrections and amendments of the record may only be ordered by the chamber.

(4) Objections and motions of parties in respect of the record, as well as corrections and amendments of the record, shall be noted in the supplement of the concluded record. The supplement to the record shall also contain the reasons why certain objections and motions were not upheld. The president of the chamber and the recorder shall sign the supplement to the record.

Article 314

(1) The introductory part of the record shall contain the title of the court where the trial is being conducted, the place and time of the session, the first names and surnames of the president of the chamber, the chamber's members and the recorder, prosecutor, defendant and defence counsel, aggrieved and his legal representative or proxy and the interpreter, designation of the criminal offence which is the subject of the proceedings, as well as an indication whether the trial is public or held *in camera.*

(2) The record shall in particular specify whether the indictment was read out at the trial or set our verbally, whether the prosecutor altered or amended the charges, whether and what motions were submitted by the parties, the decisions of the president of the chamber or the chamber, what evidence was adduced, whether any records or other documents were read out, whether audio or other recordings were played and what objections had been made by the parties in respect of the records or documents read out and recordings played. Where the public has been excluded from the trial, it shall be noted in the record that the president of the chamber cautioned those present about the consequences of divulging without permission what they had learnt at the trial as a secret.

(3) Statements made by the defendant, witnesses and expert witnesses are entered in the record to show their essential content. Such testimony shall be entered in the record only if it deviates from or adds to statements made by them earlier. At the request of a party, the president of the chamber shall order the record of that party's earlier testimony to be read out in full or in part.

(4) At the request of a party, questions and/or answers the chamber rejected as inadmissible shall be entered in the record.

Article 315

(1) The ordering part of the judgement shall be entered in full in the trial record (Article 361 paragraphs 3 to 5), with an indication of whether the judgement had been made

public. The ordering part of the judgement contained in the trial record shall be deemed the original.

(2) Where a detention order was made (Article 358), it shall also be entered in the trial record.

6. Commencement of the trial and interrogation of the defendant

Article 316

(1) When summoned by the authorised officer, all in the court shall stand when a judge or a chamber enters or leaves the courtroom.

(2) The parties and other participants in the proceedings are required to stand when they address the court, except there exist where justifiable obstacles, or where the interrogation and questioning are organised in another manner.

(3) After the president of the chamber determines that all persons duly summoned are present, or after the chamber rules that the trial shall be held without the presence of one or more of those summoned, or where it has left the resolution of the issues for a later date, the president of the chamber shall call on the defendant to provide his personal data (Article 89) to establish his identity.

Article 317

(1) After the identity of the defendant is established, the president of the chamber shall direct witnesses and expert witnesses to the places designated for them where they shall await until they are called to be questioned. In the case of need, the president of the chamber may retain expert witnesses in the court to observe the course of the trial.

(2) If the aggrieved is present, and has not yet lodged an indemnification claim, the president of the chamber shall inform him about his right to make a motion for asserting his claim in criminal proceedings and instruct him of his rights under Article 60 of this Code.

(3) Where a subsidiary prosecutor or private prosecutor are to be questioned as witnesses, they shall not be removed from the hearing.

(4) The president of the chamber may implement requisite measures to prevent collusion among witnesses, expert witnesses and parties.

Article 318

The president of the chamber shall caution the defendant to monitor carefully the course of the trial and instruct him that he is entitled to present facts and propose evidence in his defence, that he may question co-defendants, witnesses and expert witnesses, raise objections and provide explanations in connection with their testimony.

Article 319

(1) The trial shall commence by the reading of the indictment (Article 266 paragraph 1 items 1) to 3) or private prosecution.

(2) As a rule the indictment and private prosecution shall be read out by the prosecutor, but where an indictment of a subsidiary prosecutor or a private prosecution are concerned, the president of the chamber may instead present their content orally. The prosecutor shall be allowed to amend the presentation of the president of the chamber.

(3) If the aggrieved is present, he may substantiate his indemnification claim, and if he is absent, the president of the chamber shall read out his claim.

Article 320

(1) After the indictment or private prosecution are read out or their content presented orally, the president of the chamber shall ask the defendant whether he understands the charges. Where the president of the chamber is convinced that the defendant did not understand the charges, he shall present their content again to the defendant in a manner which is the easiest for the defendant to understand.

(2) The president of the chamber shall then ask the defendant whether he admits to the commission of the criminal offence with which he is charged and call on him, if he so desires, to declare himself on the charges and present his defence. The defendant is not required to declare himself on the charges or to present a defence.

(3) The defendant’s refusal to answer the question referred to in paragraph 2 of this Article shall be deemed as a plea of innocence.

(4) When the defendant completes his statement, he may be questioned first by the prosecutor, then by his defence counsel, then by the president of the chamber and the members of the chamber, then by the aggrieved or his legal representative and proxy, co-defendants and their defence counsel, and expert witnesses.

(5) The aggrieved, the legal representative and the proxy of the aggrieved, and expert witnesses, may pose direct questions to the defendant, with the consent of the president of the chamber.

(6) The president of the chamber shall bar a question or an answer to a question because it is inadmissible (Article 90 paragraph 1) or does not refer to the charges at issue. Questions testing the veracity of the testimony shall be deemed as referring to the charges at issue. The parties may ask the chamber to rule on the prohibition.

(7) The president of the chamber may at any time pose questions contributing to a more comprehensive or clearer response to a question posed by other participants in the proceedings.

(8) Co-defendants who have not yet been questioned may not attend the interrogation of the defendant.

Article 321

(1) General provisions on interrogating accused persons (Articles 89 to 95) shall be applied accordingly in the questioning of the defendant at the trial.

(2) Where a defendant refuses to answer all questions or certain questions, statements given by him earlier or parts thereof shall be read out.

(3) After the questioning is completed, the president is required to ask the defendant whether he has anything else to say in his defence.

Article 322

(Erased)

Article 323

(1) After the completion of the interrogation of the first defendant, the other defendants, if any, shall be questioned one by one. After each questioning, the president of the chamber shall inform the person questioned about the statements made by co-defendants questioned earlier, and shall ask him for any observations. Defendants questioned earlier shall be asked by the president of the chamber if they have any observations in connection with statements made by defendants questioned subsequently. Every defendant is entitled to pose questions to all co-defendants who have already been questioned.

(2) Where statements made by co-defendants differ in respect of the same circumstance, the president of the chamber may confront co-defendants.

Article 324

The chamber may, exceptionally, temporarily remove a defendant from the courtroom where a co-defendant or witness refuses to testify in his presence or where circumstances indicate that they will not tell the truth in the presence of the defendant. After the defendant returns to the hearing, he shall be read the testimony of the co-defendant or witness. The defendant is entitled to pose questions to the co-defendant, or witness, and the president of the chamber shall ask him for any observations in connection with their testimonies. A confrontation may be conducted as required.

Article 325

During the trial defendants may confer with their defence counsel, but may not confer with their defence counsel or anyone else about how to answer a question they have been posed.

7. Evidentiary procedure

Article 326

(1) After the defendant has been questioned, the proceedings shall continue with the presentation of evidence.

(2) The presentation of evidence encompasses all facts which the courts deems as being important for proper adjudication.

(3) *(Erased)*

(4) The parties and the aggrieved may make motions for new facts to be investigated and new evidence obtained until the conclusion of the trial, and are also entitled to repeat motions earlier denied by the president of the chamber.

(5) The chamber may decide for evidence to be adduced which was been proposed or which a proposer abandoned.

Article 327

The defendant's confession at the trial shall relieve the court of the duty of adducing evidence other than that on which depends the estimate whether the confession fulfils the preconditions referred to in Article 94 of this Code, as well as evidence on which depends the type and severity of the criminal sanction.

Article 328

(1) Evidence shall be adduced in the order determined by the president of the chamber. As a rule, the first to be adduced shall be evidence proposed by the prosecutor, followed by that proposed by the defence, followed by evidence which the chamber determines *ex officio* shall be adduced, and evidence proposed by the aggrieved. Where both parties propose the same evidence, the party which first proposed it shall have precedence in adducing it.

(2) If the aggrieved, who is present, shall be questioned as a witness, he shall give testimony before all other witnesses.

(3) General provisions applied to questioning witnesses and expert witnesses shall be applied accordingly to their questioning at the trial.

(4) As a rule witnesses already questioned shall not attend presentation of evidence.

(5) Where persons below the age of fourteen as questioned as witnesses, the chamber may decide to exclude the public during his questioning.

(6) Where juveniles are present at a trial as witnesses or aggrieved parties, they shall be removed from the court as soon as their presence is no longer necessary.

Article 329

(1) Before witnesses are questioned, the president of the chamber shall instruct them of their duty to present to the court everything known to them about the case and caution them that perjury is a criminal offence.

(2) The president of the chamber shall call witnesses who had not taken oaths in the investigation to take an oath before giving testimony, and if they had already taken an oath during the investigation, the president shall remind them that they are under oath.

Article 330

(1) Before questioning expert witnesses, the president of the chamber shall caution them about their duty to present their findings and opinions to the best of their knowledge and caution them that presenting false findings and opinions is a criminal offence.

(2) The president of the chamber shall call expert witnesses who are not under oath to take an oath before giving testimony, and where they had already taken an oath, remind them that they are under oath.

(3) Expert witnesses present their findings and opinions at trials orally. Where an expert witness has prepared written findings and opinions before the trial, he may be allowed to read them out, and then they shall be attached to the trial record.

(4) The chamber may decide that instead of summoning an expert from the institution or authority entrusted with the expert analysis it will read out the findings and opinion itself, if the nature of the expert analysis makes it unlikely to expect a more comprehensive explanation of their written findings and opinion. Where it deems it necessary in view of the other evidence adduced and the objections of the parties (Article 339), the chamber may decide to question at a later time the experts who performed the expert analysis.

Article 331

(1) The parties, the president of the chamber and the members of the chamber shall question witnesses and expert witnesses directly. Unless the parties have agreed to a different order of precedence, the first to question the witness shall be the party who made the motion for that witness or expert witness to be heard, followed by the opposing party, followed by the president and members of the chamber, followed by the aggrieved or his legal representative and proxy, co-defendants and expert witnesses. Where presentation of evidence was ordered by the court without a motion from any of the parties, the first to pose questions shall be the president and members of the chamber, followed by the prosecutor, the defendant and his defence counsel, the aggrieved or his legal representative and proxy, and expert witnesses. The party which had proposed the witness or expert witness may ask additional questions after all the others.

(2) The aggrieved, or his legal representative and proxy, as well as expert witnesses, may pose questions directly, with the consent of the president of the chamber.

(3) The president of the chamber shall bar a question or an answer to a question because it is inadmissible (Article 103 paragraph 1) or does not refer to the charges at issue. The parties may ask the chamber to rule on the ban.

(4) The president of the chamber may at any time pose questions contributing to a more comprehensive or clearer response to a question posed by other participants in the proceedings.

Article 332

Where a witness or expert witness when questioned at an earlier made date mention of facts which he no longer remembers, or if he deviates from a statement, he shall be confronted with that statement or informed about the deviation and asked why he has changed his testimony, and, if required, all or a part of his earlier testimony shall be read out.

Article 333

(1) Witnesses and expert witnesses who have been questioned shall remain in the courtroom unless they are relieved completely by the president of the chamber after their testimony or ordered to leave the courtroom temporarily.

(2) On a motion of the parties or *ex officio*, the president of the chamber may order witnesses and expert witnesses who have been questioned removed from the courtroom and later recalled and questioned again in the presence or absence of other witnesses and expert witnesses.

Article 334

(1) If it should be learnt at the trial that a witness or expert witness cannot attend the trial or could do so only with great difficulty, the chamber, if it deems his testimony important, may order that witness questioned away from the venue of the trial by the president of the chamber or a judge who is a member of the chamber, or by the investigating judge of the court in whose territorial jurisdiction the witness or expert witness is located.

(2) Where a crime scene inspection or reconstruction away from the trial venue is required, it shall be performed by the president of the chamber or a judge who is a member of the chamber.

(3) The parties, defence counsel and the aggrieved shall always be notified of the time and place of the questioning of a witness, crime scene inspections or reconstructions, and that they may attend those actions. If the defendant is in detention, the chamber shall rule whether his presence at those actions is necessary. Parties and the aggrieved attending the performance of the aforesaid actions are entitled to the rights prescribed by Article 251 paragraph 7 of this Code.

Article 335

The chamber may, during the trial, after taking statements from the parties, decide to ask the investigating judge to perform certain actions to clarify certain facts, where undertaking such actions at the trial would entail considerable delays or other substantial difficulties. When the investigating judge is acting on such a request of the chamber, provisions relating to the implementation of investigatory actions shall be applied.

Article 336

(1) Records of crime scene inspections outside the trial, searches of abodes and persons and seizures of objects, as well as documents, books, files and other documentation serving as evidence, shall be read at the trial for the purpose of establishing their contents, and if the chamber so decides, their contents may also be presented orally in brief. Documents which have the significance of evidence, where possible, shall be presented in the original.

(2) Objects which may serve to clarify matters during the trial shall be shown to the defendant, an if needed also to witnesses and expert witnesses. Where such presentation has the significance of identification, it shall be acted in accordance with Article 104 of this Code.

Article 337

(1) Except for cases especially prescribed in this Code, records of the statements made by witnesses, co-defendants or participants in the criminal offence who have already been convicted, as well as records or other documents in connection with the findings and opinions of expert witnesses, may if so decided by the chamber be read out only in the following cases:

1) if persons who were interrogated or questioned have died, are suffering from a mental illness or cannot be found, or where advanced age, poor health or other reasons make their appearance before the court impossible or very difficult;

2) if witnesses or expert witnesses decline to give testimony at the trial without statutory reasons.

(2) The chamber may, with the consent of the parties, decide that the record of earlier questioning of witnesses or expert witnesses, or their written findings and opinions, be read out although the witness, or expert witness, is not present, whether of not he was summoned to the trial. Exceptionally, even without the consent of the parties, or after taking their statements, the chamber may decide that a record be read out of the examination of witnesses or expert witnesses at an earlier trial hearing held before the same president of the chamber, although the time limit referred to in Article 309 paragraph 3 of this Code has run out, or that written findings and opinions be read out of a professional institution or public authority, when the expert of that institution or authority which conducted the expert analysis did not come the trial, if, in view of the other evidence adduced, it finds it necessary to acquaint itself with the content of the record or written finding and opinion. After the record or written finding and opinion are read out and parties' objections heard (Article 339), taking into consideration the other evidence adduced, the chamber shall decide whether to question the witness or expert witness directly.

(3) Records of earlier questioning of persons exempted from the duty of giving evidence (Article 98) may not be read out if those persons have not been summoned to the trial or have before the first questioning at the trial declared that they would not give testimony. After concluding the evidentiary procedure, the chamber shall decide that these records be separated from the files and kept separately (Article 178). The chamber shall act similarly in respect of other records and information referred to in Article 178 of this

Code, unless a decision on their separation has already been rendered. A special appeal against the decision on separating records and information may be filed. After the ruling becomes final, the excluded records and information shall be sealed under a separate cover and submitted to the investigating judge for safekeeping apart from the other files, and may neither be examined not used in the proceedings. Records and information must be separated before the files are submitted to a higher court in connection with an appeal against the judgement.

(4) The reasons for reading out the record shall be noted in the trial, and it shall be announced during the reading whether the witness or expert witness had been sworn in.

Article 338

In the cases referred to in Articles 321, 332 and 337 of this Code, as well as in other cases where necessary, the chamber may decide that besides the reading of the record, recordings of interrogations and questioning shall be played at the trial (Article 179).

Article 339

After the examination of every witness or expert witnesses and the reading of every record or other document, the president of the chamber shall ask the parties and the aggrieved whether they have any observations.

Article 340

(1) After the conclusion of the evidentiary procedure, the president of the chamber shall ask the parties and the aggrieved whether they have any proposals to amend the evidentiary procedure.

(2) If no one proposes any amendment of the evidentiary procedure or a proposal is rejected, and the chamber finds that the state of the matter has been examined, the president shall declare the evidentiary procedure concluded.

8. Revising and expanding indictments

Article 341

(1) If the prosecutor finds during the trial that the evidence adduced indicates that the facts of the matter as presented in the indictment have changed, he may revise the charges orally at the trial, or may move for an adjournment to prepare a new indictment.

(2) In case a new indictment is to be filed, the court is required to give the defendant and defence counsel sufficient time to prepare the defence, and at their request also where necessary in case the charges are revised.

(3) If the chamber allows an adjournment of the trial for preparing a new indictment, it shall determine a time limit in which the prosecutor must submit the indictment. A copy of the new indictment shall be communicated to the defendant, but objections to this

indictment are not allowed. If the prosecutor does not file the indictment within the aforesaid time limit, the chamber shall resume the trial on the basis of the old indictment.

Article 342

(1) If the defendant commits a criminal offence while the trial is under way or another earlier criminal offence of the defendant is detected during the trial, the chamber shall acting on charges of an authorised prosecutor, which may be presented orally, expand the trial to include that offence, or decide on a separate trial for that criminal offence. No objections against those charges are allowed.

(2) If the chamber accepts an expansion of the charges, it shall adjourn the trial and ensure sufficient time for preparing a defence.

(3) Where a higher court has jurisdiction for adjudicating the offence referred to in paragraph 1 of this Article, the chamber shall decide whether to refer the case being tried to the competent higher court.

9. Closing arguments

Article 343

At the conclusion of the evidentiary procedure, the president of the chamber shall call on the parties, the aggrieved and defence counsel to make their closing arguments. The first to speak shall be the prosecutor, followed by the aggrieved, the defence counsel, and the defendant.

Article 344

The prosecutor shall present in his closing argument an assessment of the evidence adduced at the trial and conclusions about facts of importance for the decision, and list the provisions of the Criminal Code and other laws that should be applied and the mitigating and aggravating circumstances which should be taken into account in admeasuring the penalty. The prosecutor may not propose any specific penalty to the court, but may propose a judicial admonition or a conditional penalty.

Article 345

The aggrieved or his proxy may in his closing statement substantiate his indemnification claim and point out evidence about the criminal offence of the defendant.

Article 346

(1) The defendant’s defence counsel or the defendant himself shall present his defence in his closing statement, and may comment on statements made by the prosecutor and the aggrieved.

(2) The defendant shall also be entitled to address the court after his defence counsel, to state whether he supports the defence presented by his defence counsel, and to supplement it.

(3) The prosecutor and the aggrieved are entitled to make a response to the defence, and the defence counsel or defendant are entitled to comment on those responses.

(4) The defendant shall always be entitled to speak last.

