

REPUBLIC OF SERBIA

CRIMINAL PROCEDURE CODE

Belgrade, 2021

CRIMINAL PROCEDURE CODE

Note: This is a true translation of the original Law,
but it is not legally binding.

Original title:

ZAKONIK O KRIVIČNOM POSTUPKU

© 2021, JP “Službeni glasnik”

Sva prava su zadržana. Nijedan deo ove brošure ne može biti reprodukovan niti smešten u sistem za pretraživanje ili emitovan u bilo kom obliku, elektronski, mehanički, fotokopiranjem, snimanjem ili na drugi način, bez prethodne pismene dozvole izdavača.

All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system, without permission in writing from the publishers.

CONTENTS

CRIMINAL PROCEDURE CODE

Part One	3
Part Two	100
Part Three	175
ARTICLES NOT INCLUDED IN THE FINAL TEXT	207

CRIMINAL PROCEDURE CODE*

Part One

GENERAL PART

Chapter I

BASIC PROVISIONS

Subject Matter of the Code

Article 1

This Code shall establish the rules the aim of which 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 law, based on lawfully and fairly conducted proceedings.

This Code shall also establish the 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 material gain, resolution of property claims and issuance of wanted circulars and notices.

Meaning of Expressions

Article 2

Certain expressions used in this Code shall have the following meaning:

1) “suspect” shall be 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/she committed a criminal offence, and a person against whom an investigation is being conducted;

2) “defendant” shall be 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 main hearing or hearing for pronouncing a criminal sanction has not yet been set, but also an expression used as a general term for a suspect, an accused person, a defendant and a convicted person;

* Published in the *Službeni glasnik RS*, Nos. 72/11 of 28 September 2011, 101/11 of 30 December 2011, 121/12 of 24 December 2012, 32/13 of 8 April 2013, 45/13 of 22 May 2013, 55/14 of 23 May 2014, 35/19 of 21 May 2019 and 27/21 of 24 March 2021 (CC). The latest changes are given in *italic*.

3) “accused” shall be a person against whom an indictment has been confirmed and a person against whom a main hearing 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) “convicted” person shall be 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/she is not to be regarded as convicted under the provisions of the Criminal Code;

5) “prosecutor” shall be a public prosecutor, private prosecutor and subsidiary prosecutor;

6) “public prosecutor” shall be 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) “private prosecutor” shall be a person who has submitted a private prosecution in connection with a criminal offence prosecutable by law by private prosecution;

8) “subsidiary prosecutor” shall be a person who has taken over prosecution from a public prosecutor;

9) “party” shall be 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 an expression 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) “injured party” shall be a person whose personal or property right has been violated or jeopardised by a criminal offence;

12) “representative of the injured party” shall be the legal representative and proxy of the injured party, subsidiary prosecutor and private prosecutor;

13) “police” shall be 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 law;

14) “proceedings” shall be the pre-investigation proceedings and criminal proceedings;

15) “authority conducting proceedings” shall be the public prosecutor, the court or other public authority before which the proceedings are being conducted;

16) “competent bar association” shall be the bar association with which a lawyer is registered;

17) “grounds for suspicion” shall be a set of facts which indirectly show that a criminal offence has been committed or that a certain person is the perpetrator of a criminal offence;

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

19) “justified suspicion” shall be a set of facts which directly substantiate grounded suspicion and justify the filing of an indictment;

20) “certainty” shall be a conclusion about indubitable existence or non-existence of facts, based on objective standards of reasoning;

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

22) “cross-examination” shall be 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” shall be an arrest, retaining, prohibition of leaving an abode, detention, and a stay in an institution which is under this Code counted into detention;

24) “common law marriage” shall be 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” shall be an association of two persons which by its duration and mutual obligations has the properties of family life;

26) “instrument” shall be 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” shall be photographic, cinematographic, television or other recording by a technical device which makes a video recording or a video and audio recording;

28) “audio recording” shall be the recording of speech and other sound effects by technical devices which make an audio recording;

29) “electronic record” shall be the audio, video or graphical data in electronic (digital) form;

30) “electronic address” shall be a set of characters, letters, numbers and signals intended for determining the origin of a connection;

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

32) “electronic signature” shall be the set of data which is defined as an electronic signature under the law regulating the electronic signature;

33) “organised criminal group” shall be 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 financial or other gain;

34) “organised crime” shall represent the commission of criminal offences by an organised criminal group or its members;

35) “criminal law” shall be the Criminal Code and other law of the Republic of Serbia containing provisions of criminal law;

36) “transaction” shall be the treatment of property defined as a transaction under the law that regulates the prevention of money laundering;

37) “data record” shall be 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” shall be secret data and foreign secret data defined in accordance with the law that regulates classified 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 public 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 shall be the authorised prosecutor for criminal offences which are prosecuted *ex officio*, and the private prosecutor shall be the authorised prosecutor for criminal offences prosecutable by private prosecution.

Criminal prosecution shall be 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/she is abandoning prosecution (Article 52), he/she may be replaced by a subsidiary prosecutor, under the conditions prescribed by this Code.

Legality of Criminal Prosecution

Article 6

The public prosecutor shall be 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.

Notwithstanding 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/her favour.

Initiation of Criminal Proceedings

Article 7

Criminal proceedings shall be 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 (Article 504 paragraph 1, Article 514 paragraph 1 and Article 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 shall be 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.

Information of an investigation 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 shall be effective as of:

- 1) the confirmation of the indictment;
- 2) the scheduling of a main hearing or hearing for pronouncing a criminal sanction in summary proceedings;

3) the scheduling of a main hearing 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 shall communicate this information to the defendant and his defence counsel at their request.

The Language and Script Used in Proceeding

Article 11

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

Proceedings shall be 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 shall be entitled to use their own languages and scripts during proceedings, and, where proceedings are not being conducted in their language and if, 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, shall be secured and paid from budget funds.

Translation and interpretation shall be entrusted to a translator.

Authorisation to Pronounce Criminal Sanction

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/her presence, except where trials in absentia 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/herself.

Trial within a Reasonable Deadline

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 shall be urgent.

Evidentiary Actions

Article 15

Evidence shall be collected and examined in accordance with this Code.

The burden of proof shall be on the prosecutor.

The court shall examine evidence upon motions by the parties.

The court may order a party to propose additional evidence, or, exceptionally, order such evidence to be examined, should it find 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 Determining Facts

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 contradiction to the Constitution, this Code, other law or generally accepted rules of international law and ratified international treaties, except in court proceedings in connection with the obtaining of such evidence.

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

The court shall assess 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 shall rule in favour of the defendant.

Preliminary Issue

Article 17

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

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

If a decision on the legal issue 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 shall not be 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 shall be entitled to compensation of damages by the state and other rights prescribed by law.

Duty to Assist a Participant in Proceedings

Article 19

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

Suspension of Proceedings due to Death of Defendant

Article 20

If established that during criminal proceedings the defendant has died, the authority conducting proceedings shall issue ruling suspending the proceedings.

Chapter II

COURT JURISDICTION

1. Court Composition

Composition of Trial Panels

Article 21

First-instance courts shall adjudicate in panels comprising:

- 1) one judge and two lay judges for criminal offences punishable by a term of imprisonment exceeding eight years and up to twenty years;
- 2) two judges and three lay judges for criminal offences punishable by a term of imprisonment from thirty to forty years *or life sentence**;
- 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 shall adjudicate in panels comprising:

- 1) three judges, unless otherwise stipulated by this Code;
- 2) five judges, for criminal offences punishable by a term of imprisonment from thirty to forty years *or life sentence** and for criminal offences determined by a separate law as being within the jurisdiction of a prosecutor's office of special jurisdiction.

Third-instance courts shall adjudicate in panels comprising:

- 1) three judges, unless otherwise stipulated by this Code;
- 2) five judges, for criminal offences punishable by a term of imprisonment from thirty to forty years *or life sentence** and for criminal offences determined by a separate law as being within the jurisdiction of a prosecutor's office of special jurisdiction.

Courts shall 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 main hearing and initiating proposals in cases specified by this Code or other statute.

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

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

* Published in the *Službeni glasnik RS*, No. 35/19 of 21 May 2019.

Judges

Article 22

A single judge shall adjudicate 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 shall adjudicate in cases specified in this Code.

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

The judge for the execution of criminal sanctions shall decide in the procedure of executing criminal sanctions and other cases specified by 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 shall have 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 shall have jurisdiction.

Defendant's Temporary or Permanent Residence

Article 24

If the place where the act of 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 shall have jurisdiction.

In case proceedings have been instituted in accordance with paragraph 1 of this Article, the court which has initiated proceedings shall 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/she is arrested, or where he/she surrenders himself, shall have 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 shall have jurisdiction, and in other cases, the court which has jurisdiction shall 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 Means of Public Information

Article 27

If a criminal offence was committed through the means of public information, the court on whose territory lies the seat of the means of public information, shall have 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 shall have jurisdiction.

Where the author of the information is accountable under the law, the court where the author has temporary or permanent residence shall have 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 shall 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 shall have 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 shall designate one among all courts with subject 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 and 2 of this Article and a higher court for others, the higher court shall have jurisdiction for conducting single criminal proceedings. Where courts of the same type have jurisdiction, the court in whose territory the proceedings were first instituted shall have 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 shall not be 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 main hearing, 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 shall be issued by the court after hearing the present prosecutor and defendant.

An appeal shall not be allowed against the ruling referred to in paragraph 2 of this Article.

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 shall be required to notify thereof the immediately higher court, which shall issue a ruling designating another court with substance matter jurisdiction in its territory.

An appeal shall not be allowed against the ruling referred to in paragraph 1 of this Article.

Reasons of Purposefulness

Article 33

Acting on a motion by the judge for the preliminary proceedings, a single 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 shall 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 shall be 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 during the main hearing has been initiated the court determines that a lower court is competent, it shall not refer the case to the lower court, but shall 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 shall be 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 shall 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 shall initiate proceedings for resolving the conflict of jurisdiction.

Notwithstanding 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 shall be 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 shall be required to conduct procedural actions that cannot be postponed.

A ruling issued in connection with a conflict of jurisdiction shall not be 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) if was injured by the criminal offence;
- 2) if a defendant, defence counsel, the prosecutor, the injured parties, their legal representatives or proxies is his/her spouse or person with whom he/she lives in a common law marriage or other permanent personal association or a relative by blood to any degree, or collaterally to the fourth degree, and by marriage to the second degree;
- 3) if the judge is a foster-parent or foster-child, adopter or adoptee, guardian or ward of the defendant, his/her 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 from judiciary duty 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 learning of the existence of any of the grounds for his/her recusal (Article 37 paragraph 1), a judge or lay judge shall be required to suspend all work on the case and notify thereof the president of the court, who shall issue a ruling on recusal of the judge and assign the case to another judge according to the order.

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

Recusal Motion

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 main hearing, and where they learn of grounds for recusal at a later date, they shall file such motions immediately upon becoming aware of those grounds.

The parties and defence counsel may request 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 shall be required to substantiate in their motion the evidence and the circumstances which led them to believe in the existence of any of the grounds for recusal of a judge, lay judge or the president of the court. 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

Should a judge or lay judge learn that a recusal motion against him/her has been submitted, he/she shall be 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/she 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 Motion

Article 41

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

In case 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 shall be rendered by the president of the immediately higher court, and if the recusal of the president of the Supreme Court of Cassation is sought, the ruling shall be rendered by a General session.

Prior to issuing a ruling on a recusal motion, statements shall be 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 contrary to 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 session, the aforementioned ruling shall be 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 shall be decided by the appellate court. Where such 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.

An appeal cannot be filed against the ruling denying or upholding a recusal motion.

***Mutatis Mutandis* Application of Provisions on Recusal**

Article 42

The provisions on the recusal of judges and lay judges shall 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 otherwise provided by this Code (Article 116).

Public prosecutor shall decide on motions for the recusal of persons authorised by law to deputise him/her in criminal proceedings. Motions for recusal of a public prosecutor shall be 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 shall be 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 shall be ruled on by the public prosecutor. If a record-keeper participates in the performance of such actions, motions to recuse the record-keeper shall be ruled on by the police official performing the action.

Chapter IV

PUBLIC PROSECUTOR

Rights and Duties of a Public Prosecutor

Article 43

The basic right and the basic duty of a public prosecutor shall be to prosecute the perpetrators of criminal offences.

In the case of criminal offences prosecutable *ex officio*, the public prosecutor shall be 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 shall be required to notify the competent public prosecutor of each and every action taken with the aim of detecting a criminal offence and locating a suspect. The police and other state authorities responsible for discovering criminal offences shall be required to comply with every request of the competent public prosecutor.

Where the police or other state authority fails to comply with a request of the public prosecutor referred to in paragraph 1 of this Article, the public prosecutor shall 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 state authority fail 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/she believes is responsible for not complying with his/her request.

Public Prosecutor's Substance Matter Jurisdiction

Article 45

The substance matter jurisdiction of the public prosecutor shall be 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 shall be 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 it is uncertain in which territory 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).

Conflict of Jurisdiction between Public Prosecutors

Article 47

Conflict of jurisdiction between public prosecutors shall be resolved by a common immediately superior public prosecutor.

Conflict of jurisdiction between public prosecutors of special jurisdiction, or a public prosecutor of special jurisdiction and another public prosecutor, shall be resolved by the Republic Public Prosecutor.

Manner of Undertaking Actions

Article 48

Public prosecutors shall 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 shall also be taken by a public prosecutor who is not competent, but he/she must immediately notify the competent public prosecutor thereof.

Withdrawal of Charges by the Public Prosecutor

Article 49

A public prosecutor may withdraw charges:

1) from the moment of confirmation of the indictment until the conclusion of the main hearing;

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

In case when a public prosecutor dismisses charges in accordance with paragraph 1 of this Article, the injured party shall be entitled to assume criminal prosecution (Article 52).

Chapter V

INJURED PARTY, SUBSIDIARY PROSECUTOR AND PRIVATE PROSECUTOR

1. Injured Party

Rights of the Injured Party

Article 50

The injured party shall be 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 subject 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 main hearing and participate in presentation of 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/she is questioned as a witness.

The public prosecutor and the court shall 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/she shall be required to notify the injured party thereof within eight days and to advise him that he/she shall be entitled to submit an objection to the immediately higher public prosecutor.

The injured party shall be 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/she shall be 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 shall 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 shall not be allowed. By the ruling upholding the objection, the public prosecutor shall issue a compulsory instruction to the competent public prosecutor to conduct or resume criminal prosecution.

Assuming Criminal Prosecution by the Injured Party

Article 52

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

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

If the injured party declares that he/she shall assume criminal prosecution, the court shall resume the trial or schedule a main hearing. In case the injured party does not declare himself/herself within the time limit referred to in paragraph 2 of this Article or declares that he/she does not wish to assume criminal prosecution, the court shall issue a ruling discontinuing the proceedings or a judgment dismissing the charges.

If the injured party is not present at the preparatory hearing or the main hearing, 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 shall be presumed that he/she does not wish to assume prosecution and the court shall issue a ruling discontinuing the proceedings or a judgment dismissing the charges.

Motion for Criminal Prosecution

Article 53

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

The motion for criminal prosecution shall be 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 shall be deemed that he/she is thereby also submitted a motion for criminal prosecution.

A timely private prosecution shall be deemed a timely motion by the injured party if during the proceedings it is established that it is a matter of 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 shall 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, and by the conclusion of the main hearing at the latest. In such 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, shall be 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

In case the injured party is a minor or a person completely business incompetent, his/her legal representative shall be 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/her spouse, common-law spouse or other persons with whom he/she had lived in a common law marriage or other permanent personal association, children, parents, adopter, adoptee and siblings and legal representative may, within three months of his/her 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 be duly applied 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 shall be entitled to:

- 1) represent accusation 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/her capacity as a state 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/her, if this is in the best interest of the proceedings and if the financial standing of the subsidiary prosecutor makes it impossible for him/her to bear the costs of representation.

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

Termination of Capacity of a Subsidiary Prosecutor

Article 60

The capacity of a subsidiary prosecutor shall cease in the following cases:

- 1) by dismissing charges;
- 2) if the public prosecutor assumes criminal prosecution;
- 3) by his/her 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 main hearing, or the trial before a second instance court (Article 450, paragraph 5). The declaration on dismissal of charges shall be irrevocable.

If a subsidiary prosecutor does not appear at the preparatory hearing or the main hearing although he/she 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 shall be presumed that he/she has waived charges and the court shall 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 shall be entitled to assume criminal prosecution and representation of the prosecution no later than the end of the main hearing.

Mutatis Mutandis 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 a Private Prosecutor

Article 64

Private prosecutors shall be 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) undertake other actions provided for by this Code.

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

Private Lawsuit

Article 65

Private lawsuit shall be filed with the competent court.

Private lawsuit shall be 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 it is a matter of 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 against whom a private lawsuit for a criminal offence has been launched, may by the end of the main hearing and 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/her a criminal offence prosecuted by a private lawsuit.

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

*Mutatis Mutandis Application of Provisions on the Injured Party and the Subsidiary
Prosecutor*

Article 67

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

Chapter VI

DEFENDANT AND DEFENCE COUNSEL

1. Defendant

The Defendant's Rights

The defendant shall be entitled:

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

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

3) to defend himself/herself 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 the 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, prior to the interrogation, the criminal complaint, the crime scene report, and the findings and opinions of an expert witnesses;

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

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

9) to collect evidence for his/her own defence;

10) to state his/her position in relation to all the facts and evidence against him/her and to present facts and evidence in his/her favour, to question witnesses for the prosecution and to demand that witnesses for the defence be questioned in his/her 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 shall be required to advise the defendant before his/her first interrogation of the rights referred to in paragraph 1, items 2) to 4) and item 6) of this Article.

Rights of the 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 shall be entitled to:

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

2) prior to being interrogated, to have a confidential conversation with his/her 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/her be notified without delay about his/her arrest, as well as a diplomatic and consular representative of the state of which he/she 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/she be examined without delay by a physician of his/her 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 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 shall be required to:

- 1) respond to a summons from the authority conducting proceedings;
- 2) notify the authority conducting proceedings about the change of his/her temporary or permanent residence, or about his/her intention to change his temporary or permanent residence.

2. Defence Counsel

Rights of the Defence Counsel

Article 71

The defence counsel shall be entitled to:

- 1) conduct a confidential conversation with the arrested person prior to 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 before as well, 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) undertake other actions set for by this Code.

Duties of the Defence Counsel

Article 72

The defence counsel shall be required to:

- 1) submit his/her power of attorney without delay to the authority conducting proceedings;
- 2) provide to the defendant assistance with his/her 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 or renouncing the rights;
- 5) provide legal assistance to the defendant within 30 days from the date when he/she revoked the power of attorney, unless a defence counsel is selected prior to the expiry of that time limit in accordance with Article 75 paragraph 1 of this Code.

Should the defendant declare to the authority conducting proceedings that he/she refuses an *ex officio* defence counsel and that he/she wishes to conduct his/her own defence, the *ex officio* defence counsel shall be required to:

- 1) be informed about the content of evidentiary actions and the content and course of the main hearing;
- 2) provide explanation and advice to the defendant in writing, if the defendant refuses to talk to him/her;
- 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 undertake other procedural actions at the request of the defendant, or with his/her explicit 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 up to five years, an attorney may be replaced by a legal trainee.

The following cannot be a defence counsel:

- 1) co-defendant, injured party, spouse or person living 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 main hearing as witnesses, except if under this Code they may not be questioned as witnesses, or have been relieved from the duty to testify and have duly declared that they shall not testify;
- 3) persons who had in the same case acted as judge, public prosecutor, representative of an injured party, police officer, or other person who had performed actions in the pre-investigation proceedings;
- 4) defence counsel of a co-defendant charged in the same case for 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/she is mute, deaf, blind or incapable to conduct his/her 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/she 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/she 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 main hearing is being held in his/her absence due to inability he/she himself/herself induced – from the issuance of a ruling for the main hearing to be held in absentia until the finality of the ruling by which the court establishes the cessation of inability to stand the main hearing;

6) if he/she has been removed from the courtroom for disturbing the order, until the conclusion of the evidentiary procedure or the termination of the main hearing – from the issuance of the order on his removal until his/her 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/her – 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 hearing is held in his/her absence (Article 449 paragraph 3) – from the moment of adoption of the ruling to hold the hearing 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, or his/her 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.

Ex officio 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/she 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 an ex officio 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 shall be 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 shall be effective.

An *ex officio* defence counsel may seek his/her recusal only on justifiable grounds.

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

Defence of an Indigent Person

Article 77

A defence counsel shall be appointed for a defendant who because of his/her 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 such 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 single judge shall decide on the request referred to in paragraph 1 of this Article, and the defence counsel shall be 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 an *ex officio* defence counsel.

