24 Annex - Justice, freedom and security

161. CRIMINAL PROCEDURE CODE

CRIMINAL

PROCEDURE CODE

(*Official Gazette of Montenegro 57/09 of 18 August 2009*)

Part one

GENERAL PROVISIONS

Title I

BASIC RULES

Subject-Matter and Aim of the Code

Article 1

This Code lays down the rules with the objective to enable a fair conduct of criminal proceedings and ensure that no innocent person be convicted and that a criminal sanction be imposed on an offender under the conditions provided for in the Criminal Code and pursuant to legally conducted proceedings.

Principle of Legality

Article 2

(1) A criminal sanction may be imposed on the offender only by the court of appropriate jurisdiction in the proceedings initiated and conducted in compliance with this Code.

(2) Freedom and other rights of the accused may be limited prior to the passing of a legally-binding court ruling only under the conditions provided for in this Code.

Presumption of Innocence and *in dubio pro reo*

Article 3

(1) All persons shall be considered innocent of a crime until their guilt has been established by a legally-binding ruling.

(2) State bodies, media, associations of citizens, public figures and other persons shall respect the rules referred to in paragraph 1 of this Article and shall not violate other procedural rules, rights of the accused and the injured party and the principle of independence of judiciary by their public statements regarding the criminal proceedings that is in progress.

(3) The court shall pass a decision that is more favourable for the accused if once all available evidence are provided and presented in the criminal proceedings, only a suspicion remains with respect to the existence of a fundamental element of a criminal offence or as regards facts on which depends an application of a provision of the Criminal Code or this Code.

Rights of Suspects and the Accused Respectively

Article 4

(1) At the first hearing, the suspects shall be informed about the criminal offence they are charged with as well as the grounds for suspicion against them.

(2) The accused shall be provided with an opportunity to make a statement regarding all the facts and evidence incriminating them and to disclose all facts and present all evidence in their favour.

(3) On the occasion of the first hearing, the suspects and the accused shall be informed that they are not obliged to neither make any statements nor answer the questions they are asked and that all statements they make may be used as evidence.

Rights of Persons Placed under Arrest

Article 5

(1) Persons placed under arrest by a competent state body shall be immediately informed in their language or in a language they understand about the grounds for placing them under arrest and, at the same time, informed that they are not obliged to make any statement, that they have a right to a defence counsel of their own choice and to request that a person of their choosing be informed on their placement under arrest as well as a diplomatic consular representative of a state whose nationals they are or a representative of appropriate international organization if they are stateless persons or refugees.

(2) Persons placed under arrest without a court ruling shall be brought immediately before the competent Public Prosecutor save where provided for in this Code.

Prohibition of Re-trial (*Ne bis in idem*)

Article 6

(1) No person shall be tried again for a criminal offence s/he has already been convicted or acquitted of by a legally-binding decision.

(2) The prohibition referred to in paragraph 1 of this Article shall not prevent the repetition of criminal proceedings in compliance with this Code.

Official Language in Criminal Proceedings

Article 7

(1) The official language in criminal proceedings shall be the Montenegrin language.

(2) In courts having jurisdiction over the territory in which members of minority nations and other minority ethnic communities (hereinafter referred to as the: minorities) constitute a substantial part of population, their respective language shall also be officially used in criminal proceedings, in compliance with law.

Right to Use One's Own Language in Criminal Proceedings

Article 8

(1) Criminal proceedings shall be conducted in the Montenegrin language.

(2) Parties, witnesses and other persons participating in the proceedings shall be entitled to use their own language or the language they understand in the proceedings. If proceedings are not conducted in a language those persons understand, interpretation of statements and translation of documents and other written evidence shall be provided.

(3) Persons referred to in paragraph 2 of this Article shall be instructed of their right to interpretation, and they may waive that right if they understand the language in which the proceedings are being conducted. A note shall be made in the record that the participants of the proceedings have been so instructed, and their statement thereto shall also be recorded.

(4) Interpretation shall be entrusted to an interpreter.

Language Used for Referring Petitions to Courts and for Remitting Petitions by Courts

Article 9

(1) Actions, appeals and other petitions shall be referred to the court in the Montenegrin language.

(2) Persons placed under arrest may refer petitions to the court in their language or in the language they understand.

(3) Courts shall issue summonses, decisions and other documents in the Montenegrin language.

(4) If the language of a minority is also officially used in the court, the court shall deliver documents in that language to persons belonging to the respective national minority if they have used that language in the course of the proceedings. Those persons may request that documents be delivered to them in the Montenegrin language.

(5) An accused in custody, serving a sentence or who is in a medical institution where a security measure is being enforced shall also receive a translation of the documents referred to in paragraphs 1 and 3 of this Article in the language used by him/her during the proceedings.

Communication between Courts of Law

Article 10

The correspondence and legal assistance between courts shall be carried out in the Montenegrin language. If a document is composed in the language of a minority and it is sent to a court in which that language is not officially used, a translation into the Montenegrin language shall be attached.

Prohibition of Use of Force and Extortion of a Confession

Article 11

(1) It shall be forbidden to threaten or exert violence over a suspect, accused or another person participating in the procedure, as well as to extort confession or another statement from such persons.

(2) No judgment shall be based on any confession or other statement obtained by extortion, torture or inhuman or degrading treatment.

Right to Defence

Article 12

(1) The accused shall be entitled to defend themselves in person or with the professional assistance of a defence counsel of their own choice from the ranks of attorneys-at-law.

(2) The accused shall be entitled to have a defence counsel present during their hearing.

(3) Prior to the first hearing, the accused shall be instructed of their right to retain a defence counsel, to agree with the defence counsel on the manner of defence and told that a defence counsel may be present during their hearing. They shall be cautioned that everything they state may be used as evidence against them.

(4) If the accused do not retain a defence counsel by themselves, they shall be appointed an *ex officio* defence counsel, when provided so by this Code.

(5) The accused shall be ensured enough time and possibilities to prepare their defence.

(6) The suspects shall be entitled to a defence counsel in compliance with this Code.

Right to Rehabilitation and Damages

Article 13

Persons who have been unlawfully or groundlessly placed under arrest of unjustifiably convicted shall be entitled to rehabilitation, the right to damages from the state, as well as other rights laid down by law.

Instruction on the Rights of the Accused or Other Participants in the Procedure

Article 14

The court, the Public Prosecutor and state bodies participating in the procedure shall instruct the suspects i.e. the accused or other participants in the procedure, who are likely to omit to perform an action in the procedure or fail to exercise their rights because of that, of the rights they are entitled to pursuant to this Code as well as of the consequences of the failure to act.

Right to a Prompt Trial

Article 15

(1) The accused shall be entitled to be brought before the court in the shortest possible time and to a prompt trial.

(2) The court shall conduct the procedure without delays and to prevent all abuses of rights that are vested in participants in the procedure.

(3) The duration of detention and other forms of restrictions of freedom shall be reduced to the shortest necessary time.

Principle of Truth and Fairness

Article 16

(1) The court, Public Prosecutor and other state bodies participating in criminal proceedings shall truthfully and fully establish all facts relevant to pass a lawful and fair decision, as well as to examine and establish, with equal attention, facts that incriminate the accused and the ones in his/her favour.

(2) The court shall ensure equal terms to the parties and to the defence counsel as regards the offering, accessing and presenting of evidence.

Free Assessment of Evidence and Legally Invalid Evidence

Article 17

(1) Courts and Public Prosecutors shall appraise the existence or non-existence of facts on which to base their decisions at their discretion.

(2) Judgments may not be based on evidence that have been obtained by violating human rights and fundamental freedoms guaranteed by the Constitution or by ratified international treaties or on evidence obtained by violating the provisions of criminal proceedings as well as on other evidence obtained thereof, nor may such evidence be used in the procedure.

Accusatory Principle

Article 18

(1) Criminal proceedings shall be initiated and conducted upon the indictment of an authorised Prosecutor.

(2) For criminal offences that are prosecuted *ex officio*, the authorised prosecutor shall be the Public Prosecutor whereas for criminal offences prosecuted upon a personal action at law, the authorised prosecutor shall be a plaintiff.

(3) If a Public Prosecutor determines that there are no grounds for the institution or conduct of criminal proceedings, the injured party acting as a subsidiary prosecutor may assume his/her role, under the conditions provided for by this Code.

Principle of Legality of Criminal Prosecution

Article 19

Unless otherwise provided by this Code, the Public Prosecutor shall initiate prosecution when there is well-founded suspicion that a certain person has committed a criminal offence that is prosecuted *ex officio*.

Trial by a Panel

Article 20

(1) In the criminal proceedings a Panel shall adjudicate in courts.

(2) A single judge shall adjudicate in the court of first instance when so provided for by this Code.

Restrictions of Certain Rights Caused by the Initiation of Criminal Proceedings

Article 21

When provided for that the initiation of criminal proceedings entails the restriction of certain rights, such restrictions, unless otherwise provided by law, shall commence when the indictment enters into force, whereas for criminal offences punishable by a fine or up to five years of incarceration as the principal punishment, those consequences shall commence as of the day the sentence is passed, regardless of whether it has become legally-binding or not.

Definitions

Article 22

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

1) *suspects* are persons against whom the competent state body has taken an action because there are grounds for suspicion that they had committed a criminal offence, but order for initiation of investigation has not yet been issued or a direct indictment has not been lodged against them;

2) *the accused* are persons against whom an order on the conduct of investigation, indictment, bill of indictment or personal action at law was issued or persons against whom a special procedure was initiated for the enforcement of security measures of mandatory psychiatric treatment and confinement in a medical institution and mandatory psychiatric treatment while at freedom; the term accused may be used in the criminal proceedings as a general term for the accused, defendant and convicted person;

3) *defendants* are persons against whom the indictment has entered into force;

4) *convicted* persons are persons whose criminal liability for a particular criminal offence was established by a legally-binding judgment or a legally-binding ruling on punishment;

5) *injured parties* are persons whose personal or property right of some type was violated or endangered by a criminal offence;

6) *prosecutors* are Public Prosecutors, plaintiffs and subsidiary prosecutors;

7) *parties* are the prosecutor and the accused;

8) *organized crime* implies the existence of grounds for suspicion that a criminal offence punishable under law by an imprisonment of four years or a more severe sentence is a result of the action of three or more persons joined into a criminal organization, i.e. criminal group, acting with the aim of committing serious criminal offences in order to obtain illicit profit or power, in case when at least three of the following conditions have been met:

a) that every member of the criminal organization, i.e. criminal group has had an assignment or a role defined in advance or manifestly definable;

b) that actions of the criminal organization, i.e. criminal group have been planned for a longer term of time or for an unlimited term;

c) that activities of the criminal organization, i.e. group have been based on the implementation of certain rules of internal control and discipline of its members;

d) that activities of the criminal organization, i.e. criminal group have been planned and performed on an international scale;

e) that activities of the criminal organization, i.e. criminal group include the application of violence or intimidation or that there is readiness for their application;

f) that activities of the criminal organization, i.e. criminal group include the use of economic or business structures;

g) that activities of the criminal organization, i.e. criminal group include the use of money laundering or illicit profits;

h) that there is an influence of the criminal organization, i.e. criminal group or its part upon the political authorities, media, legislative, executive or judicial branch of power or other important social or economic factors.

Title II

JURISDICTION OF COURTS

1. SUBJECT-MATTER JURISDICTION AND COMPOSITION OF COURTS

Subject-Matter Jurisdiction

Article 23

Courts shall adjudicate within the limits of their subject-matter jurisdiction provided by law.

Composition of Court and Effective Court Jurisdiction

Article 24

(1) Courts shall adjudicate in the first instance in a Panel composed of three judges with the exception of the case referred to in paragraph 2 of this Article.

(2) For criminal offences punishable by a fine or up to ten years of imprisonment as the principal punishment, a single judge shall adjudicate in the first instance, with the exception of offences under the competence of a superior court or unless otherwise provided by law.

(3) Courts of second instance shall adjudicate in a Panel composed of three judges.

(4) Courts of third instance shall adjudicate in a Panel composed of five judges, with the exception of the case referred to in paragraph 10 of this Article.

(5) Preliminary investigation and investigation shall be participated by an investigative judge of a court of first instance in compliance with this Code.

(6) The President of the Court and the Chair of the Panel shall decide in cases provided for by this Code.

(7) Adjudicating in a panel composed of three judges, courts of first instance shall decide on appeals against rulings of the investigative judge and other rulings if provided so by this Code, they shall pass first instance decisions out of main hearing, conduct procedure and pass a judgment upon a request for enforcement of a foreign judgment, and make proposals in cases provided for in this Code or other law.

(8) If the panel referred to in paragraph 7 of this Article can not be established in a court adjudicating only in the first instance due to an insufficient number of judges, affairs under the jurisdiction of that panel shall be conducted by the panel of the directly superior court.

(9) Provisions of this Code which refer to the rights and duties of the Chair of Panel and its members shall also be applied accordingly to a single judge when s/he is adjudicating a case in compliance with the provisions of this Code.

(10) When deciding on a request for judicial review, the court shall adjudicate in a Panel composed of three judges, save where deciding on a request for judicial review against a decision of a Panel of the same court for violation of law.

(11) In cases not provided for in paragraphs 3, 4 and 10 of this Article, higher instance courts shall also adjudicate in a Panel composed of three judges, unless otherwise provided by this Code.

2. TERRITORIAL JURISDICTION

General Rules of Determining Territorial Jurisdiction

Article 25

(1) As a rule, the court having territorial jurisdiction shall be the one within whose territory criminal offence was committed or attempted.

(2) A personal action at law may be lodged with the court within the territory of which the accused has permanent or temporary residence.

(3) If the criminal offence was committed or attempted within the territory of several courts or on the border of those territories, or if it is uncertain within which territory the offence has been committed or attempted, the court of appropriate jurisdiction shall be the one which has first instituted the procedure upon the indictment of the authorized prosecutor, whereas in preliminary investigation and investigation the court of appropriate jurisdiction shall be the one that was the first to take an action upon the prosecutor’s motion.

Territorial Jurisdiction of Courts in Cases of Offences Committed on a National Ship or Aircraft

Article 26

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

Territorial Jurisdiction for an Offence Committed by Means of Media

Article 27

(1) If a criminal offence was committed by means of press, the court of appropriate jurisdiction shall be the one within whose territory the paper was printed. If this location is unknown

or if the paper was printed abroad, the court of appropriate jurisdiction shall be the one within whose territory the printed paper is distributed.

(2) If according to law the author of the text is responsible, the court of appropriate jurisdiction shall be the one within whose territory the author has permanent residence or the court within whose territory the event to which the text refers took place.

(3) Provisions of paragraphs 1 and 2 of this Article shall also be applied accordingly to cases where the statement or text was released via a radio, television station or other mass media.

Territorial Jurisdiction in Case When the Place of Commission of a Criminal Offence is Unknown

Article 28

(1) If the place of the commission of a criminal offence is unknown or if that place is outside of Montenegro, the court of appropriate jurisdiction shall be the one within whose territory the accused has temporary or permanent residence.

(2) If the procedure is already pending before the court of the temporary or permanent residence of the accused, when the place of the commission has been determined, this court shall retain its jurisdiction.

(3) If neither the place of the commission of the criminal offence nor the temporary or permanent residence of the accused is known, or if both are outside the territory of Montenegro, the court of appropriate jurisdiction shall be the one within whose territory the accused is placed under arrest or turned himself/herself in.

Territorial Jurisdiction in Cases of Criminal Offences Committed in Montenegro and Abroad

Article 29

If a person has committed a criminal offence both in Montenegro and abroad, the court of appropriate jurisdiction shall be the one that has jurisdiction over the criminal offence committed in Montenegro.

Designated Territorial Jurisdiction *(Forum ordinatum)*

Article 30

If it is not possible to ascertain which court has territorial jurisdiction under the provisions of this Code, the Supreme Court of Montenegro (hereinafter referred to as the: the Supreme Court) shall designate one of the courts of subject-matter jurisdiction to conduct the proceedings.