Article 347

(1) The duration of the statements of parties, defence counsel and aggrieved may not be restricted.

(2) Persons who address the court in an offensive or insulting manner or who are repetitive and make statements obviously not connected to the case shall first be cautioned by the president of the chamber and may then be interrupted. It shall be stated in the trial record that an address to the court was interrupted and why it was interrupted.

(3) Where there are several persons representing the prosecution, or several defence counsel, arguments may not be repeated. A representative of the prosecution and a representative of the defence shall by mutual agreement select the issues they will address.

(4) After the closing arguments are completed, the president of the chamber is required to ask whether anyone wishes to make a further statement.

Article 348

(1) If following the closing statements of the parties, defence counsel and aggrieved the chamber does not decide to adduce more evidence, the president of the chamber shall declare the trial closed.

(2) If the chamber decides to adduce more evidence it shall continue the evidentiary procedure and after its conclusion again act in accordance with the provisions of Article 343 of this Code. The prosecutor, the aggrieved, defence counsel and the defendant may supplement their closing arguments only in respect of the additional evidence adduced.

(3) After declaring that the trial is closed, the chamber shall retire for deliberation and voting in order to render the judgement.

10. Dismissing the indictment

Article 349

During the trial or after its closure, the chamber shall dismiss the indictment by a ruling if it determines the following:

1) that the court has no material jurisdiction;

2) that the proceedings were conducted without a request by an authorised prosecutor, without a motion by an aggrieved person or without the approval of a competent public authority, or that competent public authority has withdrawn its approval;

3) that other circumstances exist which temporarily preclude prosecution.

Chapter XXIII
THE JUDGEMENT

1. Pronouncement of the judgement

Article 350

(1) If during its deliberation the court finds that it is not necessary to reopen the trial in order to amend the proceedings or clarify certain issues, it shall pronounce its judgement.

(2) The judgement is pronounced and made public in the name of the people.

Article 351

(1) The judgement may relate only to the defendant and the offence which is the object of the charges specified in the indictment as it was filed or as it was revised and expanded during the trial.

(2) The court is not bound by the prosecutor’s motions in respect of the legal qualification of the offence.

Article 352

(1) The court shall base its judgement only on the evidence adduced at the trial.

(2) The court is required to conscientiously assess each item of evidence individually and in relation to the other evidence and on the basis of that assessment to draw a conclusion on whether a particular fact had been established.

2. Types of judgement

Article 353

(1) Judgements shall either deny the charges, acquit the defendant or convict the defendant.

(2) If the charges include several criminal offences, it shall be specified in the judgement whether any of the charges are denied and which charges, or if the defendant is acquitted of the charges, or convicted.

Article 354

The court shall pronounce a judgement denying the charges in the following cases:

1) if in the period from the commencement to the conclusion of the trial the prosecutor abandoned the charges or the aggrieved abandoned his motion for prosecution;

2) if the defendant has already been convicted or acquitted of the charges in connection with the same offence by a final judgement, or if the charges against the defendant have been denied by a final judgement, or if the proceedings against him have been discontinued by a final ruling;

3) if the defendant has been relieved of prosecution by an amnesty or pardon, or if criminal prosecution cannot be effected because the statutory limit for prosecution has lapsed, or because of another circumstance that permanently precludes criminal prosecution.

Article 355

The court shall pronounce a judgement acquitting the defendant in the following cases:

1) if the offence of which he was accused under the law is not a criminal offence;

2) if it has not been proven that the defendant committed the offence of which he was accused.

Article 356

(1) In a judgement convicting the defendant, the court shall specify the following:

1) the offence in connection with the defendant is pronounced guilty, with specification of the facts and circumstances which constitute the elements of a criminal offence, as well as those on which depends the application of certain provisions of the Criminal Code;

2) the legal designation of the criminal offence and which provisions of the law had been applied;

3) which penalty the Court imposes on the defendant, or whether pursuant to the provisions of the Criminal Code he is relieved of the penalty;

4) a decision on a conditional sentence, or a decision revoking a conditional conviction or conditional release;

5) a decision on security measures and confiscation of proceeds from crime;

6) a decision on including time spent in detention or penalty already served in the total sentence;

7) a decision on the costs of the criminal proceedings and the indemnification claim.

(2) If the defendant has been convicted to pay a fine, the judgement shall specify whether the fine was calculated and pronounced in daily amounts, or payable within a certain time limit, and that limit, as well as the manner of substitution of the fine if it is not possible to enforce collection.

(3) If the defendant has been convicted to serve a communal service penalty, the judgement shall specify its type and duration and the manner of substitution of the penalty with a term of imprisonment in case the defendant does not perform the service in full, or in part.

(4) If the defendant has been convicted to seizure of his driver's licence, the judgement shall specify the duration of the seizure and manner of its substitution with a term of imprisonment in case the defendant is found operating a motor vehicle during the term of the seizure of the driver's licence.

(5) If the defendant has been pronounced a conditional sentence with protective supervision, the judgement shall specify its content, its duration and the consequences of non-fulfilment of the protective supervision obligation.

3. Publication of the judgement

Article 357

(1) After the court has pronounced the judgement, the president of the chamber shall immediately make it public. If the court is not able to pronounce the judgement on the same day following the conclusion of the trial, it shall postpone the official pronunciation of the judgement by no more than three days and shall specify and time and place of the pronouncement of the judgement. If the judgement is not made public within three days of the conclusion of the trial, the president of the chamber is required immediately upon the expiry of that time limit to notify the president of the court and inform the president of the reasons.

(2) The president of the chamber shall in the presence of parties, their legal representatives, proxies and defence counsel read out the operative provisions of the judgement and briefly substantiate the judgement.

(3) The judgement shall be pronounced even where a party, legal representative, proxy or defence counsel are not present. The chamber may order that the defendant, who is absent, be read out the judgement by the president of the chamber, or that the judgement be delivered to the defendant.

(4) If the public was excluded from the trial, the ordering part of the judgement shall always be read at a public session. The chamber shall decide whether to exclude the public during the announcement of the reasons for the judgement.

(5) All those present shall stand while the ordering part of the judgement is being read out.

Article 358

(1) Where it pronounces a term of imprisonment of less than five years, the chamber shall order defendants released on their own recognizance during the trial to be placed in detention if the reasons referred to in Article 142 paragraph 1 items 1) and 3) of this Code exist, and shall order the release from detention of defendants if the grounds on which detention had been ordered no longer exist.

(2) The chamber shall always order defendants to be released from detention if they are acquitted, or the charges are denied, or if they are convicted but relieved of the penalty, or have only been convicted to pay a fine, perform public service work or hand over their driver's licences, or have been pronounced a judicial admonition or a conditional sentence, or have due to time served already served out their entire sentences, or where the charges were dismissed (Article 394), except due to a lack of material jurisdiction.

(3) The provision of paragraph 1 of this Article shall always be applied to ordering detention of ordering release from detention after the pronouncement of the judgement, until it becomes final. The decision shall be rendered by the chamber of the court of first instance (Article 24 paragraph 6).

(4) Before rendering the ruling ordering detention or ordering release from detention in the cases referred to in paragraph 1 and 3 of this Article, the opinion shall be sought of the public prosecutor, where the proceedings are being conducted at his request.

(5) If the defendant is already in detention and the chamber finds that the reasons for which detention had been ordered, or the reasons referred to in Article 142 paragraph 1 item 6) and of paragraph 1 of this Article, still exist, it shall issue a special ruling extending detention. The chamber shall also issue a special ruling where detention, or release from detention, needs to be ordered. Appeals against the ruling do not stay execution of the ruling.

(6) Detention ordered or extended pursuant to the provisions of the preceding paragraphs may last until the defendant, or convicted person, is transferred to a penitentiary institution to serve his penalty, but no longer than the duration of the penalty pronounced in the judgement rendered in the first instance.

(7) At the request of a defendant who is in detention in the period following pronouncement of the judgement, the president of the chamber may issue a ruling transferring the defendant to a penitentiary institution even before the judgement becomes final.

Article 359

(1) Upon pronouncement of the judgement, the president of the chamber shall instruct the parties on their right to file appeals, as well as of the right to respond to an appeal.

(2) If the enforcement of a penalty imposed on a defendant has been deferred, he shall be cautioned by the president of the chamber about the significance of a conditional sentence and the requirements by which he must abide.

(3) The president of the chamber shall caution the parties that they are required to notify the court of any changes of address until the final conclusion of the proceedings.

4. Drawing up and service of the judgement

Article 360

(1) Once judgements have been pronounced they must be done in writing and dispatched within a time limit of eight days from the pronouncement, and exceptionally, in complex matters, within a time limit determined by the president of the next higher court. If a judgement is not done in writing and sent within the aforesaid time limits, the president of the chamber is required to notify the writing the president of the court and the president of the next higher court why this was not done. The president of the court and president of the next higher court shall ensure that the judgement is done in writing and sent as soon as possible.

(2) Judgements are signed by the president of the chamber and the recorder.

(3) Certified copies of the judgement shall be served to the prosecutor, and to the defendant and defence counsel in accordance with Article 162 of this Code. Where the defendant is in detention, certified copies of the judgement must be sent within the time limits referred to in paragraph 1 of this Article.

(4) Defendants, private prosecutors and subsidiary prosecutors shall also be served instructions on their right to submit appeals.

(5) Certified copies of the judgement, with instructions on the right to appeal, shall be served by the court to aggrieved parties if they are entitled to submit appeals, to persons whose objects were confiscated by the judgement, as well as to legal persons against whom the confiscation of proceeds from crime has been ordered. Copies of the judgement shall be served to aggrieved parties not entitled to submit appeals in the case referred to in Article 62 paragraph 2 of this Code, with instructions on seeking restitution. Final judgements shall be served to aggrieved parties if they do request.

(6) If the court, by applying provisions on admeasuring a joint penalty for concurrent criminal offences, has pronounced a sentence taking into consideration judgements rendered by other courts, it shall send certified copies of the final judgement to those courts.

Article 361

(1) Judgements done in writing are required to correspond fully to the judgements pronounced. Judgements must have an introduction, an ordering part and a statement of reasons.

(2) The introduction of the judgement contains the following: a statement that the judgement is being rendered in the name of the people, the name of the court, the first name and surname of the president and members of the chamber and of the recorder, the first name and surname of the defendant, the criminal offence of which he is charged

and whether he attended the trial, the date of the trial and whether it was public, the first names and surnames of the prosecutor, the defence counsel, legal representatives and proxies present at the trial and the date the judgement pronounced was made public.

(3) The ordering part of the judgement shall contain the personal data of the defendant (Article 89 paragraph 1) and a decision pronouncing the defendant guilty of committing the criminal offence with which he is charged, or acquitting him of the charges in connection with that offence, or denying the charges.

(4) If the defendant is convicted, the ordering part of the judgement is required to include the data specified in Article 356 of this Code, and if the defendant is acquitted of the charges or the charges are denied, the ordering part of the judgement is required to include a description of the offence of which he was accused and a decision on the costs of the criminal proceedings and indemnification claim, if any.

(5) In the case of concurrent criminal offences, the court shall specify in the ordering part of the judgement the penalties determined for each individual criminal offence, and then the penalty pronounced for all the offences in concurrence.

(6) In the reasons for the judgement the court shall expound the reasons for every count of the judgement.

(7) The court shall unambiguously and fully explain which facts and for which reasons it considers proven or unproven, declaring itself in particular in connection with the assessment of the credibility of contradictory evidence, for which reasons it did not accept certain motions of the parties, for which reasons it decided not to question directly a witness or expert witness whose testimony, or written findings and opinion, were read out without the consent of the parties (Article 337 paragraph 2), which reasons guided it in resolving legal questions, in particular in determining whether a criminal offence committed by the defendant existed and in the application of certain provisions of the law on the defendant and his offence.

(8) If the defendant was sentenced to a penalty, the statement of reasons shall indicate the circumstances the court took into account in admeasuring the penalty. The court shall in particular explain the reasons for its decision to impose a more severe penalty than the prescribed one, or for the decision to mitigate the penalty of relieve the defendant of a penalty, or to impose a conditional sentence, security measure or confiscation of proceeds from crime, or to revoke a conditional release.

(9) If the defendant is acquitted, the statement of reasons shall particularly indicate the grounds referred to in Article 379 of this Code for reaching such a decision.

(10) In the statement of reasons or a judgment denying the charges and in the statement of reasons for a ruling dismissing the charges, the court shall not discuss the merits of the case but shall limit itself only to the reasons for denying or dismissing the charges.

Article 362

(1) The president of the chamber shall upon a request of the parties or *ex officio* issue a special ruling correcting mistakes in names and numbers, as well as other obvious

mistakes in writing and calculation, deficiencies in the form and discrepancies between the judgement in writing and the original.

(2) If there are discrepancies between the judgement in writing and the original in respect of the data referred to in Article 356 paragraph 1 items 1) to 5) and item 7) of this Code, the ruling on corrections shall be served to the persons referred to in Article 360 of this Code. In such cases, the time limit for filing appeals against the judgement shall begin to run from the date of delivery of the ruling, which is not appealable.

G. JUDICIAL REVIEW

Chapter XXIV
REGULAR LEGAL REMEDIES

1. Appeals against first-instance court judgements

a) The right to appeal

Article 363

(1) Authorised persons may file appeals against judgments rendered in the first instance within fifteen days from the day a copy of the judgment was served to them.

(2) Duly filed appeals by authorised persons do not stay execution of judgements.

Article 364

(1) Appeals may be submitted by the parties, the defence counsel. the legal representative of the defendant and the aggrieved.

(2) The defendant's spouse, lineal relative by blood, adopted, adoptee, sibling, foster-parent and the person with whom he lives in an extramarital or other lasting association may file an appeal on behalf of the defendant. In such cases the time limit for submitting appeals also begins to run from the date when the defendant or his defence counsel were served a copy of the judgement.

(3) The public prosecutor may file an appeal both in prejudice of and for the benefit of the defendant.

(4) The aggrieved may challenge a judgement only in respect of the court's decision on the costs of the criminal proceedings, but if the public prosecutor had taken over proceedings from the subsidiary prosecutor (Article 64 paragraph 2), the aggrieved may file an appeal in connection with all the reasons for which judgements may be challenged (Article 367).

(5) Appeals may also be filed by persons from whom objects or proceeds from crime were seized.

(6) The defence counsel and the persons referred to in paragraph 2 of this Article may file appeals without specific authorisation of the defendant, but not against his will, except where a term of imprisonment of from thirty to forty years was imposed on the defendant.

Article 365

(1) The defendant may waive his right to appeal only after being served the judgement. The defendant may waive his right to an appeal even earlier, if the prosecutor and the aggrieved, if the aggrieved is entitled to file an appeal in connection with all the grounds (Article 364 paragraph 4), have waived the right to appeal, except where the defendant is sentenced to a term of imprisonment. The defendant may withdraw an appeal already filed until the rendering of a decision by a court of second instance. The defendant may also withdraw an appeal filed by his defence counsel or the persons specified in Article 364 paragraph 2 of this Code.

(2) The prosecutor and the aggrieved may waive the right to appeal from the moment the judgement is made public until the expiry of the time limit for filing appeals, and may withdraw an appeal already filed until a court of second instance renders a decision.

(3) Appeal waivers and withdrawals cannot be revoked.

(4) The defendant may not waive the right to appeal or withdraw an appeal that has already been filed if he has been sentenced to a term of imprisonment of from thirty to forty years.

b) The contents of appeals

Article 366

(1) An appeal shall contain the following:

1) a designation of the judgement being appealed;

2) the grounds for challenging the judgement (Article 367);

3) substantiation of the appeal;

4) a motion for the challenged judgement to be annulled in full or in part or revised;

5) at the end, the signature of the person filing the appeal.

(2) If the appeal was filed by the defendant or other person referred to in Article 364 paragraph 2 of this Code and the defendant has no defence counsel, or if the appeal was filed by the aggrieved, a subsidiary prosecutor or private prosecutor who has no proxy, and the appeal is not compiled in accordance with the provisions of paragraph 1 of this Article, the court of first instance shall call on the appellant to amend the appeal with a written submission, or state it for the record with that court, within a certain period

of time. If the appellant fails to do so, the court shall dismiss an appeal which does not contain the data referred to in items 3) and 5) of paragraph 1 of this Article, and shall dismiss an appeal not containing the data referred to in item 1) of paragraph 1 of this Article only if it cannot be established to which judgement it refers. Appeals in favour of the defendant shall be referred by the court to a second-instance court if it can be established to which judgements they relate, and shall be dismissed if it cannot be so established.

(3) Where an appeal was filed by the aggrieved, a subsidiary prosecutor or private prosecutor with a proxy or the public prosecutor, and the appeal does not contain the data referred to in items 2), 3) and 5) of paragraph 1 of this Article or where the appeal does not contain the datum referred to in item 1) of paragraph 1 of this Article, and it cannot be established to which judgement it relates, the court shall dismiss the appeal. Appeals with these shortcomings filed in favour of the defendant who has a defence counsel shall be referred by the court to a second-instance court if it can be established to which judgement they relate, and dismissed if it cannot be so established.

(4) New facts and new evidence may be presented in appeals, but the appellant is required to state the reasons for not presenting them earlier. In citing new facts, the appellant is required to specify the evidence which would provide proof for those facts, and in citing new evidence, the appellant is required to specify the facts he is attempting to prove with the assistance of that evidence.

v) Grounds for challenging judgements

Article 367

Judgements may be challenged on the following grounds:

1) substantive violations of the provisions of criminal procedure;

2) violations of the Criminal Code;

3) incorrect or incomplete establishment of facts;

4) the decision on criminal sanctions, the decision on confiscation of proceeds from crime, the decision on the costs of the criminal proceedings and the decision on indemnification claims.

Article 368

(1) Substantive violations of the provisions of criminal procedure shall exist in the following cases:

1) where the court was not composed in accordance to the Law or where a judge or lay judge who did not participate in the trial or who was disqualified by a final decision participated in rendering a judgment;

2) where a judge or lay judge who should have been disqualified took part in the trial (Article 40 items 1) to 5));

3) where the trial was held in absence of a person whose presence at the trial was mandatory under the law or where the defendant, defence counsel, subsidiary prosecutor or private prosecutor were, 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 contravention of this Code;

5) If the court violated provisions of criminal procedure related to the existence of charges by authorised prosecutors or the existence of motions of aggrieved persons, or approvals of competent authorities;

6) where a judgement was rendered by a court not authorised to adjudicate the matter owing to lack of material jurisdiction or where a court improperly dismissed the charges due to a lack of material jurisdiction;

7) where by its judgement the court failed to fully resolve the object of the indictment;

8) where the charges were exceeded (Article 351 paragraph 1);

9) where the judgement violated the provision of Article 382 of this Code;

10) where the judgement is based on evidence on which pursuant to the provisions of this Code it cannot be based;

11) where the ordering part of the judgement is incomprehensible, contradicts itself or the reasons of the judgement, or if the judgement lacks reasons or fails to state the reasons on decisive facts or the reasons are completely unclear or substantially contradictory, or where there exists substantial contradiction in respect of decisive facts between what is given in the reasons of the judgement on the contents of documents or records of testimony given in the proceedings and those documents or records themselves.