Joint Defence Counsel and Several Defence Counsels

Article 78

Several defendants in the same case may have a joint 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 joint defence counsel in contravention of paragraph 1 of this Article or Article 73 paragraph 3 item 4) of this Code, the authority conducting proceedings shall invite them to agree within three days which of them would be defended by the former defence counsel who defended all of them, or for each of them to choose a different defence counsel. Should they fail to do so in the case of mandatory defence, an *ex officio* defence counsel shall be appointed for them.

One defendant may have a maximum of five defence counsel in one proceeding, and it shall 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 shall invite him to choose within three days which defence counsel he shall retain, and caution him/her that if he/she 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 shall be deemed his defence counsel.

Termination of the Rights and Duties of Defence Counsel

Article 79

The rights and duties of defence counsel shall be terminated:

- 1) if the power of attorney is withdrawn or cancelled;
- 2) if the defence counsel is discharged.

Reasons for Discharge of the Defence Counsel

Article 80

A defence counsel of choice shall be discharged if:

- 1) any of the reasons referred to in Article 73 paragraph 3 of this Code exists;
- 2) after being cautioned and fined he/she continues to disturb the order in the court;
- 3) criminal proceedings are instituted against him/her based on grounded suspicion that in connection with the same case he/she had committed the criminal offence of preventing and obstructing evidentiary actions or escape or assisted escape of a person deprived of liberty;
- 4) he/she 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, an *ex officio* defence counsel shall 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/she 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 Discharge

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 a single judge shall decide on discharge of the defence counsel.

Prior to issuing its decision, the court shall be required to invite the defendant and the defence counsel to state their position in relation to the reasons for discharge of 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 discharge of a defence counsel does not stay its enforcement.

The ruling on discharge 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 shall notify the competent bar association about discharge of a defence counsel 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 shall be collected and presented in proceedings in accordance with the provisions of this Code, as well as in other manner prescribed by law.

Subject-matter of Evidentiary Actions

Article 83

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

The subject-matter of evidentiary actions shall also be 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 contrary to Article 16 paragraph 1 of this Code (unlawful evidence) may not be used in criminal proceedings.

Unlawful evidence shall be 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 to be destroyed and a record is made about their destruction.

Notwithstanding paragraph 2 of this Article, unlawful evidence shall be 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

Prerequisites for the Interrogation of the Defendant

Article 85

When a defendant is being interrogated for the first time, he/she shall be asked to state his/her first name and surname, his/her citizen's unique identification number or the number of a personal document, nickname, the first names and surnames of his/her parents,

his/her mother's maiden name, his/her place of birth, his/her residence, day, month and year of birth, citizenship, occupation, family circumstances, literacy status, professional qualifications, his/her and his/her family's financial standing, whether he/she was ever convicted of any offence, when and what for, whether he/she served any sanction pronounced against him/her, and whether proceedings are being conducted against him/her in connection with another criminal offence.

The defendant shall 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/her duties (Article 70) and the consequences of not abiding by them.

The defendant shall then be invited to state expressly whether he/she shall retain a defence counsel of his/her own choosing, and cautioned that if he/she does not choose a defence counsel in the case of mandatory defence, a defence counsel shall be appointed *ex officio*, 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 such right, if a duly summoned defence counsel is not present although he/she 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 such 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.

Defendant Interrogation Rules

Article 86

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

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

After a defendant has completed his/her statement, and it is necessary to supplement the statement or clarify it, he/she shall be asked questions which must be clear, unambiguous and understandable, which may not contain deception or be based on an assumption that he/she has admitted to something which he/she 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/her confession, the authority conducting proceedings may invite him/her to explain why he/she had made differing statements or why he/she had recanted his/her confession.

Interrogation through an Interpreter or Translator

Article 87

If a defendant is deaf, he/she shall be questioned in writing, if the defendant is mute, he/she shall be invited to reply in writing and if he/she is blind, the contents of written evidence shall be presented to him orally. If the interrogation cannot be conducted in this

manner, a person capable of communicating with the defendant shall be invited to serve as an interpreter.

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

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

The provisions of this Code relating to expert witnesses shall 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 shall be required to continue collecting evidence about the perpetrator and the criminal offence only where grounded suspicion exists 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 shall be placed facing each other and shall be 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 shall be entered into record by the authority conducting the proceedings.

Recognition of Persons or Objects

Article 90

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

The defendant shall then be asked to state whether he/she 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/her or objects whose basic characteristics are similar to those he/she has described.

In line 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 shall be a person for whom it is probable that he/she shall 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/her knowledge or observations in connection with the subject-matter of the testimony shall have the capacity to give evidence.

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

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

Exclusion from Duty of Testifying

Article 93

The duty to testify shall not apply to:

1) a person who would by his/her statement violate the duty of preserving confidential data, until the competent authority or person from state authorities revokes the data confidentiality or releases him/her from that duty;

2) a person who would by his/her statements violate the duty to preserve the professional secrecy (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/she was told by the defendant;

Notwithstanding paragraph 1 of this Article, the court may decide, at the proposal of the defendant or his/her defence attorney, to interrogate a person who has been excluded from the duty to testify.

Relieving from the Duty of Testifying

Article 94

The following shall be released from the duty of testifying:

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 final and inclusive of the second degree;

3) adopter and adoptees of the defendant.

Minors, who, in view of their age and mental development are 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 shall be required to caution the person referred to in paragraph 1 of this Article that he/she does not have to testify before questioning or as soon as it learns about his/her relationship with the defendant. The caution and the response shall be entered into record.

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

Preconditions for Questioning Witnesses

Article 95

Witnesses shall 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 shall also be cautioned that they are not required to answer certain questions if it 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 shall be entered into record.

Witnesses shall then be asked to provide their first name and surname, citizen's unique identification 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 shall 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 contrary to 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 contrary to Article 9 of this Code, the court's decision may not be based on the testimony of such witness.

Witnesses' Oath

Article 96

Witnesses shall be required to take the oath, prior to testifying.

Witnesses may take the oath, prior to the main hearing, only where there is a danger that poor health or another reason could prevent them from attending main hearing. The reasons for taking the oath on that date shall be entered in the record.

The text of the oath shall say: "I swear by my honour that I shall tell only the truth about everything I am asked, and that I shall omit nothing of what I have knowledge of".

Witnesses shall 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 shall sign the text of the oath, and deaf, blind or mute witnesses who are illiterate shall take the oath with the help of an interpreter.

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

Witnesses not Taking the Oath

Article 97

The following witness shall not take the oath:

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

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

Witnesses Interrogation Rules

Article 98

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

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

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

Witnesses shall always be asked for the origin of their knowledge.

Injured parties questioned as witnesses shall 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 shall be 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 shall be 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 h/she had described them, the recognition shall be performed in accordance with Article 90 of this Code.

The recognition of persons in the pre-investigation proceedings and during the investigation shall be 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 shall be 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/her absence, or without authorisation or a justifiable reason leaves the location where he/she was to be

questioned, the authority conducting proceedings may order that the witness be brought in by force, and the court may impose a fine of up to 100,000 dinars.

If a witness appears, and after being cautioned about the consequences refuses to testify without legal justification, the court may impose a fine of up to 150,000 dinars and if the witness still refuses to testify, he/she may be punished again with the same sanction.

An appeal against a ruling pronouncing a fine shall be 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 shall be required to protect an injured party or witness from an insult, threat and any other attack.

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

An appeal against a ruling pronouncing a fine shall be decided on by the panel. The appeal shall 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 shall 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/herself, designate as an especially vulnerable witness a witness who is especially vulnerable in view of his age, life 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 shall be issued by the public prosecutor, president of the panel or single judge.

Should it deem 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 shall issue a ruling appointing a proxy for the witness, and the public prosecutor or the president of the court shall appoint a proxy according to the order on the roster of attorneys submitted to the court by the bar association competent for designating *ex officio* defence counsels (Article 76).

No special appeal shall be 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 shall 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 shall be decided by the authority conducting proceedings.

Should the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination shall be 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/her 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/herself 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 shall be 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/herself 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/her identity is not revealed to the general public, and exceptionally also to the defendant and his/her 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 shall not be revealed to the public are excluding the public from the main hearing and prohibition of publication of data about the identity of the witness.

The measure of special protection withholding the data about the identity of a protected witness from the defendant and his/her 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/her 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 shall be revealed by the court to the defendant and his/her defence counsel no later than 15 days before the commencement of the main hearing.

In deciding on the measures of special protection referred to in paragraphs 1 and 2 of this Article, the court shall 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/herself.

The request referred to in paragraph 1 of this Article shall contain: 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/her, and a description of the circumstances to which the provision of evidence relates.

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

If during interrogation the witness withholds the provision of the data referred to in Article 95 paragraph 3 of this Code or 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 shall invite the witness to act within three days in accordance with the provisions of paragraphs 2 and 3 of this Article.

If withholding of data, replies, or testimony is deemed 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 shall apply the provisions of Article 101 paragraph 2 of this Code.

Deciding on Determining the Protected Witness Status

Article 108

During the investigation the judge for preliminary proceedings shall decide on determining protected witness status by issuing a ruling, and after the indictment is confirmed, the panel. The public shall be excluded from the main hearing 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 shall contain a pseudonym of the protected witness, the duration of the measure and the manner in which it shall 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 shall be 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 shall be rendered within three days of the date of receiving documentation.

Interrogating a Protected Witness

Article 109

Once the ruling determining protected witness status becomes final, the court shall, 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 shall be notified that his/her identity shall 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 shall also be informed about the manner in which he/she shall be examined.

The court shall caution all those present that they are required to keep confidential data on the protected witness and persons close to him/her 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 shall be entered in the record.

The court shall 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 shall be handled by a professional.

The protected witness shall sign the minutes using a pseudonym.

Protecting Data on a Protected Witness

Article 110

Data on the identities of the protected witness and persons close to him/her and on other circumstances which may lead to the exposure of their identities shall 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 shall be marked on the cover. The cover shall 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 shall pose secret data. Besides public officials, all other persons who gaining knowledge thereof, in any capacity whatsoever, shall be required to maintain their confidentiality.

Duty of Notification about Special Protection Measures

Article 111

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

Mutatis Mutandis Application of Provisions on a Protected Witness

Article 112

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

v) Expert Examination

a. Basic Provisions

Reasons for Expert Examination

Article 113

The authority conducting the proceedings shall 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 an Expert Witness

Article 114

An expert witness shall be a person who possesses the required professional knowledge for establishing or evaluating a fact in the proceedings.

As a rule, a single expert witness shall 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 are expert witnesses from the list of permanent expert witnesses, other expert witnesses may be designated only in case of danger of a delay, or if the permanent expert witnesses are prevented, or if other circumstances so require.

If there is a professional institution 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, shall, as a rule, be entrusted to such an institution or authority, which shall thereafter designate one or more experts to issue findings and opinions.

If a domestic expert, professional institution or public authority do 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 shall be required to respond to the summons and to provide his/her findings and opinion within a certain time limit. At the request of the expert witness, on justifiable grounds, the authority conducting proceedings may extend this time limit.

If an expert witness duly summoned fails to appear and does not justify his/her absence, or departs without authorization from the location where he/she is to be questioned, the authority conducting proceedings may order him/her brought in forcibly, and the court may impose a fine of up to 100,000 dinars on him/her, 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 fails to provide findings and opinion within the designated time limit, the court

may fine him/her up to 150,000 dinars, and fine a professional institution with 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, if the expert examination is performed by the public authority.

An appeal against a ruling ordering a fine shall be decided on by the panel. An appeal shall 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/her findings and opinion.

Grounds for exemption from the duty of conducting expert examination (Article 37 paragraph 1) also exist in respect of a person 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 shall 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) shall be decided on by the judge for preliminary proceedings or the panel (Article 21 paragraph 4). An appeal shall stay the conduct of expert examination, unless there is a danger of delay.

Ordering an Expert Examination

Article 117

The authority conducting proceedings shall order 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/her 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/her defence counsel to order an expert examination, which shall be 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/her 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 shall also be delivered to the parties.

Expert Examination Order

Article 118

The expert examination order shall contain:

- 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 that need to 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/her name and address shall be designated in the order.

Oath of the Expert Witness

Article 119

An expert witness shall be asked to take an oath before his/her expert examination, and a permanent expert witness shall be cautioned before the expert examination of the oath he/she took previously.

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

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

Process of Expert Examination

Article 120

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

The authority conducting the proceedings shall manage the expert examination, and show to the expert witness the objects he/she shall consider, pose questions and if needed, ask for clarification in respect of the findings and opinion given.

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

The expert witness shall be entitled to request and obtain from the authority conducting proceedings and the parties additional clarification, to examine the objects and review the files, 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 Authority

Article 121

When an expert examination has been entrusted to a professional institution or a state authority, the provisions of Article 119 and Article 120 paragraphs 1 and 2 of this Code shall not be applied, and the authority conducting proceedings shall caution the managing official of the professional institution or the state authority 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 shall place at the disposal of the professional institution or the state authority, the material needed for the expert examination and act in accordance with Article 120 paragraph 3 of this Code.

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

The head of the professional institution or the state authority shall be required to inform a party at its request about the names of the persons who shall 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 a single judge, may, *ex officio* or on a motion of a party or expert witness, 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, shall be 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 a single judge shall 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 shall count towards the defendant's time spent in detention, or time spent serving a custodial criminal sanction.

Findings and Opinion of an Expert Witness

Article 123

An expert witness' findings and opinion given orally shall be immediately entered 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 shall 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 shall inform 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 the Findings and Opinions of an Expert Witness

Article 124

The authority conducting proceedings shall, *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 shall designate another expert witness to perform a new expert examination.

Professional Consultant

Article 125

A professional consultant shall be understood to be 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 shall be entitled to submit to the authority conducting proceedings a motion for appointing a professional consultant. When 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 shall be applied accordingly.

An appeal against a ruling denying the motion referred to in paragraph 3 of this Article shall be 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 shall be 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/her counsel, to review, during the expert examination, the case files 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 main hearing, and to be examined on the subject-matter of the expert examination.

Prior to questioning a professional consultant shall 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 shall be 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/her rights and from delaying the proceedings.

b) Special Cases of Expert Examination

Expert Examination of Bodily Injuries

Article 127

In case of suspicion in relation to the type and manner of origin of a bodily injury, the authority conducting proceedings shall order expert examination of bodily injuries.

As a rule, expert examination of bodily injuries shall be performed by an examination of the injured person, and if this 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 shall be applied accordingly.

Findings and Opinion of an Expert Witness

Article 128

An expert witness shall accurately describe the injuries and if needed, document them photographically, and thereafter render an opinion on the type and severity 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 shall be required to act in accordance with the provision of Article 130 paragraph 2 of this Code.

Expert Examination of a Cadaver

Article 129

In case of doubt 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 shall 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 shall 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 shall 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 shall be taken to establish the identity of the cadaver and to that aim, it shall be 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 shall be secured.

During the examination and autopsy of the cadaver, the expert witness shall be bound 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/she shall secure samples of biological origin (blood, urine, vitreous fluid, bodily organs etc.).

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

In his/her opinion, the expert witness shall 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 shall 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 shall 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 shall 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 course of an examination and autopsy of a foetus or a new born, 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

Should suspicion arise 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/her incapable of participating in the proceedings, the authority conducting proceedings shall order a psychiatric expert examination of the defendant.

Should suspicion arise about the capacity of a witness to convey his/her 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 shall 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 shall 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/she understands individual procedural actions and their consequences, and conducts his/her defence on his/her own or with the help of his/her defence counsel.

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

g) Investigation

Conducting Investigation

Article 133

An investigation shall be 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 investigation may be a person, an object or a location.

In the course of an investigation, the authority conducting proceedings shall, as a rule, request professional assistance from a forensic, traffic, medical or other expert, who shall, 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 investigation if his/her presence would be of benefit for providing findings and opinions.

Investigation of a Person

Article 134

Investigation of a defendant shall be performed even without his/her consent if it is necessary for establishing facts of importance for the proceedings.

Investigation 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).

Investigation of Objects

Article 135

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

Everyone shall be 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 temporarily seized.

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

Investigation of a Location

Article 136

The investigation of a location shall be 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 investigation 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 presented 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 presented, 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 shall 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) Instrument

Using an Instrument as Proof

Article 138

Proving by an instrument shall be performed by reading, observing, listening or inspecting the contents of the instrument in another manner.

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

It shall be 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 shall be determined by examining other evidence and evaluated in accordance with Article 16 paragraph 3 of this Code.

Obtaining an Instrument

Article 139

An instrument shall be obtained *ex officio* or on a motion of the parties by the authority conducting proceedings, or shall be submitted by the parties, as a rule in its original form.

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

The authority conducting proceedings shall 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 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/her 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 buccal 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 shall be 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 /her 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/her 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 shall be performed by a healthcare 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 shall be decided on by the panel. An appeal shall 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 who has been imposed a security measure of compulsory psychiatric treatment.

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

ž) *Verifying Accounts and Suspicious Transactions*

Object of Verification

Article 143

If grounds for suspicion exist 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), *accepting bribe in conducting of a business activity (Article 230, paragraph 2 of the Criminal Code)*, *giving bribe in conducting of a business activity (Article 231 of the Criminal Code)*,* money laundering (Article 245* 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 verification referred to in paragraph 1 of this Article encompasses:

- 1) acquiring data;

* Published in the *Službeni glasnik RS*, No. 35/19 of 21 May 2019.

- 2) monitoring 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 shall be required to keep the fact confidential, that it acted in accordance with paragraph 1 of this Article.

If he/she 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/she declares that he/she shall not request the conduct of proceedings against the suspect, or if he/she deems the collected data unnecessary for conducting proceedings, the public prosecutor shall issue a ruling on the destruction of the collected materials.

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

Monitoring 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 shall be ordered by the judge for preliminary proceedings by a reasoned order. The order shall contain 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 shall be discontinued as soon as the reasons for its application cease to exist.

Unless specified otherwise in the order, the bank or other financial organisation shall be required to notify the public prosecutor before every transaction, that the transaction shall be performed and to specify the time limit in which it shall 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 shall notify the public prosecutor immediately after the performance of the transaction and specify the reasons for the delay.

The bank or financial organisation shall be required to keep confidential 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/she declares that he/she shall not request the conduct of proceedings against the suspect, or if he/she deems the data collected unnecessary for conducting proceedings, the judge for preliminary proceedings shall 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 other financial organisation shall be required to maintain as a secret the data that it has acted in accordance with paragraph 1 of this Article.

z) Temporary Seizure of Objects

Objects Being Seized

Article 147

The authority conducting proceedings shall temporarily 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 temporary seizure of funds which are the object of a suspicious transaction (Article 145) and their placement in a special account for safekeeping shall be issued by the court.

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

Duty of an Object Holder

Article 148

A person holding objects referred to in Article 147 paragraphs 1 and 2 of this Code shall be 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. Prior to seizing the objects, the authority conducting proceedings shall, if needed, inspect the objects, in the presence of a professional.

A person referred to in paragraph 1 of this Article refusing 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 with up to 150,000 dinars, and if after being fined still refuses to fulfil his/her duty, may be punished with the same fine once again. The same shall 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 shall be decided on by the judge for preliminary proceedings or the panel. An appeal shall not stay execution of the ruling.

Exemption from Duty to Surrender Objects

Article 149

The following are exempted from 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 Temporary Seizure of Objects

Article 150

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

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

The person from whom the documents were seized shall be summoned to attend the opening of the cover. If failing to respond or if absent, the authority conducting proceedings shall open the cover, inspect the documents and make a list thereof. When inspecting the documents, care must be taken for unauthorised persons not to be allowed to gain insight into the content thereof.

Return of the Temporarily Seized Objects

Article 151

Objects temporarily seized during proceedings shall be returned to their holder if the reasons for which the objects were temporarily 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/her even before the cessation of the reasons for which it was seized, with an obligation of bringing it in at the request of the authority conducting proceedings.

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

i) Search

a. Basic Provisions

Subject-matter and Grounds for a Search

Article 152

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

A search of a dwelling or other premise or a person shall be 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, shall be undertaken under a court order and, if necessary, with the assistance of an expert.

Temporary Seizure of Objects and Documents

Article 153

During a search, objects and documents connected to the purpose of the search shall be temporarily 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 shall be described in the record and temporarily seized, and a receipt on the seizure shall be issued immediately.

If the search was not undertaken or attended by the public prosecutor, the authority which performed the search shall 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 temporarily seized cease to exist, and the reasons for their confiscation do not exist (Article 535), the objects shall 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 shall post a notice on the notice board of the assembly of the local self-government unit, 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 means of public information, in which it shall 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 shall result in the sale of the object.

If the object is liable to deterioration or its safekeeping demands substantial expense, it shall be sold in accordance with provisions regulating the enforcement procedure, and the money shall be kept in the court deposit, i.e. deposit of the public prosecutor's office.