3. JOINDER AND SEPARATION OF PROCEEDINGS

Joinder of Proceedings

Article 31

(1) Where an individual is accused of having committed several criminal offences some of which fall within jurisdiction of a lower, and some of a higher court, the court of appropriate jurisdiction shall be the higher court. If the courts of appropriate jurisdictions are of the same level, the court of appropriate jurisdiction shall be the one that, based on the indictment of an authorized prosecutor, first initiated the procedure. In preliminary investigation and investigation, the court of appropriate jurisdiction shall be the one that was the first to take an action upon the motion of the prosecutor.

(2) The provision of paragraph 1 of this Article shall also be applied to determine which court has jurisdiction when the injured party at the time of the commission of the criminal offence has simultaneously perpetrated a criminal offence against the accused.

(3) As a rule, co-offenders shall fall within the jurisdiction of the court which, having jurisdiction to try one of them, has first initiated the procedure.

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

(5) In cases referred to in paragraphs 1 to 4 of this Article, single proceedings shall be conducted as a rule and a single judgment shall be passed.

(6) The court may also decide to conduct a single procedure and to pass a single judgment in the case when several persons are charged with several criminal offences, but only provided that the offences are interconnected and that the evidence pertaining to each of the offences are the same. If some of these criminal offences fall within the jurisdiction of a higher court and some to that of a lower court, the single procedure may be conducted only before the higher court.

(7) The court may decide to conduct a single procedure and to pass a single judgment if separate procedures are conducted against the same person before the same court for several criminal offences or against several persons for the same criminal offence.

(8) A decision on joinder of procedures shall be decided by the court having jurisdiction to conduct the single procedure. An appeal against the ruling ordering the joinder of procedures or rejecting a motion for the joinder of procedures shall not be allowed.

(9) The provisions governing joinder of procedures shall also be applied accordingly when preliminary investigation and investigation are conducted by the Public Prosecutor who decides on the conduct of a single procedure.

Separation of Procedure

Article 32

(1) Before the main hearing is completed and upon the motion of the parties, injured party or ex officio, the court of appropriate jurisdiction in compliance with Article 31 of this Code may, for important reasons or for reasons of effectiveness order the procedure for some criminal offences or against some of the accused to be separated and separately completed or referred to another court of appropriate jurisdiction.

(2) The provisions governing the separation of procedures shall also be applied accordingly when preliminary investigation and investigation are conducted by the Public Prosecutor who decides on the conduct of a single procedure.

(3) An appeal against the ruling ordering the separation of procedure or rejecting a motion for the separation of procedure shall not be allowed.

4. TRANSFER OF TERRITORIAL JURISDICTION

Necessary Transfer of Territorial Jurisdiction

Article 33

(1) When a court of appropriate jurisdiction is prevented from acting due to legal or factual reasons, it shall notify the directly superior court thereon, which shall designate another court with subject-matter jurisdiction in its territory.

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

Transfer of Competence for Reasons of Effectiveness

Article 34

(1) The Supreme Court may designate another court having subject-matter jurisdiction to conduct the procedure if it is obvious that the conduct of procedure will be thereby facilitated or other important reasons exist.

(2) The ruling within the meaning of paragraph 1 of this Article may be issued upon the motion of the parties, a single judge or the Chair of the Panel.

5. CONFLICT OF JURISDICTIONS

Assessment of Jurisdiction

Article 35

(1) The court shall examine its subject-matter and territorial jurisdiction, and as soon as it determines a lack of its jurisdiction, it shall declare that it lacks competence and, after the ruling becomes legally-binding, it shall assign the case to a court of appropriate jurisdiction, with the exception of cases referred to in paragraphs 2 and 3 of this Article.

(2) If the court finds after the commencement of the main hearing that a lower court has jurisdiction for the trial, it shall continue the procedure and pass a decision.

(3) Once the indictment comes into effect, the court may not declare that it lacks territorial jurisdiction nor may the parties raise the objection of territorial jurisdiction.

(4) The court lacking jurisdiction shall take such procedural actions with respect to which there is a risk of delay.

Initiation of a Procedure for Resolving the Conflict of Jurisdiction

Article 36

(1) If the court to which the case has been assigned as to the court of appropriate jurisdiction deems that the court that assigned the case or another court is competent, it shall initiate the procedure for resolution of the conflict of jurisdiction.

(2) When a court of second instance has passed a decision in relation to an appeal against the decision of a court of first instance by which it declared its lack of jurisdiction, this decision shall also relate in terms of lack of jurisdiction to the court to which the case has been assigned, if the court of second instance has jurisdiction to resolve the conflict of jurisdiction between those courts.

Resolving the Conflict of Jurisdiction

Article 37

(1) A ruling on the conflict of jurisdiction between courts shall be issued by the mutually directly superior court.

(2) Prior to issuing a ruling in relation to the conflict of jurisdiction, the court shall request the opinion of the Public Prosecutor competent for proceeding before that court, when the criminal proceedings is conducted upon the prosecution of a Public Prosecutor.

(3) An appeal shall not be allowed against the ruling issued in relation to a conflict of jurisdiction.

(4) On the occasion of passing a decision on the conflict of jurisdiction, the court may simultaneously, ex officio, pass a decision on the transfer of territorial jurisdiction if conditions referred to in Article 34 of this Code are met.

(5) Until the issuance of a ruling on the conflict of jurisdiction between courts, the court shall take such procedural actions with respect to which there is a risk of delay.

Title III

RECUSAL

Reasons for Recusal

Article 38

Judges may not perform their judicial duties in the following cases:

1) if they are personally injured by the criminal offence;

2) if the accused, their defence counsel, the prosecutor, the injured party, their legal representative or proxy is the judge's spouse, former spouse or common law spouse or direct blood relative to any degree whatsoever, collateral blood relative up to the fourth degree, or relative by marriage up to the second degree;

3) if s/he is a guardian, ward, adoptant parent, adopted child, foster-parent or foster-child of the accused, his/her defence counsel, the prosecutor or the injured party;

4) if in the same criminal case s/he has carried out evidentiary actions or has taken part in the procedure in the capacity of a prosecutor, defence counsel, legal representative or proxy of the injured party or the prosecutor, or if s/he has been heard in the capacity of a witness or expert witness;

5) if s/he has taken part in the same case in passing a decision of a lower court or a decision referred to in Article 302, paragraph 10 of this Code or in passing a decision of the same court being contested by an appeal;

6) if circumstances exist that raise suspicion as to his/her impartiality.

Proceedings of a Judge in Cases of Application for Recusal

Article 39

(1) When a judge learns that one of the reasons for his/her recusal referred to in Article 38, items 1 through 5 of this Code exist, s/he shall immediately discontinue all work on that case and inform thereon the President of the Court who shall allocate the case to another judge. If the case concerns the recusal of the President of the Court, in that case s/he shall be substituted by a judge of that court with the longest service in court, and if that is not possible, the President of the directly superior court shall appoint a substitute judge.

(2) If a judge holds that circumstances justifying his/her recusal exist referred to in Article 38, items 1 through 6 of this Code, s/he shall notify the President of the Court thereon.

Persons Who May Request the Recusal of a Judge

Article 40

(1) Recusal of a judge may be requested by the parties, defence counsel and injured party.

(2) The parties, defence counsel and injured party may submit an application for the recusal of a judge until the commencement of the main hearing, and if they learn about the reason for the recusal later, they may submit the application immediately after receiving that knowledge.

(3) The parties, defence counsel and injured party may submit an application for the recusal of a judge of a higher court immediately after receiving that knowledge, and at the latest until the commencement of the Panel session or the hearing.

(4) The parties, defence counsel and injured party may request only the recusal of an individually designated judge exercising his/her judicial power in that particular case.

(5) The parties, defence counsel and injured party shall specify in the application the circumstances which they deem to represent some of grounds for recusal referred to in Article 38

of this Code. Reasons mentioned in the previous application for recusal that has been rejected may not be specified again in the application.

Deciding on an Application for Recusal

Article 41

(1) The President of the Court shall decide on the application for recusal referred to in Article 40 of this Code.

(2) If the recusal requested concerns only the President of the Court or the President of the Court and a judge, the decision on recusal shall be passed by the President of the directly superior court and if the recusal requested concerns the President of the Supreme Court, the decision on recusal shall be passed by the Supreme Court Bench.

(3) Before issuing the ruling on recusal, a statement of the judge or of the President of the Court shall be taken on recusal and where appropriate, further inquires shall be carried out.

(4) An appeal shall not be allowed against the ruling upholding an application for recusal. The ruling dismissing an application for recusal may be contested by a separate appeal, but if such ruling was issued after the indictment was brought, than only by an appeal against the judgment.

(5) If the application for recusal was submitted contrary to the provisions of Article 40 of this Code, the application shall be dismissed entirely or partially. An appeal shall not be allowed against the ruling dismissing an application. The ruling dismissing the application shall be issued by the President of Court, and at the main hearing it shall be issued by the Panel. The judge whose recusal is requested may participate in issuing that ruling at the main hearing.

Proceeding of a Judge Pending the Passing of a Decision on Recusal

Article 42

When a judge learns that an application for their recusal has been submitted, they shall immediately discontinue work on the case and in the case of recusal referred to in Article 38, item 6 of this Code, s/he may, pending the issuance of the ruling on the application, take only those actions whose delay poses a risk.

Recusal of a Public Prosecutor and Other Participants in the Procedure

Article 43

(1) Provisions on the recusal of judges shall also be applied accordingly to Public Prosecutors and persons who are authorized under law to represent the Public Prosecutor in the procedure, court reporters, interpreters and experts, as well as expert witnesses whose recusal might also be requested for reasons referred to in Article 139 and Article 148, paragraph 2 of this Code.

(2) By way of exception to paragraph 1 of this Article, Public Prosecutors shall not be recused if they have performed evidentiary actions in the same case, or participated in the procedure as prosecutors or if they participated in the same case in the procedure before a lower instance court within the meaning of Article 38, paragraphs 4 and 5 of this Code.

(3) Public Prosecutors shall decide on the recusal of persons who are authorized under law to represent them in the criminal proceedings. The directly superior Public Prosecutor shall decide on the recusal of a Public Prosecutor. The decision on the recusal of the Supreme Public Prosecutor shall be passed in compliance with a separate law.

(4) The Panel, the Chair of the Panel or a judge shall decide on the recusal of a court reporter, interpreter, expert or expert witness.

(5) When authorized police officers take evidentiary actions pursuant to this Code, the competent Public Prosecutor shall decide on their recusal. The person in official capacity who takes the action shall decide on the recusal of a court reporter participating in taking these actions.

Title IV

PUBLIC PROSECUTOR

Rights and Duties

Article 44

(1) The fundamental right and duty of the Public Prosecutor shall be the prosecution offenders.

(2) For criminal offences prosecuted ex officio, the Public Prosecutor shall be competent to:

1) issue binding orders or directly manage the activities of the administration authority competent for police affairs (hereinafter referred to as the: police force) in the preliminary investigation;

2) issue rulings on the postponement of prosecution, when envisaged so by this Code and dismiss criminal charges for reasons of equity;

3) order the investigation to be conducted, conduct the investigation and conduct pressing evidentiary actions in the preliminary investigation;

4) enter into plea bargains with the accused, in compliance with this Code, after having obtained evidence in compliance with this Code;

5) bring and represent indictments, i.e. bills of indictment before court of appropriate jurisdiction;

6) lodge legal remedies against judgments;

7) take other actions provided for by this Code.

(3) In order to exercise powers referred to in paragraph 2 item 1 of this Article, police force and other state bodies shall notify the competent Public Prosecutor before taking any action, with the exception of in cases of urgency. The police force and other state bodies competent for detecting criminal offences shall proceed upon the request of the competent Public Prosecutor.

(4) During the investigation the Public Prosecutor shall establish with equal attention the facts which incriminate the accused and which are in his/her favour.

Subject-matter Jurisdiction

Article 45

The subject-matter jurisdiction of the Public Prosecutor in criminal proceedings shall be established in compliance with a separate law.

Territorial Jurisdiction

Article 46

The territorial jurisdiction of the Public Prosecutor shall be determined according to the territorial jurisdiction of the court for the area the Public Prosecutor was appointed for.

Actions Taken by a Public Prosecutor Lacking Competence

Article 47

The procedural actions shall be also taken by the Public Prosecutor lacking competence when risk of delay exists. S/he shall immediately notify the competent Public Prosecutor thereon.

Taking Actions

Article 48

Public Prosecutors shall take procedural actions either directly or through persons authorized under law to represent them.

Conflict of Jurisdiction

Article 49

The conflict of jurisdiction between Public Prosecutors shall be decided by their mutually directly superior Public Prosecutor.

Withdrawal of Charge

Article 50

Public Prosecutors may withdraw charge until the end of the main hearing before a court of first instance, and they may do so before a higher court in cases envisaged by this Code.

Title V

PLAINTIFF AND THE INJURED PARTY

Term for Filing a Personal Action at Law

Article 51

(1) As regards criminal offences prosecuted upon a personal action at law, the action shall be lodged within three months as of the day when the plaintiff, i.e. person referred to in Article 54 of this Code, learned about the criminal offence and the offender.

(2) If a personal action at law has been lodged for the criminal offence of insult, the accused may, until the completion of the main hearing and after the expiration of the term referred to in paragraph 1 of this Article, bring an action against the plaintiff who insulted him/her in return on the same occasion (counter-action). In this case, the court shall pass a single judgment.

Bringing a Personal Action at Law

Article 52

(1) A personal action at law shall be brought with the court of appropriate jurisdiction.

(2) When the injured party has lodged a criminal charge and in the course of the procedure it is ascertained that a criminal offence subject to personal action at law is involved, the charge shall be considered as timely personal action at law if it was submitted within the term envisaged for a personal action at law.

Personal Action at Law of a Minor and of a Person Deprived of Capacity to Exercise Rights

Article 53

(1) A personal action at law on behalf of juveniles and persons fully deprived of the capacity to exercise rights shall be brought by their legal representative.

(2) As an exception, juveniles who have reached sixteen years of age may also bring a personal action at law by themselves.

Succession of a Plaintiff

Article 54

If a plaintiff dies within the term regulated for bringing a personal action at law or in the course of procedure, his/her spouse, common law spouse, children, parents, adopted children, adoptive parents and siblings may, within three months after his/her death, bring an action or make a statement that they will continue the procedure.

Several Injured parties and Prosecution upon a Personal Action at Law

Article 55

If several persons were injured by the criminal offence, prosecution shall be initiated or continued upon a personal action at law of any of the injured parties.

Withdrawal of a Personal Action at Law and Consequences Thereof

Article 56

(1) By virtue of his/her own statement to the court before which procedure is being conducted, a plaintiff may withdraw personal action at law until the completion of the main hearing.

(2) In case referred to in paragraph 1 of this Article, the plaintiff shall lose the right to bring a personal action at law again.

Presumed Withdrawal of a Personal Action at Law and Return to the *status quo ante*

Article 57

(1) If a plaintiff fails to appear at the main hearing although s/he was duly summoned, or if the summons could not have been served to him/her due to his/her failure to report to the court changes of address or temporary residence, it shall be deemed that s/he has withdrawn the personal action at law, with the exception of case referred to in Article 457 of this Code.

(2) The Chair of the Panel shall grant return to the status quo ante to the plaintiffs who, for valid reasons, failed to appear at the main hearing or notify the court in due time about changes of address or temporary residence, provided they file a petition for return to the status quo ante within eight days after the discontinuance of impediment.

(3) No return to the status quo ante may be claimed after a expiration of three months from the day of failure to file a petition referred to in paragraph 2 of this Article.

(4) An appeal shall not be allowed against the ruling upholding the return to the status quo ante.

(5) The ruling on the discontinuance of proceedings issued in case referred to in paragraph 1 of this Article shall enter into effect upon the expiration of terms referred to in paragraphs 2 and 3 of this Article, if a plaintiff does not lodge a petition within those terms for return to the status quo ante or when the ruling dismissing the petition becomes legally-binding.