(2) Substantive violations of the provisions of criminal procedure also exist where the court during preparations for the trial or during the trial, or during the rendering of the judgement, failed to apply or applied incorrectly any provision of this Code, or violated the rights of the defence at the trial, and that affected or could have affected the lawful and proper rendering of the judgement.

Article 369

Violations of the Criminal Code exist where the Criminal Code was violated in respect of:

1) whether the offence for which the defendant is being prosecuted is a criminal offence;

2) whether there exist circumstances which preclude criminal prosecution, especially whether the statutory limit for criminal prosecution has lapsed or whether prosecution is precluded by an amnesty of pardon, or whether the matter has already been adjudicated by a final judgement;

3) whether an applicable law was applied in relation to the criminal offence being prosecuted;

4) whether the court exceeded its statutory powers in its decisions on punishment, conditional punishment or judicial admonition, security measure or seizure of proceeds from crime or revocation of conditional release;

5) whether provisions on calculation of time spent in detention and serving a sentence were breached.

Article 370

(1) Judgements may also be challenged due to incorrect or incomplete establishment of facts when a court incorrectly established a decisive fact or failed to establish it.

(2) Incomplete establishment of the facts also exists where new facts and new evidence indicate so.

Article 371

(1) Judgements, or rulings on judicial admonitions, may be challenged due to the decision on the penalty, conditional punishment and judicial admonitions where statutory powers were not exceeded by such decisions (Article 369 item 4), but the court failed to admeasure the penalty correctly in view of circumstances influencing the size of the penalty and because the court applied or failed to apply provisions on mitigating penalties, on relief from punishment, on conditional sentences, on revocation of conditional release or on judicial admonitions, although the statutory requirements for doing so existed.

(2) Decisions on security measures or seizure of proceeds from crime may be challenged where there is no violation of the law referred to in Article 369 paragraph 1 item 4) of this Code, but the court had rendered the decision improperly or had failed to pronounce a security measure, or seizure of proceeds from crime, although the statutory requirements for doing so existed.

(3) Decisions on indemnification claims or costs of criminal proceedings may be challenged if they are improper or contrary to statutory provisions.

g) Appellate Proceedings

Article 372

(1) Appeals shall be submitted to the court which pronounced the judgement in the first instance in a number of copies sufficient for the court, the opposing party and the defence counsel.

(2) Untimely (Article 386) and inadmissible (Article 387) appeals shall be dismissed by a ruling by the president of the chamber of the court of first instance.

Article 373

One copy of the appeal shall be served by the court to the opposing party (Articles 162 and 163), which may within eight days of receipt submit to the court a response to the appeal. The court of first instance shall forward the appeal, response to the appeal and all files to the court of second instance.

Article 374

(1) When the files with the appeal are received by the court of second instance, the president of the appellate chamber shall assign a reporting judge. Where a criminal offence prosecuted at the request of the public prosecutor is concerned, the reporting judge shall forward the files and appeal to the competent public prosecutor, who is required to examine them and make his own motion, or declare that he will make a motion at a session of the chamber, and return them to the court, promptly, or within fifteen days at most.

(2) After the public prosecutor has returned the files, the president of the chamber shall call a session of the chamber and notify the public prosecutor thereof.

(3) The reporting judge may, if needed, obtain from the court of first instance a report on any violations of criminal procedure, and may obtain requisite reports or documents through that court, or through an investigating judge of the court in whose territorial jurisdiction an action is to be conducted in order to verify the appeal’s merits in respect of new evidence and new facts, or they are to be verified in another way, or through other authorities and organisations.

(4) If the reporting judge determines that the records and information referred to in Article 178 of this Code are contained in those files, he shall forward the files to the court of first instance before a session of the second-instance chamber is held, in order for the president of the first-instance chamber to issue a ruling on their exclusion from the files, and after the ruling becomes final, to deliver them in a sealed cover to the investigating judge for keeping separate from the other files.

Article 375

(1) Those defendants and their defence counsel, subsidiary prosecutors, private prosecutors or their proxies who had within the time limit prescribed for filing an appeal or a response to an appeal requested to be notified about the session or proposed that a hearing be held before a court of second instance (Articles 377 to 379) shall be notified of the session of the chamber. The president of the chamber or the chamber may decide

to notify one or more parties about the session of the chamber even if they had not requested notification, if their presence would be of benefit to clarify matters.

(2) If a defendant who is in detention or in a correctional institution is being notified of a session of the chamber, the president of the chamber shall order that his presence is secured.

(3) A session of the chamber shall begin with a report of the reporting judge on the matter at hand. The chamber may ask the parties attending the session for necessary explanations in connection with arguments presented in the appeal. With the permission of the president of the chamber, the parties may propose that certain documents be read out in order to supplement the report, and provide requisite explanations of arguments presented in their appeal, or response to the appeal, without repeating the contents of the report.

(4) The failure of parties duly notified to attend the session of the chamber shall not prevent its holding. Where a defendant has failed to notify the court of a change of abode or permanent residence, a session of the chamber may be held in spite of the defendant not being notified.

(5) The public may be excluded from sessions of the chamber attended by the parties only in accordance with the requirements specified by this Code (Articles 292 to 294).

(6) The record of the session of the chamber shall be annexed to the files of the courts or first and second instance.

(7) The rulings referred to in Articles 386 and 387 of this Code may be issued even without notifying the parties about the session of the chamber.

Article 376

(1) The court of second instance shall render decisions at sessions of the chamber or based on a hearing held previously.

(2) The chamber of the court of second instance shall decide whether a hearing should be held.

Article 377

(1) Hearings before courts of second instance shall be held only if it necessary to adduce new evidence due to incorrect or incomplete findings of fact or to repeat evidence already adduced and where justifiable reasons exist for the case not to be returned to the court of first instance for retrial.

(2) The defendant and his defence counsel, the prosecutor, the aggrieved, legal representatives and proxies of the aggrieved, subsidiary prosecutors and private prosecutors, as well as those witnesses and expert witnesses the court decides to examine, shall be summoned to a hearing before a court of second instance.

(3) Where the defendant is in detention, the president of the chamber of the court of second instance shall take necessary steps to bring the defendant to the hearing.

(4) Where a subsidiary prosecutor or private prosecutor fails to appear at a hearing before a court of second instance, the provisions of Article 303 paragraph 2 of this Code shall not be applied.

(5) By exception from paragraph 1 of this Article, hearings before a court of second instance must be held where a judgement was set aside once in the same criminal case.

Article 378

(1) Hearings before courts of second instance shall commence with a report by the reporting judge, who shall present the facts without giving any opinions on the merits of the appeal.

(2) On a motion or *ex officio,* the entire judgement or its part to which the appeal refers shall be read out, and if needed also the trial record.

(3) The appellant shall then be called to substantiate the appeal, and the opposing party to make a response. The defendant and his defence counsel shall always be the last to speak.

(4) The parties may present new evidence and facts at the hearing.

(5) The prosecutor may, in view of the results of the hearing, abandon the indictment in full or in part or revise the indictment in favour of the defendant. Where the public prosecutor drops the charges in their entirety, the aggrieved is entitled to the rights referred to in Article 62 of this Code.

Article 379

Unless specified otherwise in the preceding Articles, provisions on the trial before a court of first instance shall apply accordingly to proceedings before a court of second instance.

d) Scope of appellate review

Article 380

(1) The court of second instance shall review the part of the judgement challenged by the appeal, but is always required to examine, *ex officio*:

> 1) whether there exists a violation of the provisions of criminal procedure referred to in Article 368 paragraph 1 items 1), 5), 6), 8) to 11) of this Code and whether the trial, in contravention of provisions of this Code, was held in the absence of the defendant, and, in the case of mandatory defence, in the absence of a defence counsel of the defendant;

2) whether the Criminal Code was violated to the detriment of the defendant (Article 369).

(2) Where an appeal submitted in favour of the defendant does not contain the data referred to in Article 366 paragraph 1 items 2) and 3) of this Code, the court of second instance shall only review violations referred to in items 1) and 2) of paragraph 1 of this Article, as well as decisions on the penalty, security measures and seizure of proceeds from crime (Article 371).

Article 381

The violation of the law referred to in Article 368 paragraph 1 item 2) of this Code may be cited in the appeal only if the appellant was not able to present the violation during the trial, or did present it, but the court of first instance did not take it into consideration.

Article 382

If an appeal has been lodged only to the benefit of the defendant, the judgement may not be revised to his detriment in respect of the legal qualification of the criminal offence and the criminal sanction.

Article 383

Appeals in connection with incorrect or incomplete determinations of fact or violations of the Criminal Code lodged to the benefit of the defendant shall include an appeal against the decision on the criminal sanction and seizure of proceeds from crime (Article 371).

Article 384

Where a court of second instance determines in connection with any one appeal that the grounds on which it rendered a decision in favour of the defendant are of benefit to any co-defendant who did not appeal or did not appeal in this respect, it shall proceed *ex officio* as if such an appeal was filed.

đ) Appellate decisions of courts of second instance

Article 385

(1) A court of second instance may in a session of the chamber or on the basis of a conducted hearing dismiss an appeal as untimely or inadmissible, deny an appeal as unfounded, and uphold a judgement of a court of first instance, or set aside the judgement and refer the case to the court of first instance for retrial, or reverse a first-instance judgement.

(2) By exception from the provisions of paragraph 1 of this Article, where a first-instance judgement was already set aside once in the same case, the court of second instance shall in a session of the chamber or on the basis of a hearing render a decision, where it may not set aside the challenged judgement and refer the case back the court of first instance for retrial.

(3) The court of second instance shall render a single decision on all appeals against the same judgement.

Article 386

Appeals shall be dismissed by a ruling as untimely if it is determined that they were filed after the expiry of the statutory time limit.

Article 387

An appeal shall be dismissed by a ruling as inadmissible if it is determined that the appeal was filed by a person not authorised to file an appeal or a person who has waived the right to appeal, or if it is determined that the appeal was abandoned or that an appeal was filed again after the abandonment, or if an appeal is not admissible under the law.

Article 388

The court of second instance shall render a judgement denying an appeal as unfounded and upholding the judgement of the court of first instance if it determines that the reasons for which the judgement is being challenged or the violations referred to in Article 380 paragraph 1 of this Code do not exist.

Article 389

(1) The court of second instance shall by accepting the appeal or *ex officio* by a ruling set aside the first-instance judgement and return the case for retrial if it finds substantive violations of criminal procedure provisions, except for the cases referred to in Article 391 paragraph 1 of this Code, or if it finds that due to incorrectly or incompletely determined facts a new trial before a court of first instance should be ordered.

(2) The court of second instance may order a new trial before a court of first instance to be held before a completely different chamber.

(3) The court of second instance may also only partially set aside a first-instance judgement where certain parts of the judgement may be separated without detriment to proper adjudication.

(4) If the defendant is in detention, the court of second instance shall examine whether reasons for detention still exist and shall render a ruling extending o repealing detention. These rulings are not appealable.

Article 390

(1) If the court of second instance determines that there exists any of the reasons referred to in Article 349 of this Code, it shall render a decision setting aside the judgement of the court of first instance and dismissing the indictment.

(2) If the court of second instance in reviewing an appeal determines that it has material jurisdiction to adjudicate the case in the first instance, it shall set aside the first-instance judgement, refer the case to a chamber of the same court and notify the court of first instance thereof.

(3) If only an appeal to the benefit of the defendant has been filed, and it is determined that a higher court is competent to adjudicate in the first instance, the first-instance judgement may not be set aside for that reason alone.

Article 391

(1) The court of second instance shall by accepting the appeal or *ex officio* by a ruling reverse the first-instance judgement if it determines that the decisive facts in the first-instance judgement had been determined correctly and that in respect of the finding of facts, and by the correct application of the law, a different judgement should be rendered, and according to the state of the matter also in the case of the violations referred to in Article 368 paragraph 1 items 5), 8) and 9) of this Code.

(2) If the court of second instance finds that statutory reasons exist to pronounce a judicial admonition, it shall reverse the first-instance judgement by a ruling and pronounce a judicial admonition.

(3) If due to the reversal of the first-instance judgement the conditions are fulfilled to order or repeal detention pursuant to Article 142 paragraph 1 item 6) and Article 358 paragraph 2 of this Code, the court of second instance shall issue a separate ruling on that matter which is not appealable.

Article 392

(1) In its statements of reasons for its judgements or rulings, the court of second instance shall evaluate all the merits of the appeals and specify the violations of the law it took into account *ex officio*.

(2) Where a first-instance judgement is being set aside due to substantive violations of criminal procedure provisions, the statement of reasons shall specify the provisions violated and how they were violated (Article 368).

(3) Where a first-instance judgement is being set aside due to incorrect or incomplete finding of facts, the shortcomings in determining the facts shall be specified, as shall be stated why new evidence and facts are important and of influence for rendering a correct decision, and omissions of the parties which affected the decision of the court of first instance may also be pointed out.

Article 393

(1) The court of second instance shall return all files to the court of first instance, with a sufficient number of certified copies of its decision, for the purpose of delivery to parties and other interested persons.

(2) The court of second instance is required to deliver its decision and the files to the court of first instance within a time limit of four months, a where the defendant is in detention, within a time limit of three months from the date of receipt of the files from that court.

Article 394

(1) The court of first instance to which a case has been referred for trial shall proceed on the basis of the earlier indictment. Where the judgement of the court of first instance was set aside in part, the court of first instance shall proceed on the basis of that part of the charges relating to the part of the judgement which was set aside.

(2) The parties may present new facts and adduce new evidence at the trial.

(3) The court of first instance is required to conduct all procedural actions and examine all contentious issues pointed out by the court of second instance in its decision.

(4) In rendering a new judgement, the court of first instance is bound by the prohibition prescribed in Article 382 of this Code.

(5) If the defendant is in detention, the chamber of the court of first instance is required to proceed in accordance with Article 146 paragraph 2 of this Code.

2. Appeals against judgements of courts of second instance

Article 395

(1) Appeals against judgements of courts of second instance may be filed with courts which decide in the third instance only in the cases where the court of second instance reverses a first-instance judgement acquitting the defendant and pronounces a judgement convicting the defendant.

(2) Appeals against judgements of courts of second instance are decided by courts of third instance at sessions of the chamber, pursuant to provisions applicable to second-instance proceedings. No hearings may be held before courts of third instance.

(3) The provisions of Article 384 of this Code shall be applied to co-defendants who were not entitled to appeal against second-instance judgements.

Articles 396 and 397

(Erased)

4. Appeals against rulings

Article 398

(1) The parties and persons whose rights are violated may appeal against rulings of the investigating judge and other rulings issued by courts in the first instance at all times, except where explicitly specified in this Code that no appeal is permitted.

(2) Rulings of the chamber issued before and during the investigation are not appealable, unless specified otherwise by this Code.

(3) Rulings rendered for the purpose of preparing trials and judgements may only be challenged in appeals against judgements.

(4) Rulings of the Supreme Court of Cassation are not appealable, unless specified otherwise by this Code.

Article 399

(1) Appeals shall be submitted to the court which issued the ruling.

(2) Unless specified otherwise by this Code, appeals against rulings shall be submitted within three days of the date of delivery of the ruling.

Article 400

Unless specified otherwise by this Code, submission of an appeal against a ruling shall stay execution of the ruling appealed.

Article 401

(1) Courts of second instance shall decide in sessions of the chamber on appeals against rulings the court of first instance, unless specified otherwise by this Code.

(2) Appeals against rulings issued by the investigating judge shall be decided by the chamber of the same court (Article 24 paragraph 6), unless specified otherwise by this Code.

(3) In deciding on appeals, the court may dismiss them by a ruling as untimely or inadmissible, deny the appeal as unfounded, or accept the appeal and reverse or set aside the ruling, and, where needed, return the case for retrial.

(4) When in deciding on rulings ordering, repealing or extending detention the court sets aside the ruling and returns the case for retrial, it is required to render a decision on the detention at the same time.

(5) In reviewing the appeal, the court shall *ex officio* examine whether the court of first instance had had material jurisdiction for rendering the ruling, or whether the ruling was issued by an authority with the proper authorisation.

Article 402

(1) The provisions of Articles 364, 366, 372, 374 paragraphs 1, 3 and 4, Articles 382 and 384 of this Code shall apply accordingly to the procedure in connection with appeals against rulings.

(2) If an appeal has been filed against the ruling referred to in Article 506 of this Code, the public prosecutor shall be notified of the session of the chamber, and all other persons under the conditions prescribed by Article 375 of this Code.

(3) Unless specified otherwise by this Code, the court is required to deliver its decision on the appeal to the court which had issued the ruling no later than 30 days from the date of receiving the files from that court.

Article 403

Unless specified otherwise by this Code, the provisions of Articles 398 and 402 of this Code shall apply accordingly to all other rulings rendered under the provisions of this Code.

Chapter XXV
EXTRAORDINARY LEGAL REMEDIES

1. Reopening of criminal proceedings

Article 404

Criminal proceedings concluded by a final ruling or a final judgement may at the request of an authorised person be reopened only in the cases and under the conditions prescribed by this Code.

Article 405

(1) Final judgement may be reversed even without reopening criminal proceedings:

1) where in two or more judgements, or rulings on punishment issued against the same convicted person several penalties had been pronounced and taken effect, and the provisions on admeasuring an aggregate penalty for concurrent criminal offences had not been applied;

2) where in pronouncing an aggregate penalty, applying provisions on concurrence of criminal offences, a penalty already included in a sentence, or a ruling on a penalty, pronounced pursuant to the provisions on concurrence of criminal offences in a previous judgement, was taken as established;

3) where a final judgement pronouncing an aggregate penalty for several criminal offences is partially unenforceable due to an amnesty, pardon or other reasons;

4) where after a judgement becomes final circumstances appear which did not exist when the judgement was being pronounced, or the court was not aware of them although they had existed, and they would clearly have led to a lighter penalty.