If within one year no one claims the objects or the proceeds from their sale, the court shall 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 shall be entitled to demand in civil litigation the return of objects or proceeds from their sale. The statutory limit of this right shall begin to run from the date of publication of the notice.

b. Search Based on an Order

Search Order

Article 155

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

The search order shall contain 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 shall perform the search;

5) other data of importance for the search.

The search referred to in paragraph 1 of this Article shall 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 shall be returned to the court.

Search Prerequisites

Article 156

After serving the search order, the holder of a dwelling and other premises or person who shall 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 shall 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 shall be postponed until his/her 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 shall be summoned to attend the search, and if he/she is absent, an adult member of his/her household or another person shall be called to attend the search on his/her behalf.

When military facilities, premises or premises of state authorities, enterprises or other legal persons are searched, their managing official or person he/she designates shall be summoned to attend the search. If the person summoned fails to appear within three hours of receiving the summons, the search may be performed without his/her 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 shall 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/her presence.

The search shall be attended by two adult citizens as witnesses who shall before the commencement of the search be advised to observe the course of the search, and that they shall be entitled, prior to signing 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 shall be 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 shall be conducted during 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 shall 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 shall 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, shall be 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 shall be made of each and every search in which the objects and instruments being seized and the location of their finding shall be accurately described, and a special explanation shall 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 shall be signed by the persons present. In case a person refuses to sign the record, this shall be noted on the record. A receipt shall be made in respect of the seized objects and shall 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 shall be mandatory. The recordings and photographs shall 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 premise 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/her in;
- 5) for the purpose of eliminating a direct and serious threat to persons or property.

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

If a search was undertaken after entering a dwelling and other premise, a record shall be made of the entry into the premises and the search performed without a court order and presence of witnesses, specifying 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/she shall discard, conceal or destroy objects which should be seized from him/her 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 shall 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/she 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/she 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 shall 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), robbery (Article 206, paras. 2 and 3 of the Criminal Code), extortion (Article 214 paragraph 4 of the Criminal Code), *abuse of a position of a responsible person (Article 227 of the Criminal Code), abuse concerning public procurement (Article 228 of the Criminal code), accepting bribe in conducting of a business activity (Article 230 of the Criminal Code), giving bribe in conducting of a business activity (Article 231 of the Criminal Code), counterfeiting money (Article 241, paras. 1 through 3 of the Criminal Code), money laundering (Article 245, paras. 1 through 4 of the Criminal Code), unlawful production and*

circulation of narcotics (Article 246, paras.1 through 4 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), endangering people enjoying international protection (Article 392 of the Criminal Code) and the criminal offence referred to in Article 98, paras. 2 through 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).

Handling 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/she declares that he/she shall not use them in the proceedings or that he/she shall not request the conduct of proceedings against the suspect, the judge for preliminary proceedings shall 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/her identity was established and if it would not threaten the possibility of conducting criminal proceedings. The materials shall be destroyed under the supervision of the judge for preliminary proceedings who shall make 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

* Published in the *Službeni glasnik RS*, No. 35/19 of 21 May 2019.

proceedings, the court's decision may not be based on the data collected and the collected material shall be treated in accordance with Article 84 paragraph 3 of this Code.

Accidental Findings

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.

Data Confidentiality

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 Supervision of Communication

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 supervision 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 shall be ordered by the judge for preliminary proceedings by a reasoned order.

The order referred to in paragraph 1 of this Article shall contain 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 grounds exist 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 shall be 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 shall be executed by the police, Security Information Agency or Military Security Agency. Daily reports shall be made on the conduct of the covert interception of communication and together with the collected recordings of communications, letters or other parcels shall be 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 shall be required to make accessible to the state authority referred to in paragraph 1 of this Article executing 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 in the course of covert interception of communications, it becomes apparent that the suspect is using another telephone number or address, the state authority referred to in Article 168 paragraph 1 of this Code shall 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 shall immediately submit a motion for an expansion of the covert interception of communications. The motion shall be decided on within 48 hours of the receipt of the motion by the judge for preliminary proceedings, who shall make a note thereof in the record.

If approving the motion referred to in paragraph 2 of this Article, the judge for preliminary proceedings shall authorise an expansion of the covert interception of communications, and if denying the motion, the materials collected in accordance with paragraph 1 of this Article shall be 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 shall in the opening of letters and other parcels, take due care not to damage the seals and to preserve the covers and addresses. A record shall be made of the opening. All materials obtained by the implementation of the covert interception of communications shall be delivered to the public prosecutor.

The public prosecutor shall 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 shall apply accordingly to recordings made in contravention of the provisions of Articles 166 to 169 of this Code.

v) Covert Surveillance and 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 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 or 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 recording only if it is probable that the suspect shall be present there or that he is using those vehicles.

Order on Covert Surveillance and Recording

Article 172

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

The order referred to in paragraph 1 of this Article shall contain 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 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 shall be discontinued as soon as the reasons for their application cease to exist.

Conducting Covert Surveillance and Recording

Article 173

The order referred to in Article 172 paragraph 1 of this Code shall be executed by the police, Security Information Agency or Military Security Agency. Daily reports shall be made on the conduct of the covert surveillance and recording and shall be, 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 shall be applied accordingly.

g) Simulated 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 deals

Article 175

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

The order referred to in paragraph 1 of this Article shall contain 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 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 deals may exceptionally be extended two more times at most, by three months, respectively. The conclusion of simulated deals shall be discontinued as soon as the reasons for their application cease to exist.

Implementation of Simulated Deals

Article 176

The order referred to in Article 175 paragraph 1 of this Code shall be 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 shall be made on the implementation of simulated deals and, together with the collected recordings, they are to be 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 deal shall not be committing a criminal offence if the action he/she is undertaking is specified by criminal law as a criminal offence.

It shall be 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 deals, the public authority implementing the order, referred to in Article 175 paragraph 1 of this Code, shall provide the judge for preliminary proceedings with 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 deals, data on the person who concluded the simulated deals, except when it 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 deals.

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

d) Computer Data Search

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 Computer Data Search

Article 179

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

The order referred to in paragraph 1 of this Article shall contain 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 state authority which is required to conduct the search of the requested data, scope and duration of the special evidentiary action.

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 shall be discontinued as soon as the reasons for its application cease to exist.

Implementing Computer Data Search

Article 180

The order referred to in Article 179 paragraph 1 of this Code shall be 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 the computer data search, the state authority, or the legal person referred to in paragraph 1 of this Article shall deliver to the judge for preliminary proceedings a report containing: data on the time of commencing and terminating computer data search, 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 shall 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 will determine by an order the manner of conducting the controlled delivery.

Conducting Controlled Delivery

Article 182

Controlled delivery shall be 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 shall be 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 the controlled delivery, the police or other state authority shall 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 shall be ordered by the judge for preliminary proceedings by a reasoned order.

The order referred to in paragraph 1 of this Article shall contain 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 shall be 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 preliminary proceedings. The engagement of an undercover investigator shall be discontinued as soon as the reasons for his deployment cease to exist.

Designating an Undercover Investigator

Article 185

The minister responsible for internal affairs, director of the Security Information Agency or director of the Military Security Agency, or a person they authorize, shall designate an undercover investigator under a pseudonym or code-name.

As a rule, an undercover investigator shall be 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 shall be 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/her deployment, an undercover investigator shall submit periodical reports to his/her immediate superior.

At the conclusion of the deployment of the undercover investigator, the superior official referred to in paragraph 1 of this Article shall provide the judge for preliminary proceedings with 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 shall deliver the materials and the 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 shall be performed so that the identity of the undercover investigator is not revealed to the parties and the defence counsel.

The undercover investigator shall be summoned through his/her superior officer (Article 186 paragraph 1) who, immediately before the examination, by a declaration given before the court, shall confirm the identity of the undercover investigator. The data on the identity of the undercover investigator being examined as a witness shall be confidential 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/her presence and unobstructed conduct or criminal proceedings shall be as follows:

- 1) summonses;
- 2) bringing in;
- 3) prohibition of approaching, meeting or communicating with a certain person and visiting certain locations;
- 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 shall 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 shall 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 thereto arise.

Control of Observance of Prohibition to Leave a 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, shall be attached to the wrist or ankle or other place on a defendant by a professional, who shall give the defendant detailed instructions on the manner in which the device works. The professional shall control the device which remotely tracks the movements of the defendant and his/her position in space – the receiver.

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

2. Specific Measures

a) Summonses

Content of Summons

Article 191

The presence of a defendant in criminal proceedings shall be secured by summoning him/her. Summonses shall be issued to the defendant by the public prosecutor or the court.

A defendant shall be 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/she is charged, place where the defendant is to appear, date and time when he/she is to appear, remark that he/she 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 shall be ordered against him/her, 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/she shall be advised in the summons on his/her right to retain a defence counsel and that the defence counsel may attend his/her 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/she shall be interrogated in the place where he/she is located or transportation shall be provided for him/her 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 shall summon a witness, expert witness or other participant in the proceedings, and if the public prosecutor fails to do so, at the request of the defendant and his/her defence counsel, the summons shall be 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 shall be summoned by the court, if the court has ordered his/her 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 shall be 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 with to 150,000 dinars. The ruling on the fine shall be issued by the court.

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

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

Summoning by Public Notice

Article 194

If having 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 means of public information.

b) Bringing in

Order to Bring 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/her 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 shall be issued in writing. The order shall contain: 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/she 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 in

Article 196

The order referred to in Article 195 paragraph 1 of this Code shall be 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 shall serve the order to the defendant and call him/her to come with him/her. If the defendant refuses, he/she shall bring him/her 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 shall be executed by their command, or by the institution.

v) *Prohibition of Approaching, Meeting or Communicating with a Certain Person and Visiting Certain Places*

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/she is threatening to commit, the court may prohibit the defendant from approaching, meeting or communicating with certain persons or prohibit the visiting of certain locations.

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 shall decide 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 shall be issued by the judge for preliminary proceedings, and after the indictment is filed by the president of the panel, and at the main hearing, 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 shall be sought before the decision is rendered.

In the ruling pronouncing the measure referred to in paragraph 1 of this Article the defendant shall be cautioned that a harsher measure (Article 188) may be ordered against him/her if he/she violates the prohibition ordered against him. The ruling shall also be 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 shall be bound 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 shall 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 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/her 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/her 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 shall decide 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 shall inform 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 shall be issued by the judge for preliminary proceedings, and after the indictment is filed by the president of the panel, and at the main hearing, 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 shall be sought before the decision is rendered.

In the ruling pronouncing the measure referred to in paragraph 1 of this Article the defendant shall be cautioned that a harsher measure (Article 188) may be ordered against him/her should he/she violate the prohibition ordered against him/her.

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/her travel documents to be returned to him/her, should he/she appoint a proxy to receive mail for him/her in the Republic of Serbia and promise 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 shall be 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 shall not stay the execution of the ruling.

Temporary Seizure of a Driver's License

Article 201

Temporary 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 shall 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 shall be 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/she personally or another on him/her behalf offers a bail that he/her shall not abscond until the conclusion of the criminal proceedings, and if the defendant himself/herself issues a promise before the court conducting the proceedings that he/she shall not go into hiding or leave his abode without the permission of the court.

The bail shall always be 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 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 shall 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 shall be 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 shall be issued by the judge for preliminary proceedings, and after the indictment is filed, by the president of the panel, and at the main hearing, 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 shall 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 shall 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 shall 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 shall be ordered placement in detention.

Repealing Bail

Article 207

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

In the case referred to in paragraph 1 of this Article, the bail shall be repealed by a ruling, the deposited cash money, valuables, securities or other movable assets are returned, and the mortgage is lifted. It shall 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 shall be repealed only after the defendant begins to serve the criminal sanction.

d) Prohibition of Leaving a Dwelling

Conditions for Ordering

Article 208

If circumstances exist 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/her dwelling without permission and determine the conditions under which he/she shall stay in the dwelling, such as a prohibition on using the telephone or the internet or receiving other persons into the dwelling.

Notwithstanding paragraph 1 of this Article, the defendant may leave his/her dwelling without permission if it is necessary for the purpose of an urgent medical intervention, he/she or another person living with him/her 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 shall be 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/she is currently located.

Deciding on the Measure

Article 209

The court shall decide 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 shall be 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 shall 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 shall be cautioned that he/she may be ordered placed in detention should he/she violate 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 shall be 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 shall 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 shall 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 grounded suspicion exists, indicating that he/she has committed a criminal offence if:

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

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

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

4) the criminal offence with which he/she 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/she 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 main hearing may last until the publication of the judgment. In the case referred to in paragraph 1 item 2) of this Article, detention shall 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 shall 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 shall decide on ordering detention on a motion by the public prosecutor, and after the indictment is confirmed, *ex officio* as well.

Before issuing the decision referred to in paragraph 1 of this Article, the court shall 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 shall be 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.

Notwithstanding 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 shall 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 shall decide whether to leave the decision ordering detention in force or to repeal detention.

Ruling Ordering Detention

Article 213

Detention shall be ordered by a ruling of the competent court.

The ruling ordering detention shall contain: the first name and surname of the person being detained, criminal offence with which he/she is charged, legal basis for the detention, time for which detention is being ordered, time of the arrest, notice of right to appeal, substantiation of the grounds and reasons for ordering detention, official seal and signature of the judge who orders detention

The ruling ordering detention shall be served to the defendant at the time of his/her arrest, or no later than 12 hours after he/she 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 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 shall be 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 shall be immediately delivered to the panel.

An appeal shall not stay execution of the ruling. A decision on the appeal shall be 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 shall be 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 shall be allowed against that ruling, but it shall 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 shall 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 shall be issued *ex officio* or on a motion of the parties and the defence counsel.

The panel shall be 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 shall 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 shall be immediately delivered to the panel. An appeal shall 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 shall 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 shall not be accommodated in the same room. If possible, persons for whom there is grounded suspicion of being repeat offenders shall 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 shall be provided a possibility to move outdoors for at least two hours per day.

Detainees shall be 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/she 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/her 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 shall be 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/her 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/her

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 shall 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 international organisation of public law, in case of a refugee or a stateless person is concerned, shall be 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/her. The judge for preliminary proceedings shall 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, 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, shall be 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 2 of this Article shall be 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 shall not stay the execution of the ruling.

The prohibition referred to in paragraph 1 of this Article shall not relate to letters a detainee sends to or receives from international courts, authorized organizations of international public law, Ombudsman and domestic authorities belonging to legislative, judicial and executive branch, as well as to letters he/she 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 shall be 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/her defence, and before the court has comprehensively examined the case.

An appeal to the panel (Article 21 paragraph 4) shall be allowed against the ruling on a penalty issued for a disciplinary offence within 24 hours of the time of receiving the

ruling. An appeal shall not stay the execution of the ruling. The panel shall decide on the appeal within eight days of the date of receiving the appeal.

Monitoring Detainees

Article 222

Monitoring of detainees shall be 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 shall be required, at least once in 15 days, to visit detainees and, if he/she 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 shall be 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 shall be 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.

Rendering By-laws

Article 223

The execution of the measure of detention shall be regulated in detail in a regulation issued by the minister responsible for the judiciary.

Chapter IX

TIME LIMITS

1. Basic Provisions

Calculating Time Limits

Article 224

The time limits specified by this Code cannot be extended, unless 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 so in writing, or orally on the record before the authority conducting proceedings.

Time limits shall be 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, shall not be counted towards the time limit, but the first following hour or day shall be taken as the outset of the time limit. One day shall be counted as 24 hours, and months shall be counted according to calendar time.

Time limits stipulated in months or years shall 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 shall terminate 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 state 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 shall be deemed delivered in time if 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 shall be 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 shall be 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 shall be deemed as the date of delivery to the person to whom it was sent.

A defendant in detention may also orally make a submission the delivery of which 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/she 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 shall 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 shall be considered as having been submitted in a timely manner.

2. Reinstatement to 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, main hearing or a hearing from Article 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 Prior Position

Article 227

An application for reinstatement to a prior position shall be submitted within eight days of the date when the obstacle ceased to exist.

A defendant who missed a time limit for an appeal against a judgment or a ruling corresponding to a judgment, shall be 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, shall not stay execution of the judgment or ruling corresponding to a judgment, but the court having competence to decide on the application may decide to defer the execution until the issuance of a decision on the application.

Upon expiry of a period of three months from the date of the failure to act, reinstatement to prior position cannot be sought.

Deciding on Application for Reinstatement to Prior Position

Article 228

The president of the panel or a single judge who issued the judgment or ruling being challenged by the appeal, or a ruling discontinuing proceedings or a judgment dismissing the charges, shall decide on an application for reinstatement to a prior position, and an application for reinstatement to a prior position shall be decided on by the panel (Article 21 paragraph 4) which issued the ruling dismissing the charges.

An appeal shall not be allowed against the ruling allowing reinstatement to prior position.

When a defendant has appealed against a ruling not allowing reinstatement to a prior position, the court shall be 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 shall be 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 otherwise specified in this Code, the authority conducting proceedings shall 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/she fails to do so within a specified time limit, shall dismiss the submission.

In the notice to correct or amend a submission, the submitter shall be cautioned about the consequences of omission.

A submission which under this Code is delivered to the opposing party shall be 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 shall be copied at the expense of the submitter.

Electronic Submission

Article 230

A submission which, under this Code, is 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 shall be 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 shall confirm 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 shall be deemed not to have been sent.

The authority conducting proceedings shall make an official note on an electronic submission. In the event of an incomprehensible or incomplete submission it shall 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 shall be defined in detail in the Court Rules of Procedure.

Penalizing a Submitter

Article 231

The authority conducting proceedings shall be 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 shall 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 the submission, insult the authority or a participant in proceedings. The competent bar association shall be informed about the penalization of a lawyer and it shall be bound to inform the court about the undertaken measures.

The decision on the fine referred to in paragraph 2 of this Article shall be issued by the court. The panel shall decide on an appeal against the ruling pronouncing a fine. An appeal shall not stay the execution of the ruling.

If the public prosecutor or person deputising him/her, insults another participant in the proceedings in a submission, the court shall notify thereof the competent public prosecutor and the State Prosecutors Council.

2. Transcripts

a) Basic Provisions

Recording Actions

Article 232

A transcript shall 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 shall be 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 shall be composed by the person performing the action, by saying out loud to the record-keeper what to enter into the transcript.

A person being questioned or examined may be allowed to speak for the transcript in his/her own words. In the case of abuse, this possibility may be denied.

Notwithstanding paragraph 1 of this Article, an official note shall be 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 shall also be entered.

Transcript Contents

Article 233

The following shall be entered into 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 shall be entered into the transcript in a narrative form. Questions shall be entered into 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 shall 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 shall be stated so in the transcript, and the objects seized shall be attached to the transcript or it shall 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.) shall be entered in the transcript, and if sketches, drawings, plans, photographs, film and other technical recordings were made – this shall be stated in the transcript and attached to the transcript.

Transcript Keeping Manner

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 shall be entered at the end of the transcript and must be certified by the persons who sign the transcript.

Determining 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 present, shall be entitled to read a transcript or to request that it be read out to them. The person undertaking action shall be required to advise them thereof, and it shall be noted in the record whether the advice was given and whether the transcript was read.

A transcript shall always be read if there was no record-keeper, and it shall be so stated in the transcript.

The transcript shall be signed by the person questioned or examined, and if a transcript is made up of several pages, the person questioned or examined shall sign every page thereof.

An illiterate person instead of signing, shall place a print of the index finger of his/her right hand, and the record-keeper shall write his/her first name and surname under the print. If making a print of the index finger of the right hand is not possible, the print of another finger shall be made, or a print of a finger of the left hand, and it shall 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/she shall read the transcript, and if he/she is illiterate – the transcript shall be read to him, and it shall be stated so in the transcript.

If a person questioned or examined refuses to sign a transcript or leave his/her fingerprint, it shall be so stated in the transcript and the reason for the refusal noted.

At the end of the transcript, the translator or the interpreter shall be signed, if 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 shall be 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 shall be signed by two witnesses, unless securing their presence is not possible.

If it was not possible to undertake the action without interruptions, the date and hour when the interruption began shall 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 shall be entered in the transcript.

The transcript shall be 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 shall be mandatory.

The authority conducting proceedings shall notify the person participating in the action referred to in paragraph 1 of this Article in advance that it shall be recorded.

Audio or video recording may be performed at a main hearing only when authorised for a particular main hearing by the president of the panel. If recording at a main hearing has been authorised, the trial panel may for justifiable reasons decide that certain parts of the main hearing are not to be recorded. Audio recording of a main hearing at which offences referred to in Article 162 paragraph 1 item 1) of this Code are being discussed shall be 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 shall be played back immediately, and that person's corrections and explanations shall be recorded.

It shall be entered in the record of an evidentiary or other action or the main hearing 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 enclosed with the case file.