Right to Be Informed about Evidence and Right to Offer Evidence

Article 58

(1) In the course of investigation, injured parties shall be entitled to call attention to all facts and to offer evidence important for the criminal case and for their claim under property law.

(2) At the main hearing, the injured party and the plaintiff shall be entitled to offer evidence, to examine the defendant, witnesses and expert witnesses, to put forward remarks and explanations as regards their statements as well as to make other statements and proposals.

(3) The injured party, the subsidiary prosecutor and the plaintiff shall be entitled to inspect files and objects serving as evidence. The inspection of the files may be denied to the injured party until an order on the conduct of investigation has been made or until s/he has been examined in the capacity of a witness.

(4) The injured party who is a victim of a criminal offence against sexual freedom shall be entitled to be heard and to have the procedure be conducted by a judge of the same sex, if so allowed by the staff composition of the court.

(5) The Public Prosecutor and Chair of the Panel shall inform the injured party and the plaintiff of the rights referred to in paragraphs 1 to 4 of this Article.

(6) In cases when the criminal proceedings is conducted for a criminal offence punishable by imprisonment exceeding three years and the injured party can not bear representation costs according to his/her financial standing, s/he may be appointed a proxy upon his/her request, if the representation of the injured party by a proxy is in the interest of equity. If the injured party is a minor, during the entire criminal proceedings the court shall assess ex officio whether s/he needs to be appointed a proxy.

(7) The right to legal assistance shall be exercised by the injured party in compliance with a separate law.

Injured Party as a Prosecutor (Subsidiary Prosecutor)

Article 59

(1) When a Public Prosecutor establishes that there are no grounds for assuming prosecution for a criminal offence that is prosecuted ex officio or that there are no grounds to assume prosecution against one of reported accomplices, s/he shall inform the injured parties thereon within eight days, instruct them that they may assume prosecution themselves and deliver them a ruling on the dismissal of the criminal charge, with the exception of cases referred to in Article 272, paragraph 6 and Article 273 of this Code.

(2) Public Prosecutors shall proceed in the manner referred to in paragraph 1 of this Article when they issue an order on the discontinuance of investigation and the court when it issues a ruling on the discontinuance of procedure due to the Public Prosecutor’s withdrawal of action.

(3) The injured party shall be entitled to take, i.e., continue prosecution, within 30 days as of the receipt of notification referred to in paragraph 1 of this Article.

(4) If the Public Prosecutor has withdrawn the indictment, the injured party may, when assuming prosecution, abide by the existing indictment or bring a new one.

(5) The injured party who has not been notified that the Public Prosecutor did not assume prosecution or has withdrawn from prosecution may make his/her statement before the court of appropriate jurisdiction specifying that s/he assumes or continues proceedings, within six months from the day the Public Prosecutor dismissed the charge or discontinued investigation, i.e. from the day the ruling on the discontinuance of procedure was issued.

(6) The notification of the Public Prosecutor, i.e. of the court that the injured party may assume prosecution shall also contain an instruction as to which actions s/he may take in order to exercise that right.

(7) If the subsidiary prosecutor dies pending the term for assuming prosecution or pending the proceedings, his/her spouse, common law spouse, children, parents, adopted children, adoptive parents or siblings may, within three months after his/her death, assume prosecution i.e. make the statement that they shall continue the proceedings.

(8) The ruling on discontinuance of proceedings because the Public Prosecutor has withdrawn from prosecution shall enter into effect after the terms referred to in paragraphs 3, 5 and

7 of this Article have expired, if the injured party i.e. persons referred to in paragraph 7 have failed to assume prosecution within the regulated terms.

Continuing Prosecution at the Main Hearing and Return to the *status quo ante*

Article 60

(1) When a Public Prosecutor withdraws prosecution at the main hearing, injured parties shall declare immediately whether they wish to continue prosecution.

(2) It shall be deemed that the injured parties do not wish to continue prosecution, if they fail to appear at the main hearing, although they were duly summoned or the summons could not have been served to them because they failed to notify the court about change of address or residence.

(3) The Chair of the Panel of the court of first instance shall allow return to the status quo ante to the injured party who was not duly summoned or who was duly summoned but for valid reasons failed to appear at the main hearing during which the judgment rejecting the charge has been passed on grounds that the Public Prosecutor had withdrawn from prosecution, provided that the injured party submits the petition for return to the status quo ante within eight days as of the receipt of the judgment and if in this petition s/he states the intention to continue prosecution. In such a case the main hearing shall be rescheduled and the previous judgment shall be overruled by the new one passed pursuant to the new main hearing. If the duly summoned subsidiary prosecutor fails to appear at the new main hearing, or states before the beginning of the main hearing that s/he is withdrawing from prosecution, the previous judgment shall remain in force.

(4) Provisions of Article 57, paragraphs 3 and 4 of this Code shall apply to return to the status quo ante referred to in paragraph 3 of this Article.

(5) The judgment rejecting the charge passed in the case referred to in paragraph 2 of this Article shall become legally-binding after the terms for submitting a petition for return to the status quo ante have expired.

Forfeiture of the Right to Subsidiary Prosecution

Article 61

(1) If the injured party fails to assume or continue prosecution within the legal term or if the subsidiary prosecutor fails to appear at the main hearing although s/he was duly summoned, or if the summons could not have been served to him/her due to his/her failure to report to the court changes of address or residence, it shall be deemed that s/he has withdrawn from prosecution.

(2) If the subsidiary prosecutor, having been duly summoned, fails to appear at the main hearing, provisions of Article 57, paragraphs 2 to 5 of this Code shall apply.

Rights of the Subsidiary Prosecutor and Assumption of Prosecution by the Public Prosecutor

Article 62

(1) The subsidiary prosecutor shall have the same rights as the Public Prosecutor, with the exception of authorizations vested in the Public Prosecutor as a state body.

(2) In proceedings conducted upon the prosecution of a subsidiary prosecutor, the Public Prosecutor shall be entitled to examine criminal case files and to assume prosecution and representation of prosecution prior to the completion of the main hearing.

Legal Representative of the Injured Party Lacking the Capacity to Exercise Rights

Article 63

(1) If the injured party is a minor or a person that is completely deprived of the capacity to exercise rights, his/her legal representative shall be authorized to make all statements and take all actions to which the injured party is entitled under this Code.

(2) As an exception, an injured party who reached sixteen years of age shall be authorized to make statements and take procedural actions on his/her own.

Exercise of Rights through Proxies

Article 64

(1) The plaintiff, the injured party and the subsidiary prosecutor, as well as their legal representatives may exercise their procedural rights through proxies as well.

(2) The court shall instruct the persons referred to in paragraph 1 of this Article as to their right to have a proxy.

(3) When the procedure is conducted upon the prosecution of the subsidiary prosecutor for a criminal offence punishable under law by imprisonment for a term exceeding five years, the court may upon the request of the subsidiary prosecutor appoint a proxy to him/her if that is in the interest of the procedure and if the subsidiary prosecutor is financially unable to meet the costs of legal representation. The Chair of the Panel shall decide on this request, and the President of the Court shall appoint a proxy from the ranks of attorneys-at-law.

Duty to Report to the Court on the Change of Address or Residence

Article 65

The plaintiff, subsidiary prosecutor and the injured party as well as their legal representatives and proxies shall report to the court all changes of address or residence. The court shall inform them therewith and caution them about the consequences of failing to comply as provided for by this Code.

Title VI

DEFENCE COUNSEL

Right to a Defence Counsel

Article 66

(1) The accused shall be entitled to a defence counsel.

(2) The accused’s legal representative, spouse, direct blood relative, adoptive parent, adopted child, siblings or foster-parent as well as his/her common law spouse may engage a defence counsel on behalf of the accused.

(3) Only an attorney-at-law may be engaged as defence counsel.

(4) Defence counsels shall submit their power of attorney to the authority before which the procedure is being conducted. The accused may also submit power of attorney to the defence counsel orally before the authority conducting the procedure.

Several Defence Counsels and a Common Defence Counsel

Article 67

(1) Several accused may retain a common defence counsel unless that is contrary to the interests of their defence.

(2) One accused may simultaneously retain at the most three defence counsels in the procedure, and it is deemed that defence is provided for when one of the defence counsels participates in the proceedings.

Persons Who May Not Act as Defence Counsels

Article 68

(1) A defence counsel may not be the co-accused, the injured party, spouse of the injured party, prosecutor or judge, or their direct blood relative to any degree or a collateral blood relative to the fourth degree or a relative by marriage to the second degree.

(2) A defence counsel may not be a person summoned as a witness at the main hearing, unless relieved of the obligation to testify under this Code and has declared that s/he would not testify.

(3) A defence counsel may not be the person who acted in the capacity of a judge or Public Prosecutor in the same case or has taken actions in the preliminary investigation.

Cases When the Accused Shall Have a Defence Counsel

Article 69

(1) If the accused is a person with special needs due to which s/he is incapable to defend himself/herself, or if the procedure is conducted for a criminal offence punishable by the maximum term of imprisonment, the accused shall have a defence counsel on the occasion of his/her first hearing.

(2) When the indictment is brought for a criminal offence punishable under law by the imprisonment of ten years, the accused shall have a defence counsel when the indictment is served on him/her.

(3) The accused against whom detention is ordered shall have a defence counsel while they are in custody.

(4) The accused that are tried in absence within the meaning of Article 324 paragraph 2 of this Code shall have a defence counsel as soon as the court issues a ruling on the trial in absence.

(5) If the accused in cases referred to in paragraphs 1, 2 and 3 of this Article fail to retain a defence counsel, the competent Public Prosecutor shall pass a decision on the appointment of an ex officio defence counsel to represent them before the indictment is brought, the President of the Court after the bringing of indictment until the judgment becomes legally-binding and in case the longest imprisonment was imposed, for the procedure of filing extraordinary legal remedies as well. In cases when a ex officio defence counsel is appointed to the accused after the indictment has been brought, the accused shall be informed thereon at the time the indictment is served on them. In cases of mandatory defence, if the accused are left without a defence counsel in the course of procedure and they do not retain another defence counsel, the President of the Court before which the procedure is being conducted shall appoint an ex officio defence counsel.

(6) A defence counsel of his/her choice shall be appointed to the accused person from the list of the Bar Chamber of Montenegro (hereinafter referred to as: the Bar Chamber). If the accused do not use this right, the defence counsel shall be appointed under the order from the Bar Chamber's list.

Appointment of Defence Counsel Due to Poor Financial Standing

Article 70

(1) When conditions for mandatory defence are not met, but it is required so by the interests of fairness, upon the request of the accused, they may be appointed a defence counsel if they are not able to bear the costs of defence under their financial standing.

(2) The decision upon the request shall be passed by the competent Public Prosecutor in the preliminary investigation and in the investigation and after the pressing of charges, the President of the Court in compliance with the order on the list of the Bar Chamber.

Dismissal of the Appointed Defence Counsel

Article 71

(1) If the accused in cases referred to in Art. 69 and 70 of this Code retains another defence counsel by themselves, the appointed defence counsel shall be relieved from duty.

(2) The defence counsel appointed pursuant to Article 69, paragraph 3 of this Code shall be relieved from duty after the ruling on termination of detention becomes legally-binding.

(3) The appointed defence counsel may request to be relieved from duty only for valid reasons.

(4) The decision on relieving the defence counsel from duty in cases referred to in paragraphs 1 and 2 of this Article shall be passed by the Public Prosecutor before the indictment is brought, after the indictment is brought by the Chair of Panel, at the main hearing by the Panel, and in the appellate procedure by the President of the first instance Panel or the Panel competent to decide on appeal. An appeal shall not be allowed against this ruling.

(5) The competent Public Prosecutor or the President of the Court may relieve the appointed defence counsel from duty who negligently carries out his duties. The competent Public Prosecutor or President of the Court shall appoint another defence counsel in lieu of the defence counsel who was relieved from duty. The Bar Chamber shall be notified of relieving the defence counsel from duty.

Right of the Defence Counsel to Inspect Files and Examine Objects

Article 72

(1) The defence counsel shall be entitled to inspect and copy files and to examine collected objects which serve as evidence.

(2) The defence counsel shall be entitled to be informed about the content of the criminal charge before the first hearing of the suspect.

(3) As an exception, the defence counsel may be denied the right to inspect or copy files in the preliminary investigation or investigation, if the purpose of investigation, national security or the protection of witnesses would thereby be endangered, which may not endanger the right to defence in further procedure.

(4) When defence counsels appraise that they were unlawfully deprived of the right to inspect or copy files, they may ask the investigative judge to issue a ruling so as to allow the defence counsel to inspect or copy files. An appeal shall not be allowed against the ruling of the investigative judge.

Communication between the Accused in Custody and the Defence Counsel

Article 73

(1) If the accused are in custody, the defence counsel may correspond with them and have unsupervised conversations.

(2) The defence counsel shall be entitled to have a private conversation with the suspect who is placed under arrest even before the suspect is heard. The control of this conversation before the first hearing shall be allowed only by observing and not by listening.

Taking of Actions by the Defence Counsel

Article 74

(1) The defence counsel shall be authorized to take all actions in favour of the accused that can be taken by the accused, with the exception of those explicitly reserved for the accused personally under the provisions of this Code.

(2) The defence counsel shall not take actions against the expressly stated will of the accused, with the exception the case referred to in Article 382, paragraph 6 of this Code.

(3) The rights and duties of defence counsels shall cease when the accused revoke their power of attorney, when they are relieved from duty and upon the expiration of term of 15 days as of the day the power of attorney was denounced.

Title VII

EVIDENTIARY ACTIONS

1. SEARCH OF DWELLING, ARTICLES AND PERSONS

Reasons for Search of Dwelling, Other Premises, Movable Articles and Persons

Article 75

(1) Search of dwelling and other premises of the accused or other persons as well as their movable articles outside the dwelling may be carried out if grounds for suspicion exist that in the course of search the offender would be captured or that traces of the criminal offence or objects relevant to the criminal proceedings would be found.

(2) The search of movable articles within the meaning of paragraph 1 of this Article shall include the search of computers and similar devices for automatic data processing which are connected to the computer. Upon the request of the court, the person using a computer shall enable access to the computer and to removable storage used for storing information relative to the object of the search (discs, USB flash discs, USB hard discs, floppy disks, tapes and alike), as well as give necessary information on the use of the computer. Persons who refuse to do so although reasons referred to in Article 111 of this Code do not exist may be punished in compliance with Article 85 paragraph 3 of this Code.

(3) Search of persons may be carried out if grounds for suspicion exist that in the course of search traces and objects relevant to the criminal proceedings would be found.

Search Warrant and Request for a Search Warrant

Article 76

(1) A search warrant shall be issued by a court upon the request of the Public Prosecutor or upon the request of an authorized police officer granted authorization by the Public Prosecutor, and it shall be enforced by the police force.

(2) A request for the issuance of a search warrant shall be submitted in writing and as an exception also orally in compliance with Article 78 of this Code.

Contents of the Request for a Search Warrant

Article 77

The request for issuing a search warrant shall contain:

1) the name of the requester,

2) the name of the court to which the request is referred,

3) facts indicating the likelihood that reasons for search exist referred to in Article 75 of this Code,

4) forename and family name, and, where appropriate, a description of the person that needs to be captured during the search of dwelling or other premises, or expected traces and a description of things that should be found by the search,

5) the designation of the object of the search, by indicating the address, data about the owner or the possessor of the objects, dwelling or other premises and any other data of importance to establish the identity,

6) signature of the requester.

Oral Request for a Search Warrant

Article 78

(1) An oral request for issuing a search warrant may be lodged when risk of delay exists.

(2) The request referred to in paragraph 1 of this Article may be communicated to the investigative judge also by telephone, radio or other means of electronic communication.