(2) In the case referred to in item 1) of paragraph 1 of this Article, the court shall render a new judgement reversing the earlier judgements, or rulings on punishment, in respect of the decisions on sanctions, and pronounce an aggregate sentence. The court of first instance which adjudicated the matter in which the harshest type of penalty was pronounced has the jurisdiction for rendering a new judgement, and where the penalties were of the same type – the court which had pronounced the harshest penalty, and where the penalties are equal – the last court to impose a penalty.

(3) In the case referred to in item 2) of paragraph 1 of this Article, the court which had in pronouncing an aggregate penalty wrongly taken into account a penalty already included in an earlier judgement or ruling on punishment shall reverse its judgement or ruling on a sanction.

(4) In the case referred to in item 3) of paragraph 1 of this Article, the court which adjudicated the case in the first instance shall reverse its earlier judgement in respect of the penalty and pronounce a new penalty, or determine how much of the penalty imposed earlier shall be executed.

(5) In the case referred to in item 4) of paragraph 1 of this Article, the court which adjudicated the case in the first instance shall reverse its earlier judgement in respect of the decision on the penalty and pronounce a new penalty.

(6) A new judgement shall be rendered at a session of the chamber on a motion of the public prosecutor or the convicted person, and after hearing the opposing parties.

(7) If in the case referred to in items 1) and 2) of paragraph 1 of this Article, judgements or rulings on sanctions issued by other courts were taken into account in pronouncing a penalty, certified of copies of the new final judgement shall be delivered to those courts.

Article 405a

(1) Final judgements may be reversed even without repeating the criminal proceedings pursuant to Article 504ć paragraph 3 of this Code.

(2) A motion for reversing a final judgement without repeating the proceedings shall be submitted by the public prosecutor within one month of the date when a convicting judgement referred to in Article 504ć paragraph 3 of this Code becomes final.

(3) The court which adjudicated in the first instance the case of the person referred to in Article 504ć paragraph 1 of this Code shall have jurisdiction for rendering a new judgement.

(4) If the court finds that the requirements referred to in Article 504ć paragraph 3 of this Code have been fulfilled, it shall reduce the pronounced measure by at least one-half.

Article 406

(1) If a request for conducting an investigation was dismissed because there was no request by an authorised prosecutor or a motion by an aggrieved party for prosecution or the necessary authorisation issued by a public authority, or where there existed other circumstances temporarily precluding prosecution, or criminal proceedings were discontinued by a final ruling or the indictment was dismissed for the same reasons (Article 349), the proceedings shall resume at the request of the authorised prosecutor as soon as the reasons for rendering the aforesaid decisions cease to exist.

(2) Where an indictment was dismissed by a final ruling (Article 349) owing to a lack of material jurisdiction of the court, the proceedings shall continue before a court with the requisite material jurisdiction at the request of the authorised prosecutor.

(3) If in connection with a request by an authorised prosecutor for conducting an investigation a court rendered a final ruling determining that an investigation was not needed because there did not exist reasonable suspicion that the suspect had committed the criminal offence, criminal proceedings may be instituted at the request of an authorised prosecutor where new evidence is submitted which did not exist at the time the earlier request was submitted or which the authorised prosecutor was not aware of at the time, on the basis of which the chamber (Article 24 paragraph 6) shall determine fulfilment of the necessary requirements for conducting criminal proceedings.

Article 407

(1) Criminal proceedings concluded by a final judgement may be reopened only to the benefit of the accused person, as follows:

1) where the judgement was based on a fraudulent document or false testimony of a witness, expert witnesses or interpreter;

2) where the judgement resulted from a criminal offence committed by a judge, lay judge or a person who had conducted investigatory actions;

3) where new facts are presented and new evidence adduced which on their own or in connection with earlier evidence may lead to the acquittal of the person who was convicted or to that person’s conviction pursuant to a more lenient criminal law;

4) where a person was tried more than once in connection with the same criminal offence or where more than one person was convicted of the same criminal offence which could have been committed by only one person, or by some of the persons convicted, but not by all;

5) if in the case of a conviction for an extended criminal offence, or other criminal offence which under the law includes several acts of the same type or several acts of a different type, new facts are presented or new evidence adduced which indicate that the convicted person had not committed the action included by the offence in the conviction, and the existence of those

facts would have led to the application of a more lenient law or would have significantly influenced the admeasurement of the penalty.

(2) In the cases referred to in items 1) and 2) of paragraph 1 of this Article it must be proven by a final judgement that the aforesaid persons have been pronounced guilty of the commission of the aforesaid criminal offences. Where proceedings against those persons cannot be conducted because of their death or the existence of other circumstances which preclude their prosecution, the facts referred to in items 1) and 2) of paragraph 1 of this Article may also be determined by other evidence.

Article 408

(1) Motions for reopening criminal proceedings may be submitted by the parties and defence counsel, and following the death of the convicted person they may be submitted by the public prosecutor and persons referred to in Article 364 paragraph 2 of this Code.

(2) Motions for reopening criminal proceedings may also be submitted after the convicted person has served his sentence, and irrespective of a lapse of the statutory limit for prosecution, amnesties or pardons.

(3) Where the court which would have the jurisdiction for deciding on the reopening of criminal proceedings (Article 409) learns about the existence of reasons to reopen criminal proceedings, it shall notify thereof the convicted person, or the person authorised to submit motions on behalf of the convicted person.

Article 409

(1) The chamber (Article 24 paragraph 6) of the court which adjudicated in the first instance in the initial proceedings shall rule on motions to reopen criminal proceedings.

(2) The motion shall state the legal grounds for reopening the case and which evidence substantiates the facts on which the motion is founded. Where a motion does not contain these data, the court shall call on the person who submitted the motion to amend it within a specified tike limit.

(3) In dediding on the motion, if possible a judge who participated in rendering the judgement in the previous proceedings shall not be included in the chamber.

Article 410

(1) The Court shall dismiss the motion by a ruling if it determines on the basis of the motion and the files of the previous proceedings that the motion was submitted by a person without the necessary authority, or that the legal requirements for reopening the proceedings do not exist, or that the facts and evidence on which the motion is based had already been presented in an earlier motion to reopen the proceedings denied by a final ruling of the court, or that the facts and evidence are obviously not adequate for allowing the proceedings to be reopened, or that the person who submitted the motion failed to act pursuant to Article 409 paragraph 2 of this Code.

(2) If the court does not dismiss the motion, it shall deliver a copy of the motion to the opposing party, which is entitled to submit a response within eight days. When the court receives a response to the motion or the time limit expires, the president of the chamber shall order an inquiry into the facts and collection of evidence cited in the motion and in the response to the motion.

(3) Following the inquiries, in case of criminal offences prosecutable *ex officio*, the president of the chamber shall order the file delivered to the public prosecutor, who shall without delay, and within not more than one month, return it with his opinion.

Article 411

(1) After the public prosecutor returns the file, the court shall, unles it orders amended inquiries, based on the results of the inquiries either approve the motion and allow reopening of criminal proceedings, or deny the motion.

(2) If the court finds that the reasons for which it allowed reopening of proceedings exist in respect of one or more co-defendants who had not submitted motions to reopen proceedings, it shall proceed *ex officio* as if such a motion existed.

(3) In the ruling allowing reopening of criminal proceedings, the court shall order a new trial scheduled immediately, or return of the matter to the investigation stage, or order the conduct of a new investigation, if there one had not been conducted.

(4) If the court finds in view of the evidence presented that in a new trial the convicted person could be convicted to a new penalty of such a duration that including time already served he would have to be released, or that the defendant could be acquitted, or that the charges could be denied, it shall order the execution of the judgement suspended or discontinuied.

(5) When the ruling allowing reopening of criminal proceedings becomes final, the execution of the penalty shall be discontinued, but on a motion by the public prosecutor the court shall order detention, if the requirements referred to in Article 142 of this Code exist.

Article 412

(1) The provisions of this Code which applied to the intiail proceedings shall apply accoridngly to the new proceedings, conducted on the basis of the ruling allowing the reopening of criminal proceedings. In the new proceedings the court is not bound by rulings issued in the initial proceedings.

(2) If the new proceedings are discontinued by the commencement of the trial, the court shall by its ruling discontinuing the proceedings also overturn the earlier judgement.

(3) When it renders a judgement in the new proceedings, the court shall declare that the earlier judgement is partially or entirely set aside or that it shall remain in force. The new sentence shall include time served under the intitial penalty, and if the case had been reopened only in connection with one or more of the offences of which the defendant

had been convicted, the court shall pronounce a new aggregate sentence pursuant to the provisions of the Criminal Code.

(4) In the new proceedings the court shall be bound by the ban prescribed in Article 382 of this Code.

Article 413

(1) Criminal proceedings in which a person was convicted *in absentia* (Article 304) shall be reopened irrespective of the conditions prescribed in Article 407 of this Code if the convicted person and his defence counsel submit a motion for reopening proceedings within six months of the date when it became possible to conduct a trial in the presence of the convicted person.

(2) Criminal proceedings in which a person was convicted *in absentia* shall also be reopened irrespective of the conditions prescribed in Article 407 of this Code if a foreign state allowed the extradition of the person provided proceedings are reopened.

(3) In the ruling allowing reopening of criminal proceedings according to the provisions og paragraphs 1 and 2 of this Article, The court shall order the indictment served to the defendant if it had not already been served to him, and it may order the matter returned to the investigation stage, or order an investigation if one had not been conducted.

(4) At the expiry of the time limit referred to in paragraph 1 of this Article, reopening of proceedings shall be allowed only under the conditions prescribed by Articles 407 and 408 of this Code.

(5) In rendering a new judgement in proceedings conducted in accordance with the provisions of paragraphs 1 and 2 of this Article, the court shall be bound by the ban prescribed by Article 382 of this Code.

Article 414

The provisions of this chapter shall be applied accordingly where a motion has been submitted for setting aside a final court decision based on a decision of the Constitutional Court setting aside or revoking a regulation pursuant to which a final conviction had been rendered, as well as when a motion was submitted in connection with a violation of the rights of the convicted person in criminal proceedings determined by a decision of the Constitutional Court of an international court, pursuant to ratified international agreements, and the violation had influenced the lawful and proper rendering of a judgement.

Articles 415-418

(Erased)

3. Motions for the Protection of Legality

Article 419

Where the law was violated, the competent public prosecutor may submit motions for the protection of legality against final court decisions and against judicial proceedings preceding the final decisions.

Article 420

Decisions on motions for the protection of legality shall be rendered by a court determined by the law.

Article 421

Decisions on motions for the protection of legality shall be submitted by the public prosecutor determined by the law.

Article 422

(1) The court shall rule on motions for the protection of legality in chamber.

(2) Before the case is presented for adjudication, a judge designated as rapporteur shall deliver a copy of the motion to the accused and the defence counsel, and may as needed obtain information about the presumed violations of the law.

(3) The public prosecutor shall always be notified about the hearing, and the accused and his defence counsel, if the motion was submitted to the detriment of the accused, ensuring the presence of the convicted person (Article 375 paragraph 2).

(4) The court with the jurisdiction to decide on motions for the protection of legality may, Taking into consideration the contents of the motion, order the execution of a final judgment to be suspended or discontinued.

(5) The court with the jurisdiction to decide on motions for the protection of legality is required to deliver its decision with the case file to a court of first instance or a higher court no later than four months from the date of submission of the motion.

Article 423

(1) In decision on motions for the protection of legality the court shall limit itself to examination of the violations of the law cited by the public prosecutor in the motion.

(2) If the court finds that the reasons for ruling in favour of the convicted person also exist in respect of one or more co-defendants for whom no motion for the protection of legality had been filed, it shall proceed *ex officio* as if such a motion existed.

(3) If the motion for the protection of legality was submitted in favour of the convicted person, in its decisions the court shall be bound by the ban prescribed by Article 382 of this Code.

Article 424

The Court shall issue a judgement denying a motion for the protection of legality as unfounded if it determines that no violation of the law cited by the public prosecutor in his motion exists.

Article 425

(1) Where a court finds that a motion for the protection of legality is well-founded, it shall render a judgement by which it shall, according to the nature of the violation, either reverse a final decision, or partially or entirely set aside decisions issued by first-instance or higher courts, or only a decision of the higher court, and return to the case to a court of first instance or higher court for a new decision or a new trial, or limit itself to determining that a violation of the law did exist.

(2) If the motion for the protection of legality was submitted to the detriment of the accused, and the court finds it well-founded, it shall only determine that a violation of the law did exist, without infringing on the final judgement.

(3) If under the provisions of this law a court of second instance was not authorised to rectify a violation of the law made in the first-instance decision or in the judicial procedure which had preceded it, and the court deciding on a motion for the protection of legality submitted in favour of the accused finds that the motion is well-founded and that in order to rectify the violation of the law the first-instance decision should be set aside or reversed, it shall also set aside or reverse the second-instance decision, although no violation of the law had been made by it.

Article 426

If in deciding on a motion for the protection of legality submitted in favour of the accused substantial doubt appears in respect of the veracity of the decisive facts determined in the decision against which the motion was submitted, on account of which it is not possible to decide on the motion for the protection of legality, the court shall by the judgement by which it is deciding on the motion for the protection of legality set aside that decision and order a new trial to be held before the same or another first-instance court with the same material jurisdiction.

Article 427

(1) Where a final judgement was set aside and the case remanded for retrial, the previous indictment or the part of it which refers to the part of the judgement set aside shall be the basis for the new trial.

(2) The court is required to conduct all procedural actions and to discus all questions indicated by the court which decided on the motion.

(3) The parties may present new facts and new evidence before the first-instance or second-instance court.

(4) In rendering a new decision the court is bound by the ban prescribed by Article 382 of this Code.

(5) Where a decision of a higher court has also been set aside besides a decision of a lower court, the case shall be referred to the lower court through the higher court.

Articles 428-432

(Erased)

D. SPECIAL PROVISIONS ON SUMMARY PROCEEDINGS, PROCEDURES OF PRONOUNCING CRIMINAL SANCTIONS WITHOUT A TRIAL, AND PROCEEDINGS FOR PRONOUNCING JUDICIAL ADMONITIONS

Chapter XXVI
SUMMARY PROCEEDINGS

Article 433

In proceedings in connection with criminal offences punishable by a fine or terms of imprisonment of up to five years as the principal penalty, the provisions of Articles 434 to 448 of this Code shall be applied, and unless prescribed otherwise in any of those provisions, the other provisions of this Code shall be applied accordingly.

Article 434

(1) Criminal proceedings shall be initiated on the basis of a motion to indict of the public prosecutor or a subsidiary prosecutor, or private prosecution.

(2) Te public prosecutor may file a motion to indict on the basis of the criminal complaint.

(3) The motion to indict or private prosecution shall be submitted in a sufficient number of copies for the court and the accused.

Article 435

(1) Before submitting the motion to indict, the public prosecutor may propose to the investigating judge the conduct of certain investigatory actions. If the investigating judge accepts the motion, he shall conduct investigatory actions, and then deliver the entire file to the public prosecutor. All investigatory actions shall be conducted in the shortest possible period.

(2) If the investigating judge does not agree with the motion to conduct investigatory actions, he shall ask the chamber (Article 24 paragraph 6) to decide thereon. The chamber's decisions are not appealable.

(3) When in the cases referred to in paragraphs 1 and 2 of this Article the public prosecutor receives the files, he may submit a motion to indict or issue a ruling dismissing the criminal complaint.

Article 436

(1) Detention may be ordered against a person reasonably suspected of having committed a criminal offence for the purpose of unobstructed conduct of criminal proceedings:

1) if the person is in hiding, or if the person's identity cannot be established, or where there exist other circumstances clearly indicating a flight risk;

2) if the criminal offence is punishable by a term of imprisonment of three years and particular circumstances indicate that the accused might complete the attempted criminal offence, commit the criminal offence he is threatening to commit, or repeat the criminal offence.

(2) Before the submission of the motion to indict, detention may last only for as long as it is needed to conduct investigatory actions, but in no case more than eight days, and exceptionally up to thirty days where a criminal offence with elements of violence is concerned. The chamber (Article 24 paragraph 6) shall decide on appeals against rulings ordering detention.

(3) In respect of detention in the period from the submission of the motion to indict until the pronouncement of a first-instance judgement, the provisions of Article 146 of this Code shall apply accordingly, with the proviso that the chamber is required to examine once every month if the reasons for detention continue to exist.

(4) Where accused persons are in detention, the court is required to act with particular expediency.

Article 437

Where an aggrieved person has submitted a criminal complaint, and the public prosecutor within one month of receiving the criminal complaint does not submit a motion to indict or does not notify the aggrieved that the complaint has been dismissed, the aggrieved is entitled to assume prosecution as a subsidiary prosecutor by submitting a motion to indict to the court.

Article 438

(1) The motion to indict or a private prosecution shall contain the following: the first name and surname of the accused with all known personal data, a brief description of the criminal offence, a designation of the court which the trial is to be held, a proposal for

adduction of evidence at the trial, and a motion to convict the accused according to the law.

(2) The motion to indict may contain a proposal for the accused to be placed in detention. If the accused is already in detention or was in detention while investigatory actions were being conducted, the motion to indict shall specify the time spent in detention.

(3) Where the public prosecutor finds a trial unnecessary, he may propose in the motion to indict that the court issue a ruling punishing the accused without scheduling a trial (Article 449).

Article 439

(1) Where the court receives a motion to indict or private prosecution, the judge shall first assess whether the court has jurisdiction, whether certain investigatory action need to be conducted or those already conducted supplemented, and whether the necessary conditions exist to dismiss the motion to indict or private prosecution.

(2) If the judge does not issue any of the rulings referred to in paragraph 1 of this Article, he shall serve the charges to the accused and schedule a trial immediately. If no trial is scheduled within one month of the reception of a motion to indict or private prosecution, the judge is required to notify of the reasons thereof the president of the court, who shall undertake measures to ensure that the trial is held as soon as possible.

(3) Where the judge finds that certain investigatory actions need to be conducted, he shall ask the investigating judge to conduct them.

Article 440

(1) If the judge finds that another court has jurisdiction to try the case, he shall rule himself unqualified, and when the ruling becomes final refer the case to that court, and if he finds that a higher court has jurisdiction to try the case, he shall refer the case to the public prosecutor acting before that higher court. If the public prosecutor considers that the court which referred the case to him has jurisdiction, he shall request a decision from the chamber of the higher court.

(2) After it has scheduled a trial, a court may not declare itself territorially unqualified *ex officio*.

Article 441

(1) The judge shall deny a motion to indict or private prosecution if he finds that there exist the reasons referred to in Article 274 paragraph 1 items 1) and 2) of this Code for discontinuing proceedings, and if investigatory actions have been conducted, the reasons referred to in item 3) of the Article.