The public prosecutor or the court may order a recording transcribed in full or in part. In such case, he/she shall examine the transcript, certify it and attach it to the record of an evidentiary or other action.

The recording shall be 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 main hearing.

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 such case, the identities of the parties and participants of the recorded action must be concealed.

Excluding Transcripts and Information

Article 237

When set forth by 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 shall, *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 shall be allowed.

Once the ruling becomes final, the excluded transcripts shall be 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. Once the criminal proceedings are ended by a final decision, the excluded transcripts shall 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 shall 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/she shall deliver documentation with such information to the judge for preliminary proceedings, who shall act in accordance with provisions of this Article.

b) Special Types of Transcripts

a. Main Hearing Transcript

Recording the Main Hearing

Article 238

A transcript of the main hearing shall be kept, in which, in essence, the content of the work and the entire course of the main hearing shall be entered.

The course of the main hearing may also be recorded stenographically. Stenographic notes shall within 48 hours be translated, examined, signed by the stenographer and attached to the file.

The provisions of Article 236 of this Code shall be applied accordingly to the audio recording of the course of the main hearing. Permission for audio recording shall be issued by the president of the panel.

Contents of the Main Hearing Transcript

Article 239

The introductory part of the transcript must contain the indication of the court where the main hearing 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/her legal representative or proxy, translator, interpreter, the criminal offence which is the subject-matter of the main hearing, as well as whether the main hearing is public or held *in camera*.

The transcript must in particular contain data on which indictment was read at the main hearing, 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 main hearing, 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 main hearing as a secret.

Statements given by the defendant, witness, expert witness or other person shall be 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/she deems particularly important to be entered in the transcript *verbatim*.

The entire summary judgment (Article 428 paras. 3 to 5) shall be entered in the main hearing transcript, with a designation of whether the judgment was made public. The summary judgment contained in the main hearing transcript represents the original.

If a ruling on detention was issued at the main hearing, it must also be entered in the main hearing transcript.

The information about the beginning and end of the main hearing, 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 main hearing held in connection with the offences referred to in Article 162 paragraph 1 item 1) of this Code, shall be entered in the main hearing transcript.

If an audio recording is made of the main hearing or one of its parts (Article 236 paragraph 3), the main hearing transcript shall be made in the way described in paragraph 7 of this Article.

Determining Authenticity of the Main Hearing Transcript

Article 240

A transcript must be concluded by the conclusion of a session. The transcript shall be signed by the president of the panel and the record-keeper.

The parties shall be 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 shall be 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 the reasons for which certain motions and objections were not approved shall be entered as well. The president of the panel and the record-keeper shall also sign the continuation of the transcript.

b. Minutes of Deliberation and Voting

Composing Minutes of Deliberation and Voting

Article 241

Separate minutes shall be composed of deliberation and voting.

The minutes of deliberation and voting contain the course of the voting and the decision taken.

These minutes shall be 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 shall be attached to the minutes of deliberation and voting, unless it is entered in the transcript. The panel member who has the dissenting opinion shall have the obligation to send his/her written rationale within eight days from the date of the vote at the latest.

The minutes of deliberation and voting shall 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 shall 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 shall be, 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 through the police as well.

Summons for a main hearing or 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 shall be entered in the record which shall be signed by the person summoned, except if it is designated in the main hearing transcript, and the service shall thereby be 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 shall be 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 shall be 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/her household who is required to accept it. If no member of the family household is present, the document shall be delivered to a doorman, neighbour or president of the house council if they agree to it, and the delivery shall thereby be 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 shall be required to accept the document, or a person employed there, if he/she agrees to receive the document, and the delivery shall thereby be 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 shall leave a notice that he/she shall 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 shall be 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 shall 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/she is employed, and the delivery shall thereby be 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 shall be effected in the manner specified in paragraph 4 of this Article.

Receipt of Delivery

Article 244

Documents delivered by direct delivery shall be delivered in a sealed cover.

The recipient and process server shall sign a receipt on a performed delivery – a receipt of delivery or return receipt. The recipient shall mark the date of acceptance on the receipt.

If the recipient is illiterate or unable to sign the document, the process server shall sign it, designating the date of receipt and place a remark, explaining why he/she 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 shall so note on the receipt and designate the date of delivery, whereby the delivery shall be executed.

The certificate of receipt of a document delivered through a post office box shall be 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 shall 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 shall be received, a participant in proceedings, and if there is a danger of a delay exceptionally the defendant as well, may be notified by a telegram or telephone about a summons to a main hearing or other summons, or a decision to defer a main hearing or other actions.

The authority conducting proceedings shall 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 shall be 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 which the defendant has reported to the authority conducting proceedings, the process server shall leave a notice stating he/she shall 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 shall be deemed executed.

If the defendant has issued a power of attorney to his defence counsel to receive documents from whose service begins the time limit begin to run, for applying for a legal remedy, the service shall be deemed executed by the delivery of the document to the lawyer's office of the defence counsel.

Notwithstanding 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 which the defendant reported to the court, a defence counsel shall be appointed for him/her *ex officio* until the defendant informs the court of the new address.

A necessary time limit of no less than three days shall be determined for the appointed defence counsel for examining the files, after which the judgment shall be served on him/her and the proceedings continued.

Service upon a Prosecutor

Article 247

Documents shall be 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 shall be deemed the date of delivery.

The court shall, at the request of the public prosecutor, serve upon him/her 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 case file.

If a subsidiary prosecutor or private prosecutor has a proxy, documents shall be 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 shall be served upon an injured party who having a proxy.

Service upon Persons with a Certain Status

Article 248

Documents shall be 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 shall be served upon persons deprived of liberty through the custodial institution where they are held.

Documents shall be served upon persons who, in accordance with international law, enjoy immunity in the Republic of Serbia through the ministry responsible for foreign affairs, unless otherwise specified by a ratified international agreement.

Documents shall be served upon persons involved 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 shall be served upon a participant in proceedings who is at a known address in a foreign country in accordance with the provisions of a separate law, unless 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.

In case the defendant fails to act in accordance with paragraph 2 of this Article, the authority conducting proceedings shall appoint a proxy for him/her. Service of a document upon the appointed proxy shall be deemed execution of the delivery.

2. Examination of Case File Documents

Conditions for Examination of Case File Documents

Article 250

Anyone having a justified interest may examine, copy or record certain case file documents, except those bearing an indication of level of confidentiality.

Permission to examine the case file documents referred to in paragraph 1 of this Article during the proceedings shall be 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/her.

If the public had been excluded from the main hearing 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 shall be appealable, but the appeal shall 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/her defence counsel, shall be 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) shall 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 arising as a result of commission of a criminal offence or of a wrongful act designated by law as a criminal offence shall 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 shall be required to designate his/her 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 shall be 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/she shall be notified that he/she can submit it by the end of the main hearing. 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 shall 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 shall be called to declare himself/herself whether he/she intends to pursue the claim. If a duly summoned person does not respond, it shall be deemed that he/she has desisted from the claim for restitution already submitted.

Examining Circumstances on a Claim for Restitution

Article 256

The authority conducting proceedings shall 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 shall be 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 shall 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 shall decide 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 shall not stay the execution of the ruling.

If an injured party has a claim against a third person because he/she holds things acquired by a criminal offence or a wrongful act designated by law as a criminal offence, or because due to such act he/she 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 regulating the procedures of enforcement and security, order temporary measures of security against the third person as well. The provisions of paragraphs 2 and 3 of this Article shall also apply in this case.

In a judgment convicting a defendant or a ruling pronouncing a security measure of compulsory psychiatric treatment, the court shall either revoke the measures referred to in paragraph 4 of this Article, if not already revoked, or refer the injured party to civil litigation, whereby these measures shall 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 shall decide on a claim for restitution.

When a court declares itself incompetent for a criminal proceeding, it shall refer an authorised person to submit a claim for restitution in criminal proceedings which shall 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 shall 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 shall 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 shall 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 shall, 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 shall 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 or a request for protecting legality.

Notwithstanding the case referred to in paragraph 1 of this Article, the convicted person, or his/her 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 regulating 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 shall 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 shall be referred to civil litigation, and the court in criminal proceedings shall 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 shall include the following:

- 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 an 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 shall be 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*, shall be 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 shall be required to enter all costs paid out in advance into an inventory to be enclosed with the file.

The costs of translation and interpretation as well as the costs of defence of an indigent defendant (Article 77 paragraph 1) shall 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 shall be decided in every judgment or ruling corresponding to a judgment who shall 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 shall be issued by the president of the panel or single judge when those data are obtained. **

When the costs of criminal proceedings have been decided by a separate ruling, an appeal against that ruling shall be 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, shall bear the costs of

** Published in the *Službeni glasnik RS*, No. 27/21 of 24 March 2021 (Decision CC).

being brought in, deferment of an evidentiary action or a main 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 shall be 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 shall be 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 shall pronounce in the judgment that he/she is required to indemnify the costs of the criminal proceedings.

A person charged with several criminal offences shall not be required to indemnify the costs in respect of the part of the charges of which he/she was acquitted, if it is possible to separate those costs from the overall costs.

In a judgment convicting several defendants, the court shall order what part of the costs shall be borne by each of them, and if that is not possible, it shall order all defendants to bear the costs jointly. The payment of the lump sum shall be determined for each defendant separately.

In the decision deciding 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 single 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 shall 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, shall be covered from the budget funds of the court.

A person convicted by a final judgment for the criminal offence of false reporting shall be bound by a separate ruling to bear the costs of criminal proceedings he/she caused. The ruling shall be issued by the panel (Article 21 paragraph 4) acting on a motion of the public prosecutor.

A private prosecutor shall be 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 shall all bear the costs jointly.

An injured party who desisted from a motion to prosecute, shall bear the costs of criminal proceedings unless the defendant has declared that he/she himself/herself shall bear them.

When a court dismisses an indictment because it is not competent, the decision on the costs shall be issued by the competent court.

If a motion for the compensation 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 shall be entitled to pursue their claims in civil litigation against the Republic of Serbia.

Payment of Fees and Necessary Expenses

Article 266

The person represented shall be 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/she is required to support, the fee and necessary expenses of the defence counsel shall be paid from budget funds of the court. It shall 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 shall decide 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 compensation of the costs of proceedings and the amount of the lump sum shall be 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 shall be issued in proceedings in the form of a judgment, ruling and order.

A judgment shall be issued only by a court, and rulings and orders shall be issued also by other authorities conducting proceedings.

Preconditions for Deciding

Article 270

The court shall deliberate and vote in a closed session.

Only the members of the panel and record-keeper may be present in the room where the deliberation and voting are taking place.

The president of the panel shall manage the deliberation and the voting, ensure that all questions are discussed comprehensively and fully, and is the last to vote.

Order in Which Issues shall be Decided

Article 271

In deciding on the subject-matter of proving, it shall be 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, the resolution of the principal matter shall then be dealt with.

In deciding on the principal matter, a vote shall 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 shall 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 shall issue its decisions after oral deliberation and voting. A decision shall be rendered when a majority of the panel's members vote in favour thereof.

If in respect of certain questions being voted on, the votes shall be divided into several different opinions, so that none of them have majority, the questions shall be separated and the voting shall be repeated until majority is achieved. If a majority is not achieved in this manner, a decision shall be taken in such manner that the most unfavourable votes for the defendant shall 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 shall not be required to vote on the criminal sanction. If he/she does not vote, it shall be deemed that he/she 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, shall be entitled to dissent from the majority and explain his/her dissenting opinion in writing.

The judge shall be required to orally announce the written explanation of his/her dissenting opinion at a session of the panel after the issuance of the decision, and may request that his/her opinion be published together with the decision

The judge shall be required to deliver the written explanation of his/her 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/her 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 shall be dispatched, and a dissenting opinion delivered at a later date shall be enclosed with the court case and shall represent an integral part thereof.

Announcement of Decisions

Article 274

Unless otherwise specified by this Code, decisions shall be 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 shall be noted in the record or file, and a person entitled to file an appeal shall confirm so by his signature. If that person declares that he/she shall not appeal, a certified copy of the orally announced decision shall not be delivered to him, unless otherwise specified by this Code.

Copies of decisions which are appealable shall be delivered with a remedial clause. An appeal submitted in favour of the defendant shall 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 shall become final when it can no longer be challenged by an appeal and when an appeal is not permitted.

A final judgment shall become 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 shall be 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 shall 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 state authority in accordance with the law.

The costs of criminal proceedings shall be collected forcibly for the benefit of the budget of the Republic of Serbia *ex officio*. The costs of the forced collection shall be 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/her a certified copy of the decision, with specification that the decision shall be enforceable.

If a security measure of confiscation of objects was pronounced in a judgment, the court which pronounced the judgment in the first instance shall decide whether the objects shall 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 shall 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 shall become 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 shall be enforceable once it becomes final. An order shall be enforceable immediately after it is issued, unless otherwise specified by the authority which issued the order.

Rulings and orders, unless specified otherwise, shall be 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 shall be 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 shall decide thereon in a special ruling. An appeal shall not stay the execution of the ruling, unless otherwise specified by the court.

If doubt appears during enforcement in respect of the interpretation of a court decision, the court which issued the final decision shall decide thereon.

Adopting By-laws

Article 279

The manner of keeping criminal records shall be governed 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 shall relate details known to him/her 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 shall be submitted to the competent public prosecutor, in writing, orally, or by other means.

If a criminal complaint is submitted orally, a transcript shall be made thereof and the submitter shall be cautioned about the consequences of false reporting. If the criminal complaint is communicated by telephone or other telecommunications medium an official note shall be made, and if the complaint was submitted by electronic mail it shall 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 shall 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/she finds out in some other way that a criminal offence has been committed, the public prosecutor may:

- 1) collect the necessary data himself/herself;
- 2) summon citizens 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 with 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/she still refuses to provide the necessary information, another fine in the same amount may be imposed on him/her once again.

The decision on imposing the fine referred to in paragraph 2 of this Article shall be issued by the public prosecutor. An appeal against the ruling imposing the fine shall be decided by the judge for the preliminary proceedings. An appeal shall not stay the execution of the ruling.

If he/she is not able to undertake the actions referred to in paragraph 1 of this Article by himself/herself, the public prosecutor shall 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 shall be required to act in accordance with the request of the public prosecutor and to notify him/her 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 shall act in accordance with Article 44 paragraphs 2 and 3 of this Code.

The public prosecutor, public and other authorities or legal persons, shall be 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 account allocated for the payment of public revenues, used for humanitarian or other public purposes;
- 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 shall determine a time limit during which the suspect must fulfil the obligations undertaken, whereby the time limit may not exceed one year. Oversight of the fulfilment of obligations shall be 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 shall dismiss the criminal complaint by a ruling and notify the injured party thereof, and the provision of Article 51 paragraph 2 of this Code shall not be applied.

The funds from paragraph 1, item 2) of this Article shall be granted to the humanitarian organisations, funds, public institutions or other legal entities and natural persons, upon conducted public tender, which shall be announced by the ministry competent for judiciary.

The public tender from paragraph 4 of this Article shall be conducted by the committee formed by the minister competent for judiciary.

Notwithstanding paras. 4 and 5 hereof, the committee may, at the request of natural person, and without administering a public tender, propose for the funds from paragraph 1, item 2) of this Article to be granted for the purpose of treatment of a child abroad, unless such funds were provided in the Republic Health Insurance Fund.

The administration of the public competition, the criteria for the allocation of funds, the composition and the mode of operation of the committee shall be governed by the act of the ministry competent for judiciary.

The decision on the allocation of funds from paragraph 1, item 2) of this Article shall be rendered by the Government.

Dismissing a Criminal Complaint

Article 284

The public prosecutor shall 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 shall notify the injured party within eight days about the dismissal of the criminal complaint and the reasons thereof and advise him/her of his/her rights (Article 51 paragraph 1), and if the criminal complaint was submitted by a police authority, he/she shall 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 shall not be applied.

2. Authority of the Authorities Conducting Pre-investigation Proceeding

Authority of the Public Prosecutor

Article 285

The public prosecutor shall lead the pre-investigation proceedings.

For the purpose of exercising the authority referred to in paragraph 1 of this Article the public prosecutor shall undertake 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 shall be required to execute the order of the public prosecutor and to inform him/her regularly about actions undertaken.

In case the police do not comply with the order the public prosecutor shall act in accordance with Article 44 paragraphs 2 and 3 of this Code.

In the course the pre-investigation proceedings the public prosecutor shall be 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 shall be 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 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 shall 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 judge of preliminary proceedings, and at the proposal 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 shall 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 shall be entitled to submit a complaint to the judge of preliminary proceedings.

Evidentiary Actions of the Police

Article 287

If the police conduct an evidentiary action during the pre-investigation proceedings, it shall 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/she 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 shall be read out to the citizen who provided the information, and he/she may make remarks, which the police is required to enter in the official note. A copy of the official note about the information provided shall be issued to the citizen, if he/she 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/she 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 a single judge, the police may also collect information from detainees, if it is necessary for detecting other criminal offences or other perpetrators. This information shall 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 shall not be 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 shall be 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 grounds exist for suspicion that he/she is the perpetrator of a criminal offence, or undertake towards that person actions in the pre-investigation proceedings stipulated by this Code, they may summon him/her only in the capacity of a suspect. The suspect shall be advised in the summons that he/she shall be 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/her 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 shall attend his/her questioning.

The police shall 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 shall 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/her statement during the questioning are given in the presence of his/her defence counsel. The transcript of this questioning shall not be 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 shall deliver to him/her, without delay, the transcript of the questioning.

Holding 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/her 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 a reason exists for ordering detention (Article 211), but it shall be required to take such a person without delay to the competent public prosecutor. When bringing the person in, the police shall 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 due to unavoidable obstacles lasted more than eight hours, the police shall be required to explain the delay in detail to the public prosecutor, about which the public prosecutor shall draft an official note. The public prosecutor shall 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 shall 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 shall act in accordance with the provisions of this Code (Articles 291 and 293).

Questioning the Arrested Person

Article 293

The public prosecutor shall be required to advise an arrested person brought before him/her 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/her 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/her to find a defence counsel.

If the arrested person fails to secure the presence of a defence counsel within 24 hours of the time when it was made possible to him/her within the meaning of paragraph 1 of this Article, or declares that he/she does not wish to obtain a defence counsel, the public prosecutor shall be required to question him/her 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/she was advised of this right or declares that he/she shall not obtain a defence counsel, an *ex officio* defence counsel shall be appointed for him.

Immediately after the questioning, the public prosecutor shall 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/her 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 undergo a medical examination.

The public prosecutor shall attach to the files the decision determining the physician who shall 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/her authorisation, the police, shall issue and serve a ruling on custody immediately, or not more than two hours after the suspect was told that he/she 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/her defence counsel shall be entitled to appeal against the ruling on custody within six hours of the delivery of the ruling. A decision on the appeal shall be issued by the judge for the preliminary proceedings within four hours of receiving the appeal. The appeal shall not stay the execution of the ruling.

The suspect shall be 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/her own within four hours, the public prosecutor shall secure one for him/her *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 Investigation

Article 295

An investigation shall be initiated:

- 1) against a specific person for whom there are grounds for suspicion that he/she 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 shall be 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 main hearing or that its examination 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 shall be initiated by an order issued by the competent public prosecutor.

An order to conduct an investigation shall be 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/her 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 shall be delivered to the suspect and his/her defence counsel, if he/she 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 shall 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/her defence counsel, the public prosecutor shall 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 shall be 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 shall undertake evidentiary actions only on the territory which is within the competence of the court before which he/she acts. If the interest of the investigation so requires, he/she 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/she 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/her request. At the request of the public prosecutor, a legal person shall be 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, shall 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/she shall 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 shall be 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.

Notwithstanding 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/her defence counsel to attend the questioning if he/she 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/her defence counsel and the injured party may attend an examination.

If the suspect has a defence counsel, the public prosecutor shall 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 shall decide whether the presence of the suspect is necessary.

The public prosecutor shall be required to notify a professional consultant that he/she may attend an expert examination (Article 126 paragraph 1).

If a summons to a suspect and his/her 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/her absence.

Persons undertaking evidentiary actions may propose to the public prosecutor to ask a suspect, witness or expert witness certain questions in order to clarify matters, and with the permission of the public prosecutor may also pose questions directly. These persons shall be entitled to request that their remarks in respect of the conduct of 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/her 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/her defence counsel shall be 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/her 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/her counsel during the questioning of a witness or a test of the authenticity of his/her 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/her defence counsel believe that a certain evidentiary action needs to be taken, they shall propose to the public prosecutor that it be undertaken.

If the public prosecutor rejects the proposal for conducting certain evidentiary action or fails to decide on the proposal within eight days of the date of its submission, the suspect and his/her defence counsel may submit the proposal to the judge for the preliminary proceedings, who shall issue a decision thereon within eight days.