(3) When a oral request for issuing a search warrant has been lodged, the investigative judge shall record the further course of conversation. If a voice recording device has been used or stenographic record kept, a transcript thereof shall be made within 24 hours, the sameness of which shall be authenticated and kept with the original record.

Search Warrant

Article 79

(1) When the investigative judge receives the request for issuing a search warrant, if s/he agrees with the request, s/he shall immediately issue a search warrant containing:

1) the data referred to in Article 77 of this Code;

2) that the search will be conducted by the police force;

3) an instruction that the search is being done in compliance with Article 80 of this Code;

4) signature of the judge and the official stamp of the court.

(2) If the investigative judge does not concur in the request for issuing a search warrant is not justified, s/he shall immediately request the Panel referred to in Article 24, paragraph 7 of this Code to decide upon the request. The Panel shall make a decision upon the request within 24 hours.

Search upon a Court Order

Article 80

(1) Before the commencement of the search, the search warrant shall be given to the person to be searched or whose premises are to be searched. Before the search, the persons against whom the search warrant has been issued shall be asked to voluntarily hand over the wanted person or objects. Those persons shall be instructed that they are entitled to retain an attorney-at-law i.e. a defence counsel who may be present during the search. If a person against whom a search warrant has been issued demands the presence of an attorney-at-law or defence counsel, the commencement of the search shall be postponed until his/her arrival, but at the longest for two hours.

(2) The search may commence without previously presenting a warrant or without a previous invitation to hand over the person or objects and without an instruction on the right to a defence counsel or attorney-at-law, if it is necessary for preventing a criminal offence from being committed, outright capturing of a offender, saving persons and property or if the search is to be carried out in public premises.

(3) The search shall be carried out by day from 6:00^{h} until 21:00^{h}. The search may be carried out by night as well, if it was commenced during the day and was not completed or if it was explicitly ordered so by the court because of risk of delay or if reasons referred to in Article 83 paragraph 1 of this Code exist.

Rules of Search

Article 81

(1) The possessor of a dwelling or other premises shall be invited to attend the search, and if they are absent, their representative, adult members of his family or neighbours shall be invited to attend.

(2) Premises that are locked, furniture and other things shall be opened by force only if their possessor is absent or if s/he refuses to open them voluntarily. Unnecessary damage shall be avoided on the occasion of opening.

(3) The search of a dwelling or person shall be attended by two citizens of age in the capacity of witnesses, save when reasons referred to in Article 83 paragraph 4 of this Code exist. The search of persons shall be carried out by a person of the same sex, and a person of the same sex shall be taken as a witness. Before the commencement of the search, witnesses shall be admonished to pay attention to the course of the search, as well as that they are entitled to raise their objections before the signing of the record on the search, should they consider that the contents of the record are incorrect.

(4) When conducting a search of premises of state bodies, business organizations or other legal persons, the head of such body, business organization or other legal person shall be invited to be present at the search.

(5) Search and inspections of military facilities shall be carried out upon the permission of the competent military officer and in the presence of a person designated by him/her.

(6) If a search needs to be carried out aboard a ship or aircraft the search warrant shall be delivered to the captain of the ship or person in charge of the aircraft. The captain of the ship or the person in charge of aircraft, or a person designated by them shall be present during the search.

(7) The search of dwelling and persons shall be carried out carefully, while respecting human dignity and the right to privacy, without unnecessary disturbance of the house rules and without harassing the citizens.

(8) A record shall be made on the search signed by the person whose premises have been searched or who has been searched and by persons whose presence during the search is mandatory. The course of the search may be audio and audio-visually recorded while paying special attention to the places where certain persons and objects have been found. The venue of the search and its individual parts, as well as the persons or objects found during the search may be photographed. Audio or audiovisual recordings and photographs shall be attached to the record on the search and may be used as evidence.

(9) Only those objects and documents that relate to the purpose of the search shall be seized on the occasion of the search. The record shall include and clearly specify the objects and documents that have been seized, which shall also be specified in a receipt to be given immediately to the person from whom the objects or documents have been seized.

Seizure of Other Objects by Virtue of a Search Warrant

Article 82

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

(2) If the competent Public Prosecutor was not present during the search, s/he shall immediately be informed about the discovery of objects referred to in paragraph 1 of this Article in

view of initiating criminal proceedings. These objects shall be returned immediately if the Public Prosecutor establishes that there are no grounds to initiate criminal proceedings and if no other legal grounds for the seizure of these objects exist.

(3) If certain objects are seized during the search of computers and similar devices for automatic data processing, they shall be immediately returned to their users, if they are not needed for conducting the procedure. Personal data obtained during the search may be used only for the purpose of conducting criminal proceedings and shall be erased as soon as that purpose ceases.

Entering Another Person's Dwelling without a Search Warrant and Searching

Article 83

(1) An authorized police officer may enter another person's dwelling or other premises even without a search warrant and, where appropriate, carry out the search, provided that the possessor of the dwelling so requires or if it is necessary for preventing the commission of a criminal offence or outright capturing an offender or for the purpose of saving people and property.

(2) The possessor of the dwelling, if present, shall be entitled to object to the procedure carried out by the authorized police officer referred to in paragraph 1 of this Article. The authorized police officer shall inform the possessor of the dwelling about this right and shall include his/her objections in the receipt on entering the dwelling or in the search record.

(3) In case referred to in paragraph 1 of this Article, if another person's dwelling or other premises were entered without search, the possessor of the dwelling shall be issued a receipt specifying the reason for entering the dwelling or other premises as well as the possessor's objections. If search also is carried out in another person's dwelling or premises, the procedure shall be the one referred to in Article 81, paragraphs 3, 7 and 8 and Article 82, paragraph 1 of this Code.

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

(5) Authorized police employees may, without a search warrant and without the presence of witnesses, carry out a search of persons on the occasion of enforcing a warrant on compulsory apprehension or on the occasion of placing a person under arrest, if suspicion exists that the person owns weapons or dangerous tools, or if suspicion exists that the person would dispense with, hide or destroy the objects that need to be seized from him/her as evidence in a criminal proceedings.

(6) If there are grounds for suspicion that criminal offence was committed that is prosecuted ex officio, authorized police employees may, without a court warrant and without the presence of witnesses, carry out the search of transport means, passengers, luggage and other movable articles, with the exception of things referred to in Article 75 paragraph 2 of this Code.

(7) When conducting a search without a search warrant, authorized police officers shall immediately submit thereon a report to the investigative judge.

Legally Invalid Evidence

Article 84

If the search was conducted contrary to the provisions of Article 76, Article 80 paragraph 1, Article 81 paragraph 3 and Article 83 of this Code, search records and evidence obtained during the search may not be used as evidence in criminal proceedings.

2. SEIZURE OF OBJECTS, MATERIAL BENEFIT AND PROPERTY

Seizure of Objects and Material Benefit

Article 85

(1) Objects which have to be seized under the Criminal Code or which may be used as evidence in criminal proceedings, shall, upon the proposal of a Public Prosecutor**,** and by way of a court ruling, be seized and delivered for safekeeping to the court or their safekeeping shall be secured in another way.

(2) The ruling on the seizure of objects shall contain:

1) the name of the court issuing the ruling,

2) legal grounds for the seizure of objects,

3) indication and description of objects that are to be seized,

4) forename and family name of the person from whom the object is seized and the place at or in which a certain object should be seized.

(3) Persons who are in possession of objects referred to in paragraph 1 of this Article shall hand them over. Persons refusing to hand over the objects may be punished by a fine of up to €1.000, and in case of further rejection, they may be incarcerated. Incarceration shall last until the object is handed over or until the criminal proceedings is completed, and at the longest for two months. The procedure as regards a person in an official capacity or a responsible person in a state body, business organisation or another legal person shall be the same.

(4) The provisions of paragraphs 1 and 3 of this Article shall apply to the data stored in devices for automatic or electronic data processing and media wherein such data are saved, which shall, upon the request of the court, be handed over in a legible and comprehensible form. The court and other authorities shall abide by the regulations on maintaining the confidentiality of data.

(5) The following objects shall not be subject to seizure:

1) files and other documents of state bodies, publication of which would violate the obligation to keep data confidential in terms of regulations providing data confidentiality, until the competent authority decides otherwise;

2) letters of the accused to their defence counsel or to persons referred to in Article 109, paragraph 1, items 1, 2 and 3 of this Code save when the accused hands them over voluntarily;

3) recordings, extracts from the register and similar documents that are in possession of persons referred to in Article 108, item 3 of this Code and that are made by such persons in relation to the facts obtained from the accused while performing their professional service, if publication thereof would constitute violation of the obligation to keep a professional secret.

(6) The prohibition referred to in paragraph 5, item 2 of this Article shall not apply to the defence counsel or persons exempted from the duty to testify pursuant to Article 109, paragraph 1 of this Code if well-founded suspicion exists that they aided the accused parties in committing the criminal offence or they helped them after the criminal offence was committed or if they acted as accomplices by virtue of concealment.

(7) The ruling referred to in paragraph 3 of this Article shall be issued by the investigative judge during the investigation and by the Chair of the Panel after an indictment has been brought.

(8) The Panel referred to in Article 24, paragraph 7 of this Code shall decide on the appeal against the ruling referred to in paragraphs 2 and 3 of this Article. An appeal against the ruling on incarceration shall not suspend enforcement.

(9) Authorized police officers may seize objects referred to in paragraph 1 of this Article when proceeding pursuant to Articles 257 and 263 of this Code or when enforcing a court ruling.

(10) On the occasion of seizing objects it shall be specified where they were found and they shall be described, and where appropriate, their sameness shall be ensured in another way as well. A receipt shall be issued for the seized objects.

(11) Measures referred to in paragraph 3 of this Article may not be enforced against the suspects or accused or persons relieved of duty to testify.

(12) Provision of Article 481 of this Code shall apply on the seizure of material benefit.

Refusal to Produce or Issue Files

Article 86

(1) State bodies may refuse to produce or issue their files and other documents if they deem that disclosure of their contents would harm the public interests, with the exception of case referred to in Article 90 of this Code. If producing or handover of files and other documents was refused, the final decision shall be made by the Panel referred to in Article 24, paragraph 7 of this Code.

(2) Business organizations or other legal persons may request that data related to their business operations not be publicly disclosed. The Panel referred to in Article 24 paragraph 7 of this Code shall decide upon the request.

Inventory and Sealing of Files

Article 87

(1) An inventory shall be made of seized files that may be used as evidence. If that is not possible, the files shall be put in a cover and sealed. The owner of the files may put his/her seal on the cover.

(2) The person from whom the files have been seized shall be invited to attend the opening of the cover. If this person fails to respond to the invitation or is absent, the cover shall be opened, the files examined and an inventory of them made in his/her absence.

(3) On the occasion of examining files, attention shall be paid that their contents not be disclosed to unauthorized persons.

Seizure of Letters, Telegrams and Other Parcels

Article 88

(1) The investigative judge may order, upon the request of the Public Prosecutor, that postal agencies, other business organisations and legal persons registered for the transfer of information retain and deliver to him/her, with the acknowledgement of receipt, letters, telegrams and other parcels sent to the suspect or accused or sent by them if circumstances exist due to which it is reasonable to expect that these parcels would serve as evidence in the procedure.

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

(3) Investigative judges shall inform Public Prosecutors about the contents of letters, telegrams and other parcels and upon their request provide them with copies thereof and of the record referred to in paragraph 2 of this Article.

(4) If the interests of the procedure allow so, the suspects or the accused parties, i.e. the recipients may be fully or partially informed on the contents of the parcel, which may be also delivered to them. If the suspects or the accused are absent, the parcel shall be returned to the sender unless that is not in breach of interests of the procedure.

Obtaining Data from the Competent State Body for Temporary Suspension of Monetary Transactions

Article 89

(1) Public Prosecutors may request that the competent state body performs control over the financial operations of certain persons and to submit them documentation and data which can be

used as evidence of a criminal offence or of the proceeds of crime, as well as notifications about suspicious monetary transactions.

(2) Public Prosecutors may request that the competent authority or organization temporarily suspends the payment, or the issuing of suspicious money, securities and objects, at the longest for six months.

(3) Public Prosecutors shall specify in the request referred to in paragraphs 1 and 2 of this Article in more detail the contents of measure of action they are requesting.

(4) At the proposal of Public Prosecutors, the court may issue a ruling ordering a temporary suspension of a certain monetary transaction when well-founded suspicion exists that it constitutes a criminal offence or that it is intended for the commission or concealment of a criminal offence or proceeds of crime.

(5) By way of the ruling referred to in paragraph 4 of this Article, the court shall order that funds in check or cash form be seized and deposited into a special account in view of keeping them until the legally-binding close of criminal proceedings or until conditions for their return are met.

(6) An appeal against the ruling referred to in paragraph 4 of this Article may be lodged by the parties and the defence counsel, or the owner of funds or his/her proxy or the legal person from whom the funds have been seized. Such an appeal shall be decided upon by the Panel referred to in Article 24, paragraph 7 of this Code.

Seizure of Material Benefit and Financial Investigation for the Purpose of Extended Seizure of Property

Article 90

(1) In the procedure conducted for the criminal offence for which the Criminal Code provides for a possibility of extended seizure of property from the convicted persons, their legal successors or persons to whom the convicted persons have transferred their property who are not able to prove the legality of its origin, and grounds for suspicion exist that the property in question was illicitly acquired, the court may, at the proposal of a Public Prosecutor, order the property to be seized.

(2) The Public Prosecutor shall initiate a financial investigation by way of an order against the suspects or the accused for the criminal offence referred to in paragraph 1 of this Article, their legal successors or persons to whom the suspects or the accused have transferred certain property.

(3) During the financial investigation, evidence shall be obtained on the property and revenues of suspects or the accused, their legal successors or persons to whom the accused have transferred property that was acquired in the term provided for by the Criminal Code.

(4) In the procedure of seizure of property referred to in paragraph 1 of this Article, provisions of the law regulating enforcement procedure shall apply accordingly, unless otherwise provided by the provisions of this Code.

Contents of the Request and Decision Making upon the Request for Ordering Seizure of Objects, Material Benefit or Property

Article 91

(1) The seizure of objects, material benefit or property shall be decided by the investigative judge immediately or within eight days as of the receipt of request, or by the Chair of the Panel before which the main hearing is conducted. The Panel referred to in Article 24, paragraph 7 of this Code shall decide on appeals lodged against such rulings.

(2) The Public Prosecutor shall institute proceedings for ordering the seizure of objects, material benefit or property referred to in paragraph 1 of this Article.

(3) The request of the Public Prosecutor referred to in paragraph 2 of this Article shall contain the following: a description of objects, material benefit and property; data on the person who is in possession of those objects, material benefit or property; reasons for suspicion that the objects, material benefit and property were illicitly acquired and reasons for likelihood that by the time criminal proceedings are completed the seizure of objects or material benefit or property in question would be significantly complicated or prevented.

(4) If the court rejects the request referred to in paragraph 1 of this Article, the ruling on rejection shall not be submitted to the person referred to in paragraph 3 of this Article.

Contents of the Ruling on Seizure of Objects, Material Benefit and Property and Appeal against the Ruling

Article 92

(1) In the ruling on the seizure of objects, material benefit and property, the court shall specify the type and value of the objects, property and the amount of material benefit, as well as the term for which they shall be seized.

(2) In the ruling referred to in paragraph 1 of this Article, the court may order that the seizure does not cover objects, material benefit or property which should be excluded by virtue of the rules on innocent title transferees.

(3) An appeal against the ruling referred to in paragraph 1 of this Article shall not suspend enforcement.

(4) The ruling with a statement of reasons referred to in paragraph 1 of this Article, shall be delivered by the court to the persons to whom the ruling refers, to the bank or other organization competent for payment transactions, and, where appropriate, to other persons and state bodies.

Scheduling a Hearing and Decisions upon Appeal

Article 93

(1) When an appeal against the ruling on the seizure of objects, material benefit or property is lodged, the Panel referred to in Article 24, paragraph 7 of this Code shall schedule a hearing and summon the person to whom the ruling relates to, his/her defence counsel and the Public Prosecutor.