(2) The ruling with a brief substantiation shall be delivered to the public prosecutor, the subsidiary prosecutor, or the private prosecutor, as well as the suspect.

Article 442

(1) The judge shall summon to the trial the accused and his defence counsel, the prosecutor, the aggrieved and their legal representatives and proxies, witnesses, expert witnesses and an interpreter, and if needed shall obtain the objects which should serve as evidence at the trial.

(2) The accused shall be notified in the summons that he may come to the trial with the evidence for his defence, or that he may specify the evidence in a timely manner to the court so that the evidence may be obtained for the trial. The accused shall be cautioned in the summons that the trial shall also be held *in absentia* if the legal requirements exist (Article 445 paragraph 3). To the summons shall be attached the motion to indict or private prosecution, and the accused shall be instructed on the right to a defence counsel, as well as that in cases where a defence is not mandatory the trial does not need to be adjourned if a defence counsel does not appear or if the accused retains one at the trial itself.

(3) The period between the service of the summons to the accused and the scheduled date of the trial must be sufficient for preparing a defence, in any case not less than eight days. If the accused consents to it, the period may be shortened.

Article 443

The trial shall be held in the seat of the court. In urgent cases, particularly if there is a need for a crime scene inspection or if it is in the best interest of easier conduct of the evidentiary procedure, with the approval of the president of the court the trail may be held in the place where the criminal offence was committed or the place where the inspection is to be held, if those are within the territorial jurisdiction of the court.

Article 444

(1) Parties may submit territorial jurisdiction objections no later than the commencement of the trial.

(2) The judge who conducted investigatory actions shall not be disqualified from participating in the trial.

Article 445

(1) The trial shall be held if a duly summoned public prosecutor fails to appear. In such case, aggrieved parties are entitled to represent the prosecution within the limits of the motion to indict.

(2) The trial may be held if a subsidiary prosecutor, or a private prosecutor, fails to appear, if he has submitted to the court a motion for the trial to be held in his absence.

(3) If the accused does not appear at the trial, although duly summoned, or if the summons could not be served due to his failure to notify the court of a change of temporary or permanent residence, the court may decide to hold the trial in his absence

provided that his presence is not absolutely necessary and that he had been interrogated beforehand.

Article 446

(1) The trial shall commence with a reading of the motion to indict or private prosecution. If possible, the trial shall be completed without interruptions.

(2) In case the accused makes a full confession at the trial which is substantiated by other evidence, the court shall with the agreement of the parties suspend the evidentiary procedure and pronounce the criminal sanction, except if it has doubts about the truthfulness of the confession.

(3) Under the conditions referred to in paragraph 2 of this Article, the court may pronounce the following criminal sanctions: a judicial admonition, a conditional penalty, revocation of a driver's licence, a public service penalty, a fine and a term of imprisonment of up to one year, together with one or more of the following measures: confiscation of objects, ban on operating a motor vehicle and confiscation of proceeds from crime. The term of imprisonment for the criminal offences referred to in Article 443 paragraph 2 of this Code may not exceed three years.

(4) If during or after the conclusion of the trial the judge finds that a higher court has jurisdiction for the case, he shall deliver the file to the competent public prosecutor, and if he finds that a chamber is competent for the trial, a chamber shall be formed and the trial will commence anew. If he finds the existence of any of the reasons referred to in Article 349 of this Code, the judge will issue a ruling dismissing the charges.

(5) At the conclusion of the trial, the court shall immediately pronounce a judgement and make it public, with substantive reasons. A written judgement must be rendered within eight days of the publication of the judgement.

(6) Appeals against the judgement may be filed within eight days of the date of delivery of the copy of the judgement.

(7) The parties and the aggrieved may waive their right to appeal immediately after the judgement is pronounced. In that case copies of the judgement shall be delivered to parties and aggrieved only if they request so. If both the parties and aggrieved waived to right to appeal on pronouncement of the judgement and none of them requested to be delivered a copy of the judgement, the written judgement does not need to contain a substantiation.

(8) The provisions of Article 358 of this Code shall be applied accordingly in respect of release from detention after the pronouncement of the judgement.

(9) Where the court pronounces a prison sentence, he may be ordered placed or remanded in detention, if the reasons referred to in Article 436 paragraph 1 of this Code exist. In such case detention may last until the judgement is final, but no longer than the expiry of the sentence imposed on the accused by the first-instance court.

(10) If the public prosecutor was not present at the trial (Article 445 paragraph 1), the aggrieved is entitles to appeal against the judgement, irrespective of whether the public prosecutor is also appealing.

Article 447

(1) Before scheduling a trial for criminal offences prosecuted by private prosecution, the judge may summon only the private prosecutor and the suspect to the court on a specified date for the purpose of preliminary clarification of the matter, if he considers it appropriate for more rapid completion of the proceedings. To the suspect's summons shall be attached a copy of the private prosecution.

(2) If there is no settlement between the private prosecutor and the suspect and a withdrawal of the private prosecution, the judge shall take statements from them and invite them to make proposals in connection with the procurement of evidence.

(3) If the judge does not find that conditions exist for dismissing the prosecution, he shall render a decision on the evidence to be adduced at the trial and as a rule immediately schedule a trial and inform the parties.

(4) If the judge considers that presentation of evidence is not necessary, and there are no other reasons for scheduling a trial on a specific date, he may open the trial immediately and on adducing evidence which is before the court render a decision in connection with the private prosecution. The private prosecutor and the suspect shall be explicitly advised about this during service of the summons.

(5) The provision of Article 59 of this Code shall be applied to private prosecutors failing to appear after being duly summoned.

(6) If the accused fails to appear and the judge has decided to open the trial, the provision of Article 445 paragraph 3 of this Code shall apply.

Article 448

(1) When a court of second instance rules on an appeal against a judgement pronouncing a prison sentence rendered in summary proceedings, the parties and the defence counsel of the accused within the meaning of Article 374 paragraph 2 and Article 375 paragraph 1 of this Code shall be notified about the chamber session, and in other cases, only if the president of the chamber or the chamber finds that the presence of the parties would be of benefit for clarification of the matter.

(2) If a criminal offence prosecuted on a request of the public prosecutor is concerned, before the session of the chamber the president of the chamber shall deliver the file to the public prosecutor, who may submit a written motion.

Chapter XXVII
PROCEDURES OF IMPOSING CRIMINAL SANCTIONS WITHOUT A TRIAL

1. Procedure of sentencing without a trial

Article 449

(1) For criminal offences punishable by a fine as the principal penalty of a term of imprisonment of up to three years, the judge may, on a motion of the public prosecutor, issue a ruling on punishment without holding a trial.

(2) The motion for issuing a ruling on punishment referred to in paragraph 1 of this Article shall be made by the public prosecutor in the motion to indict, if he considers that holding a trial would not be necessary.

(3) Where an indemnification claim has been submitted, the authorised person shall be referred to civil litigation.

Article 450

In a ruling on punishment the judge may impose a fine, a public service penalty, revocation of a driver's licence or a conditional penalty, together with one or more of the following measures: confiscation of objects, ban on operating a motor vehicle and confiscation of material gains.

Article 451

(1) Before determining that there exist preconditions for rendering a ruling on punishment, the judge shall act in accordance with the provisions of Article 439 paragraph 1 to Article 441 of this Code. If the judge determines that preconditions for rendering a ruling on punishment are not fulfilled, he shall submit the motion to indict to the suspect and schedule a trial immediately.

(2) If the judge agrees with the motion of the public prosecutor, he shall obtain information of prior convictions, and, if necessary, on the personality of the accused, and shall after questioning the accused render a judgement.

(3) The ruling on punishment must specify that the public prosecutor's motion had been accepted; the accused's personal data; the offence of which he is being convicted, with a specification of the facts and circumstances which represent the elements of a criminal offence and on which depends the application of a specific provision of the Criminal Code; the legal designation of the criminal offence and the provisions and the Criminal Code and other laws applied in the procedure; the decision on the sanction and measure imposed, as well as the decision on directing the authorised person to realise his indemnification claim in civil litigation; reasons for the sanction and measures imposed; an instruction on the right to an objection, and a caution that ruling on punishment would become final at the expiry of the time limit for the objection appealing against the ruling.

Article 452

(1) The ruling on punishment shall be delivered to the public prosecutor and the accused.

(2) The accused may file an objection against the ruling on punishment within eight days of its delivery.

Article 453

(1) If the accused submits an objection in a timely manner, the judge shall schedule a trial on the motion to indict filed by the public prosecutor and proceed further according to the provisions of Articles 434 to 448.

(2) Appeals against rulings dismissing the objection shall be decided by the chamber (Article 24 paragraph 6).

(3) Where no objection is submitted against the ruling on punishment, the ruling shall become final.

Article 454

In the proceedings on the motion to indict the judge is not bound by the public prosecutor's proposal for punishment, or by the ban prescribed in Article 382 of this Code.

2. Procedure for sanctioning and pronouncing conditional sentences by the investigating judge

Article 455

(1) In case of a full confession by the accused, or the suspect, given to the investigating judge in the presence of defence counsel, or to an internal affairs authority within the meaning of Article 226 paragraph 9 of this Code, substantiated by other evidence collected in the investigation, the public prosecutor may immediately after the completion of the investigation, and in any case not later than eight days thereafter, propose in an indictment which he has filed that instead of a trial a specific public hearing be held before the investigating judge, at which after the parties are heard a judgement may be rendered, with the explicit consent of the accused.

(2) The procedure referred to in paragraph 1 of this Article may be applied in connection with criminal offences punishable by a fine as the principal sanction or a term of imprisonment of up to five years.

Article 456

(1) The accused and his defence counsel may file an objection to the indictment referred to in Article 455 hereof within eight days of its delivery which excludes application of the procedure. The accused is required to be instructed of this during the service of the indictment.

(2) The investigating judge may also pronounce a judgement on a motion of the accused within eight days of the delivery of the indictment, if the public prosecutor and the investigating judge agree on this.

Article 457

(1) Under the conditions referred to in Article 455, the investigating judge may pronounce a fine, a public service penalty, revocation of a driver's licence, a conditional sentence and a term of imprisonment of up to one year, and together with them one or more security measures: confiscation of objects, prohibition of operating a motor vehicle, and confiscation of material gains.

(2) The expenses of the procedure referred to in Article 455 shall be covered from the budget funds of the court.

Article 458

Judgements of the investigating judge may be challenged by appeals lodged within eight days of the date of delivery, pursuant to the provisions of Article 367 paragraph 1 items 1), 2) and 4) of this Code.

Chapter XXVIII
SPECIAL PROVISIONS ON PRONOUNCING JUDICIAL ADMONITIONS

Article 459

(1) Judicial admonitions shall be pronounced by a ruling.

(2) Unless specified otherwise in this chapter, the provisions of this Code relating to judgements convicting defendants shall apply accordingly to rulings on judicial admonitions.

(3) Judicial admonitions may also be pronounced in procedures for punishment before the trial, as well as in the procedure of punishment by the investigating judge (Chapter XXVII).

Article 460

(1) Rulings on judicial admonitions shall be pronounced immediately after the conclusion of the trial, with essential reasons. On the occasion the judge or the president of the chamber shall caution the accused that a penalty is not being imposed on him for the criminal offence he had committed because a judicial admonition is expected to affect him sufficiently to abstain from committing criminal offences in the future. Where rulings on judicial admonitions are being pronounced in the absence of the accused, the court shall enter the caution in the substantiation of the ruling. The provision of Article 446 paragraph 5 of this Code shall be applied accordingly in connection with waivers of the right to appeal and written rendering of the ruling.

(2) The ordering part of the ruling shall besides the personal data of the accused only state that a judicial admonition is being pronounced against the accused for the offence of which he is accused and the legal designation of the criminal offence. The ordering

part of the ruling on a judicial admonition shall include the requisite date referred to in Article 356 paragraph 1 items 5) and 7) of this Code.

(3) In the substantiation of the ruling the court shall state the reasons which guided it in pronouncing the judicial admonition.

Article 461

(1) Rulings on judicial admonitions may be challenged on the grounds referred to in Article 367 paragraph 1 items 1) to 3) of this Code, as well as owing to the non-existence of the circumstances which would justify the pronouncement of a judicial admonition.

(2) Where a ruling on a judicial admonition contains a decision on ordering a security measure or confiscation of proceeds from crime, it may be challenged on the grounds specified in Article 371 paragraph 2 of this Code.

(3) Where a ruling on a judicial admonition contains a decision on an indemnification claim or on the costs of criminal proceedings, it may be challenged on the grounds specified in Article 371 paragraph 3 of this Code.

Article 462

A violation of the Criminal Code in the case of the pronouncement of a judicial admonition shall be deemed to exist, except in connection with issues referred to in Article 369 paragraph 1 items 1) to 3) of this Code, where the decision on a judicial admonition, security measure or confiscation of proceeds from crime exceeded the legal powers of the court.

Article 463

(1) Where an appeal against the ruling on a judicial admonition was lodged by the prosecutor to the detriment of the accused, a second-instance court may render a judgement pronouncing the accused guilty and imposing a penalty or a conditional sanction, if it finds that the court of first instance established all the decisive facts correctly, but that correct application of the law provides for the imposition of a penalty or a conditional sentence.

(2) Deciding on any appeal against a ruling on a judicial admonition, the court of second instance may issue a ruling dismissing the charges or acquitting the accused, if it finds that the court of first instance established all the decisive facts correctly and that correct application of the law provides for the pronouncement of one of these decisions.

(3) Where the conditions referred to in Article 388 of this Code exist, a second-instance court shall issue a ruling denying the appeal as unfounded and upholding the ruling of the court of first instance on the judicial admonition.

Articles 464-504*

(No longer in force)

Chapter XXIXa
SPECIAL PROVISIONS ON PROCEEDINGS FOR CRIMINAL OFFENCES OF ORGANISED CRIME, CORRUPTION AND OTHER EXCEPTIONALLY SERIOUS CRIMINAL OFFENCES

1. General provisions

Article 504a

(1) The provisions of this chapter contain special rules of procedure related to criminal offences of organised crime, corruption and other exceptionally serious criminal offences.

(2) Unless specified otherwise by the provisions of this chapter in cases referred to in paragraph 1 of this Article, other provisions of this Code shall apply accordingly.

(3) The organised crime referred to in paragraph 1 of this Article is the commission of criminal offences by organised criminal group or its members.

(4) The organised criminal group referred to in paragraph 3 of this Article shall mean a group of three or more persons existing for a certain period of time and acting in concert for the purpose of committing one or more criminal offences punishable by terms of imprisonment of four years or more severe punishment, for the purpose of acquiring, directly or indirectly, financial and other benefits.

(5) The criminal offences of corruption referred to in paragraph 1 of this Article, even if not the result of the activities of organised criminal group, include the following criminal offences: abuse of official position (Article 359 of the Criminal Code), trading in influence (Article 366 of the Criminal Code), taking bribes (Article 367 of the Criminal Code) and offering bribes (Article 368 of the Criminal Code).

(6) The other exceptionally serious criminal offences referred to in paragraph 1 of this Article, even if they are not the result of the activities of an organised criminal group, include the following criminal offences: murder (Article 113 of the Criminal Code), aggravated murder (Article 114 of the Criminal Code), abduction (Article 134 paragraphs 1 to 4 of the Criminal Code), robbery (Article 206 paragraph 2 of the Criminal Code), extortion (Article 214 paragraphs 3 and 4 of the Criminal Code), counterfeiting money (Article 223 paragraphs 1 to 3 of the Criminal Code), money laundering (Article 231 paragraphs 1 to 4 of the Criminal Code), unlawful production and circulation of narcotic drugs (Article 246 paragraphs 1 and 3 of the Criminal Code), criminal offences against the constitutional order and security of the Republic of Serbia (Articles 305 to 321 of the Criminal Code), illegal manufacture, possession and sale of weapons and explosive materials (Article 348 paragraph 3 of the Criminal Code), illegal border crossings and human trafficking (Article 350 paragraphs 2 and 3 of the Criminal Code), human trafficking (Article 388 paragraphs 1 to 6, 8 and 9 of the Criminal Code), trafficking in minors for adoption (Article 389 paragraphs 1 and 2 of the Criminal Code), international

terrorism (Article 391 of the Criminal Code), taking hostages (Article 392 of the Criminal Code) and financing terrorism (Article 393 of the Criminal Code).

(7) The provisions of this chapter related to criminal offences referred to in paragraph 3 of this Article shall also apply to the procedure for criminal offences referred to in Articles 370 through 384 and Articles 385 and 386 of the Criminal Code, as well as to the procedure for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since January 1, 1991 listed in the Statute of the International Criminal Tribunal for the Former Yugoslavia.

(8) The provisions of this chapter related to criminal offences referred to in paragraph 3 of this Article shall also apply to the procedure in connection with criminal offences referred to in Article 322 paragraphs 3 and 4, Article 323 paragraphs 3 and 4, Article 335, Article 336 paragraphs 1, 2 and 4, Article 336b, Article 337 paragraphs 1, 3 and 4 and Article 339 of the Criminal Code, if committed in connection with the criminal offences referred to in paragraph 3 of this Article, as well as to the procedure in connection with criminal offence referred to in Article 333 of the Criminal Code, if committed in connection with the criminal offences referred to in paragraphs 3 and 7 of this Article.

Article 504b

Public authorities and officials taking part in criminal proceedings for the criminal offences referred to in Article 504a of this Code are required to act with expediency.

Article 504v

(1) Data on preliminary criminal proceedings and investigatory proceedings in connection with the criminal offences referred to in Article 504a of this Code are deemed official secrets. Besides officials, the data may not be divulged by other participants in proceedings to whom the data become available. The official before whom the proceedings are being conducted is required to instruct participants in proceedings about the duty of maintaining confidentiality.

(2) Data on preliminary criminal proceedings and investigatory proceedings in connection with the criminal offences referred to referred to in Article 504a of this Code may be made public only on the basis of a written authorisation of the competent public prosecutor or investigating judge.

Article 504g

(1) A chamber made up of three judges shall adjudicate first instance proceedings for criminal offences referred to in Article 504a paragraph 3 of this Code, and a chamber made up of five judges in the second instance.

(2) Appeals against first-instance court judgements in proceedings for the criminal offences referred to in Article 504a paragraph 3 of this Code may be lodged by authorised persons within 30 days of the date of delivery of the judgement.

Article 504d

(1) Special summary procedure provisions (Chapter XXVI) shall not be applied in proceedings for the criminal offences referred to in Article 504a paragraph 3 of this Code and in the procedure of pronouncing criminal sanctions without a trial (Chapter XXVII).