If the judge for the preliminary proceedings grants the proposal of the suspect and his/her defence counsel, he/she shall order the public prosecutor to undertake the evidentiary action and shall determine a deadline for its conduct.

Getting Acquainted with Collected Evidence

Article 303

The public prosecutor shall be required to enable, within a time limit sufficient for the preparation of defence, a suspect who has been questioned and his/her defence counsel, to examine case-file documents and view objects which shall 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 shall 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 shall call on the suspect and his/her 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/her defence counsel shall be required after collecting evidence and materials for the benefit of the defence (Article 301) to notify the public prosecutor thereof and to enable him/her before the conclusion of the investigation to examine the case-file documents and view objects that shall 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/her defence counsel do not act in accordance with paragraph 3 of this Article, the public prosecutor shall decide on concluding the investigation (Article 310).

Maintaining Confidentiality

Article 304

If necessary for the purpose of 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 conducting an evidentiary action shall order persons he/she 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 shall be entered into transcript of the evidentiary action, or shall 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 shall warn a person disturbing the order during the conduct of an evidentiary action, and should he/she continue to disturb the order the court may fine him/her up to 150,000 dinars.

The panel (Article 21 paragraph 4) decide on an appeal against the ruling imposing a fine referred to in paragraph 1 of this Article. An appeal shall not stay the execution of the ruling.

If the participation of the person referred to in paragraph 1 is not necessary, he/she may be removed from the location where the evidentiary action is being undertaken.

Expanding the Investigation

Article 306

An investigation shall be conducted only in respect of the suspect and the criminal offence to whom the order to conduct an investigation refers.

Should the investigation show that the proceedings should be expanded to include another criminal offence or another person, the public prosecutor shall expand the investigation by issuing an order.

The provisions of Articles 296 and 297 of this Code shall apply to the expansion of the investigation.

Suspending an Investigation

Article 307

An investigation shall 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/her 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 shall 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 shall propose the ordering of detention against the suspect.

When obstacles which caused the suspension cease to exist, the public prosecutor shall 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 shall 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

Prior to concluding an investigation, the public prosecutor shall 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/her conduct during the service of the criminal sanction.

The public prosecutor shall, as needed, obtain data about the suspect's prior life, his/her personal circumstances and other circumstances relating to his/her 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 shall 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

If determining that the subject matter of the investigation has been clarified sufficiently, the public prosecutor shall issue an order on the conclusion of the investigation which he/she shall deliver to the suspect and his/her defence counsel, if having one, and shall 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/she shall 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 shall be required to undertake measures to conclude the investigation.

Should the public prosecutor decide to discontinue prosecution after the conclusion of the investigation, he shall notify the suspect and the injured party about it (Article 51 paragraph 1).

Supplemental Investigation

Article 311

The public prosecutor shall issue an order supplementing the investigation when after concluding the investigation, he/she finds that new evidentiary actions need to be undertaken.

The suspect and his/her defence counsel may propose to the public prosecutor that the investigation be supplemented. In such case the provisions of Article 302 of this Code shall be applied accordingly.

Objecting to Irregularities during the Investigation

Article 312

The suspect and his/her 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 shall 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 shall be allowed. By virtue of the ruling granting the objection, the public prosecutor shall 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/her 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/she shall order the undertaking of measures to rectify the irregularities.

2. Agreements of the Public Prosecutor and the Defendant

a) Plea Agreement

Entry into 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 finalization of the main hearing.

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.

The 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 shall 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) shall not be 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 shall invite him/her to file the claim before the agreement is concluded.

Contents of the Agreement

Article 314

The plea agreement shall contain 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/she 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 shall be confiscated from the defendant.

Deciding on the Agreement

Article 315

The judge for the preliminary proceedings shall decide 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 shall be rendered at a hearing to which the public prosecutor, defendant and his/her defence counsel are summoned.

The hearing referred to in paragraph 2 of this Article shall be held *in camera*.

Dismissing an Agreement

Article 316

The court shall 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.

Dismissing an Agreement

Article 317

The court shall 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/she has waived his/her right to a trial and that he/she 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 shall contain the reasons which led the court to accept the agreement.

Rejecting an Agreement

Article 318

The court shall reject a plea agreement by a ruling should it determine:

- 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 shall be delivered to the public prosecutor, the defendant and his/her defence counsel.

A ruling dismissing (Article 316) or rejecting (Article 318) the plea agreement shall not be 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 main hearing.

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/she 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 shall, before concluding the agreement on testifying, ask the defendant to, within a time limit which may not exceed 30 days, autonomously and in his/her own writing, in as much detail as possible, truthfully describe everything he/she

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 shall dictate the preliminary testimony into a voice-recording machine.

An agreement on testifying shall be concluded in written form and submitted to the court by the conclusion of the main hearing. 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 shall contain:

- 1) a description of the criminal offence which is the subject-matter of the charges;
- 2) a statement of the defendant that he/she confesses in entirety to the criminal offence, that he shall testify to everything he/she knows about the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code and shall omit nothing, that he/she 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/she 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 shall 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 the main hearing 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 shall be confiscated from the defendant.

Deciding on the Agreement

Article 322

A decision on an agreement on testifying by a defendant shall be 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 shall be issued by the president of the panel.

A ruling on dismissing, accepting or rejecting the agreement on testifying by a defendant shall be issued at a hearing to which the public prosecutor, the defendant and the defence counsel shall be summoned.

The provisions of Article 316 of this Code shall be applied accordingly to the issuance of a decision dismissing an agreement on a defendant's testifying.

Accepting the Agreement

Article 323

The court shall accept the agreement on testifying by a defendant with a ruling should it determine:

- 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 law.

Rejecting the Agreement

Article 324

The court shall 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 shall be 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 shall be examined after questioning of defendants and shall be removed from the courtroom, after the examination.

Obligation of the Court to the Decision on Acceptance of the Agreement

Article 326

A court of first instance and a court of legal remedy shall be 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 shall 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/she was convicted (cooperating convicted person).

A person convicted as the organizer of an organized criminal group nor a person convicted by final judgement, to prison sentence of forty years *or life sentence**, 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 shall be prepared in a written form and submitted to the court by the conclusion of the main hearing.

Contents of the Agreement

Article 328

The agreement on testifying by a convicted person shall contain 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/she shall testify about everything known to him/her about the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code and that he/she shall 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/she 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/she provides testimony at the main hearing in accordance with the obligation proceeding from item 2) of this Article;
- 4) a statement by the public prosecutor that he/she shall, 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.

* Published in the *Službeni glasnik RS*, No. 35/19 of 21 May 2019.

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 shall be issued by the president of the panel.

A ruling on dismissing, accepting or rejecting the agreement on testifying by a convicted person shall be 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 shall be applied accordingly during the issuance of the ruling referred to in paragraph 2 of this Article.

Obligation of the Court to the Decision on Acceptance of the Agreement

Article 330

The court shall be 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 shall file an indictment when there is justified suspicion that a certain person has committed a criminal offence.

An indictment shall be 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 fails to file an indictment within the time limit referred to in paragraph 2 of this Article and does not state that he/she is discontinuing criminal prosecution, the defendant, his/her 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/she 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 shall 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 shall 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 shall 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 shall contain the following:

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/she is in detention, or is at liberty, and, in case he/she 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 main hearing shall be held;

5) a proposal for the evidence to be examined at the main hearing, 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 shall 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/she is in detention, it may be proposed that he/she 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 shall be 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 shall be delivered to the court together with the indictment.

Immediately upon receiving the indictment the panel shall examine whether the indictment has been composed correctly (Article 332), and should it determine that it 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 shall issue a ruling dismissing the indictment, and in case a private prosecutor misses the aforesaid time limit, it shall be deemed that he/she has desisted from the prosecution and the charges shall 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/her release from detention, the panel (Article 21 paragraph 4) shall rule 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/her release, the panel shall *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 shall not stay its execution.

Delivery of the Indictment to the Defendant

Article 335

The president of the panel (Article 21 paragraph 4) shall deliver an indictment which is properly composed to the defendant who is at liberty without delay, and if he/she 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 shall be served to the defendant during his/her arrest, together with the ruling ordering detention.

If during his/her arrest the defendant is not in an institution in the territory of the court where the main hearing shall be held, the panel (Article 21 paragraph 4) shall order the defendant to be immediately brought to that institution where he/she shall be served the indictment.

Defendant's Response to the Indictment

Article 336

The defendant shall be entitled to submit a written response to the indictment within eight days from the delivery of the indictment. Advice of his/her to right to respond shall be provided to him/her 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/her will.

Examining the Indictment

Article 337

The panel (Article 21 paragraph 4) shall examine the indictment within 15 days from the expiry of the time limit for submitting a response to the indictment (Article 336 paragraph 1).

Should the panel determine that another court is competent for the criminal offence which is the subject-matter of the charges, it shall issue a ruling on the incompetence of the court and after the ruling becomes final it shall 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 shall order a supplemental investigation, or an investigation to be conducted, or certain evidence be collected.

The public prosecutor shall, within three days from the day the decision of the panel referred to in paragraph 3 of this Article is communicated to him/her, issue an order to supplement or to conduct an investigation, and a private prosecutor shall 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/she shall be 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 shall be presumed that he/she has decided to desist from prosecution and the charges shall 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 shall issue a ruling excluding them from the files. A special appeal against this ruling shall be allowed.

Once the ruling referred to in paragraph 6 of this Article is final, the panel shall 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) shall decide by a ruling that the charges are unfounded and that the criminal proceedings are being terminated should it determine 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 shall 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) shall 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 required motion or approval for criminal prosecution, or there are other circumstances temporarily preventing prosecution, it shall 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) shall not be 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) shall confirm the indictment by a ruling.

In the same ruling the panel shall 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 shall be the subject-matter of examination at the main hearing.

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

MAIN HEARING AND JUDGMENT

1. Main Hearing

a) Preparations for the Main Hearing

Authority of the President of the Panel

Article 344

The president of the panel shall begin preparations for the main hearing immediately after receiving the confirmed indictment and the case file.

The preparations for the main hearing shall include the holding of a preparatory hearing, the scheduling of the main hearing and the rendering of other decisions relating to the management of the proceedings.

No appeal shall be allowed against the decisions issued by the president of the panel during preparations for the main hearing, unless otherwise specified by this Code.

a. Preparatory Hearing

Basic Rules

Article 345

At the preparatory hearing the parties shall state their positions in relation to the subject-matter of the charges, explain the evidence which shall be examined at the main

hearing and propose new evidence, the factual and legal questions which shall be the subject-matter of discussion at the main hearing are determined, a decision shall be 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 main hearing.

The preparatory hearing shall be held before the president of the panel, *in camera*.

In the summons for the preparatory hearing, the president of the panel shall caution the parties and the injured party that the main hearing may be held at the preparatory hearing (Article 350 paragraph 6).

Provisions on the main hearing shall be applied accordingly to the preparatory hearing, unless otherwise specified by this Code.

Scheduling a Preparatory Hearing

Article 346

The president of the panel shall 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/she shall notify thereof the president of the court, who shall undertake measures for the preparatory hearing to be scheduled immediately.

Notwithstanding 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/she shall issue an order scheduling a main hearing.

If the public prosecutor, the defendant and his/her defence counsel have concluded a plea agreement (Article 313 paragraph 1) in respect to certain counts of the indictment, the president of the panel shall 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/she shall issue a ruling on their exclusion from the files. A special appeal shall be allowed against this ruling.

Once the ruling referred to in paragraph 5 of this Article becomes final, the president of the panel shall 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, shall be summoned to the preparatory hearing.

The parties shall 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 shall, 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 shall check 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).

Notwithstanding 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/her 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 shall check the data referred to in Article 332 paragraph 1 item 1) of this Code.

The president of the panel shall 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 shall notify thereof the president of the panel, who shall 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 shall be severed in accordance with Article 31 of this Code, and for the other counts of the indictment it shall 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 main hearing.

Parties' Declarations

Article 349

The public prosecutor shall quote 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 shall present 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/she may submit a restitution claim, and if he/she is not present, the president of the panel shall 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 shall instruct him/her to declare himself/herself on the charges (Article 392).

If the defendant challenges the claims made in the charges the president of the panel shall instruct him/her to explain which part of the indictment he is challenging and for what reasons, and shall caution the defendant that only evidence connected to the part of the indictment which has been challenged shall be examined at the main hearing.

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 main hearing shall be held for both co-defendants and as a rule a single judgment shall be issued.

Proposing Evidence

Article 350

The president of the panel shall ask the parties, the defence counsel and the injured party to explain the proposed evidence they intend to examine at the main hearing, and shall caution them that evidence known to them, but not proposed at the preparatory hearing without justified reasons, shall not be examined.

The president of the panel may order obtaining new evidence for the main hearing 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 main hearing shall 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 the decision on the type and extent of the criminal sanction depends.

Each party shall state its position on the proposals of the opposing party and the injured party.

The provisions of Article 395 of this Code shall be applied accordingly to the deciding on the proposal for examining evidence

If in view of the proposed evidence, the facts which shall be the subject-matter of evidentiary actions (Article 83 paragraphs 1 and 2) and the legal questions which shall be discussed, the president of the panel shall deem that in accordance with the provisions of this Code a main hearing may be held, and after taking statements from the parties, he/she shall issue a ruling on the holding of a main hearing (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 shall not be appealable.

Discontinuing Proceedings

Article 352

The president of the panel shall discontinue criminal proceedings by a ruling if he/she 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/her 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.

4) 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 Main Hearing

Time of Holding the Main Hearing

Article 353

The president of the panel shall issue an order before the conclusion of the preparatory hearing designating the date, hour and place of the holding of the main hearing.

If no preparatory hearing was held (Article 346 paragraph 3), the president of the panel shall schedule a main hearing 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/she does not schedule a main hearing, the president of the panel shall notify about the reasons why no main hearing was scheduled the president of the court, who shall undertake necessary measures to schedule a main hearing. In case the president of the panel is prevented for a considerable time, for justified reasons, from scheduling a main hearing, the president of the court shall assign the case to another president of a panel.

Place of Holding the Main Hearing

Article 354

The main hearing shall be held in the seat of the court and in the courthouse.

If in certain cases courthouse premises are unsuitable for holding a main hearing or for other justified reasons, the president of the court may order the main hearing to be 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 main hearing to be held outside the territory of the competent court.

Summoning Parties and other Persons to the Main Hearing

Article 355

The defendant and his/her defence counsel, the prosecutor and the injured party and their legal representatives and proxies, and if needed also a translator and an interpreter, shall be summoned to the main hearing.

Proposed witnesses and expert witnesses shall also be summoned to the main hearing, except for those for whom the president of the panel holds that their examination at the main hearing 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 shall 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 shall be advised in the summons that he/she is entitled to obtain a defence counsel, but that the main hearing shall not be deferred because a defence counsel does not appear at the main hearing or because the defendant obtained a defence counsel only at the main hearing.

The summons must be delivered to the defendant so as to provide sufficient time between the delivery and the main hearing 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 shall be notified by the court in the summons that the main hearing shall be held even in his/her absence, and that his/her statement on an restitution claim shall be read out. The injured party shall also be cautioned that if he/she fails to appear it shall be deemed that he/she does not intend to continue criminal prosecution if the public prosecutor desists from the charges.

The subsidiary prosecutor and the private prosecutor shall be cautioned in the summons that if they fail to appear at the main hearing or to send a proxy it shall be deemed that they have desisted from the charges.

The defendant, witness and expert witness shall be cautioned in the summons about the consequences of failing to appear at the main hearing (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 main hearing that new witnesses or expert witnesses be called to the main hearing 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 shall be 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 main hearing (Article 15 paragraph 4), of which he/she shall notify the parties before the commencement of the main hearing.

Examining a Witness or Expert Witness Outside of the Main Hearing

Article 357

The president of the panel shall decide on examining a witness or expert witness whose examination was proposed by the parties but who could not attend the main hearing 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, shall perform the examination directly or by using a video and audio link, and shall 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 shall decide about the need for his/her 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 shall be 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/she shall issue a ruling on their exclusion from the files. A special appeal against this ruling shall be allowed.

Upon the finality of the ruling referred to in paragraph 1 of this Article, the president of the panel shall 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 main hearing 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 main hearing 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 Main Hearing

Article 360

When 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 main hearing by not longer than 30 days.

All persons summoned to the main hearing as well as the president of the court shall be notified about the deferment immediately.

Dismissing Charges by the Prosecutor

Article 361

Should a prosecutor decide to dismiss charges before the commencement of the main hearing, the president of the panel shall notify thereof all persons summoned to the main hearing, and shall discontinue criminal proceedings by a ruling which shall be delivered to the parties, the defendant's counsel and the injured party.

b) Holding the Main Hearing

a. Publicity of the Main Hearing

General Publicity Rule

Article 362

The main hearing shall be public.

Only persons over 16 years of age may attend a main hearing.

Excluding the Public

Article 363

From the commencement of the hearing until the conclusion of the main hearing, 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 main hearing 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 shall not apply to the parties, the defence counsel, the injured party and his/her representative and the proxy of the prosecutor.

The panel may permit a main hearing 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/her spouse, close relatives and the person with whom he/she lives in a common law marriage or other permanent personal association.

The president of the panel shall caution persons attending a main hearing 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 main hearing (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 corresponding the judgment.

Special Case of Excluding the Public

Article 366

The public prosecutor may propose to the court to exclude the public from the main hearing 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 shall request from the defendant and his/her defence counsel to state their position on the proposal to exclude the public.

b. Conducting the Main Hearing

Authority of the President of the Panel

Article 367

The president of the panel shall conduct the main hearing.

In session and at the main hearing, the president of the panel shall:

- 1) determine 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) determine whether the preconditions for holding the main hearing have been fulfilled;
- 3) be responsible for maintaining order and for applying measures to prevent disturbances of order in the courtroom;

4) be 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) decide 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) give the floor to the members of the panel, parties, defence counsel, injured party, legal representative and proxy, witness, expert witness and expert consultant;

7) decide on motions made by the parties, unless the panel decides on them;

8) instruct a party to propose additional evidence;

9) convey into the transcript the contents of the work and the entire course of the main hearing;

10) undertake necessary measures to protect witnesses (Articles 102 and 103);

11) rule on other issues, in accordance with this Code.

Authority of the Panel

Article 368

During the main hearing the panel shall decide 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 main hearing;

3) prohibiting, irrespective of permission issued for video recording, video recording of certain parts of the main hearing on justified grounds;

4) removal from the courtroom, on the exclusion of a defence counsel or proxy, and on continuing, adjourning or deferring the main hearing for the purpose of maintaining order and conducting the main hearing;

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 shall always be pronounced and entered in the transcript with brief reasoning.

Protection of the Reputation of the Court and Participants in Proceedings

Article 369

The court shall be 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 shall be required to rise.

The president of the panel shall immediately after opening the session, in case of any reasons thereto, 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 shall be 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 main hearing 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 main hearing 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 shall caution him/her, and if that person continues to disturb the order, shall fine him/her with up to 150,000 dinars.

The president of the panel shall 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/her, or shall adjourn the main hear and request that the competent public prosecutor designate another person to represent the prosecution when the main hearing resumes, with the obligation to notify the court of the undertaken measures.

The president of the panel shall notify the competent bar association about a penalty imposed on a lawyer for disturbing the order, with the obligation of notifying 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 upon returning to the courtroom, the defendant continues to disturb the order, the panel may remove him/her until the conclusion of the evidentiary proceedings and order, if such possibility is available, that the defendant follow the course of the proceedings from a separate room by means of an audio and video link.

Prior to the conclusion of the evidentiary proceedings, the president of the panel shall, if technical means for monitoring the course of the proceedings referred to in paragraph 1 of this Article were unavailable, inform the defendant about the course of the evidentiary proceedings for the period during which he/she was removed from the courtroom, introduce him/her to the testimony given by co-defendants previously questioned, or make it possible for him/her to read the transcripts of the testimony, if the defendant so requests, and ask him/her to state his/her position on the charges, unless he/she 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/her from the courtroom again, without a right to attend the main hearing until its conclusion, in which case the president of the panel or a judge member of the panel shall 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 shall assign an *ex officio* defence counsel for him/her (Article 74 item 6 and Article 76).

Exclusion of the Defence Counsel or Proxy

Article 372

The panel shall exclude a defence counsel or proxy from the further course of the proceedings, should they continue 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 unable to appoint a new defence counsel, without harming the defence, the main hearing shall be adjourned or deferred.

If a subsidiary prosecutor or private prosecutor do not obtain another proxy, the panel may decide to resume the main hearing without a proxy, if it finds that his/her absence would not adversely affect the interests of the person represented.

Removing Other Persons from the Courtroom

Article 373

Until the end of the evidentiary procedure, the panel may remove from the courtroom the subsidiary prosecutor or private prosecutor or their legal representative, who continues to disturb order after the pronouncing of the sentence and shall appoint a proxy for him/her 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 main hearing shall 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, should he/she continue to disturb the order even after being cautioned or fined, and have him/her immediately removed, whereby concurrently fining him/her as well.