(2) The hearing referred to in paragraph 1 of this Article shall be held within 30 days from the date of the filing of the appeal. Summoned persons shall be heard at the hearing. Their failure to appear shall not preclude holding of the hearing.

(3) The Panel shall overrule the ruling referred to in paragraph 1 of this Article if the suspect or the accused proves the lawfulness of the origin of objects, material benefit or property by plausible documents, or if, in the absence of plausible documents, s/he makes it plausible that the objects, material benefit or property were illicitly acquired.

(4) The Panel shall reverse the ruling referred to in paragraph 1 of this Article if, in compliance with paragraph 3 of this Article, proof has been produced or it was made plausible that the object, a part of material benefit or property that were seized are of lawful origin.

Duration of the Seizure of Objects, Material Benefit and Property

Article 94

(1) The seizure of objects, material benefit or property may last at the longest until the Panel referred to in Article 24, paragraph 7 of this Code decides upon the request of the Public Prosecutor referred to in Article 486 of this Code.

(2) If the seizure referred to in paragraph 1 of this Article was ordered during the preliminary investigation, it shall be overruled *ex officio* if the investigation has not been instituted within a term of six months from the date of issuing the ruling on seizure.

(3) The ruling on the seizure of objects, material benefit or property may be overruled by the court *ex officio* or upon the request of the Public Prosecutor or the interested party if it is proved that the measure is not needed or justifiable in consideration of the gravity of the criminal offence, financial standing of the person the measure is imposed on or the situation of persons s/he is legally bound to maintain, as well as if the circumstances of the case which indicate that seizure of objects, material benefit and property will not be prevented or significantly complicated until the completion of the criminal proceedings.

Enforcement of the Ruling on Seizure of Objects, Material Benefit and Property

Article 95

(1) The ruling on seizure of objects, material benefit and property shall be enforced by the court having jurisdiction for conducting the enforcement, in compliance with the law regulating the enforcement procedure.

(2) The court referred to in paragraph 1 of this Article shall have jurisdiction to decide on disputes in relation to enforcement.

(3) On the date of instituting bankruptcy proceedings against a legal person who is in possession of objects, material benefit or property that was seized, conditions shall be met to bring an interpleader in reference to these objects, material benefit or property, as well as in reference to mature amounts.

Temporary Administration of Property and Assets

Article 96

The competent state body shall administrate the seized property and assets in compliance with the law regulating the safekeeping of seized and confiscated property.

Return of Seized Objects

Article 97

The objects which were seized in the course of criminal proceedings shall be returned to the owner or possessor if the procedure is discontinued and grounds for their seizure referred to in Article 477 of this Code do not exist. The objects shall be returned to the owner or possessor even before the close of criminal proceedings if reasons for their seizure cease to exist.

3. PROCEEDING WITH SUSPICIOUS OBJECTS

Advertising Suspicious Objects

Article 98

The notice shall contain an invitation to the owner to appear within one year from the notice posting date, with a remark that the object would otherwise be sold. The proceeds obtained by the sale shall be entered into a special budget allotment for the work of courts.

(2) If the object is perishable or its safekeeping would entail significant costs, the object shall be sold pursuant to the law regulating enforcement procedure and the proceeds shall be delivered for safekeeping to the court deposit.

(3) Provision of paragraph 2 of this Article shall also apply when the thing belongs to a fugitive or to unknown offender.

Deciding on Suspicious Objects

Article 99

(1) If in the course of one year no one comes forward and requires the objects or the proceeds obtained by the sale referred to in Article 98 of this Code, a ruling shall be issued that the object becomes property of the state or that the proceeds are credited to the budget.

(2) The owner of the object shall be entitled to request in civil proceedings the restitution of items or proceeds acquired from its sale. The statute of limitations with respect to this right shall start running from the date of the posting of notice.

4. HEARING OF THE ACCUSED

Instruction on the Rights and the Manner of Hearing the Accused

Article 100

(1) When the accused are heard for the first time, they shall be asked for their forename and family name, personal identification number, nickname if any, the forename and family name of their parents, the maiden name of their mother, place of birth, address, the day, month and year of birth, nationality, whether they understand the Montenegrin language and what their language is**,** occupation, family situation, whether they are literate, their educational background, what their financial standing is, whether they have ever been convicted and if so when and why, whether they have served the imposed sentence and when, whether criminal proceedings against them for another criminal offence is in progress, and if they are juveniles, who their legal representative is.

(2) The accused shall be cautioned that they are obliged to answer the summons and immediately notify of all changes of address or of intention to change their place of residence, as well as of consequences if they do not act accordingly. Thereafter, the accused shall be informed on the rights referred to in Article 8, paragraph 2 and Article 12 paragraph 3 of this Code, of the offence they are charged with, grounds for suspicion against them, that they are not obliged to present their defence or answer questions asked, and that their statement may be used as evidence in the procedure even without their consent and they shall be invited to present their defence, if they wish to do so.

(3) The statement of the accused on the rights referred to in paragraph 2 of this Article shall be entered in the record and confirmed by the accused' signatures.

(4) The accused shall be heard orally. On the occasion of hearing, the accused shall be entitled to use their notes.

(5) On the occasion of hearing, the accused shall be enabled to make an unhindered statement on all circumstances incriminating them and to present the facts serving for their defence.

(6) After completing their statements, the accused shall be asked questions if it is necessary to fill gaps or remove contradictions and vagueness in their statement.

(7) The accused shall be heard along with full respect for their personalities.

(8) Force, threat, deceit, extortion, exhaustion or other means referred to in Article 154, paragraph 5 of this Code may not be used against the accused in order to obtain their statement, confession or commission that may be used as evidence against them.

(9) The accused may be heard in the absence of a defence counsel if they have expressly waived that right, provided that defence is not mandatory, if a defence counsel who has been informed on hearing as provided in Article 282 of this Code fails to appear and there is no possibility for the accused to retain another defence counsel, or if the accused failed to ensure the presence of a defence counsel at the first hearing even within 24 hours from the time they have been instructed of this right in compliance with Article 12, paragraph 3 of this Code, with the exception of mandatory defence.

(10) In the case of a failure to comply with the provisions of paragraphs 8 and 9 of this Article or if the accused has not been instructed of the rights referred to in paragraph 2 of this Article, or if the statement of the accused referred to in paragraph 9 of this Article on the need for the defence counsel to be present are not entered in the record, such a statement may not be used as evidence in criminal proceedings.

Manner of Hearing

Article 101

(1) Questions shall be put to the accused in a clear, comprehensible and precise manner so that they can fully understand them. The hearing may not be based on the assumption that the accused have confessed something that they have not confessed, nor should leading questions be asked.

(2) If the subsequent statements of the accused differ from previous ones, and especially if the accused revoke their confession, the court may invite them to state reasons for giving different statements that is, revoking their confession.

Confrontation

Article 102

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

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

(3) Confrontation may be recorded in an audio or audiovisual form, in which case a transcript of audio recording shall be made.

Article 103

(1) If needed to establish whether the accused recognize a certain person or object that they have previously described, that person shall be presented to them, together with other unknown persons whose basic physical characteristics are similar to the ones they have described, or that object respectively, together with other objects of the same or similar kind. Afterwards, the accused shall be asked to state whether they identify the person or object with certainty and if positive, to indicate the identified person or object.

(2) In the preliminary investigation and in the investigation, identification shall be conducted by the Public Prosecutor who shall previously instruct the accused on the rights referred to in Article 100 paragraph 2 of this Code.

(3) Identification shall be conducted so that the person who is the object of identification can not see the accused, nor can the accused see that person before identification commences.

(4) Record shall be composed on the course of identification and on the statements of the accused and a joint photo taken of persons or objects being identified, and where appropriate, audio or audiovisual recording may be carried out.

Entering the Statement of the Accused in the Record

Article 104

(1) The statement of the accused shall be entered in the record in a narrative form while the questions asked and answers shall be entered in the record only when they relate to the criminal case.

(2) The accused may be permitted to dictate their statement into the record themselves.

(3) The statement of the accused may be audio or audio-visually recorded, in which case a transcript of the audio record shall be made. A recording of the statement of the accused shall constitute an integral part of the record on the hearing of the accused and it may be used as evidence. A copy of the record or recordings shall be given to the accused if they request so.

Confession of the Accused and Further Obtaining of Evidence

Article 105

(1) In the case of confession of the accused, the authority conducting the procedure shall continue obtaining evidence on the criminal offence.

(2) By way of exception to paragraph 1 of this Article, the authority conducting the procedure may decide not to obtain evidence on the criminal offence when the confession is full, clear and true.

Hearing of the Accused through Interpreters

Article 106

(1) The hearing of the accused shall be carried out through an interpreter in cases envisaged by this Code.

(2) If the accused is deaf, the questions shall be asked in writing, and if s/he is mute, s/he shall be asked to answer in writing. If the hearing may not be performed in such a manner, a person with whom the accused is able to communicate shall be summoned as an interpreter.

(3) If the interpreter has not previously taken an oath, s/he shall take the oath stating that s/he would faithfully communicate questions put to the accused as well as statements given by the accused.

(4) Provisions of this Code referring to expert witnesses shall apply accordingly to interpreters.

5. WITNESSES

Persons Who May Be Heard as Witnesses

Article 107

(1) Persons who are likely to provide information regarding the criminal offence and the offender and on other relevant circumstances shall be summoned as witnesses.

(2) The injured party, subsidiary prosecutor and plaintiff may be heard as witnesses.

(3) Every person summoned as witness shall answer the summons and, unless otherwise provided by this Code, shall testify as well.

Persons Who May Not Be Heard as Witnesses

Article 108

The following persons shall not be heard as witnesses:

1) persons who would by making a statement violate the duty of keeping confidential data within the meaning of regulations prescribing data confidentiality, until the competent authority releases them from that duty;

2) defence counsels of the accused may not testify with regard to information the accused have confided to them in their capacity of defence counsels;

3) persons who would by making a statement violate the duty of keeping a professional secret (religious confessors, attorneys-at-law, medical professionals and other health system employees, journalists, as well as other persons) unless they are relieved from this duty by a special regulation or statement of a person who benefits from the secret keeping;

4) juveniles who, in consideration of their age and mental development, are not capable to comprehend the importance of the right that they are not obliged to testify.

Persons Exempted from the Duty to Testify

Article 109

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

1) the spouse and common-law spouse of the accused;

2) the accused`s direct blood relatives, collateral blood relatives up to the third degree as well as and their relatives by marriage up to the second degree;

3) adopted children or adoptive parents of the accused.

(2) Exemption from the duty to testify referred to in paragraph 1 of this Article shall not relate to persons of age that were summoned to testify in the procedure for the criminal offence of neglecting and abusing a minor, domestic violence or violence in a family community and incest, when a minor person is the injured party.

(3) The court conducting the procedure shall instruct the persons referred to in paragraph 1 of this Article prior to their hearing or as soon as the court learns about their relation with the accused, that they are not obliged to testify. The instruction and the answer shall be entered in the record.

(4) If grounds exist for a person to refuse to testify with regard to one of the accused, that person shall be exempted from the duty to testify with regard to other accused if his/her statement may not, by nature of the matter, be limited only to the other accused.

Testimonies on Which Judgments May Not be Based

Article 110

If a person who may not be heard as a witness within the meaning of Article 108 of this Code or a person who is not obliged to testify as provided in Article 109 of this Code was heard as a witness but was not cautioned thereof or has not expressly waived that right, or if the caution and the waiver were not entered into the record or if a witness' statement was obtained by torture or in a manner referred to in Article 154 paragraph 5 of this Code, the judgment may not be based on such witness testimony.

Denial of Answer to Specific Questions

Article 111

Unless otherwise provided by this Code, witnesses shall be entitled not to answer particular questions if it is likely that they would thus expose themselves or persons referred to in Article 109, paragraph 1 of this Code to serious disgrace or criminal prosecution, and the court shall inform the witness thereon.

Summoning Witnesses

Article 112

(1) A witness shall be summoned by means of a written summons indicating the forename, family name and occupation of the person summoned, the time and place of appearance, the criminal case involved, a note that s/he is being summoned as a witness, and a caution on the consequences of an unjustified failure to appear referred to in Article 119 of this Code.

(2) The summoning of a minor under sixteen years of age as a witness shall be done through their parents or legal representatives, with the exception of where it is not possible due to a need to act urgently, or due to other circumstances.

(3) Witnesses who are in another country and witnesses who can not obey the summons due to their old age, illness or serious physical disabilities may be heard in their dwelling, and as an exception by means of technical devices for the transmission of image or sound, so that parties can ask them questions even though they are not present in the same premises as the witness. For the needs of such a hearing, expert assistance referred to in Article 282, paragraph 8 of this Code may be ordered.

(4) The summoning of witnesses may be done over the phone and other electronic communication devices, if the witness agrees to obey such a summon.

Manner of Hearing Witnesses and Cautions by the Court

Article 113

(1) Witnesses shall be heard separately and in the absence of other witnesses. Witness shall give their answers orally.

(2) Witness shall be previously cautioned that they are obliged to tell the truth and not to withhold anything, and also cautioned that giving a false testimony constitutes a criminal offence. Witnesses shall be instructed of the right referred to in Article 111 of this Code and such instruction shall be entered in the record.

(3) After the caution and instruction referred to in paragraph 2 of this Article, witnesses shall be asked about their forename, family name, their father's or mother's name, occupation, place of residence, place and year of birth, and their relation to the accused and the injured party. Witnesses shall be cautioned that they are obliged to notify the court of changes of their address or place of residence.

(4) On the occasion of hearing a minor, especially if a minor was injured by the criminal offence, special care shall be taken in order to ensure that the hearing would not have an adverse effect on the minor's mental condition. Where necessary, the minor shall be heard with assistance of a psychologist or another expert.

(5) Injured parties who are victims of a criminal offence against sexual freedom, as well as children being heard as witnesses, shall be entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused and defence counsel shall be given the possibility to view the course of hearing from other premises and to put questions to the witness, after having been duly instructed by the court thereon. The instruction shall be entered in the record.

(6) The court may decide that the provision of paragraph 5 of this Article shall apply as well to the testimony of the injured party who is the victim of discrimination.

Hearing and Confrontation of Witnesses

Article 114

(1) After general questions, witnesses shall be called upon to state everything known to them about the criminal case, whereupon questions shall be put to them in order to check, complete or clarify the testimony. It shall be forbidden to deceive the witness or to ask leading questions on the occasion of hearing of witnesses.

(2) Witnesses shall always be asked from whence they know the facts they are testifying about.

(3) Witnesses may be confronted if their statements do not correspond as regards important facts. Only two witnesses may be confronted simultaneously. (3) Provisions of Article 102, paragraphs 1 and 3 of this Code shall apply accordingly regarding the confrontation of witnesses.

(4) Injured parties heard in the capacity of witnesses shall be asked about their desires with respect to satisfaction of a claim under property law in the criminal proceedings.

Identification of Persons or Objects

Article 115

(1) If needed to establish whether witnesses recognize a certain person or object that they have previously described, that person shall be presented to them, together with other unknown persons whose basic physical characteristics are similar to the ones they have described, or that object respectively, together with other objects of the same or similar kind. Afterwards, the witness shall be asked to state whether they identify the person or object with certainty and if positive, to indicate the identified person or object.

(2) In the preliminary investigation and in the investigation, identification shall be conducted by the Public Prosecutor who shall previously caution and instruct witnesses in compliance with Article 113 paragraph 2 of this Code.

(3) Identification shall be conducted so that the person who is the object of identification can not see the witness, nor can the witness see that person before identification commences.

(4) Record shall be composed on the course of identification and on the statements of witnesses and a joint photo taken of persons or objects being identified, and where appropriate, audio or audiovisual recording may be carried out.