(2) Measures of special supervision regulated by separate law may be applied towards the detained organiser and members of an organised criminal group in proceedings in connection with criminal offences referred to in Article 504a paragraph 3 of this Code.

Article 504đ

(1) If interior ministry authorities learn that a criminal offence referred to in Article 504a of this Code is being prepared or has been committed, they are required to notify the competent public prosecutor thereof promptly.

(2) The public prosecutor may request the interior ministry authorities to undertake certain measures or actions within a specified period and to notify him thereof.

(3) The interior ministry authority is required to explain to the public prosecutor in detail why the request referred to in paragraph 2 of this Article was not complied with or why the time limit was exceeded.

(4) Statements and information collected by the public prosecutor in the preliminary criminal proceedings may be used as evidence in criminal proceedings, but the decision may not be based solely on them.

2. Measures of Law Enforcement Authorities to Detect and Prove the Criminal Offences referred to in Article 504a of this Code

1) Supervision and recording of telephone and other conversations or communications

Article 504e

(1) Acting on a written and substantiated proposal of the public prosecutor, the investigating judge may order supervision and recording of telephone and other communications by other technical means and optical recording of person suspected of having committed a criminal offence referred to in Article 504a of this Code, if there is no other manner of collecting evidence for criminal prosecution or the collection thereof would be extremely difficult.

(2) By exception, the measures referred to in paragraph 1 of this Article may be ordered where there are grounds for suspicion that one of the criminal offences referred to in Article 504a of this Code is being prepared, and the circumstances of the case indicate that the criminal offence could not detected, prevented or proved in another manner, or it would cause disproportionate difficulties or a great danger.

(3) The measures referred to in paragraph 1 of this Article shall be ordered by the investigating judge by means of a substantiated order. The order shall contain data on the person against whom the measure is being implemented, the grounds for suspicion, the manner of implementation, the scope and duration of the measures. The measures may not last longer than six months, and for important reasons may be extended by not more than two times three months. The implementation of the measures shall be terminated as soon as the reasons for their implementation cease to exist.

Article 504ž

(1) The order of the investigating judge referred to in Article 504e paragraph 1 of this Code shall be implemented by the internal affairs authorities, the Security and Information Agency, and the Military Security Agency. The internal affairs authorities, Security and Information Agency, and Military Security Agency shall compile daily reports on the implementation of the measure and submit them to the investigating judge and the public prosecutor at their request.

(2) Postal, telegraphic and other enterprises, companies and persons registered for conveying information are required to make possible for the internal affairs authorities, the Security and Information Agency, and the Military Security Agency the implementation of the measures referred to in Article 504e paragraph 1 of this Code.

(3) The recording referred to in Article 504e paragraph 1 of this Code may if so ordered by the investigating judge be performed in public places and in premises which are not dwellings.

(4) For the duration of the measure, the order of the investigating judge and the procedure of its implementation shall be deemed an official secret.

Article 504z

(1) Following the execution of the measure referred to in Article 504e paragraph 1 of this Code, the internal affairs authorities, the Security and Information Agency, and the Military Security Agency shall submit to the investigating judge recordings and a separate report containing the following: the time of commencement and termination of the measure, data on the official who implemented the measure, description of the technical means employed, the number and identities of the persons encompassed by the measure, and an assessment of the appropriateness and results of the measure implemented.

(2) The investigating judge may order the recordings obtained by the use of technical means transcribed and described in full or in part. The investigating judge shall deliver to the public prosecutor all the materials obtained by the implementation of the measures referred to in Article 504e paragraph 1 of this Code.

(3) If the public prosecutor does not institute criminal proceedings within six months of the date he first examined the materials referred to in paragraph 2 of this Article, or if the public prosecutor states that he will not use the materials in the proceedings, or that he would not conduct proceedings against the suspect, the investigating judge shall issue a ruling on the destruction of the materials collected. The investigating judge may notify

the person against whom were implemented the measures referred to in Article 504e paragraph 1 of this Code, if his identity was established during the implementation of the measure. The materials shall be destroyed under the supervision of the investigating judge. The investigating judge shall compile a record of the actions referred to in this paragraph.

(4) If during the implementation of the measures referred to in Article 504e paragraph 1 of this Code it was acted contrary to provisions of this Code or the order issued by the investigating judge, a court decision may be based on the collected data. Provisions of Article 99 of this Code shall apply accordingly to any data and information obtained. The provisions of Article 178 paragraph 1, Article 273 paragraph 4, Article 337 paragraph 3 and Article 374 paragraph 4 of this Code shall apply accordingly to recordings made in contravention of the provisions of Articles 504e to 504z of this Code.

(5) If the materials collected by the implementation of the measures referred to in Article 504e paragraph 1 of this Code are related to a criminal offence that has not been included in the order issued by the investigating judge referred to in Article 504e paragraph 3 of this Code, such materials may be used in criminal proceedings only if the proceedings relate to a criminal offence that is one of criminal offences referred to in Article 504a of this Code.

2) Providing simulated business services and simulated legal services

Article 504i

(1) Where there are grounds for suspicion that a criminal offence referred to in Article 504a of this Code has been committed, the investigating judge may, at the request of the public prosecutor, authorise the provision of simulated business services or the conclusion of simulated legal contracts, if it is not possible to collect evidence required for criminal prosecution in another way, or if their collection would be very difficult.

(2) The measure referred to in paragraph 1 of this Article may also exceptionally be ordered if there exist grounds for suspicion that one of the criminal offences referred to in Article 504a of this Code is being prepared, and the circumstances of the case indicate that it would not be possible to detect, prevent or prove the criminal offence in another way, or that it would cause disproportionate difficulties or a great danger.

(3) The written and substantiated order of the investigating judge ordering the measure referred to in paragraph 1 of this Article shall contain data on the person against whom the measure is being implemented, the legal designation and description of the criminal offence, the type, scope, location and duration of the measure.

(4) The duration of the measure referred to in paragraph 1 of this Article may not exceed six months. Acting on a substantiated request of the public prosecutor, the investigating judge may extend the duration of the measure by another three months at most. In ordering and extending the duration of the measure, the investigating judge shall specifically assess whether the same result could have been achieved in a manner imposing fewer limitations on citizens' rights.

Article 504j

(1) The measure referred to in Article 504 and paragraph 1 of this Code shall be implemented by authorised officers of the internal affairs authorities, the Security and Information Agency, the Military Security Agency, or other person designated by the investigating judge on a proposal by the internal affairs authorities, the Security and Information Agency, or the Military Security Agency. The authorised officer shall compile daily reports on the implementation of the measure and submit them together with the documentation collected to the investigating judge and public prosecutor.

(2) After the completion of the measure referred to in Article 504i paragraph 1 of this Code the internal affairs authority, the Security and Information Agency, or the Military Security Agency shall submit to the investigating judge and public prosecutor a separate report containing the following: the time of commencement and termination of the measure, data on the person implementing the measure, a description of the technical means used, the number and identities of the persons encompassed by the measure, and the results of the measure applied.

(3) Wit the report referred to in paragraph 2 of this Article the internal affairs authority, the Security and Information Agency, or the Military Security Agency shall submit to the public prosecutor the entire documentation on the measure implemented, video, audio or electronic recordings and all other evidence collected by the implementation of the measure.

(4) The person who under the orders of the investigating judge provides simulated business services or concludes simulated legal contracts shall not be committing a criminal offence, where under the Criminal Code the action the person is undertaking is defined as a criminal offence.

Article 504k

(1) If the public prosecutor does not institute criminal proceedings within six months from the day he examined the documentation referred to in Article 504j paragraph 3 of this Code, or if he declares that he will not use the same in the proceedings or that he will not initiate proceedings against the suspect, the investigating judge will act in accordance with the provision of Article 504z paragraph 3 of this Code.

(2) If by the implementation of the measure referred to in Article 504i paragraph 1 of this Code the collected material is related to a criminal offence that has not been included in the order of Investigation Judge referred to in Article 504i paragraph 3 of this Code, such material can be used in criminal proceedings only if it is related to a criminal offence that is one of criminal offences referred to in Article 504a of this Code.

3) Controlled deliveries

Article 504l

(1) The Republican Public Prosecutor, or other public prosecutor whose competences cover the entire territory of the Republic of Serbia, may authorise a controlled delivery allowing unlawful or suspect consignments to exit from Serbia, cross the border or enter the territory of one or more states, with the knowledge and consent of their competent

authorities, for the purpose of collecting evidence and identifying persons involved in the commission of a criminal offence.

(2) The measure referred to in paragraph 1 of this Article and the manner of implementing the measure are implemented by the internal affairs authorities or other public authorities designated by the Republican Public Prosecutor or other public prosecutor whose competences cover the entire territory of the Republic of Serbia.

(3) Controlled deliveries shall be implemented with the consent of the competent authorities of the interested states and based on a principle of reciprocity, in accordance with ratified international agreements, in which the content of the measure is described in detail.

(4) The measure referred to in paragraph 1 of this Article may be undertaken if the detection and deprivation of liberty of suspects involved in the commission of the criminal offences referred to in Article 504a of this Code would not be possible in other ways, or would be very difficult, especially in the cases of unlawful trafficking in narcotics, weapons and other objects arising from the commission of criminal offences or which serve for the commission of criminal offences.

(5) Unless prescribed otherwise by international agreement, the measures referred to in paragraph 1 of this Article shall be implemented if the competent authorities of the states through which the unlawful or suspect consignments are passing have previously reached agreement on the following:

1) that certain unlawful or suspect consignments enter and exit, or traverse the territory of the domestic state;

2) that the transportation and delivery of unlawful or suspect consignments would be constantly monitored by the competent authorities of the state on whose territory they are located;

3) that actions would be undertaken for the purpose of criminal prosecution of all persons participating in the delivery of unlawful or suspect consignments;

4) that the competent public authorities of other states would be regularly informed of the course and outcome of the criminal proceedings against those accused of the criminal offences which were the subject of the controlled delivery.

(6) The Republican Public Prosecutor, or other public prosecutor whose competences cover the entire territory of the Republic of Serbia, shall determine the manner of implementing the measure referred to in paragraph 1 of this Article.

(7) Following completion of the measure referred to in paragraph 1 of this Article, an authorised official of interior affairs authority or other public authority shall submit to the Republican Public Prosecutor, or other public prosecutor whose competences cover the entire territory of the Republic of Serbia, a report which contains: data on the times of commencement and termination of the measure, data on the official implementing the

measure, a description of the technical means used, the number and identities of the persons encompassed by the measure, and the results of the applied measure.

4) Automated computer searches of personal and other data and related data

Article 504lj

(1) Automatic computer searches of personal and other related data and their electronic processing may be undertaken where there are grounds for suspicion that a criminal offence referred to in Article 504a of this Code has been committed, if evidence required for criminal prosecution could not be collected in other manner, or if the collection would be very difficult.

(2) The measure referred to in paragraph 1 of this Article may exceptionally be ordered where there are rounds for suspicion that one or more of the criminal offences referred to in Article 504a of this Code are being prepared, and the circumstances of the case indicate that it would not be possible to detect, prevent or prove the criminal offence in another way, or it could cause disproportionate difficulties or a great danger.

(3) The measure referred to in paragraph 1 of this Article consist of automatic searches of stored personal data and other data directly linked to them, and their automatic comparison with data relating to a criminal offence referred to in paragraph 1 of this Article and the suspect, so that persons for whom there is no probability that they are connected to the criminal offence could be excluded as possible suspects.

(4) The measure referred to in paragraph 1 of this Article shall be ordered by the investigating judge, acting on a proposal by the public prosecutor. The order of the investigating judge shall contain the following: the legal designation of the criminal offence referred to in paragraph 1 of this Article, a description of the data it is necessary to collect and forward, the designation of the public authority required to automatically gather the requested data and submit them to the public prosecutor and the internal affairs authority, the scope of the special evidentiary action, and its duration.

(5) The duration of the measure referred to in paragraph 1 of this Article may not exceed six months, and may be extended by three months for reasons of importance.

(6) The measure referred to in paragraph 1 of this Article shall be implemented by an internal affairs authority, the Security and Information Agency, the Military Security Agency, the customs service or other public authority, or other legal persons with public authorisation pursuant to the law.

(7) If the public prosecutor does not institute criminal proceedings within six months of the date he first examined the data collected by the implementation of the measure referred to in paragraph 3 of this Article, or if the public prosecutor states that he will not use the data in the proceedings, or that he will not initiate proceedings against the suspect, the investigating judge will act in accordance with the provision of Article 504z paragraph 3 of this Code.

3. Special Measures of Law Enforcement Authorities for Detecting and Proving Criminal Offences referred to in Article 504a paragraph 3 of this Code

1) Undercover operatives

Article 504m

(1) The investigating judge may, at the request of the public prosecutor, order the engagement of an undercover operative where there exist grounds for suspicion that a criminal offence referred to in Article 504a paragraph 3 of this Code has been committed, if it would not be possible to collect evidence for criminal prosecution in another way or their collection would be very difficult.

(2) The measure referred to in paragraph 1 of this Article may exceptionally be ordered also where there exist grounds for suspicion that one of the criminal offences referred to in Article 504a paragraph 3 of this Code is being prepared, and the circumstances of the case indicate that it would not be possible to detect, prevent or prove the criminal offence in another way, or it could cause disproportionate difficulties or a great danger.

(3) A written and substantiated order of the investigating judge ordering the measure referred to in paragraph 1 of this Article shall contain data about the persons and the group against whom it is being implemented, a description of possible criminal offences, the type, scope, location and duration of the measure.

(4) An undercover operative using an alias or a code-name shall be designated by the minister responsible for internal affairs, the director of the Security and Information Agency, or the director of the Military Security Agency, or a person duly authorised by them.

(5) As a rule, the undercover operative shall be an authorised official of the internal affairs authority, the Security and Information Agency, or the Military Security Agency, and if the circumstances of the case so require, another duly trained person, who may on condition of reciprocity also be a foreign national.

(6) The undercover operative may not be a person subject to ongoing criminal proceedings or a person convicted of a criminal offence prosecutable *ex officio*, or a person for whom there exist grounds for suspicion of being a member of an organised criminal group.

(7) The duration of the measure referred to in paragraph 1 of this Article shall be as long as it is needed to collect evidence, but not longer than one year. Acting on a substantiated proposal of the public prosecutor, the investigating judge may extend the duration of the measure by another six months at most.

(8) During the implementation of the measure referred to in paragraph 1 of this Article, for the purpose of protecting the identity of the undercover operative, the competent authorities may alter data in data bases and issue personal identification documents with altered data for the purpose of protecting the identity of the undercover operative and the implementation of the measure. These data are considered official secrets.

Article 504n

(1) The undercover operative may on the basis of an order issued by the investigating judge use technical means of recording conversations, photographic equipment or equipment for audio and video recording.

(2) The undercover operative shall submit periodic reports for the duration of the measure to his immediate superior. By exception, reports shall not be submitted if it would threaten the security of the undercover operative or other persons.

(3) After the measure is terminated, the superior officer referred to in paragraph 2 of this Article is required to submit a report to the investigating judge and the public prosecutor. The report shall contain the following: the time of commencing and terminating the measure, the code-name or alias of the undercover operative, a description of the procedures applied and the technical equipment used, data on the number and identities encompassed by the measure, and a description of the results achieved.

(4) With the report referred to in paragraph 3 of this Article, photographs, audio and video recordings, collected documentation and all evidence collected by the implementation of the measure shall be delivered to the public prosecutor.

(5) Inciting others to commit criminal offences by the undercover operative is prohibited and punishable.

Article 504nj

(1) Exceptionally, an undercover operative may be examined as a witness in criminal proceedings under an alias or code-name. The questioning shall be performed without revealing the identity of the undercover operative to the parties. The identity of the undercover operative shall be established by the court immediately prior to his examination on the basis of a statement given by the superior officer referred to in Article 504n paragraph 2 of this Code. Data on the undercover operative being examined as a witness shall be deemed an official secret. The undercover operative shall be questioned pursuant of the rules on questioning cooperating witnesses. Undercover operatives shall be summoned through their superiors referred to in Article 504n paragraph 2 of this Code.

(2) The decision of a court cannot be based solely on the testimony of an undercover operative.

(3) If by the implementation of the measure referred to in Article 504m paragraph 1 of this Code the collected material is related to a criminal offence that has not been included in the order of Investigation Judge referred to in Article 504m paragraph 3 of this Code, such material can be used in criminal proceedings only if it is related to a criminal offence that is one of criminal offences referred to in Article 504a paragraph 3 of this Code.

2) Cooperating witnesses

Article 504o

(1) The public prosecutor may propose to the court that with certain privileges a member of an organised criminal group be examined as a witness who has admitted belonging to the group (hereinafter: cooperating witness), against whom criminal proceedings are being conducted in connection with the criminal offence referred to in Article 504a paragraph 3 of this Code, provided that he has fully confessed to the commission of the criminal offence, and that the significance of his testimony for detecting, proving and preventing other criminal offences by the organised criminal group outweighs the consequences of the criminal offence he had committed.

(2) A person reasonably suspected of being the organiser of the group referred to in paragraph 1 of this Article may not be a cooperating witness.

(3) The public prosecutor may submit the proposal referred to in paragraph 1 of this Article before the closure of the trial.

Article 504p

(1) Before submitting a request, the public prosecutor shall inform the cooperating witness about the duties referred to in Article 102 paragraph 2 and Article 106 of this Code and the privileges referred to in Article 504t of this Code. The cooperating witness may not invoke the privileges of exemption from the duty to give testimony referred to in Article 98 of this Code and exemption from the obligation of answering certain questions referred to in Article 100 of this Code.

(2) Following the caution referred to in paragraph 1 of this Article, the public prosecutor shall ask the cooperating witness to within a time limit not longer than thirty days independently and in his own hand in as much detail and as fully as possible truthfully describe everything he known about the subject matter of the trial in connection with which the criminal proceedings are being conducted, and about other criminal offences. Illiterate cooperating witnesses shall dictate their preliminary statements to a voice recorder.

(3) The caution referred to in paragraph 1 of this Article, the replies of the cooperating witness, his statement that he will testify to everything he knows and not leave anything out, shall be entered in the record by the public prosecutor, together with the statement referred to in paragraph 2 of this Article, which shall also be signed by the cooperating witness. The record shall be attached to the motion of the public prosecutor referred to in Article 504o paragraph 1 of this Code.

Article 504r

(1) The chamber of the court of first instance referred to in Article 24 paragraph 6 of this Code shall decide by a ruling on the motion of the public prosecutor referred to in Article 504o paragraph 1 of this Code during the investigation and until the commencement of the trial, and at the trial itself, the chamber before which the trial is being held. Decisions shall be rendered within 30 days of submission of motions.