The panel may order all persons removed from the courtroom, who are attending the main hearing in accordance with Article 362 of this Code, if unobstructed holding of the main hearing could not be ensured by the measures to maintain order stipulated by this Code.

Measures to Prevent Delaying Proceedings

Article 374

The panel shall 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 shall notify the competent public prosecutor and the State Prosecutors Council about untimely or inappropriate actions by the public prosecutor or person deputising for him/her, which delay the proceedings, with the obligation to notify the court of the undertaken measures.

The president of the panel shall 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 Main Hearing

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 main hearing for the purpose of maintaining order and administering the main hearing, shall be entered in the transcript with reasoning.

A ruling on a fine shall be appealable. Prior to submitting 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 main hearing and to exclude a defence counsel, may be appealable, but the appeal shall not stay the execution of the ruling. No special appeal shall be 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 main hearing shall not be appealable.

Criminal Offence Committed at the Main Hearing

Article 376

If, during the main hearing, the defendant or another person commits a criminal offence, which is prosecutable *ex officio*, the president of the panel shall notify the competent public prosecutor thereof.

If there are grounds for suspicion that a witness, expert witness or professional consultant has committed perjury at the main hearing, the president of the panel shall order taking of a special record made of the testimony given by the witness, expert witness or professional consultant which shall 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 refusal thereof.

v. Preconditions for Holding a Main Hearing

Presence at the Main Hearing

Article 377

The preconditions for the holding of a main hearing shall be:

- 1) presence of the president, members of the panel and the record-keeper;
- 2) presence of the persons summoned without whom the main hearing cannot be held, unless conditions stipulated by this Code have been met, under which a main hearing 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 main hearing.

Opening the Session

Article 378

If the panel is not in its full composition, the president of the panel, and in his/her absence, a judge member of the panel or a judge designated by the president of the court, shall announce that the main hearing shall not be held.

If the panel is in its full composition, the president of the panel shall open the session and announce the composition of the panel and the subject-matter of the main hearing, determine 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 his/her deputy, fails to appear to a main hearing scheduled on the basis of an indictment filed by the public prosecutor, the president of the panel shall notify thereof the competent public prosecutor and request that he/she immediately designates a replacement. If this is not possible, the president of the panel shall order that the main hearing shall not be held and shall notify the competent public prosecutor and the State Council of Prosecutors thereof, who shall 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 main hearing without justifying their absence although being duly summoned, the panel shall discontinue the proceedings by virtue of a ruling.

Absence of the Defendant

Article 380

If a defendant has been duly summoned and fails to appear at the main hearing or to justify his/her absence, the panel shall order that he/she be brought in. If the defendant cannot be brought in immediately, the panel shall decide that the main hearing shall not be held and order that the defendant be brought in to the next main hearing.

If the defendant justifies his/her absence before being brought in, the panel may revoke the order for bringing him/her in and release the defendant from the obligation to bear the costs caused by the failure to hold the main hearing.

In Absentia Trial

Article 381

A defendant may be tried *in absentia* only if particularly justified reasons exist, to try him/her although being absent, provided he/she is at large or not accessible to the state authorities.

A ruling on an *in absentia* trial shall be issued by the panel on a motion of the prosecutor.

An appeal shall 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 appear at the main hearing and fails to notify the court of the reason for his/her absence as soon as he/she learns thereof, or if a defence counsel leaves the main hearing without permission, the president of the panel shall ask the defendant to obtain another defence counsel immediately, and if the defendant fails to do so, the panel may decide that the main hearing be held without a defence counsel being present.

If the case referred to in paragraph 1 of this Article implies mandatory defence, and there is no possibility for the defendant to obtain another defence counsel immediately or for the court to appoint an *ex officio* defence counsel without harming the defence, the panel shall decide that the main hearing 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 main hearing, shall by a ruling of the panel, which shall be entered in the transcript with a brief reasoning, be fined with up to 150,000 dinars and ordered to bear the costs incurred thereby, and the competent bar association shall be notified thereof by the panel, and the bar association shall have the obligation to notify the court about the undertaken measures.

Holding the Main Hearing 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 main hearing 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 main hearing 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/her own inability to participate in the main hearing, the panel may, after examining an expert witness, issue a ruling deciding that the main hearing be held, but not concluded, in the absence of the defendant. In case the main hearing is held without the presence of the defendant, the president of the court shall appoint an *ex officio* defence counsel for him/her (Article 74 item 5 and Article 76). An appeal shall 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 main hearing shall resume in the presence of the defendant, after the president of the panel has informed him/her about the preceding course and contents of the main hearing.

Absence of a Witness, Expert Witness or Professional Consultant

Article 384

If a duly summoned witness, expert witness or professional consultant fails to appear at a main hearing without justifying his/her absence, the panel may order him to be brought in immediately.

The main hearing may commence even without the presence of the summoned witness, expert witness or professional consultant, but the panel shall be required to decide subsequently during the main hearing whether to adjourn or defer the main hearing 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/her absence with up to 150,000 dinars, order him/her brought in to the next main hearing, and order that he/she bear the costs he/she caused, but may in justified cases revoke these decisions.

g. Course of the Main Hearing

Commencement and Duration of the Main Hearing

Article 385

The main hearing shall commence with the issuance of a ruling on the holding of the main hearing.

The main hearing shall be held continuously during the working hours on one or more consecutive workdays.

Adjourning the Main Hearing

Article 386

Except in cases specially stipulated in this Code, the president of the panel may adjourn the main hearing:

- 1) for recess;
- 2) at the expiry of working hours;
- 3) for the purpose of obtaining certain evidence in short term;
- 4) to enable preparation of the prosecution or defence;
- 5) on other justified grounds.

Adjournment of a main hearing for 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) to 5) of this Article for up to 15 days at the longest.

A ruling on adjourning a main hearing shall specify the place and time of its resumption.

The ruling referred to in paragraph 3 of this Article shall not be appealable.

An adjourned main hearing shall always be resumed before the same panel.

If it is not possible to resume a main hearing before the same panel, or the adjournment of the main hearing exceeds 15 days, it shall be acted in accordance with the provisions of Article 388 of this Code.

Deferring the Main Hearing

Article 387

Except in cases specially stipulated in this Code, the panel shall defer a main hearing 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 main hearing, 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/her to participate in the proceedings;
- 3) there are other obstacles for a successful conduct of the main hearing.

The ruling deferring the main hearing shall, as a rule, specify the time and place where the main hearing shall be resumed.

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

Commencing Anew or Resuming a Deferred Main Hearing

Article 388

A main hearing 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 main hearing or, if necessary, for the president of the panel to summarize the content of the testimony or read it out. This ruling shall not be appealable.

A main hearing which has been deferred and is held before the same panel shall resume by a brief report of the president of the panel about the course of the earlier main hearing.

If the main hearing is held before a different president of the panel, the main hearing must commence anew and all evidence must be examined again.

Notwithstanding 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 shall be allowed and shall be decided on by the panel (Article 21 paragraph 4).

The president of the panel shall be required to notify the president of the court about all deferments for 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 main hearing, or when the panel decides to hold the main hearing in the absence of one of the persons summoned, or decides to rule on those issues subsequently, the president of the panel shall:

1) ask the defendant to state his/her personal data in order to establish his/her identity, as well as to declare himself /herself on his/her prior convictions, unless he/she has done so at the preparatory hearing;

2) caution the defendant to follow the course of the main hearing carefully and that he/she 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/her rights and duties (Articles 68 and 70), and especially of the right to present facts and propose evidence in his/her 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/her if he/she has understood the advice.

If the defendant refuses to state his/her personal data, his/her identity shall be established in another manner. If the defendant declares that he/she has not understood the advice on his/her rights, the president shall explain it in a suitable manner, and in case the defendant refuses to declare himself on whether he/she has understood the advice on his/her rights, it shall be deemed, after being cautioned, that the advice has been understood.

If the injured party is present, the president of the panel shall advise him/her about the rights referred to in Article 50 of this Code, and if an restitution claim has not been filed yet, he/she shall advise him/her that such a claim may be filed in criminal proceedings.

Treating Summoned Persons

Article 390

Once the identity of the defendant is established, the president of the panel shall instruct witnesses to move from the courtroom to a location at which they shall wait to be called to testify. The president of the panel shall, in the same manner, act with expert witnesses and professional consultants, unless it is deemed necessary for a certain expert witness or professional consultant to follow the course of the main hearing.

All of the defendants shall remain in the courtroom for the duration of the main hearing.

If a subsidiary prosecutor or private prosecutor is to be examined as witnesses, they shall 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/her presence or the circumstances indicate that his/her presence shall exert influence on the aforesaid persons. Upon the return of the defendant, testimony given in his/her absence shall be read out to him, and he/she 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 shall be presented by the prosecutor reading the indictment (Article 332 paragraph 1 items 1) to 3) or a private 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/her absence, if such a claim has been filed, the claim shall be read out by the president of the panel.

Defendant's Plea

Article 392

Following the presentation of the charges, the president of the panel shall ask the defendant:

1) if he/she has understood the charges, and if convinced that the defendant has not understood them, he/she shall relate their entire contents to the defendant in a manner which is the most understandable for the defendant;

2) whether he/she wishes to state his/her position in relation to the charges, and state his/her position regarding the restitution claim, if one has been filed;

3) if he/she confesses to having committed the criminal offence of which he/she is accused, and if convinced that the defendant has not understood what confession means, he/she shall explain to him/her 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 shall not be required to state his/her position in relation to the charges or to answer any questions posed to him/her.

If several persons are encompassed by the indictment, they shall 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.

Introductory Statements

Article 393

Following the presentation of the charges and the defendant's declaration, the president of the panel shall ask the prosecutor, and then the defence counsel or a defendant conducting his/her 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 introductory statements must be concise and refer only to the facts which shall be the subject matter of the evidentiary actions, explanation of the evidence the party shall examine and legal questions which shall be discussed.

The president of the panel may limit the introductory statements to a certain time and interrupt a party or defence counsel if exceeding the prescribed time or deviates from the subjects allowed for the introductory statements.

After the introductory statements, the injured party may briefly substantiate his/her restitution claim.

Commencement and Subject Matter of Evidentiary Proceedings

Article 394

The president of the panel shall announce the commencement of the evidentiary proceedings.

Evidence on facts which are the subject matter of the evidentiary actions (Article 83 paragraphs 1 and 2) shall be examined in the evidentiary proceedings.

If the defendant confesses to having committed the criminal offence at the main hearing, the only evidence that shall 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 main hearing, propose that new evidence be examined, and may repeat motions which were earlier denied.

The president of the panel shall decide 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 shall deny the motion by a reasoned ruling.

The president of the panel may, by a reasoned ruling, deny a motion to examine evidence should he/she find that:

1) the parties, defence counsel and injured party knew about the evidence during the preparatory hearing (Article 350 paragraph 1) or after the main hearing was scheduled (Article 356 paragraph 1), but failed to 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 shall determine 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 the decision on the type and extent of the criminal sanction depends. Provided

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, shall 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/her examination shall be undertaken before the other witnesses.

Following the examination of each item of evidence, the president of the panel shall 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 shall advise the defendant that he/she may state his/her position in relation to all the circumstances against him/her and that he/she may present all circumstances of benefit, and invite him/her to present the defence.

The defendant shall present the defence according to the rules which are under this Code applicable to questioning.

Once the defendant concludes the presentation of the defence, the president of the panel shall ask him/her whether he has anything to add in his/her defence.

Should the defendant deviate from a statement given earlier, the president of the panel shall caution him/her thereof, and ask 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 shall 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/her earlier statement or a part of that statement shall be read out or its video or audio recording shall be reproduced.

Questioning the Defendant

Article 398

When the defendant concludes the presentation of the defence, he/she 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/her legal representative and proxy, co-defendant and his/her 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 shall 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 shall be entered in the transcript at the request of a party.

The president of the panel may always pose a question to a defendant, which shall contribute to a more comprehensive or clear reply to a question posed by other participants in the proceedings.

The defendant shall be entitled to consult his/her defence counsel during the main hearing, but may not collude with his/her 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 shall 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 shall ask a defendant who has presented his/her defence if he/she has anything to declare in connection with the testimony of a co-defendant who presented his/her defence after him/her.

Every co-defendant shall be entitled to pose questions to co-defendants.

The president of the panel may confront with each other the 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 shall 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/she 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 main hearing as a witness or injured party, he/she shall be removed from the courtroom as soon as his/her 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 shall caution him/her:

- 1) that perjury, or presentation of false finding or opinion, represents a criminal offence;
- 2) that he/she has taken the oath before the main hearing;

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 shall before the commencement of the examination, ask a witness or expert witness or professional consultant who had not taken the oath before the main hearing, to do so.

Examining a Witness, Expert Witness or Professional Consultant

Article 402

At the main hearing, a witness or professional consultant shall be examined with the *mutatis mutandis* application of Article 98 of this Code, while an expert witness shall present his/her findings and opinion orally, but the panel may allow for the findings and opinion to be read out, which it shall then attach to the transcript.

The parties and the defence counsel, the president of the panel and the members of the panel shall question a witness, expert witness and professional consultant directly, and the injured party or his/her 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 shall 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 shall first be posed by the president and members of the panel, then by the prosecutor, the defendant and his/her defence counsel, and expert witness or professional consultant.

The injured party or his/her legal representative and proxy shall be entitled to question a witness, expert witness or professional consultant after the prosecutor, whenever the prosecutor is entitled to examination.

The basic examination shall be performed first, followed by cross-examination, and additional questions may be posed with the approval of the president of the panel.

In the course of 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 applied *mutatis mutandis*.

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/she shall 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 Main Hearing

Article 404

If it is learnt at the main hearing that a witness or expert witness either cannot appear before the court or that there is substantial difficulty for his/her appearance before the court, the panel may, if it deems his/her testimony important, order him/her examined away from the main hearing 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 main hearing, the panel shall 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 shall 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 shall be 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 main hearing, searches of residences and other premises or persons, certificates of seized objects, as well as records serving as evidence, shall be inspected, or, if the panel deems it necessary, the president of the panel shall relate their content briefly, or read them out.

A video or audio recording or electronic recording which are being used as evidence shall be played at the main hearing so that those present can be informed about their content.

If stipulated by this Code that testimony or other procedural actions shall be recorded and that alongside the recording a transcript shall be kept, in which only specific data shall be entered, the examination of such evidence shall be performed in accordance with paragraphs 1 and 2 of this Article.

Objects which may serve to clarify matters shall be shown at the main hearing to the defendant, witnesses or expert witnesses, and if the presentation has the significance of recognition, action shall be taken in accordance with Article 90 and Article 100 paragraphs 1 and 2 of this Code.

Records being used as evidence shall be, if possible, submitted in the original.

Inspecting the Content of Testimony Transcripts

Article 406

Except in cases set forth 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 *mutatis mutandis* 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 main hearing 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 main hearing or have declared at the main hearing that they shall not give testimony.

The reasons shall be specified in the transcript of the main hearing 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 shall announce whether the witness or expert witness who testified, had taken the oath.

Excluding Unlawful Evidence

Article 407

The panel shall 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 shall be 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 shall act in accordance with Article 237 paragraphs 2 and 3 of this Code.

If, based on the examined evidence, the panel finds that exclusion of evidence was inappropriate, 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 shall 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 fails to order any evidence examination, the president of the panel shall declare the evidentiary proceedings concluded.

Altering an Indictment or Filing a New One

Article 409

During the main hearing, the prosecutor may, if finding 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 main hearing for the purpose of preparing a new indictment.

If the panel adjourns the main hearing for the purpose of the preparation of a new indictment, it shall specify a time limit within which the prosecutor must file a new indictment.

The court shall be required to deliver the new indictment to the defendant and his/her defence counsel and to give them enough time to prepare the 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 deemed necessary, the court shall, upon request of the defendant and his/her defence counsel, provide them with sufficient time for preparing their defence, also in the case of an alteration of the indictment during the main hearing.

Amending the Indictment

Article 410

If a criminal offence committed by the defendant at an earlier time is uncovered during the main hearing, the panel shall in accordance with an indictment of the authorised prosecutor, which may also be presented orally, expand the main hearing to include that offence, or decide that the earlier criminal offence should be adjudicated separately.

Should the panel approve an amendment of the indictment, it shall adjourn the main hearing 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 shall decide whether it shall also refer to that court the case it is adjudicating.

Additional Supplement of the Evidentiary Proceedings

Article 411

Following the 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 fails to order any evidence examination, the president of the panel shall declare the evidentiary proceedings concluded.

Order of the Closing Words

Article 412

Upon declaring the evidentiary proceedings concluded, the president of the panel shall call upon the prosecutor to make their closing argument first, followed by the injured party or his/her legal representative or proxy, followed by the defence counsel, and finally the defendant.

The prosecutor and the injured party or his/her legal representative or proxy shall be entitled to make a response to the closing argument of the defence counsel and defendant, and the defence counsel and defendant shall be entitled to comment on those responses.

The last word shall always be that of the defendant.

The president of the panel may, after the parties declare themselves, specify the duration of the closing arguments.

Content of the Closing Arguments

Article 413

In his/her closing argument, the prosecutor shall present an assessment of the evidence examined at the main hearing, draw conclusions about the facts of importance for the decision, indicate the provisions of criminal and other law which should be applied, cite mitigating and aggravating circumstances which should be taken into consideration in deciding on a criminal sanction, and propose a type and extent of criminal sanction.

In the closing argument, the injured party or his/her 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 having a defence counsel shall be entitled to declare at the end, whether he/she 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 shall be required to agree on a division of tasks and topics they shall 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/herself or addresses issues clearly not connected to the case, and is required to state in the transcript of the main hearing whether and for what reason the closing argument was interrupted.

After all the closing arguments have been given, the president of the panel shall be 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 shall 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 Main Hearing

Article 415

If the panel decides not to resume evidentiary proceedings after the closing arguments, the president of the panel shall declare that the main hearing has been concluded.

After announcing that the main hearing has been concluded, the panel shall 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 main hearing and resume the evidentiary proceedings for the purpose of examining additional evidence, it shall act in accordance with Article 414 of this Code.

d. Dismissing the Indictment

Article 416

During and after the conclusion of the main hearing the panel shall issue a ruling dismissing the indictment should it determine 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 disorder or other serious illness owing to which he/she permanently cannot participate in the proceedings.

The court shall not deal with the principal matter in the substantiation of the ruling referred to in paragraph 1 of this Article, but shall 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, shall 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, unless the competent state authority has withdrawn approval for criminal prosecution.

2. Judgement

Pronouncing the Judgement

Article 418

If it does not re-open the main hearing, the court shall pronounce a judgment.

The judgment shall be pronounced and made public in the name of the people. The summary judgment shall always be read at a public session.

Factual Basis of the Judgment

Article 419

The court shall base its judgment solely on evidence examined at the main hearing.

The court shall be 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 main hearing.

The court shall not be bound by the prosecutor's proposals in respect of the legal qualification of the criminal offence.

Types of Judgments

Article 421

The judgment shall:

- 1) reject the charges (a rejecting judgment)
- 2) pronounce the defendant not guilty of the charges (an acquittal);
- 3) pronounce the defendant guilty (a conviction).

If the charges include several criminal offences, the judgment shall 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 shall pronounce a rejecting judgment if:

- 1) in the period from the commencement until the conclusion of the main hearing, 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/her were rejected with a final judgment, or the proceedings against him/her 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 shall be pronounced by the court if:

- 1) the offence with which he/she 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/she was charged.

Conviction

Article 424

In a judgment pronouncing the defendant guilty, the court shall state:

1) the offence of which the defendant is being pronounced guilty, specifying the facts and circumstances which represent the elements of a criminal offence, as well as those on which the application of a certain provision of criminal law depends;

2) the legal designation of the criminal offence and which provisions of the 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 shall 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 shall 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/her 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 the 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 shall immediately proclaim it.

If the court is unable to pronounce the judgment on the same day following the conclusion of the main hearing, it shall 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 shall be proclaimed.

The president of the panel shall, 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 shall 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 main hearing, the summary judgment shall always be read out in the presence of the public. The panel shall decide whether to exclude the public during the proclamation of the reasons for the judgment.

All those present shall rise to listen to the reading of the summary judgment.

Detention Following the Pronouncement of a Judgement

Article 425a

When pronouncing a sentence of imprisonment of under five years, the panel shall order detention to the defendant, defending him/herself from freedom, if reasons from Article 211, paragraph 1, items 1) and 3) of this Code exist, and to the defendant found in detention, detention shall be suspended, if reasons for detention, based on which it was imposed, no longer exist.