Hearing Witnesses through an Interpreter

Article 116

If hearing witnesses is conducted through an interpreter or if witnesses are deaf or mute, their hearing shall be conducted in the manner provided for in Article 106 of this Code.

Taking an Oath

Article 117

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

(2) Before the main hearing, witnesses may take an oath only if concern exists that they will not be able to appear at the main hearing due to illness or for other reasons. Reasons why the oath was taken then shall be entered into the record.

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

(4) Witnesses shall take an oath orally by reading its text or by answering affirmatively after the contents of the oath has been read to him by the authority before which the proceedings are conducted. Witnesses that are mute and literate shall sign the text of the oath, whereas deaf or mute witnesses who are illiterate shall be sworn through an interpreter.

(5) The rejection of the witness to take an oath and the grounds thereof shall be entered into the record.

Persons Who May Not Take an Oath

Article 118

The following persons shall not take an oath:

1) who are not of age at the time of hearing;

2) for whom it has been proved or grounded suspicion exists that they have committed or participated in the commission of a criminal offence for which they are being heard;

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

Measures to Ensure the Presence of Witnesses and Procedural Penalties

Article 119

(1) If duly summoned witnesses fail to appear and do not justify their absence, or if they leave without approval or justifiable reason the place where they are to be heard, the court may order their compulsory apprehension as well as impose a fine in an amount not exceeding €1.000.

(2) If witnesses appear and after being cautioned and instructed in compliance with Article 113, paragraph 2 of this Code, refuse to testify without a legal cause, they may be punished by a fine in an amount not exceeding €1.000, and if thereafter they still refuse to testify, they may be incarcerated. Incarceration shall last until witnesses agree to testify or until their hearing becomes unnecessary or until the completion of the criminal proceedings, but at the longest for two months.

(3) If witnesses offend the court and other participants in the procedure or threaten them, the court shall warn them and may impose a fine in an amount not exceeding €1.000.

(4) In the preliminary investigation and investigation, the fines referred to paragraphs 1, 2 and 3 of this Article shall be imposed by the court at the motion of the Public Prosecutor.

(5) The Panel referred to in Article 24, paragraph 7 of this Code shall decide on an appeal against the ruling imposing a fine or incarceration. An appeal against a ruling on incarceration shall not suspend enforcement.

Protection of Witnesses from Intimidation

Article 120

(1) If reasonable concern exists that by making a statement or answering certain questions witnesses would put in danger their, their spouse’s, close relative’s or a close person's life, health, physical integrity, freedom or property of great value, witnesses may refuse to give the data referred to in Article 113, paragraph 3 of this Code, answering certain questions or giving the statement altogether until their protection is ensured. If it finds that the refusal to make a statement is manifestly groundless, the authority conducting the proceedings shall caution witnesses that fines specified in Article 119 of this Code may be imposed on them.

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

(3) Protection of witnesses and other persons referred to in paragraph 1 of this Article may be ensured beyond the criminal proceedings as well, in compliance with the law regulating witness protection.

(4) The court shall inform the witness on the rights referred to in paragraphs 1, 2 and 3 of this Article.

Special Ways of Participating and Hearing Protected Witnesses

Article 121

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

(2) If special way of hearing of witnesses in the procedure consists only of withholding data referred to in Article 113, paragraph 3 of this Code, the hearing shall be done under pseudonym, while in other part of the procedure, the hearing shall be done in compliance with general provisions of this Code on the hearing of witnesses.

(3) If special ways of participating and hearing witnesses in the procedure consists of withholding data referred to in Article 113, paragraph 3 of this Code as well as of hiding the face of the witness, hearing shall be done through technical devices for transmission of image and sound. The expert referred to in Article 282, paragraph 8 of this Code shall operate a technical device. During the hearing, face and voice of the witness shall be changed. During the hearing, witnesses shall be in the room other than the one where the investigative judge and other persons present at the hearing are. The investigative judge shall ban all the questions which could lead to revealing the identity of witnesses.

(4) After the hearing has been completed, witnesses shall sign the record using pseudonym only in the presence of the investigative judge and court reporter.

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

Deciding on Special Ways of Participating and Hearing Witnesses and Protection of Data

Article 122

(1) The ruling on the special manner of participation and hearing of the protected witness in investigation shall be issued by the investigative judge at the motion of witnesses, the accused, the defence counsel or the Public Prosecutor, whereas at the main hearing it shall be issued by the Panel. The motion shall contain a statement of reasons.

(2) The investigative judge shall, prior to issuing the ruling, ascertain as to whether the statement of the witness is of such a relevance to be given the status of a protected witness. In view of establishing these facts, the investigative judge may fix a hearing for the Public Prosecutor and the witness to appear in court.

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

Probative Value of the Protected Witness's Statement

Article 123

(1) Provisions of Articles 120, 121 and 122 of this Code shall apply to the hearing of protected witness at the main hearing as well.

(2) A judgment may not be based solely on the statement given by the witness in the manner provided for in Articles 120, 121 and 122 of this Code.

Protection of the Injured Party on the Occasion of Making a Statement

Article 124

Provisions of Articles 120 to 123 of this Code shall apply accordingly to participation and hearing of the injured party in the criminal proceedings as well.

Cooperative Witnesses

Article 125

(1) The Public Prosecutor may put a motion to the court to examine as a witness a member of the criminal organization, i. e. criminal group who consents to do so (hereinafter referred to as the: cooperative witness) against whom criminal charges have been brought or criminal proceedings have been instituted for an organized crime offence referred to in Article 22 paragraph 8 of this Code if it is certain that:

- their statement and evidence provided to the court will significantly contribute in proving the criminal offence in question and culpability offenders or assist in revealing, proving and preventing other criminal offences of the criminal organization or criminal group and

- the significance of their statement as to proving these criminal offences and culpability of other offenders prevails over the harmful consequences of the criminal offence they have been charged with.

(2) The motion referred to in paragraph 1 of this Article may be put by the Public Prosecutor by the completion of the main hearing, and such a motion shall contain the facts and data pursuant to which the court shall issue a ruling on establishment of the status of a cooperative witness.

(3) Cooperative witness may not be a person for whom well-founded suspicion exists that s/he is an organizer or a leader of a criminal organization i.e. criminal group.

Cautioning Cooperative Witnesses

Article 126

(1) Before submitting the motion referred to in Article 125 paragraph 1 of this Code, the Public Prosecutor shall admonish and caution the witness proposed for cooperative witness regarding the obligations referred to in Article 113, paragraph 2 of this Code. The cooperative witness may not invoke exemption from the duty to testify referred to in Article 109 of this Code and the obligation not to answer to certain questions referred to in Article 111 of this Code.

(2) The Public Prosecutor shall enter into a record the admonition and caution referred to in Article 113 paragraph 2 of this Code, answers of the person proposed to be a cooperative witness and his/her statement that they would make a statement on everything known to them and that they would not withhold anything. The record shall be signed by that person. If the person proposed to be a cooperative witness does not speak the Montenegrin language, translation of the record shall be provided into the language of the witness who shall then sign the record. The record shall be attached to the motion referred to in Article 125, paragraph 1 of this Code.

(3) If the Public Prosecutor finds that grounds exist that an accused in custody be proposed as cooperative witness, the court will enable the Public Prosecutor to establish a contact with the accused, in order to perform the actions referred to in paragraphs 1 and 2 of this Article.

Deciding on the Proposal of the Public Prosecutor

Article 127

(1) The Panel referred to in Article 24, paragraph 7 of this Code shall decide on the motion of the Public Prosecutor referred to in Article 125 of this Code during investigation and until the beginning of the main hearing, and at the main hearing - the Panel before which the main hearing is held.

(2) The Public Prosecutor, person proposed to be a cooperative witness and his/her defence counsel shall be invited to attend the session of the panel to decide whether prerequisites are met referred to in Article 125 of this Code. The session shall be held behind closed doors. Statements made at this session may not be used in the criminal proceedings against the person proposed to be a cooperative witness as evidence for declaring that person guilty.

(3) The Public Prosecutor may lodge an appeal against the ruling of the Panel referred to in paragraph 1 of this Article by which the motion of the Public Prosecutor has been rejected, within 48 hours from the receipt thereof. A superior court shall pass a decision on the appeal within three days from receipt of the appeal and files from the court of first instance.

(4) If the Panel has granted the motion of the Public Prosecutor, it shall order that records and official annotations regarding the previous statements made by the cooperative witness in the capacity of a suspect and accused be separated from the files and they may not be used as evidence in the criminal proceedings, with the exception of cases referred to in Article 130 of this Code.

(5) If the accused is detained, and the Panel decides pursuant to paragraph 4 of this Article, it shall simultaneously issue a ruling on termination of detention.

Ruling on Acknowledgment of Cooperative Witness Status

Article 128

(1) If after deliberations held pursuant to Article 127 of this Code it is established that prerequisites are met referred to in Article 125, paragraph 1 of this Code, the panel shall issue a ruling by which the suspect or the accused is acknowledged as a cooperative witness.

(2) If the panel is deciding on the motion for acknowledging the cooperative witness against whom a criminal charge has been submitted or investigation initiated, the panel shall, before determining whether the conditions referred to in paragraph 1 of this Article have been meet, establish the existence of the conditions set forth by Article 22 item 8 of this Code.

(3) The ruling shall state the following: that criminal proceedings shall not be instituted or continued against the cooperative witness; description of the act which results in the statutory elements of the criminal offence and the statutory title of the criminal offence to which the prohibition of institution or continuation of criminal proceedings applies, the nature and contents of cooperation to be provided by the cooperative witness and conditions under which the ruling may be overruled.

(4) The ruling referred to in paragraph 1 of this Article shall be delivered to the Public Prosecutor, cooperative witness and his/her defence counsel.

Impossibility of Criminal Prosecution

Article 129

(1) Cooperative witness who has made a statement before the court pursuant to the provisions of Article 126, paragraphs 1 and 2 of this Code may not be prosecuted for the criminal offence of organized crime for which the proceedings are being conducted.

(2) When the court states in its ruling that has been entered into record at the main hearing that the cooperative witness has made a statement within the meaning of paragraph 1 of this Article, the Public Prosecutor shall dismiss the criminal charge or refrain from prosecution of the cooperative witness at the latest until the completion of the main hearing being conducted against other members of the criminal organization, i.e. criminal group and the court shall pass a judgment by which the charges against the cooperative witness are rejected.

(3) In the case referred to in paragraph 2 of this Article the provisions of Article 59 of this Code shall not be applied.

Annulment of the Ruling

Article 130

(1) If cooperative witnesses fail to make a statement pursuant to Article 126, paragraphs 1 and 2 of this Code or if they commit a new criminal offence of organized crime before the legally-

binding closure of the proceedings, the Public Prosecutor shall propose that the ruling referred to in Article 128, paragraph 1 of this Code be annulled and shall continue the prosecution or institute criminal proceedings for both offences.

(2) If cooperative witnesses fail to make a statement pursuant to Article 125, paragraphs 128 and 1 of this Code or if they commit a new criminal offence of organized crime before the final completion of the proceedings, the Public Prosecutor shall propose that the ruling referred to in Article 128, paragraph 1 of this Code be annulled and shall continue the prosecution or institute criminal proceedings for both offences.

(3) If during the proceedings a previous criminal offence committed by the cooperative witness is revealed and it does not constitute organized crime offence, the Public Prosecutor shall proceed in compliance with the general rules of this Code.

Protection of Cooperative Witnesses

Article 131

(1) Unless the panel, upon a proposal by the Public Prosecutor and with the consent of the cooperative witness, decides otherwise, hearing of the cooperative witness shall be held behind closed doors.

(2) Prior to passing the decision referred to in paragraph 1 of this Article, the Chair of the Panel shall, in the presence of the defence counsel, inform cooperative witnesses of the Public Prosecutor's proposal and of their right to be heard behind closed doors. When cooperative witnesses make a statement concurring to be heard in the presence of public, that statement shall be entered into the record.

(3) The Public Prosecutor may propose that the cooperative witnesses, their spouses, close relatives or close persons be provided special protection under Article 120 of this Code.

Probative Significance of the Statements of Cooperative Witnesses

Article 132

The court may not find a person guilty solely on the merit of evidence obtained by the testimony of a cooperative witness.

6. CRIME SCENE INVESTIGATION AND RECONSTRUCTION

Conducting Crime Scene Investigation

Article 133

Crime scene investigations shall be conducted when direct observation is needed to establish or clarify some relevant facts in the procedure.

Reconstruction of Events

Article 134

(1) In order to verify the evidence presented or to establish facts relevant to the clarification of the matter, the authority conducting the procedure may order a reconstruction of the event which shall be conducted by reproducing the acts or situations under conditions that, according to the evidence presented, existed at the time when the event took place. If acts or situations were described differently in the statements of certain witnesses or the accused, the events shall, as a rule, be separately reconstructed with each of them.

(2) The action referred to in paragraph 1 of this Article may be carried out in whole or partially by using adequate technical means.

(3) Reconstructions may not be performed in such a manner to breach public peace order and offend morality or endanger human life or health.

(4) Where appropriate, certain evidence may be presented again on the occasion of the reconstruction.

Assistance of an Expert and Expert Witness

Article 135

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

(2) Expert witnesses may also be summoned to be present at the crime scene investigation or reconstruction if their presence would be useful for providing findings and opinions.

7. FORENSIC EXAMINATION

Ordering Forensic Examination

Article 136

Forensic examination shall be ordered when, with a view to determine or assess a relevant fact, it is necessary to obtain findings and the opinion of a person who possesses necessary expertise.

Order for Forensic Examination

Article 137

(1) Forensic examination shall be ordered by a written order of the authority conducting the procedure and it shall contain the following: the task and scope of forensic examination, term for submitting the findings in written form and designation of the person to carry out the forensic examination that is enrolled in the Register of Court Experts (hereinafter referred to as the: the Register). The order shall be delivered to the parties as well.

(2) If a specialized institution exists for a certain type of forensic examination, or the forensic examination may be performed by a state body, such forensic examinations, particularly complex ones, shall as a rule be assigned to such an institution, i.e. authority. The institution or the authority shall appoint one or more experts specialized in the appropriate field who shall deliver forensic examination.

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

(4) In cases of certain forensic examinations, when no expert witnesses have been appointed by the court or all expert witnesses for a particular field are prevented from conducting the forensic examination within proper term, the forensic examination may be conducted by a person having permanent residence in another state, who is not enrolled in the Register or by a legal person with its seat in another state.

Duty of Expert Witnesses and Procedural Penalties

Article 138

(1) Expert witnesses shall obey the summons and present their findings in written form and opinion within a term determined in the order. Upon a motion of an expert witness the term determined in the order may be prolonged if justifiable reasons exist.

(2) If duly summoned expert witnesses fail to appear and do not justify their absence, or if they refuse to perform forensic examination or offend the authority conducting the proceedings or other participants in the proceedings or if they fail to present their findings and opinion within the term determined in the order, they may be fined in an amount not exceeding €1.000 while the specialized institution or another legal person may be fined in an amount not exceeding €5.000. In the case of an unjustifiable absence the expert witness may be brought by force.

(3) In the preliminary investigation and investigation, the penalties referred to in paragraph 2 of this Article shall be imposed by the court at the proposal of the Public Prosecutor.

(4) The panel referred to in Article 24, paragraph 7 of this Code shall decide on the appeal against the ruling ordering a fine.

Persons Who May Not be Appointed as Expert Witnesses

Article 139

(1) Persons who may not testify as witnesses in compliance with Article 108 of this Code or persons exempted from the duty to testify within the meaning of Article 109 of this Code may not be appointed an expert witness; neither may a person against whom the criminal offence was committed. If such a person is appointed, the judgment may not be based on his/her findings or opinion.

(2) Persons who are employed by the injured party or the accused may not be appointed an expert witness, or if the injured party or the accused are employed by the expert witness or if the expert witness is together with them or with some of them employed by other employer.

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

(4) When an interlocutory appeal is allowed against the ruling rejecting the petition for the recusal of an expert witness within the meaning of Article 41, paragraph 4 of this Code, this appeal shall stay the giving of the forensic examination if there is no risk of delay.