(2) The public prosecutor, the person proposed as the cooperating witness and his defence counsel shall be summoned to the chamber's session. The session shall be held *in camera*.

(3) The public prosecutor may appeal against the ruling of the chamber referred to in paragraph 1 of this Article denying the public prosecutor's motion within 48 hours of the time of delivery of the ruling. A decision on the appeal shall be issued by the immediately higher court within three days of the delivery of the appeal and case file by the first-instance court.

(4) If the chamber accepts the public prosecutor's motion, it shall order extracted from the file all records and official notes of earlier statements given by the cooperating witness as a suspect or accused, and they may not be used as evidence in criminal proceedings, except in the case referred to in Article 504t paragraph 3 of this Code.

Article 504s

(1) During examination of the cooperating witness the public shall be excluded, unless the chamber decides otherwise, acting on a motion of the public prosecutor and with the consent of the cooperating witness.

(2) Before issuing the decision referred to in paragraph 1 of this Article, the president of the chamber shall in the presence of his defence counsel notify the cooperating witness about the motion of the public prosecutor and inform him of his right to be questioned without the public being present. A statement of the cooperating witness to be examined with the public being present shall be entered in the record.

Article 504t

(1) The court shall impose on a cooperating witness who gave testimony to the court in accordance with the obligations referred to in Article 504p of this Code the minimum penalty prescribed by the Criminal Code for the criminal offence to which he has confessed and which has been proved committed by him in the proceedings, following which the court shall halve that penalty and pronounce it as such, with the proviso that it may not be less than 30 days' imprisonment.

(2) Taking into consideration the significance of the testimony of the cooperating witness, the circumstances of the criminal offences of which he is accused, his conduct before the court, his earlier life and other important circumstances, the court may exceptionally, on a motion by the public prosecutor, pronounce the cooperating witness guilty and pronounce a more lenient penalty, or relieve him of punishment.

(3) If a cooperating witness does not act in accordance with the obligations referred to in Article 504p of this Code or commits a new criminal offence referred to in Article 504a paragraph 3 of this Code before the proceedings are concluded by a final decision, the public prosecutor shall resume criminal prosecution or institute criminal prosecution in connection with a new criminal offence. Based on a statement of the public prosecutor, the court shall rescind the ruling granting cooperating witness status.

(4) If a new criminal offence by the cooperating witness specified in Article 504a paragraph 3 of this Code is uncovered during the proceedings, the public prosecutor may proceed in accordance with the provisions of Articles 504o and 504p of this Code.

(5) Apart from the duty to tell the truth and exclude nothing he knows about the case on trial, the cooperating witnesses is entitled to the same rights to which the accused is entitled under this Law.

Article 504ć

(1) The public prosecutor may propose to the court as a witness a person with a final conviction in connection with a criminal offence referred to in Article 504a paragraph 3 of this Code, provided that the significance of his testimony for detecting, proving or preventing criminal offences referred to in Article 504a paragraph 3 of this Code outweighs the consequences of the criminal offence of which he was convicted.

(2) The person referred to in paragraph 1 of this Article cannot be a person with a final conviction as the organiser of an organised criminal group or a person with a final conviction to serve a term of imprisonment of forty years.

(3) If the court finds that the witness referred to in paragraph 1 of this Article provided testimony in accordance with the obligations referred to in Article 504p of this Code, the public prosecutor shall after the conclusion of the proceedings with a final conviction submit a request pursuant to Article 405a of this Code.

(4) Provisions on the examination of cooperating witnesses shall apply accordingly to the examination of the witnesses referred to in paragraph 1 of this Article.

Part Three
SPECIAL PROCEEDINGS

Chapter XXX
PROCEEDINGS FOR THE IMPLEMENTATION OF SECURITY MEASURES, CONFISCATION OF PROCEEDS FROM CRIME, REVOCATION OF CONDITIONAL SENTENCES AND CONDITIONAL RELEASE

1. Proceedings for implementation of security measures

Article 505

(1) Where an accused person commits an offence specified by law as a criminal offence in a state of mental incapacity, the public prosecutor shall submit a motion with the court to impose a security measure of compulsory psychiatric treatment and confinement of

the perpetrator to a health-care institution, or a motion for compulsory psychiatric treatment as an outpatient, if the requirements determined by the Criminal Code for pronouncing such a measure exist.

(2) In such case an accused person who is in detention shall not be released but shall until the completion of the proceedings for the implementation of a security measure be temporarily confined in an appropriate health-care institution or other suitable premises.

(3) Besides the grounds referred to in Article 142 of this Code, accused persons who are at large may be ordered placed in detention if there is a justifiable danger of the commission of a criminal offence owing to mental incapacity. Before ordering detention, the court shall obtain the opinion of an expert witness. After the decision on detention is issued, the accused shall until the completion of the proceedings for implementation of a security measure be placed in an appropriate health-care institution or premises which are suitable for the state of his health.

(4) Following the motion referred to in paragraph 1 of this Article, the accused is required to have a defence counsel.

Article 506

(1) The court which has jurisdiction to try the case in the first instance shall rule after holding a trial on the implementation of the security measure of compulsory psychiatric treatment and confinement in a health-care institution or compulsory psychiatric treatment as an outpatient.

(2) Besides the persons who are required to be summoned to the trial, psychiatrists from the health-care institution where the accused was examined shall be summoned to provide testimony as expert witnesses. The accused shall be summoned if his health permits him to attend the trial. The spouse of the accused and his parents, or guardian, and according to the circumstances also other close relatives, shall also be summoned to the trial.

(3) If the court, based on evidence presented, determines that the defendant has committed a criminal offence and that at the time of the commission he was mentally incapable, it shall decide, based on testimonies of summoned persons and findings and opinions of expert witnesses, whether to impose on the defendant a security measure of compulsory psychiatric treatment and confinement to a health-care institution or compulsory psychiatric treatment as an outpatient. When deciding which of which security measure to impose, the court shall not be bound by the motion of the Public Prosecutor.

(4) If the court finds that the accused was not mentally incapable, it shall discontinue the proceedings for implementation of a security measure.

(5) All persons entitled to file appeals against a court judgement (Article 364) may appeal against the ruling within eight days of the date of receiving the ruling, except the aggrieved.

Article 507

The security measures referred to in Article 505 paragraph 1 of this Code may also be imposed where the public prosecutor during the trial amends his indictment or motion to indict by submitting a motion for imposition of the measures.

Article 508

Where the court imposes a penalty on a person who committed a criminal offence in a state of significantly diminished mental capacity, it shall in the same judgement impose a security measure of compulsory psychiatric treatment and confinement to a health-care institution, after it establishes that all statutory conditions are fulfilled.

Article 509

The final decision imposing the security measure of compulsory psychiatric treatment and confinement to a health-care institution or compulsory psychiatric treatment as an outpatient (Articles 506 and 508) shall be submitted to a court having jurisdiction to decide on deprivation of the capacity to act. The competent welfare institution shall also be notified of the decision.

Article 510

(1) The court which imposed the security measure shall once every nine months examine *ex officio* whether the need for treatment and confinement to a health-care institution still exists. The health-care institution, the welfare institution and the person on whom the security measure was imposed may submit motions to that court for discontinuing the measure. After hearing the public prosecutor, the court shall discontinue the measure and order the release of the person from the health-care institution, if it establishes, based on the opinion of a physician, that the need for treatment and confinement to the health-care institution no longer exists, or may also order his compulsory treatment as an outpatient. If the motion for discontinuance of the measure is denied, it may be submitted again after the expiry of a period of six months from the day the decision was rendered.

(2) When a perpetrator with significantly diminished mental capacity is released from a health-care institution after spending less time in that institution than the duration of the term of imprisonment to which he had been sentenced, the court shall decide by a ruling on the release whether the person should serve the rest of the sentence or be conditionally released. Perpetrators who are conditionally released may also be imposed a security measure of compulsory psychiatric treatment as outpatients, if the statutory requirements for this are fulfilled.

(3) The court may, *ex officio* or upon a motion of the administration of the health-care institution where the defendant is treated or should have been treated, and after hearing the public prosecutor, impose the security measure of compulsory psychiatric treatment and confinement to a health-care institution on a perpetrator who is subject to a security measure of compulsory psychiatric treatment as an outpatient, if it establishes that such person did not undergo treatment or abandoned it wilfully, or that despite the treatment

he is still so dangerous for his surroundings that his compulsory treatment and confinement to a health-care institution is necessary. If necessary, before it renders a decision the court shall also obtain an opinion from a physician and hear the defendant, if his condition permits it.

(4) The decisions referred to in the preceding paragraphs shall be rendered at a session of the chamber (Article 24 paragraph 6). The public prosecutor and the defence counsel shall be notified about the session. Before a decision is rendered the perpetrator shall be heard, if necessary and if possible.

Article 511

(1) The court shall decide on the implementation of the security measure of compulsory treatment of an alcoholic or compulsory treatment of a narcotics addict after obtaining the findings and opinion of an expert witness. The expert witness is also required to give an opinion on the possibilities of treatment of the accused.

(2) If a perpetrator has been ordered by a conditional sentence to undergo outpatient treatment, and he failed to attend treatment or abandoned it wilfully, the court may, *ex officio* or on a proposal of the institution where perpetrator underwent treatment or should have been treated, and after hearing the public prosecutor and the perpetrator, order the conditional sentence to be revoked or order enforcement of the measure of compulsory treatment of an alcoholic or compulsory treatment of a narcotics addict in a health-care institution or other specialised institution. Before rendering its decision, the court shall if needed obtain an opinion from a physician.

Article 512

(1) Objects which must be seized under the Criminal Code shall be seized even when the criminal proceedings are not concluded by a judgement convicting the defendant, if it is in the interest of general security or reasons of morality.

(2) The authority which conducted the proceedings shall issue a special ruling on the seizure of objects at the time the proceedings are concluded or discontinued.

(3) A ruling on the seizure of objects referred to in paragraph 1 of this Article shall also be issued by the court where no such decision was made in the judgement convicting the defendant.

(4) A certified copy of the ruling on the seizure of objects shall be delivered to the owner of the objects, if the owner is known.

(5) The owner of the objects is entitled to appeal against the ruling referred to in paragraphs 2 and 3 of this Article if he considers that there are no legal grounds for seizing the objects. If the ruling referred to in paragraph 2 of this Article was not issued by a court, the appeal shall be decided by the chamber (Article 24 paragraph 6) of the court which had jurisdiction to try the case in the first instance.

2. Procedure for confiscation of proceeds from crime

Article 513

(1) Proceeds from crime shall be determined in criminal proceedings *ex officio*.

(2) The court and other authorities before whom criminal proceedings are conducted are required during the proceedings to collect evidence and investigate circumstances of importance for determining proceeds from crime.

(3) Where an aggrieved has submitted an indemnification claim for the restitution of objects acquired by the commission of a criminal offence, or for payment of an amount corresponding to the value of the objects, the proceeds from crime shall be established only in respect of the part not encompassed by the claim.

Article 514

(1) Where confiscation of proceeds from crime from other persons is under consideration, the person to whom the proceeds from crime were transferred or the person for whom they were obtained, or the representative of a legal person, shall be summoned for interrogation or questioning in preliminary proceedings and at the trial. The summons shall state that the proceedings will be held if the person does not appear.

(2) The representative of a legal person shall be questioned at the trial after the accused. The court shall proceed in the same manner in respect to the other person referred to in the preceding paragraph, if that person was not summoned as a witness.

(3) The person to whom the proceeds from crime were transferred or the person for whom they were obtained, or the representative of a legal person, is authorised to propose evidence in connection with the establishment of the proceeds from crime, and, with the permission of the president of the chamber, question the accused, witnesses and expert witnesses.

(4) Exclusion of the public from the trial shall not refer to the person to whom the proceeds from crime were transferred or the person for whom they were obtained, or the representative of a legal person.

(5) If the court establishes during the trial that confiscation of proceeds from crime comes into consideration, it shall adjourn the trial and summon the person to whom the proceeds from crime were transferred or the person for whom they were obtained, or the representative of a legal person.

Article 515

The Court shall admeasure the amount of proceeds from crime at its own discretion, if its determination would cause disproportionate difficulties of substantial delays of the proceedings.

Article 516

Where confiscation of proceeds from crime is under consideration, the court shall *ex officio*, according to the provisions applicable to enforcement proceedings, order temporary security measures. In such case, the provisions of Article 210 paragraphs 2 and 3 of this Code shall be applied accordingly.

Article 517

(1) Confiscation of proceeds from crime may be ordered by the court in convicting judgements, rulings on punishment without a trial, rulings of judicial admonitions, as well as rulings imposing security measures of compulsory psychiatric treatment.

(2) The court shall specify in the ordering part of the judgement or ruling the object or amount of money to be confiscated.

(3) A certified copy of the judgement, or ruling, shall be delivered to the person to whom the proceeds from crime were transferred or the person for whom they were obtained, or the representative of a legal person, if the court had ordered the confiscation of proceeds from crime from that person, or legal person.

Article 518

The person referred to in Article 514 of this Code may submit a motion for reopening criminal proceedings in respect of the decision on the confiscation of proceeds from crime.

Article 519

The provisions of Article 365 paragraphs 2 and 3 and Articles 373 and 377 of this Code shall be applied accordingly to appeals against decisions on the confiscation of proceeds from crime.

Article 520

Unless prescribed otherwise by the provisions of this chapter in respect of the procedure for implementation of security measures or the confiscation of proceeds from crime, the other provisions of this Code shall be applied accordingly.

3. Procedure for revocation of conditionals sentences

Article 521

(1) Where it is ordered in a conditional sentence that the penalty shall be executed unless the convicted person returns proceeds from crime, compensates damage or fulfils other obligations, and the convicted person does not fulfil those obligations within a prescribed time limit, the court which adjudicated in the first instance shall implement a procedure for revocation of the conditional sentence, acting on a motion by an authorised prosecutor, or *ex officio*.

(2) The judge assigned to the case shall question the convicted person, if he is available to the court, and conduct the necessary inquiries for the purpose of establishing the facts and collecting evidence of importance for the decision.

(3) The president of the chamber shall then schedule a session of the chamber and notify thereof the prosecutor, the convicted person and the aggrieved. The failure of parties duly summoned to appear shall not prevent the session from being held.

(4) If the court determines that the convicted person has not fulfilled the obligation imposed by the judgement, it shall issue a judgement revoking the conditional sentence and ordering the pronounced sentence to be executed, or order a new time limit for fulfilment of the obligation, or abolish the condition, or replace the original obligation with a new obligation. If the court finds no grounds for issuing any of the aforesaid decisions, it shall issue a ruling discontinuing proceedings for revoking the conditional sentence.

4. Procedure for conditional release

Article 522

(1) The procedure for conditional release shall be initiated on a petition by the convicted person.

(2) The petition shall be submitted to the court which tried the case in the first instance.

(3) The chamber of the first-instance court (Article 24 paragraph 6) shall establish if the period prescribed by law for ordering conditional release has passed, and request a report from the administration of the institution where the convicted person is serving a prison sentence about his conduct, performance of work obligations assigned taking into account his capacity for work, and other circumstances which indicate whether the purpose of the punishment has been accomplished, unless such a report was attached to the convicted person’s petition.

(4) If it does not deny the petition, the chamber shall take a statement from the public prosecutor acting before that court.

(5) Appeals against the chamber’s decision may be submitted both by the public prosecutor and the convicted person who submitted the petition for conditional release.

Chapter XXXI
PROCEDURE FOR RENDERING A DECISION ON REHABILITATION, CESSATION OR LEGAL CONSEQUENCES OF THE CONVICTION AND SECURITY MEASURES

Article 523

(1) Where under the law rehabilitation occurs after the expiry of a certain period of time, and provided the convicted person has not committed a new criminal offence (Article 98 of the Criminal Code), a ruling on rehabilitation shall *ex officio* be issued by the authority responsible for keeping criminal records.

(2) Before issuing a ruling on rehabilitation all necessary checks shall be performed, in particular data shall be collected on whether criminal proceedings are in progress against the convicted person in connection with a new criminal offence committed before the expiry of the period prescribed for legal rehabilitation.

Article 524

(1) If the competent authority does not issue a ruling on rehabilitation, the convicted person may request that it be established that rehabilitation has occurred by force of law.

(2) If the competent authority fails to act on the convicted person's request within thirty days of receiving the request, the convicted person may request that the court which issued the judgement in the first instance issue a ruling on rehabilitation.

(3) The chamber referred to in Article 24 paragraph 6 of this Code shall decide on the convicted person's request, after taking statement from the public prosecutor.

Article 525

If a conditional sentence is not revoked one year after the expiry of the probation testing period, the court which adjudicated the case in the first instance shall issue a ruling on rehabilitation. The ruling shall be delivered to the convicted person, the public prosecutor and the authority responsible for keeping criminal records.

Article 526

(1) The procedure of judicial rehabilitation (Article 99 of the Criminal Code) shall be initiated on a petition by the convicted person.

(2) The petition shall be submitted to the court which adjudicated in the case in the first instance.

(3) The judge assigned to the case shall examine whether the period prescribed by law has expired, and then conduct necessary inquiries, determine the facts invoked by the petitioner and obtain evidence on all circumstances of importance for the decision.

(4) The court may ask the internal affairs authority in whose territory the convicted person stayed after serving the sentence to provide information about his conduct, and may also seek such a report from the administration of the institution where the convicted person served his sentence.

(5) Following the inquiries, and the taking of a statement from the public prosecutor, the judge shall deliver the file with a substantiated motion to the chamber of the court which adjudicated the case in the first instance.

(6) The petitioner and the public prosecutor may appeal against the decision of the court on the petition for rehabilitation.

(7) Where the court denies the petition because by his behaviour the convicted person does not deserve the rehabilitation, the convicted person may repeat his petition at the expiry of a period of one year from the date when the ruling denying his petition becomes final.

Article 527

Convictions and their legal consequences erased in the rehabilitation procedure may not be mentioned in certificates issued to citizens by the criminal records registry.

Article 528

(1) Petitions for discontinuing security measures of prohibitions of performing a profession, activity or duty or prohibition of operating a motor vehicle or petitions for discontinuation of legal consequences of a conviction relating to a ban on acquiring a certain right, shall be submitted to the court which adjudicated the case in the first instance.

(2) The judge assigned to the case shall examine whether the period prescribed by law has expired, and then conduct necessary inquiries, determine the facts invoked by the petitioner and obtain evidence on all circumstances of importance for the decision.