The panel shall suspend the detention and order for the defendant to be released from custody, if freed from charges or if charges have been dismissed or if he/she has been found guilty, and released from punishment if sentenced to a fine, a community service penalty or revocation of a driver's licence or if pronounced a judicial admonition or if conditionally convicted or due to crediting custody time, he/she has already served the punishment or if charges have been dismissed (Article 416), due to the substance matter jurisdiction.

For the purpose of ordering or suspending detention, upon pronouncing the judgement, until its finality, the provision of paragraph 1 hereof shall be applied. The panel of the first-instance court shall render a ruling (Article 21, paragraph 4).

Prior to rendering the ruling imposing or suspending detention, in cases from paras. 1 to 3 hereof, the opinion of the public prosecutor shall be obtained, when the proceedings are being administered upon his/her request.

If the defendant is already found in detention, and the panel finds that reasons based on which detention has been order still exist, or the reason from Article 211, paragraph 1 item 4) of this Code exists, a special ruling shall be rendered on extension of detention. The panel shall also render a special ruling when detention has to be ordered or suspended. An appeal against this ruling shall not stay the execution of the ruling.

Detention ordered or extended in line with provisions from paras.1 to 5 of this Article, may last until the referral of the defendant, i.e. convict to the institution for the execution of criminal sanctions, and until the expiry of the punishment term, at the latest, pronounced in the firs-instance judgement.

Advising and Cautioning the Parties

Article 426

After proclaiming the judgment, the president of the panel shall 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 shall caution him about the purpose of the suspended sentence and the conditions he shall have to observe.

The president of the panel shall 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 shall 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.

Notwithstanding 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 shall 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 shall be required to notify the president of the court in writing of the reasons thereof, and the president of the court shall undertake necessary measures for the judgment to be rendered in writing and delivered as soon as possible.

The original judgment shall be signed by the president of the panel and record-keeper.

A certified copy of the judgment shall be delivered to the prosecutor, the defendant and his/her defence counsel.

A certified copy of the judgment shall be delivered by the court to an injured party who shall be 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 shall deliver a certified copy of its judgment to those courts.

Contents of a Judgment Prepared in Writing

Article 428

A judgment prepared 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 shall contain: 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/she was charged and whether he/she was present at the main hearing, date of the main hearing and whether the main hearing was public, names and surnames of the prosecutor, the defence counsel, defendant's legal representative and proxy who were present at the main hearing, and date of proclamation of the pronounced judgment as well as whether the judgment was adopted unanimously or by the majority of votes.

The summary judgment shall contain 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 shall contain a description of the offence with which he/she 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 shall contain the data specified in Article 424 of this Code, and in the case of concurrent criminal offences, the summary judgment shall contain 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 shall present reasons for each item of the judgment.

If the charges were rejected, in the rationale of the judgment, the court shall 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 shall 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) shall be specified in the rationale of a judgment.

If the defendant has been pronounced guilty, the rationale shall 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 a Judgment

Article 429

A judgment rendered in writing shall 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 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 shall begin to run from the date of delivery of a copy of the reasoned judgment.

A judgment done in writing shall be partially reasoned:

1) if the defendant confessed to committing the criminal offence – the rationale shall 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 shall 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 shall 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 the 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/she is incarcerated immediately after the proclamation of the judgment, on which occasion he/she shall be cautioned that during the service of the custodial penalty he/she shall have the same rights and obligations as all other convicted persons. The institution shall 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/she shall 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 shall be corrected by the president of the panel by a special ruling, at the request of the parties or *ex officio*.

If case of 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 shall 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 shall begin to run from the date of delivery of that ruling, against which no special appeal shall be 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 shall immediately decide on the request referred to in paragraph 2 of this Article by a ruling which shall not be appealable. If granting 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 shall stay 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/her spouse, a person with whom /she 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 shall begin to run from the date when a copy of the judgment was delivered to the defendant or his/her defence counsel.

The public prosecutor may file an appeal both to the detriment of the defendant and for his/her 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/her will, except when the defendant was sentenced to a term of imprisonment of from thirty to forty years *or life sentence* *.

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/her 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 and Abandoning an Appeal

Article 434

A defendant may waive the right to an appeal only after the judgment has been delivered to him/her, 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/her 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 *or life sentence* *.

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,

* Published in the *Službeni glasnik RS*, No. 35/19 of 21 May 2019.

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.

b. 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.

Handling 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 shall order the appellant to put the appeal in order or amend it with a written submission within three days.

If the appellant fails to act in accordance with the order referred to in paragraph 1 of this Article, the court shall 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 shall 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 shall 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 shall 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 shall dismiss the appeal as disorderly. The court shall 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 shall 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 shall be required to specify the reasons why he/she had not presented them earlier, and shall also be required to specify evidence serving to prove the facts presented, and, citing proposed evidence, he/she shall be required to specify the facts he/she wishes to prove with the help of such 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 main hearing 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 main hearing;
- 5) the main hearing was held without the presence of persons whose presence at the main hearing is mandatory, or if the defendant, defence counsel, injured party or private prosecutor was, contrary to his/her request, denied the right to the use of his/her own language at the main hearing and to follow the course of the main hearing in his/her own language;
- 6) the public was excluded from the main hearing 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 provided therein, or those reasons are completely unclear or substantially contradictory, or if in respect of the facts which are subject matter of evidentiary actions, substantial contradiction exists 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 whether the judgment is lawful and proper;
- 3) during the main hearing 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, the 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 shall exist when the court incorrectly established a decisive fact which is the subject matter of evidentiary actions, and incomplete finding of fact shall exist when the court failed to 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 failed to 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 such 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 failed to 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 shall be 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

Untimely (Article 432 paragraphs 1 and 2), inadmissible (Article 433) or untidy appeal (Article 436 paragraphs 2 to 4) shall 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 shall re-open the main hearing and resume evidentiary proceedings.

After concluding the evidentiary proceedings, the president of the panel shall 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/she shall act in accordance with Article 444 of this Code.

Responding to an Appeal

Article 444

A copy of the appeal shall 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 shall 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.

Second Instance Court's Actions with the Files

Article 445

When the files reach the court of second instance in connection with an appeal, they shall be delivered to a reporting judge, and in particularly complex cases, several members of a panel may be reporting judges, which shall be 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/she shall issue a ruling excluding them from the files, against which a special appeal shall not be allowed. Once the ruling becomes final, the reporting judge shall act in accordance with Article 237 paragraphs 2 and 3 of this Code.

In case of a criminal offence prosecuted at the request of the public prosecutor, the reporting judge shall deliver the files to the competent public prosecutor, who shall be 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.

Should the reporting judge determine that a judgment done in writing contains obvious errors, shortcomings or inconsistencies (Article 431), he/she shall, 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 shall 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 shall 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 shall issue 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 shall decide whether a hearing shall 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 shall be issued at a session of the panel.

Should the panel decide to hold a hearing, the reporting judge shall be the president of the panel and if there are several reporting judges, the panel shall 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 shall be scheduled upon a proposal of the reporting judge by the president of the panel, who shall notify the public prosecutor thereof.

Such defendant or his/her 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 shall 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 who did not request it, to also be notified of the session, if their presence would be of benefit for clarifying matters.

If a defendant in detention or serving a custodial criminal sanction is being notified about a session of the panel, and he/she has a defence attorney, the president of the panel shall order that his/her 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 shall 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 shall begin 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 shall relate 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 the 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 shall be kept of the session of the panel and 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 shall 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/her legal representative and proxy, as well as those witnesses, expert witnesses and professional consultants whom the court decides to examine directly, shall be summoned to the hearing before the court of second instance, while review of the content of the other evidence examined shall be performed in accordance with the provisions of Articles 403, 405 and 406 of this Code.

In the summons, the defendant shall be cautioned that the hearing shall be held in his/her absence, if duly summoned and fails to justify his/her absence. In this case, the court shall 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 shall 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 hearing 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 shall commence with a report of the president of the panel (Article 446 paragraph 4) who shall relate 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 shall be read out, and if needed also the transcript of the main hearing 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 shall 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 such 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 shall be entitled to the rights referred to in Article 52 of this Code.

The provisions on a main hearing before a court of first instance shall be applied accordingly to the hearing before a court of second instance, unless this Code specifies otherwise.

d. Limits of Examining a First-instance Judgment

Article 451

The court of second instance shall examine 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 shall 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/her appeal, only if he/she was not able to object to the violation during the main hearing, 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/her 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 shall act 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 shall 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 shall decide with a single decision on all appeals against the same judgment.

Ruling on Dismissal of an Appeal

Article 456

An appeal shall be dismissed by virtue of a ruling, as untimely if it is determined that it was filed after the legally-specified time-limit.

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 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 shall be dismissed by a ruling as disorderly, if it is illegible or incomplete (Article 436 paragraphs 2 to 4).

Judgment Rejecting an Appeal

Article 457

The court of second instance shall reject an appeal by a judgment as unfounded and uphold the first-instance judgment should it determine 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 an Appeal

Article 458

The court of second instance shall grant an appeal by a ruling and abolish a first-instance judgment and send the case back for re-trial, should it determine that substantive violation of the provisions of criminal procedure exists, notwithstanding the cases referred

to in Article 459 paragraph 1 of this Code, or should it find that due to an incorrect or incomplete finding of fact, indicated in the appeal, a new main hearing should be ordered before a court of first instance.

The court of second instance may order a new main hearing 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 proper adjudication.

If the defendant is in detention, the court of second instance shall examine if the reasons for detention still exist and issue a ruling extending or abolishing detention. This ruling shall not be appealable.

Judgment Granting an Appeal

Article 459

The court of second instance shall grant an appeal by a judgment and reverse a first-instance judgment, should it find that in view of the finding of fact established in the first-instance judgment, a violation referred to in Articles 439 and 441 of this Code exists, 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 shall also issue a judgment reversing the first-instance judgment, when 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 shall issue a separate ruling thereon which shall not be 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 shall 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 shall 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 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 the parties and other persons who have a legal interest.

The court of second instance shall be 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 particularly 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 Main Hearing before a Court of First Instance

Article 462

The court of first instance to which a case has been referred for adjudication shall 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 shall be only the part of the charges relating to the part of the judgment which was abolished.

At the new main hearing, the parties may present new facts and examine new evidence.

The court of first instance shall be 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 shall be 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 shall be required to act in accordance with Article 216 paragraph 3 of this Code.

b) Appeal against a Second-Instance Judgment

On 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.

Mutatis Mutandis Application of Provisions on Procedure before a Court of Second Instance

Article 464

An appellate court shall adjudicate 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 shall 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

On 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 shall not be appealable, unless otherwise specified by this Code.

Rulings issued for the purpose of preparing and conducting the main hearing may only be challenged in the appeal against the judgment.

Rulings of the second instance court shall not be appealable, unless otherwise specified by this Code.

Rulings of the Supreme Court of Cassation shall not be appealable.

Time Limits for Appealing and the Suspensive Effect of the Appeal

Article 466

An appeal shall be filed with the authority conducting proceedings who issued the ruling.

An appeal shall be filed within three days of the date of delivery of the ruling and stays its execution, unless otherwise specified by this Code.

Deciding on an Appeal

Article 467

The court shall examine 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 shall decide on an appeal against a ruling of the court of first instance at a session of the panel, unless otherwise specified by this Code. The parties may be notified about the session of the panel if the court finds their presence beneficial for the purpose of clarification of 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 otherwise specified by this Code. The court may notify the parties about the panel session if it deems that their presence would be useful for the purpose of clarification of matters.

Deciding on an appeal, the court may dismiss the appeal as untimely, inadmissible or disorderly, reject the appeal as unfounded, or grant the appeal and reverse or abolish the ruling, and, if needed, send the case back for repeated decision-making.

The court shall be 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 otherwise specified by this Code.

Mutatis Mutandis Application of Provisions on an Appeal against a First-instance Judgment

Article 468

Unless otherwise specified 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 shall be applied accordingly to the procedure on an appeal against a ruling.

Mutatis Mutandis Application of Provisions on an Appeal against a Ruling in Special Proceedings

Article 469

Unless otherwise specified by this Code, the provisions of Articles 465 to 468 of this Code shall be 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

On 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 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 shall 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 other circumstances exist 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 false 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/she 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 hearing held in his/her 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, shall decide on a request to reopen criminal proceedings and the panel of the court which adopted the decision after a hearing held in the absence of the defendant, shall decide 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, shall 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 shall notify thereof the defendant or the person authorised to submit a request on behalf of the defendant.

b. Actions Taken in Connection with Request

Dismissing Request

Article 475

The court shall 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 upon Request

Article 476

If the court does not dismiss a request to reopen criminal proceedings, it shall deliver a copy of the request to the opposing party, which shall be entitled to respond to the request within eight days.

Once the court receives the response to the request, 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 shall order the files delivered to the public prosecutor, who shall be required to return them, with his/her opinion, without delay, or within 30 days at most.

Deciding on 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 shall 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 shall order the holding of a new main hearing, 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 shall be examined at the new main hearing.

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 shall 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/she should be released, or could be acquitted of the charges, or that the charges could be rejected, it shall 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 shall 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 shall not be bound by rulings issued in the criminal proceedings conducted earlier.

If the new proceedings are discontinued before the commencement of the main hearing, the court shall abolish the earlier judgment by a ruling on discontinuing proceedings.

When the court issues a judgment in the new proceedings:

1) it shall pronounce that the earlier judgment is abolished in part or in full or that it remains in force;

2) it shall 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 shall pronounce a new single penalty according to the provisions of criminal law.

In pronouncing a new judgment, the court shall be bound by the prohibition set forth 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) shall be repeated without fulfilling the conditions prescribed in Article 473 of this Code, if the possibility arises that a trial is conducted in his/her 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/her defence counsel within six months of the date when the possibility arose of putting the defendant on trial in his/her presence.

At the expiry of the time limit referred to in paragraph 1 of this Article, the reopening of the proceedings shall be allowed only for the reasons laid down 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 shall order the indictment and ruling on confirming the indictment to be delivered to the defendant, unless they were delivered to him/her 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 shall be 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 shall be bound by the prohibition set forth in 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 shall not be 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/her 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/her 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 shall exist 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 set forth 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 served 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) committed 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/she has used an ordinary legal remedy against that decision.

Competence for Deciding on the Request

Article 486

The Supreme Court of Cassation shall decide on a request for the protection of legality.

The Supreme Court of Cassation shall decide 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, shall 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 lacking 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 shall not need to contain substantiation.

Acting upon Request

Article 488

If the Supreme Court of Cassation does not dismiss the request, the reporting judge shall deliver a copy of the request to the public prosecutor or the defence counsel, and may if needed obtain information about the reasons referred to in Article 485 paragraph 1 items 1) to 3) of this Code.

If the Supreme Court of Cassation deems that the presence of the public prosecutor and defence counsel is of importance for rendering a decision, it shall 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 shall 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 shall examine 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 shall 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 upon 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 shall either reject or grant the request.

Judgment Rejecting the Request

Article 491

The Supreme Court of Cassation shall dismiss a request for the protection of legality by a judgment as unfounded should it determine 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 shall limit itself to an indication of those reasons.

Judgment Granting the Request

Article 492

The Supreme Court of Cassation shall, after granting a request for the protection of legality, issue a judgment in which it shall, 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 shall also abolish or reverse the decision issued in ordinary legal remedy proceedings although the law was not violated by such decision.

Determining Judgment

Article 493

By virtue of a judgement, the Supreme Court of Cassation shall determine 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 Main Hearing

Article 494

If a final judgment was abolished and the case sent for retrial, the earlier indictment or part thereof relating to the part of the judgment which was abolished, shall be taken as the basis.

The court shall be required to perform all procedural actions and to examine the questions which the Supreme Court of Cassation indicated thereto.

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 shall be 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 shall be applied in proceedings for criminal offences for which a fine or a term of imprisonment of up to eight years shall be prescribed as the principal penalty, and unless something is otherwise specified in these provisions, the other provisions of this Code shall be applied accordingly.

Assessment of Territorial Jurisdiction

Article 496

After scheduling a main hearing or a hearing for pronouncing a criminal sanction, the court may not declare having territorial jurisdiction, nor may the parties object to a lack of territorial jurisdiction of the court.

Desisting from Criminal Prosecution or Charges by Public Prosecutor

Article 497

The public prosecutor may desist from criminal prosecution until the scheduling of a main hearing or a hearing for pronouncing a criminal sanction, and may desist from the charges – from the scheduling until the conclusion of the main hearing 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 shall be 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 grounded suspicion exists that he/she has committed a criminal offence if there are 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 justified by the particularly severe circumstances of the criminal offence.

Prior to 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 of 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 collecting 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 a single judge referred to in paragraph 2 of this Article, but it shall not stay execution of the ruling.

The provisions of Article 216 of this Code shall be applied accordingly in respect of detention from the filing of the charges until the pronouncement of a first-instance judgment, whereby the panel (Article 21 paragraph 4) shall be required to examine, once a month, whether reasons for detention exist.

The provisions of Article 211 paragraph 3 of this Code shall be applied accordingly also in respect of deciding on detention once judgement is pronounced.

a) Filing Charges

Charging Documents

Article 499

Summary proceedings shall be instituted on the basis of a motion of the public prosecutor to indict or on the basis of a private prosecution, when justified suspicion exists 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 period of time possible, 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/she has dismissed the complaint, the injured party shall be entitled to the rights referred to in Article 51 of this Code.

A motion to indict and a private prosecution shall be 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, shall contain 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 main hearing is to be held;
- 5) proposal of the evidence to be presented at the main hearing, 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 the imposition of which 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 main hearing is unnecessary, he/she 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/she 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/she 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.

Should the judge determine that another court is competent to adjudicate the case, he/she shall declare himself incompetent and refer the case to that court once the ruling becomes final. Should the judge determine that a better clarification of the matter is required in order to examine the justification of the charging document, he/she 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/she shall be required to notify the immediately superior public prosecutor of the reasons thereof, and if the private prosecutor misses the aforesaid time limit, it shall be deemed that he/she has waived prosecution and the lawsuit shall be rejected by a ruling.

Dismissing a Charging Document

Article 502

Should the judge determine that a request by an authorised prosecutor, the required motion or approval of criminal prosecution is lacking, or that there are other circumstances temporarily preventing prosecution, he/she shall issue a ruling dismissing the motion to indict or private lawsuit.

Rejecting a Charging Document

Article 503

The judge shall reject a motion to indict or a private lawsuit by a ruling, should he/she determine 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, shall be delivered to the public prosecutor or the private prosecutor, as well as to the defendant.

b) Main Hearing

Scheduling a Main Hearing

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/she shall issue an order setting the date, time and place of holding of a main hearing 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 main hearing 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 main hearing at the latest.

Acting upon a Private Lawsuit

Article 505

Before scheduling a main hearing 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 shall be served to 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 main hearing (Article 504 paragraph 1).

If the private prosecutor and the defendant do not accept the 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 that there are no other reasons to schedule a main hearing at another date, he/she may immediately issue a ruling to hold a main hearing and at its conclusion issue a decision on the private lawsuit. The private prosecutor and the defendant shall be in particular 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/her 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/her failure to notify the court of a change of address or place of temporary or permanent residence, the single judge shall schedule a main hearing (Article 504 paragraph 1).

Summoning and Presence at the Main Hearing

Article 506

The judge shall summon to the main hearing both the defendant and his/her 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/she may come to the main hearing with the evidence in his/her defence or that he/she should in due time propose evidence which should be obtained for the purpose of being presented at the main hearing, where he/she must specify which facts are to be proved and with which of the proposed pieces of evidence.

The defendant shall be advised in the summons that he shall be entitled to take a defence counsel, but that in the case where defence is not mandatory the main hearing shall not have to be adjourned if a defence counsel fails to appear at the main hearing or a defence counsel is retained at the main hearing itself.

The defendant will be cautioned in the summons that the main hearing shall be held even in his/her 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 main hearing. With the consent of the defendant this time limit may be shortened.

Exceptionally, a main hearing 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 Main Hearing

Article 507

The main hearing shall commence with the declaration of the main content of the motion to indict or the private lawsuit and if possible, conclude 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, fails to appear at the main hearing, the judge may decide, after taking a statement from the prosecutor, to hold the main hearing in the absence of the defendant provided that his/her presence is not necessary and that he/she was interrogated beforehand.

If, during the main hearing, the judge finds that a panel is competent to adjudicate the case, a panel shall be formed and the main hearing shall commence anew, and should he determine that any of the reasons referred to in Article 416 paragraph 1 of this Code exist, the judge shall dismiss the charges by a ruling.

Upon conclusion of the main hearing, 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 Main Hearing

Article 508

If the defendant at the main hearing 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/she 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 shall decide immediately on the request referred to in paragraph 2 of this Article by a ruling which may not be appealed. Should he/she grant 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 Hearing

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 shall 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 hearing 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/her 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 should he/she deem the holding of a main hearing 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 to the criminal offence.