Procedure of Forensic Examination

Article 140

(1) Before the commencement of the forensic examination, experts shall be asked to thoroughly examine the object of their examination, to indicate accurately everything they notice and discover and to present their opinion without bias and in compliance with the rules of the science or skills. They shall be especially cautioned that making a false expert witness opinion testimony constitutes a criminal offence.

(2) Expert witnesses may be required to take the oath before giving their testimony. Before giving an expert witness opinion testimony, experts enrolled in the Register shall only be reminded of the oath they have already taken.

(3) The text of the oath is worded as follows: "I do swear to perform the examination conscientiously and impartially, according to my best knowledge and to present my findings and opinion precisely and completely".

(4) The authority conducting the procedure shall make sure that through forensic examination all the relevant facts are determined and made clear, and for that purpose shows to expert witnesses the object to be examined, asks them questions and where appropriate, requires clarifications on the given opinion.

(5) Expert witnesses may receive explanations and may be permitted to inspect the files as well. Expert witnesses may propose that some evidence be presented or objects and information be obtained which are of relevance for giving findings and opinions. If present at the crime scene investigation, reconstruction or other investigative action, expert witnesses may propose the clarification of certain circumstances or that person who is testifying be asked certain questions.

Examination of Objects of Forensic Examination

Article 141

(1) Expert witnesses shall examine the objects of the forensic examination in the presence of the authority conducting the procedure as well as the court reporter, unless lengthy examinations are necessary for the forensic examination or if the examinations are carried out in a specialized institution or state body, or if this is required by moral considerations.

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

Entering Findings and Opinions into the Record

Article 142

The expert witness opinion shall be immediately entered into the record.

Forensic Examination by a Specialized Institution or State Body

Article 143

(1) If the forensic examination is assigned to a specialized institution or state body, the authority conducting the procedure shall be admonished that persons who are not specialized in the appropriate field or persons referred to in Articles 139 and 148 of this Code that may be recused from forensic examination or within the meaning of Article 43 of this Code may not participate in performing forensic examination and shall be subsequently warned about the consequences of giving false findings and opinions as well.

(2) The materials necessary for forensic examination shall be made available to the specialized institution or state body and where necessary it shall be further proceeded pursuant to the provisions of Article 140, paragraph 5 of this Code.

(3) The specialized institution or state body shall deliver the written expert findings and opinion signed by the persons who made the forensic examination.

(4) The parties may request from the head of specialized institution or state body to give them the names of the experts who will provide the forensic examination.

(5) The provisions of Article 140, paragraphs 1 to 4 of this Code shall not apply when performance of forensic examination is assigned to a specialized institution or state body. The authority conducting the procedure may request explanations regarding the presented expert findings and opinion from the specialized institution or state body.

Record of Forensic Examination and the Right of Its Inspection

Article 144

(1) The record on the forensic examination or the written expert findings and opinion shall specify who performed the examination as well as the occupation, educational background and expertise of the expert witness.

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

Repeated Forensic Examination

Article 145

If several expert witnesses are appointed to carry out the examination, and data in their findings do no correspond on essential points, or if their findings are ambiguous, incomplete or contradictory internally or with the investigated circumstances, and if these anomalies cannot be removed by a re-hearing of the experts, a repeated forensic examination shall be conducted by other expert witnesses.

Additional Forensic Examination

Article 146

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

Examination, Autopsy and Exhumation of a Corpse

Article 147

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

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

(3) When required, the following scientific and specialized methods of identification shall be used: taking fingerprints from corpses and comparing them, analyzing DNA samples and comparing found DNA profile with the DNA profile of a missing person or other person, blood relatives of the person presumed to be the subject of identification, and, where appropriate, carrying out other analyses and applying other scientific and specialized methods for the purpose of identifying a corpse.

(4) Taking biological samples for the purposes of DNA analyses in the criminal proceedings, packing of biological material, keeping, processing, keeping samples and results obtained through DNA analyses shall be conducted in the manner provided for by a separate law.

Forensic Examination Not Assigned to an Institution

Article 148

(1) When forensic examination is not assigned to a specialized institution, examination and autopsy of a corpse shall be carried out by one physician and where appropriate, by two or more physicians who, as a rule, should be specialized in forensic medicine. The Public Prosecutor in the preliminary investigation and investigation, i.e. the Chair of the Panel after an indictment has been brought shall order and direct forensic examination and shall enter the findings and opinion of the expert witness into the record. The Public Prosecutor in the preliminary investigation and investigation, i.e. the Chair of the Panel after an indictment has been brought shall order and direct forensic examination and shall enter the findings and opinion of the expert witness into the record.

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

Contents of the Expert Witness' Opinion and Duties of Expert Witnesses

on the Occasion of Examination and Autopsy of a Corpse

Article 149

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

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

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

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

Examination and Autopsy of a Foetus and a Newborn Infant

Article 150

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

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

Toxicological Examination

Article 151

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

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

Forensic Examination of Bodily Injuries

Article 152

(1) As a rule, forensic examination of bodily injuries shall be based on an examination of the injured party and if this is neither possible nor necessary it shall be based on medical records or other information available in the files.

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

(3) On the occasion of performing forensic examination, the expert witness shall proceed pursuant to a provision of Article 149, paragraph 4 of this Code.

Psychiatric Examination

Article 153

(1) If suspicion arises that the accused's mental capacity is excluded or diminished due to mental illness, temporary mental alienation, mental deficiency or other serious mental alienation, a psychiatric examination shall be ordered.

(2) If, in the opinion of experts, a longer observation is needed, the accused shall be committed for observation to a psychiatric institution. The investigative judge or the panel shall issue a ruling thereon. The observation may be prolonged for more than two months only upon a substantiated motion from the head of the psychiatric institution and with a previously obtained opinion of the expert witness, but it may not exceed the term of six months under no circumstances.

(3) The accused and their defence counsels may appeal the ruling referred to in paragraph 2 of this Article within 24 hours following the receipt of the ruling by the accused, i.e. defence counsel. The Panel referred to in Article 24, paragraph 7 of this Code shall decide on the appeal within 48 hours, and if the ruling being contested by an appeal was issued by that Panel, or by the Panel at the main hearing, the Panel of the directly superior court shall issue a ruling on the appeal. An appeal shall not suspend enforcement of the ruling.

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

(5) If an accused that is in custody is sent to a psychiatric institution, the investigative judge or the Chair of the Panel shall notify this institution of the grounds for detention in order to take the measures necessary for securing the purpose of the detention.

(6) The time spent in a psychiatric institution shall be included in the term of detention or credited against the accused's imprisonment, should a sentence be imposed.

Physical Examination and Other Procedures

Article 154

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

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

(3) Taking saliva samples for the purpose of carrying out DNA analyses shall be allowed where it is necessary in order to identify persons or in on order to make a comparison with other biological traces and other DNA profiles and it shall not require the consent of the person involved nor shall this action be regarded as posing a health risk.

(4) If the suspect or accused opposes actions referred to in paragraphs 1 and 2 of this Article, they may be undertaken only upon the order of the court of appropriate jurisdiction.

(5) Applying any medical intervention on the suspect, accused or witness or giving them such medication that may influence their consciousness and will on the occasion of giving their statement shall be permitted.

Expert Witness Audit of Business Books

Article 155

(1) When it is necessary to perform forensic examination on business books, the authority conducting the procedure shall specify to the expert witnesses the direction and the scope of the expert audit as well as the facts and circumstances to be established.

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

(3) The authority conducting the procedure shall issue a ruling on putting the book-keeping in order on the basis of a substantiated written report from the expert witnesses appointed to give forensic examination on business books. The ruling shall also specify the amount of money that the business organization, other legal person or the entrepreneur shall deposit to the court as an advance for the cost of putting its books in order. An appeal shall not be allowed against this ruling.

(4) After the book-keeping has been put in order, the authority conducting the criminal proceedings shall issue a ruling, on the basis of the report of the expert witness, determining the amount of costs for putting the book-keeping in order and ordering that this amount be borne by the business organization, another legal person or the entrepreneur whose book-keeping was put in order. An appeal may be lodged against that ruling regarding the grounds for the decision on compensation of costs and regarding the amount of the costs. The court of first instance Panel referred to in Article 24, paragraph 7 of this Code shall decide on the appeal.

(5) If the costs and the fee were not paid in advance, they shall be paid to the authority that paid them in advance to the expert witnesses.

(6) Before forensic examination referred to in paragraph 1 of this Article has been carried out, an inventory of the business books and other business documentation relating to the business books shall be made in the presence of the Public Prosecutor or an authorized police officer.

8. Photographs and Audio-Visual Recordings Examination of Photographs, Listening to Audio Recordings and Examination of Audiovisual Recordings

Article 156

(1) Photographs or audio, or audiovisual recordings of evidentiary activities conducted in compliance with this Code may be used as evidence and serve as grounds for making a judgment.

(2) Photographs or audio, i.e. audiovisual recordings which do not fall under photographs or audio, i.e. audiovisual recordings referred to in paragraph 1 of this Article may be used as evidence in criminal proceedings if they have been authenticated and if possibility of photo installation or video installation and other forms of falsification of photographs and recordings has been excluded and if they have been made with an implicit or express consent of the suspects or the accused when their image or their voice are on the photograph or the recording.

(3) Photographs or audio, i.e. audiovisual recordings referred to in paragraph 2 of this Article which have been made without the content of the suspect or the accused and which bear their image or voice, may be used as evidence in criminal proceedings provided that the photograph, audio or audiovisual recording bears simultaneously an image or voice of another person who has contented, either implicitly or expressly, to taking of the photograph or making of the audio or audiovisual recording.

(4) Photographs or audio, i.e. audiovisual recordings made without the tacit or express consent of the suspects or the accused but which contain their image or voice may be used as evidence in criminal proceedings provided that photographs or audio, i.e. audiovisual recordings have been taken as a result of general security measures:

- applied in public places: streets, squares, parking places, school yards and yards of institutions and other similar public places, or in public facilities and premises, state body buildings, institutions, hospitals, schools, airports, bus and train stations, sports stadiums and halls and other

similar premises and open spaces connected to them, as well as in shops, supermarkets, banks, business buildings and other similar facilities with regular security surveillance or

- taken by a person occupying dwelling or other premises or by another person acting in compliance with the order of the person who occupying dwelling or other premises, which also relates to yards and other similar open spaces.

(5) If photographs or audio, i.e. audiovisual recordings shows only certain objects or events or persons that are not suspects or accused, the photograph, or audio, i.e. audiovisual recording may be used as evidence in the criminal proceedings if they were not created by committing a criminal offence.

(6) When photographs or audio, i.e. audiovisual recordings have been taken in compliance with paragraphs 1 to 5 of this Article, a part of such photograph or record extracted by special technical means, as well as a photograph made from a frame in a video recording may be used as evidence in criminal proceedings.

(7) When photographs or audio, i.e. audiovisual recordings have been taken in compliance with paragraphs 1 to 5 of this Article, a drawing or draft made on the basis of the photograph or video recording may be used as evidence in criminal proceedings provided that they were made for the purpose of clarifying certain details of the photograph or recording and that the photograph, or the recording are a part of evidence.

(8) Audio recordings used as evidence in the criminal proceedings shall be transcribed and entered into the criminal case files.

9. MEASURES OF SECRET SURVEILLANCE

Types of Secret Surveillance Measures and Conditions for Their Application

Article 157

(1) If grounds for suspicion exist that a person has individually or in complicity with others committed, is committing or is preparing to commit criminal offences referred to in Article 158 of this Code and evidence cannot be obtained in another manner or their obtaining would request a disproportional risk or endangering the lives of people, measures of secret surveillance may be ordered against those persons:

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

2) secret photographing and video recording in private premises;

3) secret supervision and technical recording of persons and objects.

(2) If grounds for suspicion exist that a person has individually or in complicity with others committed, is committing or is preparing to commit criminal offences referred to in Article 158 of this Code and circumstances of the case indicate that evidence shall be collected with a minimum violation of the right to privacy, measures of secret surveillance may be ordered against those persons:

1) simulated purchase of objects or persons and simulated giving and taking of bribe;

2) supervision over the transportation and delivery of objects of criminal offence;

3) recording conversations upon previous informing and obtaining the consent of one of interlocutors;

4) use of undercover investigators and cooperative witnesses.

(3) Measures referred to in paragraph 1, item 1 of this Article may be also ordered against persons for whom there are grounds for suspicion that they have been conveying to the offender or from the offender of criminal offences referred to in Article 158 of this Code messages in

connection to the criminal offence, or that the offender has been using their telephone lines or other electronic communication devices.

(4) Enforcement of measures referred to in paragraph 2, items 1, 3 and 4 of this Article shall not constitute incitement to commit a criminal offence.

Criminal Offences for Which Measures of Secret Surveillance May Be Ordered

Article 158

The measures referred to in Article 157 of this Code may be ordered for the following criminal offences:

1) punishable by imprisonment of ten years or a more severe sentence;

2) having elements of organized crime;

3) having elements of corruption, as follows: money laundering, causing false bankruptcy, abuse of assessment, passive bribery, active bribery, disclosure of an official secret, trading in influence, as well as abuse of authority in economy, abuse of an official position and fraud in the conduct of an official duty punishable by imprisonment of eight years or a more serious sentence;

4) abduction, extortion, blackmail, meditation in prostitution, displaying pornographic material, usury, tax and contributions evasion, smuggling, unlawful processing, disposal and storing of dangerous substances, attack on a person acting in an official capacity during performance on an official duty, obstruction of the pleading process, criminal association, unlawful keeping of weapons and explosions, illegal crossing of the state border and smuggling in human beings.

5) against the security of computer data.

Competence for Ordering Measures of Secret Surveillance and Their Duration

Article 159

(1) Measures referred to in Article 157, paragraph 1 of this Code shall be ordered via a written order by the investigative judge at the motion of the Public Prosecutor containing a statement of reasons. Measures referred to in Article 157, paragraph 2 of this Code shall be ordered via a written order by the Public Prosecutor at the motion of police authorities containing a statement of reasons. The motion containing a statement of reasons shall be delivered in a closed envelope bearing the designation MSS - Measures of Secret Surveillance.

(2) The motion and the order referred to in paragraph 1 of this Article shall contain: the type of measure, data on the person against whom the measure is enforced, grounds for well-founded suspicion, the manner of measure enforcement, its goal, scope and duration. If it is a measure of engagement of an undercover agent and collaborator, the motion and the order shall also contain the use of false documents and technical devices for the transfer and recording of voice, image and video, participation in the conclusion of legal affairs, as well as the reasons justifying the engagement of a person who is not a police officer as an undercover agent and cooperative witness.

(3) The motion and the order for ordering measures shall become an integral part of the criminal file and should contain available data on the person against whom they are ordered, the criminal offence because of which they are ordered, the facts on basis of which the need to take them originates, duration term that needs to be suitable to achieving the objective of measure, manner, scope and place for the measures to be implemented.

(4) As an exception, if the written order can not be issued in time and risk of delay exists, application of measure referred to in Article 157 of this Code may begin on the strength of a oral order of the investigative judge, i.e., Public Prosecutor. In that case, a written order must be obtained within 12 hours following the issue of the oral order.

(5) Measures referred to in Article 157, paragraphs 1 and 2, items 2, 3 and 4 of this Code may last only as long as necessary, at the longest for four months, although for valid reasons they may be prolonged for three more months. The motion for taking the measure referred to in Article 157, paragraph 2, item 1 of this Code may refer only to one simulated act, and all subsequent motions for the application of this measure against the same person shall contain a statement of reasons justifying the repeated application of this measure. The application of measure shall be terminated as soon as reasons for its application cease.

(6) In addition to the order for the application of measure referred to in Article 157, paragraph 1, item 1 of this Code, the investigative judge shall issue a separate order containing solely the telephone number or e-mail address and the duration of the measure in question, and this order shall be delivered to business organisations referred to in paragraph 7 of this Article during the course of the application of the measure by the police authorities.