(3) The court may ask the internal affairs authority in whose territory the convicted person stayed after serving the main penalty, the expiry of the statutory period for execution of the sentence, or the reception of a pardon, to provide information about the convicted person’s behaviour, and may seek such a report from the institution where the convicted person served his sentence.

(4) Following the inquiries, and the taking of a statement from the public prosecutor, the judge shall deliver the file with a substantiated motion to the chamber of his court.

Article 529

Where a court denies a petition for discontinuing security measures or a petition for discontinuing the legal consequences of a conviction, a new petition may be submitted at the expiry of a period of one year from the date when the ruling denying the earlier petition becomes final.

Articles 530-555**

(No longer in force)

Chapter XXXIV

PROCEDURE FOR INDEMNIFICATION, REHABILITATION AND REALISATION OF OTHER RIGHTS OF PERSONS WRONGFULLY CONVICTED OR UNLAWFULLY PERPRIVED OF LIBERTY

Article 556

(1) The right to indemnification in connection with a wrongful conviction may be claimed by persons against whom criminal sanctions were pronounced by a final decision, or persons pronounced guilty but whose sentences were remitted, and subsequently in connection with an extraordinary legal remedy the proceedings had been discontinued by a final decision or the person was acquitted of the charges by a final decision, or the charges were denied, except in the following cases:

1) if the discontinuance of the proceedings or judgement denying the charges occurred because in a new proceedings the subsidiary prosecutor, or private prosecutor, abandoned prosecution, or because the aggrieved had abandoned his motion, and the abandonment had occurred based on an agreement reached with the defendant;

2) if in a new proceedings the charges were dismissed because a lack of the court's jurisdiction, and the authorised prosecutor initiated prosecution before a competent court.

(2) The convicted person shall not be entitled to indemnification if he had by a false confession or in other manner wilfully caused his conviction, except if he had been coerced into doing so.

(3) In case of concurrent criminal offences, the right to indemnification may relate to individual criminal offences in respect of which the necessary conditions for granting damages are fulfilled.

Article 557

(1) The statutory limit for exercising the right to indemnification shall lapse three years after the first-instance judgement acquitting the defendant or denying the charges became final, or when the first-instance ruling discontinuing proceedings became final, , and where a higher court ruled on an appeal, from the date of receiving the decision of the higher court.

(2) Before submitting an indemnification claim to the court, the aggrieved is required to submit his request to the ministry responsible for the judiciary for the purpose of reaching agreement on the existence of damages and the type and amount of compensation.

(3) A commission of the ministry responsible for the judiciary shall decide on the conclusion of an agreement on the existence of damages and the type and amount of compensation.

(4) The composition and manner of work of the commission referred to in paragraph 3 of this Article shall be regulated in detail by the minister responsible for the judiciary.

(5) In the case referred to in Article 556 paragraph 1 item 2) of this Code, the claim may be considered only if an authorised prosecutor has not initiated prosecution before a competent court within three months of the date of receiving the final verdict. If the authorised prosecutor initiates prosecution before a competent court after the expiry of the aforesaid time limit, the procedure for indemnification shall be suspended until the conclusion of the criminal proceedings.

Article 558

(1) If an indemnification claim is not approved and the ministry responsible for the judiciary does not issue a decision on it within three months of the date of submission of the claim, the aggrieved may file a claim for indemnification before a competent court. If agreement is reached only in respect of a part of the claim, the aggrieved may submit a claim for indemnification in respect of the remainder of his claim.

(2) The statutory limit referred to in Article 557 paragraph 1 of this Code shall not run for the duration of the procedure referred to in paragraph 1 of this Article.

(3) Indemnification claims shall be submitted against the Republic of Serbia.

Article 559

(1) Inheritors shall inherit only the right of the aggrieved person to indemnification of property damage. If the aggrieved had already filed a claim, the inheritors may continue proceedings only within the limits of the claim as submitted for indemnification of property damage.

(2) The inheritors of an aggrieved person may after his death continue the indemnification proceedings, or initiate proceedings where the aggrieved person died before the expiry of the statutory period of limitations and had not waived his right to submit a claim, in accordance with the regulations on indemnification prescribed by the Law of Contracts and Torts.

Article 560

(1) The following persons shall also be entitled to compensation:

1) persons kept in detention where criminal proceedings were not initiated, or where proceedings were discontinued by a final ruling, or where they were acquitted by a final judgement, or where the charges were denied;

2) persons who had served a sentence of deprivation of liberty, in connection with reopening of criminal proceedings, requests for the protection of legality or requests to review the legality of a final judgement, persons who had been pronounced a sentence of deprivation of liberty in a duration shorter than that actually served, or persons pronounced a criminal sanction not consisting of a deprivation of liberty, or persons who were pronounced guilty but had their penalties remitted;

3) persons who were owing to an error or the unlawful work of the authorities unjustifiably deprived of liberty or kept longer in detention or in an institution for serving a sentence or a measure;

4) Persons who had spent longer in detention than the duration of the sentence which they were convicted to serve.

(2) Persons who were under Article 227 of this Code deprived of liberty without legal grounds are entitled to indemnification if they had not been remanded in detention, or if the time of deprivation of liberty was not included in the sanction pronounced for a criminal offence or a minor offence.

(3) Persons who by their impermissible actions led to deprivation of liberty are not entitled to any compensation. In the cases referred to in item 1) of paragraph 1 of this Article, the right to indemnification is also excluded where there existed the circumstances referred to in Article 556 paragraph 1 items 1) and 2) or if the proceedings were discontinued on the basis of Article 217 of this Code.

(4) The provisions of this chapter shall be applied accordingly in proceedings for indemnification referred to in paragraphs 1 and 2 of this Article.

Article 561

(1) If a case related to wrongful conviction or unlawful deprivation of liberty of a person is presented in the information media thereby damaging the reputation of that person, the court shall, upon his request, publish in newspapers or other media an announcement about a decision declaring that the previous conviction was wrongful or that the deprivation of liberty was unlawful. If the case was not presented in the media, such an announcement shall, upon this person’s request, be delivered to a public authority, local government authority, enterprise, other legal person or natural person where the person is employed, and if necessary for his rehabilitation – to a social or other organisation. After the death of the convicted person, his spouse, children, parents and siblings are entitled to submit such a request.

(2) The request referred to in paragraph 1 of this Article may be submitted even if a claim for indemnification has not been submitted.

(3) Irrespective of the requirements prescribed in Article 556 of this Code, the request referred to in paragraph 1 of this Article may also be submitted if the legal qualification of the offence had been altered in connection with an extraordinary legal remedy, if the legal qualification in the earlier judgement had seriously damaged the reputation of the convicted person.

(4) The request referred to in paragraphs 1 to 3 of this Article shall be submitted within six months (Article 557 paragraph 1) to the court which adjudicated the case in the first instance in the criminal proceedings. The chamber (Article 24 paragraph 6) shall rule on the request. The provisions of Article 556 paragraphs 2 and 3 and Article 560 paragraph 3 of this Code shall be applied accordingly in deciding on the request.

Article 562

The court which adjudicated the case in the first instance in criminal proceedings shall *ex officio* issue a ruling annulling the inscription of the wrongful conviction in the criminal record. The ruling shall be delivered to the authority responsible for keeping criminal records. Data about annulled inscriptions from criminal records may not be made available to anyone.

Article 563

Persons who received authority for examining and copying documentation (Article 170) relating to wrongful convictions or unlawful deprivations of liberty may not use the data from the files in a manner that would be detrimental for the rehabilitation of the person against whom criminal proceedings had been conducted. The President of the court is required to duly caution of this the person who has been allowed to examine the files, which caution shall be noted on the file together with the person's signature.

Article 564

(1) A person whose employment or social insurance was terminated due to a wrongful conviction or unlawful deprivation of liberty shall have the same years of service or years of social insurance recognized as if he had been at work during the period when the loss was caused by the wrongful conviction or unlawful deprivation of liberty. The period of unemployment caused by a wrongful conviction or unlawful deprivation of liberty which was not caused through the fault of the person shall also be included in the years of service or social insurance.

(2) Whenever deciding on a right related to years of service or years of social insurance, the competent authority or organisation shall take into account the years of service or social insurance recognized by the provision of paragraph 1 of the present Article.

(3) If the authority or organisation referred to in paragraph 2 of this Article does not take into account the years of service or social insurance recognized by the provision of paragraph 1 of the present Article, the aggrieved person may request that the court referred to in Article 558 paragraph 1 of this Code determine that recognition of such a period has occurred by force of law. The action shall be brought against the authority or organisation which contests the recognition of years of service or social insurance and against the Republic of Serbia (Article 558 paragraph 3).

(4) At the request of the authority or organisation where the right referred to in paragraph 2 of this Article is being exercised, the prescribed contributions for the period for which the years of service were recognised under the provision of paragraph 1 of this Article shall be paid from budget funds (Article 558 paragraph 3).

(5) The years of social insurance recognised pursuant to the provision of paragraph 1 of this Article shall be calculated in full into the pensionable years of service.

Chapter XXXV
PROCEDURE OF ISSUING WANTED CIRCULARS AND NOTICES

Article 565

If the temporary or permanent residence of an accused is not known, where it is necessary under the provisions of this Code, the court or the public prosecutor shall ask the internal affairs authorities to search for the accused and notify them of his address.

Article 566

(1) The issuance of a wanted circular may be ordered when an accused person against whom criminal proceedings have been initiated in connection with a criminal offence prosecutable *ex officio* and punishable under the law by a term of imprisonment of three or more years has absconded, and there exists an order for him to be brought in or a ruling ordering detention.

(2) The issuance of a wanted circular shall be ordered by the court before which the criminal proceedings are being conducted.

(3) The issuance of a wanted circular shall also be ordered in the event of the flight of an accused person from an institution in which he is serving a penalty, irrespective of the duration of the penalty, or flight from an institution in which he is serving a custodial measure involving deprivation of liberty. In that case the order shall be issued by the institution’s administrator.

(4) The order of the court or the institution’s administrator for the issuance of a wanted circular shall be delivered to the internal affairs authorities for execution.

Article 567

(1) Where data are needed about certain objects connected to a criminal offence or those objects need to be located, and particularly if it is so needed in order to determine the identity of a body, an order shall be made on the issuance of a notice asking for data or information to be communicated to the authority conducting the proceedings.

(2) The internal affairs authorities may also make public photographs of cadavers or missing persons if there are grounds for suspicion that the deaths or disappearances of the said persons occurred as a result of criminal offences.

Article 568

The authority which ordered a wanted circular or notice to be issued is required to withdraw it immediately after the wanted person or object is found, or when the statutory limit for prosecution or execution of penalties lapses, or other reasons appear owing to which a wanted circular or notice are no longer necessary.

Article 569

(1) The wanted circular or notice shall be issued by the internal affairs authority located within the territorial jurisdiction of the court before which the criminal proceedings are being conducted, or the institution from which a person serving a prison sentence or a custodial measure escaped.

(2) The public information media may be used for the purpose of informing the public about the wanted circular or the notice.

(3) Where it is probable that the wanted person is abroad, the ministry of internal affairs may also issue an international wanted circular, with the consent of the ministry responsible for the judiciary.

(4) Upon a request by a foreign authority, the ministry of internal affairs may issue a wanted circular for a person suspected of being in the Republic of Serbia, if the request contains a statement that extradition would be sought if such person is found.

Chapter XXXVI
TRANSITIONAL AND CONCLUDING PROVISIONS

Article 570

If due to an insufficient number of judges in a court which adjudicates only in the first instance the chamber provided by Article 24 paragraph 6 cannot be formed, the tasks which are within the competences of that chamber shall be conducted by the chamber of the immediately higher court.

Article 571

Where a time limit was in effect on the effective date of this Code, the time limit shall be counted according to the provisions of this Code, except if under the earlier regulations the limit was longer.

Article 572

(1) For criminal offences for which the perpetrator is prosecuted on a motion of the aggrieved the time limit referred to in Article 53 paragraph 1 of this Code shall begin to run from the effective date of the Criminal Code under which certain criminal offences are prosecuted on requests of aggrieved persons.

(2) Criminal proceedings for criminal offences which were before the effective date of the Code referred to in paragraph 1 of this Article prosecuted *ex officio* or by private

prosecution, and after the effective date of that Code on a motion by the aggrieved, shall be conducted pursuant to the regulations in force before the effective date of that Code, if the proceedings had been instituted by that date.

(3) If in the case referred to in preceding paragraph a judgement is overturned in extraordinary legal remedy proceedings, further proceedings shall be conducted by private prosecution or a motion by the aggrieved.

Article 573

(1) The right to reopening criminal proceedings completed by a final decision before 1st January 1954 shall be regulated by a separate law. Until that date Article 6 of the Introductory Law for the Criminal Procedure Code (*Official Gazette of the FNRY*, No. 40/53) shall remain effective.

(2) In respect of the indemnification of persons who were wrongfully convicted or unlawfully deprived of liberty, the provision of Article 7 of the Introductory Law for the Criminal Procedure Code (*Official Gazette of the FNRY*, No. 40/53) shall be applied after the effective date of this Code, except where provided for otherwise by the federal law referred to in paragraph 1 of this Article.

Article 574

(1) If a decision against which an extraordinary legal remedy could be sought pursuant to the law then in force has been issued by the effective date of this Code, and the decision has not yet been delivered, or the time limit for submitting an extraordinary legal remedy is still running, or if no decision has yet been taken on an extraordinary legal remedy which has been sought, the provisions of the Criminal Procedure Code (*Official Gazette of the SFRY*, Nos. 4/77, 14/85, 74/87, 57/89 and 3/90 and *Official Gazette of the FRY*, Nos. 27/92 and 24/94) shall be applied in respect of the right to a legal remedy and the legal remedies procedure.

(2) If by the effective date of this Code the republican supreme courts still have pending legal remedies cases for whose adjudication the jurisdiction lies with the Federal Court, the cases shall be referred to the Federal Court.

Article 575

The secondary legislation prescribed by this Code shall be issued by the competent authorities within six months of the effective date of this Code.

Article 576

By the entry into force of the present Code, the Criminal Procedure Code (*Official Gazette of the SFRY*, Nos. 4/77, 14/85, 74/87, 57/89 and 3/90, and *Official Gazette of the FRY*, Nos. 27/92 and 24/94) shall be revoked.

Article 577

This law shall enter into force three months from the date of its publication in the *Official Gazette of the FRY*.

Independent Articles of the Law on Revisions of the Criminal Procedure Code

(Official Gazette of the FRY, No. 68/2002)

Article 12

The Legislative and Legal Commission of the Federal Assembly is hereby authorised to determine the consolidated text of the Criminal Procedure Code.

Article 13

This law shall enter into force on the eighth day from the date of its publication in the *Official Gazette of the FRY*.

Independent Articles of the Law on Revisions of the Criminal Procedure Code

(Official Gazette of the RS, No. 58/2004)

Article 69

By the date of entry into force of this Code the provisions of Article 15b of the Law on the Organisation and Competences of State Authorities in the Suppression of Organised Crime (*Official Gazette of the RS*, Nos. 42/2002, 27/2003, 39/2003, 67/2003 and 29/2004) shall be revoked.

Article 70

This law shall enter into force on the eighth day from the date of its publication in the *Official Gazette of the Republic of Serbia*.

Independent Article of the Law on Revisions of the Criminal Procedure Code

(Official Gazette of the RS, No. 85/2005)

Article 5

This law shall enter into force on the following day from the date of its publication in the *Official Gazette of the Republic of Serbia*.

Independent Article of the Law on Revisions of the Criminal Procedure Code

(Official Gazette of the RS, No. 49/2007)

Article 4

This law shall enter into force on the date of its publication in the *Official Gazette of the Republic of Serbia*.

Independent Articles of the Law on Revisions of the Criminal Procedure Code

(Official Gazette of the RS, No. 72/2009)

Article 144

If an appeal against a first-instance judgement has been submitted by the effective date of this Code, the appeal shall be decided by the second-instance court in a chamber composed in accordance with the provisions of Criminal Procedure Code (*Official Gazette of the FRY*, Nos. 70/01 and 68/02 and *Official Gazette of the RS*, Nos. 58/04, 85/05, 115/05, 49/07 and 20/09 – other law).

Article 145

If an appeal against a second-instance judgement has been submitted by the effective date of this Code, or if the time limit for submitting appeals against second-instance judgements has not yet expired, the appeals proceedings shall be completed in accordance with provisions of the Criminal Procedure Code (*Official Gazette of the FRY*, Nos. 70/01 and 68/02 and *Official Gazette of the RS*, Nos. 58/04, 85/05, 115/05, 49/07 and 20/09 – other law).

In the case referred to in paragraph 1 of this Article decisions on appeals shall be taken by a chamber composed in accordance with provisions of the Criminal Procedure Code (*Official Gazette of the FRY*, Nos. 70/01 and 68/02 and *Official Gazette of the RS*, Nos. 58/04, 85/05, 115/05, 49/07 and 20/09 – other law).

Article 146[s]

Provisions of the Criminal Procedure Code (*Official Gazette of the FRY*, Nos. 70/01 and 68/02 and *Official Gazette of the RS*, Nos. 58/04, 85/05, 115/05, 49/07 and 20/09 – other

law) shall be applied to persons who have by the effective date of this Code submitted requests for extraordinary mitigation of penalties and requests for reviewing the legality of final judgements.

If the time limit for submitting requests for reviewing a final judgement had not expired by the effective date of this Code, and a request is submitted by the expiry of the prescribed time limit, proceedings in connection with the request shall be conducted according to the provisions of the Criminal Procedure Code (*Official Gazette of the FRY*, Nos. 70/01 and 68/02 and *Official Gazette of the RS*, Nos. 58/04, 85/05, 115/05, 49/07 and 20/09 – other law).

Article 147

Persons who had by the effective date of this Code gained the status of cooperating witness shall be subject to the application of the legal provisions on cooperating witnesses which were in force at the time the status was acquired.

Article 148

Until the Supreme Court of Cassation begins operation, the activities of that court prescribed by this Code shall be transacted by the Supreme Court of Serbia.

Article 149

On the effective date of this Code, the Criminal Procedure Code (*Official Gazette of the RS*, Nos. 46/06, 49/07 and 122/08) shall be revoked.

Article 150

This law shall enter into force on the eighth day from the date of its publication in the *Official Gazette of the Republic of Serbia*.

Independent Article of the Law on Revisions of the Criminal Procedure Code

(Official Gazette of the RS, No. 76/2010)

Article 3

This law shall enter into force on the eighth day from the date of its publication in the *Official Gazette of the Republic of Serbia*.