Should the public prosecutor act in accordance with paragraph 2 of this Article, he/she 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 failing to 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 main hearing or a hearing for the imposition of a criminal sanction.

Scheduling a Main Hearing

Article 514

By virtue of his/her order, the judge shall define the date, time and place of holding of a main hearing:

- 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 main hearing.

Together with the summons for the main hearing the judge shall 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/her defence counsel.

Scheduling a Hearing

Article 515

If agreeing 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 shall be held within 15 days of the date of issuance of the order.

The parties and the defence counsel shall be summoned to the hearing, and the motion to indict shall be served on the defendant and his/her 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 shall begin with a brief exposition of the public prosecutor about the evidence at his/her disposal and about the type and severity of the criminal sanction whose imposition he/she is proposing.

The judge shall then call on the defendant to state his/her view on all facts and shall caution him/her of the consequences of agreeing with the claims of the public prosecutor, and especially that he/she 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 main hearing.

A judgment of conviction shall be 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 main hearing.

Objection to a Judgment

Article 518

A judgment of conviction shall be served on the parties and the defence counsel.

The defendant and his/her defence counsel may within eight days of the date of service submit an objection to the judgment of conviction issued pursuant to Article 517 paragraph 2 item 2) of this Code.

Should the judge fail to issue a ruling dismissing the objection as untimely or impermissible, he/she shall issue an order determining the date, time and place of the main hearing based on the public prosecutor's indicting proposal. At the main hearing the judge shall not be 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) shall decide 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 shall become final.

3. Special Provisions on the Imposition of Judicial Admonition

Pronouncement of a Judgment

Article 519

A judgment imposing judicial admonition shall be pronounced immediately after the conclusion of the main hearing 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/her for the criminal offence he/she committed, because judicial admonition is expected to influence him/her sufficiently to deter him/her 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/her 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 particular 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

Should a defendant commit 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 main hearing 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 having jurisdiction in the first instance shall decide after the holding of the main hearing 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 is a justifiable danger that he/she 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/her 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 Main Hearing

Article 525

In addition to the persons who must be summoned to the main hearing, 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/her medical condition makes it possible for him to attend the main hearing. Prior 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 main hearing, it shall be deemed that he/she is challenging the content of the charges.

The legal representative of the defendant shall be notified about the main hearing, 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 main hearing, the court shall render a decision immediately and pronounce it together with substantive reasons.

Should the court determine that the reasons referred to in Articles 422 and 423 of this Code exist, it shall issue a judgment of dismissal or acquittal.

Should the court determine 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/she 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 shall not be 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/her right to an appeal and file an indictment or motion to indict for the same criminal offence.

The main hearing 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.

Imposing 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, within the same judgment it shall impose a security measure of compulsory psychiatric treatment and confinement in a medical institution, should it determine that the relevant statutory conditions exist.

Deciding on Deprivation of Business Capacity

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 deprivation of business capacity.

The competent guardianship authority shall also be notified of the decision.

Discontinuing the Application of a Security Measure

Article 531

Acting on a proposal of a medical institution, guardianship authority 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 hereof 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/she was sentence exceeds the time he/she spent in that institution, the court shall decide in the ruling on release, whether the defendant shall serve the rest of his/her 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 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 shall issue the decision referred to in paragraph 1 of this Article after taking a statement from the public prosecutor, should it determines that the perpetrator has not undergone medical treatment or has left it wilfully or that he/she has remained so dangerous for his/her environment despite the treatment, that his/her confinement and treatment in a health care institution is necessary.

Prior to 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/her medical condition permits so. The court shall 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 Addicts

Findings and Opinion of an Expert Witness

Article 533

The court shall decide 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/her 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 shall be issued by the court *ex officio* or acting on a proposal of the institution where the convicted person was or should have been treated.

Prior to 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

Decision 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 shall be issued by the court having jurisdiction for the first-instance trial.

A ruling on the confiscation of objects shall also be 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.

Serving 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 shall have the right to appeal against the ruling referred to in Article 535 paragraphs 2 and 3 of this Code.

Chapter XXII

PROCEEDING FOR CONFISCATION OF PROPERTY GAIN

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 property gain, and unless these provisions specify something special, the other provisions of this Code shall apply *mutatis mutandis*.

Duty to Determine Property Gain

Article 538

The property gain shall be determined in criminal proceedings *ex officio*.

The authority conducting proceedings shall be required to collect evidence and examine circumstances of importance for determining the property gain during the proceedings.

If an injured party has submitted a restitution claim whose subject matter excludes the confiscation of property gain, the property gain 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 proportionate to the true value, or a representative of a legal person, shall be summoned for questioning in the preliminary proceedings and at the main hearing. This person shall be cautioned in the summons that the proceedings shall be conducted even in his/her absence.

The representative of a legal person shall be examined at the main hearing after the defendant. The same procedure shall apply to the other person referred to in paragraph 1 of this Article, unless he/she has been summoned as a witness.

The person referred to in paragraph 1 of this Article, i.e. the representative of a legal person, shall be 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 main hearing shall not relate to the person referred to in paragraph 1 of this Article, i.e. the representative of a legal person.

If only in the course of the main hearing the court determines that proceeds of crime may be confiscated, it shall adjourn the main hearing and summon the person referred to in paragraph 1 of this Article, i.e. the representative of a legal person.

Temporary Security Measures

Article 540

When proceeds from crime may be confiscated, the court shall order temporary security measures, acting *ex officio*, according to the provisions of the law regulating the

proceedings of enforcement and security. In this case, the provisions of Article 257 paragraphs 2 to 4 of this Code shall apply *mutatis mutandis*.

Decision on Confiscation of Property Gain

Article 541

The court may impose the confiscation of the property gain 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 property gain 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, shall also be 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 the property gain from that person, or legal person.

***Mutatis Mutandis* 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 the property gain.

Motion to Reopen Criminal Proceedings

Article 543

A 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 the property gain.

Chapter XXIII

PROCEEDINGS FOR REVERSING A FINAL JUDGMENT

Applicable Provisions of the Code

Article 544

The provisions of Articles 545 to 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 shall be instituted at the request of an authorised prosecutor before the court which adjudicated in the first instance:

1) if the probation ordered that the penalty would be enforced if the convicted person failed to return the proceeds from crime, indemnify the damage he/she 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 shall issue an order determining the date, time and place for holding a hearing for the revocation of probation.

The parties and the defence counsel shall be 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 shall also be summoned to the hearing, and in the case referred to in Article 545 paragraph 1 item 2) of this Code, the officer in charge of enforcing supervised probation as well.

The defendant shall be cautioned in the summons that the hearing shall be held even if he/she does not appear, or, in cases where defence is not mandatory, if his/her 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 shall commence 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/herself on the reasons referred to in paragraph 1 of this Article.

The judge thereafter shall call on the defendant to state his/her 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 should he/she determine 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/her 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, not fulfilling 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 Penalty

a) Proceedings for Pronouncing an Aggregate Sentence

Instituting Proceedings

Article 552

Proceedings for the imposition of an aggregate sentence shall be instituted at the request of the public prosecutor or the defendant and his/her 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 shall be 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 shall decide on a motion for pronouncing an aggregate penalty at a panel session.

Prior to 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 a Motion

Article 555

The court shall issue a judgment rejecting a motion for pronouncing an aggregate penalty, should it determine that the reasons referred to in Article 552 of this Code do not exist.

Granting a 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 Proceedings

Article 557

Proceedings for the mitigation of a penalty shall be 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 shall be 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, shall decide on the motion for the mitigation of the penalty.

Deciding on a Motion

Article 559

A motion for the mitigation of a penalty shall be decided by the court in a panel session.

Prior to 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 a 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 a Motion

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/her 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, shall decide 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 should it determine:

- 1) that it was submitted by an unauthorised person;
- 2) that the convicted person has not served two-thirds of his/her prison sentence;
- 3) that the convicted person tried to escape or did escape from the custodial institution while he/she was serving his/her prison sentence.

Should it fail to 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/her prison sentence about his/her 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 shall issue 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 shall summon to the hearing the convicted person, if deeming his/her presence necessary, the defence counsel of the convicted person, if having 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 the sentence.

The defence counsel shall be cautioned in the summons that the hearing shall be held even if he/she 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 shall commence 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/her, and then call on the public prosecutor to present his/her position on the convicted person's petition.

If a representative of the custodial facility, where the convicted person is serving his/her 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 a Hearing

Article 567

Immediately after the conclusion of the hearing, the panel shall issue a ruling rejecting or granting the motion for release on parole, and shall particularly take into account an estimate of the risk posed by the convicted person, his/her 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.

By virtue of the ruling on release on parole, the panel may decide, 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 shall be served on the convicted person and his/her defence counsel, public prosecutor, custodial facility where the convicted person is serving his/her sentence, the court which sent the convicted person to serve the sentence, the 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/her 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 shall 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, shall be 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 defined in 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 decision 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 decision on rehabilitation.

The decision on the request of the convicted person shall be issued by the panel (Article 21 paragraph 4), after taking a statement from the public prosecutor.

b. Judicial Rehabilitation Proceedings

Instituting Proceedings

Article 573

Judicial rehabilitation proceedings shall be instituted on the basis of a petition submitted by the convicted person or his/her defence counsel.

The petition referred to in paragraph 1 of this Article shall be 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.

Should it fail to 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/she has, according to the best of his/her 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 the penalty, and may also seek such a report from the custodial facility where the convicted person served the penalty.

Scheduling a Hearing for Deciding on the Petition

Article 575

The president of the panel shall issue 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/her defence counsel, if having one, and the public prosecutor acting before the court deciding on the petition, shall be summoned to the hearing, and if the report is positive, a representative of the custodial facility where the convicted person has served his/her 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/she or his/her 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 576

The hearing for deciding on a petition for judicial rehabilitation shall begin by a presentation of the reasons by the convicted person or his/her defence counsel, and if they are absent, the panel president shall briefly present the reasons for submitting the petition.

The president of the chamber shall then call upon the public prosecutor to present his/her position on the convicted person's petition.

If a representative of the custodial facility where the convicted person has served his/her 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 a 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/her 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 or 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, shall be instituted on the basis of a petition submitted by a convicted person or his/her defence counsel.

The petition referred to in paragraph 1 of this Article shall be decided by the panel (Article 21 paragraph 4) of the court which adjudicated in the first instance.

Preliminary Examinations

Article 579

Immediately upon 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 property gain, gained by committing a criminal offence.

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 the 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/her defence counsel, if one is available, and the public prosecutor acting before the court deciding on the petition, shall be summoned to the hearing, and if necessary, a representative of the custodial facility where the convicted person has served the sentence, as well.

The convicted person shall be cautioned in the summons that the hearing shall be held even if he/she or his/her 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, shall begin by a presentation of the reasons by the convicted person or his/her defence counsel, and if they are absent, the panel president shall briefly present the reasons for submitting the petition.

The panel president shall then call upon the public prosecutor to present his/her position on the convicted person's petition.

If a representative of the custodial facility where the convicted person has served the 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 a 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/her defence counsel, as well as the public prosecutor may appeal against the ruling referred to in paragraph 1 of this Article.

Should the panel reject 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 damage compensation and other rights of a person wrongfully deprived of liberty or wrongfully convicted, and unless something in particular is prescribed in these provisions, the other provisions of this Code shall apply accordingly.

Person Wrongfully Deprived of Liberty

Article 584

A person shall be deemed to have been wrongfully deprived of liberty in the following cases:

1) when he/she 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/she served a prison sentence, and in connection with a request for the reopening criminal proceedings or a request for the protection of legality he/she was sentenced to a term of imprisonment of shorter duration than that served, or was sentenced to a criminal sanction that does not include the deprivation of liberty, or was declared guilty but the relieved from penalty;

3) when deprived of liberty for a period longer than the duration of the criminal sanction consisting of deprivation of liberty to which he/she was sentenced;

4) when 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/her impermissible actions, shall not be entitled to damage compensation. In the cases referred to in paragraph 1 item 1) of this Article, the right to damage compensation shall also be excluded if the circumstances referred to in Article 585 paragraph 2 item 2) of this Code existed, or 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 damage compensation procedure in the cases referred to in paragraph 1 of this Article.

Wrongfully Convicted

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, shall be deemed wrongfully convicted.

The convicted person referred to in paragraph 1 of this Article shall not be entitled to damage compensation:

1) if having deliberately caused his/her own conviction by a false confession or in another manner, unless 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/her motion, and the abandonment resulted from an agreement with the defendant.

In the case of a conviction for concurrent criminal offences, the right to damage compensation may also refer to individual criminal offences in respect of which requirements for awarding damages are fulfilled.

Ruling Annuling the Entry of a Wrongful Conviction

Article 586

The court which adjudicated in the first instance in criminal proceedings shall, *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 entry may not be disclosed to any person.

Prohibition on 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 president of the court shall be required to caution thereof the person who has been allowed to review the files, which shall be recorded on the file, and with a signature of that person.

3. Proceedings for Realising the Right to Damage Compensation

Damage Compensation Claim

Article 588

Before submitting a damage compensation claim to the court, the injured party shall be 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 compensation.

The damage compensation claim shall be decided the Commission for Damage Compensation whose composition and manner of operation shall be governed by a regulation of the minister in charge of judicial affairs.

Damage Compensation Lawsuit

Article 589

If the damage compensation 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 damage compensation lawsuit.

If a settlement has been reached only in respect of a part of the claim, the damage compensation lawsuit 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 shall not run.

A damage compensation lawsuit shall be brought against the Republic of Serbia.

Rights of the Injured Party's Heir

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/her death continue the damage compensation proceedings or institute proceedings if the injured party died prior to the expiry of the statute of limitations and did not waive the claim, in accordance with rules on damage compensation prescribed by the Law of Contract and Torts.

Expiry of the Statute of Limitations of the Right to Damage Compensation

Article 591

The statute of limitations for the right to damage compensation shall expire three years from the date of finality of the first instance judgment of rejection or acquittal, i.e. the finality of the first instance ruling terminating the proceedings or rejecting the charges, and if an appellate court ruled on an appeal – from the date of receipt of the appellate court ruling.

3. Proceedings for Realising the Right to Moral Satisfaction

Prerequisites for Realising the Right

Article 592

If a case to which wrongful deprivation of liberty or wrongful conviction of a person is related, was presented in the means of public information and thereby damaged the reputation of that person, the court shall, at his/her request, publish in the means of public information a statement on the decision declaring that the deprivation of liberty, or conviction was wrongful.

If the case was not presented via means of public information, 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 employing the person who was wrongfully deprived of liberty or wrongfully convicted.

Following the death of the convicted person, his/her spouse, person with whom he/she lived in a common-law marriage or other permanent personal association, children, parents or siblings shall be 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 damage compensation 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 motion for realising the right to moral satisfaction shall be submitted within six months (Article 591) to the court which adjudicated the case in the first instance.

The motion shall be 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 shall be applied *mutatis mutandis* in deciding on the motion.

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 capacity of socially insured person were terminated due to a wrongful deprivation of liberty or wrongful conviction, shall have the same years of service or years of social insurance recognised as if he/she had been employed during the period when he/she 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 shall also be calculated into the years of service or social insurance, unless resulting from a fault of such 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.

An appeal shall be lodged 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 shall be paid from budget funds (Article 594).

The years of insurance recognised in accordance with Article 594 of this Code shall be calculated in full, into the pensionable years of service.

Chapter XXVI

PROCEEDINGS FOR ISSUANCE OF A WANTED CIRCULAR OR NOTICE

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 circular or notice, and unless something in particular is envisaged under these provisions, the other provisions of this Code shall apply *mutatis mutandis*.

Determining the Defendant's Address

Article 597

If 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/her address.

Issuing a Wanted Circular

Article 598

The issuance of a wanted circular 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 at large, and an order for him/her to be brought in exists or a ruling ordering detention.

The issuance of the wanted circular shall be ordered by the court conducting the criminal proceedings.

The issuance of the wanted circular shall also be ordered in the case of a defendant at large, from the facility where he/she is serving a criminal sanction consisting of a deprivation of liberty, and the order shall be issued by the institution's warden.

The order of the court or the institution's warden for issuing a wanted circular shall be delivered to the police authorities for execution.

Issuing a Notice

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 shall order the issuance of a notice.

The police authority may also publish photographs of corpses 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 Circular or Notice

Article 600

A wanted circular or notice shall be 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 means of public information may also be used to inform the public about the wanted circular or notice.

If it is probable that the person for whom a wanted circular or notice has been issued is abroad, the ministry in charge of internal affairs may also issue an international wanted circular, 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 circular for a person suspected of being in the Republic of Serbia, if a declaration is made in the request that in case, he/she is located, his/her 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 suspicion exists that they are located on the territory of the Republic of Serbia.

Withdrawing a Wanted Circular or Notice

Article 601

The authority which ordered the issuance of a wanted circular or notice shall be 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 circular or notice no longer necessary.

Chapter XXVII

FINAL AND TRANSITIONAL PROVISIONS

Calculation of Time Limits in Due Course

Article 602

If a time limit was in due course, on the date of entry into force of this Code, such time limit shall be calculated in accordance with the provisions of this Code, unless if it was longer, according to the provisions of the Criminal Procedure Code (“Službeni list SRJ“, Nos. 70/01 and 68/02 and “Službeni glasnik RS”, Nos. 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 of entry into force of this Code, shall be completed under the provisions of the Criminal Procedure Code (“Službeni list

SRJ”, Nos. 70/01 and 68/02 and “Službeni glasnik RS”, Nos. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 122/08, 20/09 – other law, 72/09 and 76/10), and the rest of the proceedings shall be implemented according to the provisions of this Code.

Legality of Actions Undertaken

Article 604

The legality of actions undertaken before the beginning of implementation of this Code shall be assessed in accordance with the provisions of the Criminal Procedure Code (“Službeni list SRJ”, Nos. 70/01 and 68/02 and “Službeni glasnik RS”, Nos. 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 and prior to 1 October 2013, it shall be determined in a ruling that the special department of the competent higher court bears no competence, the legality of the undertaken actions shall be assessed under the provisions of this Code.

Application of the Code on Persons Granted the Cooperating Witness Status

Article 605

The legal provisions on the cooperating witness which applied when the status of cooperating witness was granted, shall continue to apply on the persons who received this status prior to the date of entry into effect of this law.

Rendering By-laws

Article 606

The by-laws set forth by this Code shall be rendered within six months of the effective date of this Code.

Termination of Validity of the Previous Code and Provisions of the Other Law

Article 607

The Criminal Procedure Code (“Službeni list SRJ”, Nos. 70/01 and 68/02 and “Službeni glasnik RS”, Nos. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 20/09 – other law, 72/09 and 76/10) shall cease to be valid on the date of entry into force of this Code.

The provision of Article 15a and Articles 15ž to 15m of the Law on the Organization and Competence of State Authorities in Combating Organized Crime, Corruption and Other Specially Serious Criminal Offences (“Službeni glasnik RS”, Nos. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04 – other law, 45/05, 61/05, 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 (“Službeni Glasnik RS”, Nos. 67/03, 135/04, 61/05, 101/07 and 104/09) shall be cease to be valid on January 15, 2012.

Entry into Force and Beginning of Implementation of the Code

Article 608

This Code shall enter into force on the eighth day from the date of its publication in the “Službeni Glasnik Republike Srbije” and shall be implemented as of 1 October 2013, except in the proceedings in connection with criminal offences in which a prosecutor’s

office of special jurisdiction shall act in accordance with a special law, in which case its implementation shall begin as of 15 January 2012.

* * *

ARTICLES NOT INCLUDED IN THE FINAL TEXT

Law on Amendments and Additions to the Criminal Procedure Code: “Službeni glasnik RS”, No. 101/2011-272

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 (“Službeni list SRJ”, Nos. 70/01 and 68/02 and “Službeni glasnik RS”, Nos. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 122/08, 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 (“Službeni glasnik RS”, Nos. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04 – other law, 45/05, 61/05, 72/09 and 72/11-other law) and the Law on the Organization and Competence of State Authorities in Combating War Crimes (“Službeni glasnik RS”, Nos. 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 shall enter into force on 15 January 2012.

* * *

ARTICLES NOT INCLUDED IN THE FINAL TEXT

Law on Amendments and Additions to the Criminal Procedure Code: “Službeni glasnik RS”, No. 32/2013-12

Article 4

This Law shall enter into force on the eighth day from the date of its publication in the “Službeni glasnik Republike Srbije”, except for provision of Article 2, which is to enter into force on 15 April 2013.

* * *

ARTICLES NOT INCLUDED IN THE FINAL TEXT

Law on Amendments and Additions to the Criminal Procedure Code: “Službeni glasnik RS”, No. 35/2019-6

Article 6

This Law shall enter into force on the eighth day from the date of its publication in the “Službeni glasnik Republike Srbije”, except for the provisions of Article 1, 4 and 5 of this Law, which shall enter into force on 1 December 2019.