(7) Postal agencies, other business organizations and legal persons registered for transmission of information shall enable the police authorities to enforce the measure referred to in Article 157, paragraph 1 of this Code. Persons acting in an official capacity and responsible persons involved in the process of passing the order and execution of the measures referred to in Article 157 of this Code shall keep as an official secret all the data they have learned in the course of this process.

(8) If, on the occasion of the enforcement of measures of secret surveillance, data and notifications are registered referring to some other persons for whom grounds for suspicion exist that s/he had committed a criminal offence for which a measure of secret surveillance was ordered, or some other criminal offence, that part of the recording shall be copied and forwarded to the Public Prosecutor, and it may be used as evidence only for criminal offences referred to in Article 158 of this Code.

(9) The Public Prosecutor and the investigative judge shall, in an appropriate way (by coping records or official annotations without personal data, removal of an official annotation from the files and alike), prevent unauthorised persons, the suspects or their defence counsel to establish the identity of persons who have enforced the measures referred to in Article 157 of this Code. If such persons are to be questioned as witnesses, the Court shall act in the manner provided for in Articles 120-123 of this Code.

Enforcement of Measures of Secret Surveillance

Article 160

(1) The measures referred to in Article 157 of this Code shall be enforced by the police authorities in such a manner that the privacy of persons not subject to these measures be disturbed to the least extent possible.

(2) Undercover agent and collaborator may be an authorized police officer, employee in another state body, authorized police officer of another state or, as an exception, if the measure can not be enforced in another manner, some other person.

(3) Undercover agents and cooperative witnesses may not be persons for whom well-founded suspicion exists that they were or that they currently are members of a criminal organization or group or persons who have been convicted for criminal offences referred to in Article 22, item 8 of this Code.

(4) Undercover agent and cooperative witness may participate in legal dealings by using false documents, and in collecting information they may use technical devices for the transfer and recording of sound, image and video.

(5) Authorised police officer enforcing the measure shall keep records on each measure taken and report periodically to the Public Prosecutor, that is, investigative judge on the enforcement of measures. If the Public Prosecutor, i.e., investigative judge ascertains that the need for enforcement of the ordered measures does not exist any more, s/he shall issue and order on their discontinuance.

(6) Upon the enforcement of measures referred to in Article 157 of this Code the police authorities shall submit to the Public Prosecutor a final report and other material obtained by the enforcement of measures.

(7) Should the Public Prosecutor decide not to initiate a criminal proceedings against a suspect, s/he shall forward to the investigative judge the material obtained through the application of Article 157 of this Code, in a closed cover bearing the designation MSS, and the investigative judge shall order that the material be destroyed in the presence of the Public Prosecutor and the investigative judge. The investigative judge shall compose a record thereon.

(8) The investigative judge shall proceed in the manner described in paragraph 7 of this Article if the Public Prosecutor orders that investigation be conducted against the suspect who was subjected to measures of secret surveillance, when the results obtained or parts of the results are not indispensable for the conduct of the criminal proceedings.

(9) In cases referred to in paragraphs 7 and 8 of this Article, data shall be considered as classified within the meaning of regulation prescribing data confidentiality.

Legally Invalid Evidence

Article 161

(1) If the measures referred to in Article 157 of this Code were taken contrary to the provisions of this Code or contrary to the order of the investigative judge or the Public Prosecutor, the collected information may not serve as grounds for the judgment.

(2) Provisions of Article 211 paragraph 1, Article 293 paragraph 5, Article 356 paragraph 4, and Article 392 paragraph 4 of this Code shall apply accordingly with regard to the recordings made contrary to the provisions of this Article and Article 157 of this Code.

Passing Information to Persons against Whom Measure of Secret Surveillance Was Enforced When a Criminal proceedings Is Not Initiated

Article 162

(1) Before the material obtained through the enforcement of measures of secret surveillance in cases referred to in Article 160, paragraphs 7 and 8 of this Code is destroyed, the investigative judge shall inform the person against whom the measure was taken, and that person shall be entitled to examine the collected material.

(2) If there is a reasonable concern that passing information to the person referred to in paragraph 1 of this Article or examination of the collected material by such person could constitute a serious threat to the lives and health of people or could engender any investigation underway or if there are any other justifiable reasons, the investigative judge may, based on an opinion of the Public Prosecutor, decide that the person against whom the measure was taken not be informed and allowed to examine the collected material.

Title VIII

MEASURES FOR ENSURING THE PRESENCE OF THE ACCUSED AND FOR A PEACEFUL CONDUCTING OF THE CRIMINAL PROCEEDINGS

1. COMMON PROVISIONS

Types of Measures and General Rules of Their Enforcement

Article 163

(1) The following measures for providing the presence of an accused and peaceful conducting of the criminal proceedings may be carried out: summons, apprehension, measures of supervision, bail and detention.

(2) The court of appropriate jurisdiction shall observe the conditions stipulated for enforcement of certain measures, taking into account not to enforce a more severe measure if the same effect may be achieved by a less severe measure.

(3) These measures shall also be abolished ex officio after the reasons for their enforcement cease to exist, i.e. they shall be replaced with a less severe measure when the conditions for it are created.

(4) Provisions of Articles 164 and 165 and Article 166, paragraph 2, item 6 of this Code shall apply to the suspect as well.

2. SUMMONS

Service, Contents and Delivery of Summons

Article 164

(1) The presence of the suspect in the criminal proceedings shall be ensured through the summons. The authority conducting the criminal proceedings shall have the summons served to the accused.

(2) The accused shall be summoned by means of serving a sealed written summons containing: the title and address of the summoning authority, the forename and family name of the accused, the statutory title of the criminal offence s/he is charged with, the place, date and hour of appearance of the accused, note that the recipient is being summoned in the capacity of an accused and a warning that in the case of his/her failure to appear s/he shall be brought in by force, the official seal and the forename and family name of the Public Prosecutor or judge who is serving the summons.

(3) The summoning of the accused may be done over the phone and other electronic communication devices, if they agree to obey such a summon.

(4) When summoned for the first time, the accused shall be instructed in the summons of their right to retain a defence counsel and of the right to have the defence counsel present at their hearing.

(5) Witnesses shall notify the court immediately of changes of their address and on the intention to change residence. Accused shall be instructed thereon on the occasion of their first hearing or when the bill of indictment or a personal action at law is served, and shall be warned of the consequences regulated by this Code.

(6) If the accused are unable to appear due to illness or other impediment that can not be removed, they shall be heard at the place they are or transportation shall be provided to the courthouse or any other place where the procedure is to be conducted.

3. APPREHENSION

Warrant for Apprehension

Article 165

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

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

(3) A warrant for apprehension shall be issued in written form. A warrant should contain: forename and family name of the accused that is to be apprehended, place and year of birth, statutory title of the criminal offence s/he is charged with, the provision of the Criminal Code prescribing that offence stated, grounds for ordering the apprehension, an official stamp and a signature of the judge or Public Prosecutor ordering the apprehension.

(4) The person entrusted with the execution of the warrant shall serve the warrant to the accused and shall ask the accused to accompany him/her. If the accused refuse to comply they shall be apprehended by force.

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

4. SURVEILLANCE MEASURES

Types of Measures

Article 166

(1) If circumstances exist that indicate that the accused might flee, hide, go to an unknown place or abroad, or disrupt conducting of the criminal proceedings, the court may, ex officio or upon motion of prosecutor or injured party, impose one or more measures of supervision by a ruling containing a statement of reasons.

(2) Measures of supervision are:

1) prohibition to leave one’s dwelling;

2) prohibition to leave place of residence;

3) prohibition to visit particular places or areas;

4) duty to occasionally report to a certain state body;

5) prohibition of access to or meeting with certain persons;

6) seizure of a travel document;

7) seizure of a driving licence.

(3) Implementation of supervision measures referred to in paragraph 2, items 1 through 5 of this Article may be controlled by electronic surveillance. Electronic surveillance control shall be regulated by a special regulation of the Government of Montenegro (hereinafter referred to as the: the Government).

(4) Measures of supervision may not entail the restriction of the accused' right to live in their dwelling, to meet freely with members of their family and close relatives, with the exception of when the procedure is conducted for a criminal offence committed to the detriment of a family member or close relatives, as well as to perform their professional activity, with the exception of when the procedure is conducted for a criminal offence committed with relation to the performance of that activity.

(5) Measures of supervision may not restrict the right of the accused to contact their defence counsel freely.

(6) In the ruling imposing the measures referred to in paragraph 2 of this Article, the accused shall be cautioned that detention may be ordered against them in case of failure to comply with the measure imposed.

(7) In the course of the investigation, the measures referred to in paragraph 2 of this Article shall be imposed and abolished by the investigative judge, and after the indictment has been brought by the Chair of the Panel within 24 hours following the submission of the motion referred to in paragraph 1 of this Article. If the measure was not proposed by the Public Prosecutor, and the procedure is conducted for the criminal offence prosecuted ex officio, the court shall, before issuing the ruling by which a measure is imposed or abolished, seek the opinion of the Public Prosecutor. The court shall proceed in the same manner when it ascertains that a measure proposed by the Public Prosecutor should be abolished.

(8) Measures referred to in paragraph 2 of this Article may last as long as they are necessary, and at the longest until the judgment becomes legally-binding. The investigative judge or the Chair of the Panel shall examine every two months whether the enforced measure is necessary.

(9) Parties may lodge an appeal against a ruling ordering, prolonging or abolishing measures referred to in paragraph 2 of this Article and the Public Prosecutor may lodge an appeal against the ruling rejecting his/her motion for enforcement of the measure, as well. The Panel referred to in Article 24, paragraph 7 of this Code shall decide on the appeal within a term of three days from the day the appeal has been received. An appeal shall not suspend enforcement of the ruling.

Ruling Ordering a Measure of Supervision

Article 167

(1) In the ruling on prohibition to leave one's dwelling, the court shall order that the accused may not leave their dwelling and the premises having a functional link with the dwelling in question, i.e. that they may leave their dwelling only under the supervision of a certain person. As an exception, the ruling may order that the accused may leave the apartment for a certain term if it is necessary for the purpose of his/her medical treatment or if special circumstances so require due to which grave consequences for the life, health or property could occur.

(2) In the ruling on prohibition to leave a place of residence, the court shall designate the place at which the accused have to reside while the measure is in force, as well as the boundaries they may not leave.

(3) In the ruling imposing the measure of prohibition to visit particular places or areas, the court shall designate the places or areas, as well as the distance from them that the accused has to stay away from.

(4) In the ruling imposing a measure of obligation to occasionally report to a certain state body, the court shall designate a person in an official capacity to whom the accused has to report, a term within which they have to report and the way for keeping records on the reporting of the accused.

(5) In the ruling imposing a measure of prohibition of access to and meeting with certain people, the court shall designate a minimum distance at which the accused has to stay from a certain person.

(6) The ruling imposing a measure of seizure of a travel document shall specify personal details, authority that issued the document as well as the date and number of the document.

(7) The ruling imposing a measure of seizure of a driving licence shall specify personal details, authority that issued the licence, the number and the date of issuing and the category.

Enforcement of Measures of Supervision

Article 168

(1) A ruling imposing a measure of supervision shall be also delivered to the authority which is enforcing the measure.

(2) Measure of prohibition to leave one's dwelling, prohibition to leave the place of residence, prohibition of visiting a certain place or area, prohibition of access to or meeting a certain person, seizure of a travel document, and seizure of a driving licence shall be enforced by the police.

(3) The police or another state body to which the accused has to report shall attend to the enforcement of the measure of duty to report periodically to a certain state body.

Inspection of Measures of Supervision and Duty to Report

Article 169

(1) The court may order the inspection to be carried out over measures of supervision at any time and request a report from the authority competent for its enforcement, which shall submit the report to the court immediately.

(2) If the accused fail to fulfil the obligations ordered by the imposed measure, the authority enforcing the measure shall inform the court thereon, and the court may impose additional measure of supervision or order detention on that basis.

5. BAIL

Reasons for Ordering Bail

Article 170

(1) The accused who shall be detained or have already been detained only for a flight risk or on the grounds provided for in Article 175, paragraph 1, item 5 of this Code, may be allowed to remain at liberty or may be released if they personally or someone else on their behalf provide surety that they would not flee before the completion of the criminal proceedings and the accused themselves pledge that they would not conceal themselves and they would not leave their residence without permission.

(2) Bail may be ordered with a measure of supervision referred to in Article 166 paragraph 2 of this Code, in order to ensure compliance with that measure.

Ordering Bail and Its Contents

Article 171

(1) Bail shall always be expressed as an amount of money that is set on the basis of the gravity of the criminal offence, personal and family circumstances of the accused, and the financial standing of the person posting bail.

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

(3) A person posting bail shall submit evidence on their financial standing and ownership of the property posted as bail.

(4) If the accused flees, a ruling shall be issued ordering that the value posted as bail be credited to a special budget allotment for the work of courts.

Vacating Bail and Ordering Detention Instead

Article 172

(1) Notwithstanding the bail posted, detention shall be ordered if duly summoned accused fail to appear and fail to justify their absence, or if following a decision that they remain at liberty, some other legal ground for detention occurs against them.

(2) The accused for whom bail was posted on the grounds for detention provided for in Article 175, paragraph 1, item 5 of this Code shall be detained if they fail to appear at the next main hearing being duly summoned and do not justify their absence.

(3) In cases referred to in paragraphs 1 and 2 of this Article, bail shall be vacated. Deposited cash, valuables, securities or other movables shall be returned and the mortgage shall be removed. The same procedure shall be followed after the criminal proceedings have been terminated by a legally-binding ruling discontinuing the procedure or by a legally-binding judgment.

(4) If judgment imposed a sentence of imprisonment, bail shall be vacated when the convicted persons begin to serve their sentence.

Competence for Ordering Bail

Article 173

(1) The investigative judge shall issue the ruling on bail before and in the course of investigation. After the indictment has been brought the ruling on bail shall be issued by the Chair of the Panel, and during the main hearing by the Panel.

(2) If the procedure is conducted upon the indictment of the Public Prosecutor, the ruling on bail and on vacating bail shall be issued after the opinion of the Public Prosecutor has been obtained.

6. DETENTION

Exceptional Reasons for Ordering Detention and Urgency of Proceedings in Cases of Detention

Article 174

(1) Detention may be ordered only in cases provided for in this Code and only if the same purpose cannot be achieved by another measure and it is necessary for a peaceful conduct of procedure.

(2) All authorities taking part in the criminal proceedings and authorities providing them with legal assistance shall proceed with exceptional urgency if the accused is in custody.

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

Reasons for Ordering Detention

Article 175

(1) When well-founded suspicion exists that a certain person had committed a criminal offence, detention may be ordered against that person, if:

1) the persons hide or their identity cannot be established, or if other circumstances exist indicating a risk of flight;

2) circumstances exist that indicate that he/she would destroy, hide, modify or fabricate evidence or traces of a criminal offence or indicate that he/she would hinder the procedure by influencing witnesses, accomplices or accessories by virtue of concealment;

3) circumstances exist that indicate that the criminal offence would be repeated or attempted criminal offence completed or that they would commit the criminal offence they threaten to commit;

4) in the case of the criminal offences punishable by imprisonment of ten years or a more severe sentence and which is especially serious due to the manner it was committed or due to its consequences, when exceptional circumstances exist which indicate that releasing them into liberty would seriously threaten the preservation of public order and peace;

5) duly summoned defendants evades appearing at the main hearing.

(2) In the case referred to in paragraph 1, item 1 of this Article, detention ordered only because it was not possible to establish the identity of the person, shall last until this identity is established. In the case referred to in paragraph 1, item 2 of this Article, detention shall be terminated as soon as evidence due to which it was imposed are ensured. Detention ordered pursuant to paragraph 1, item 5 of this Article may last until the announcement of judgment.

Ordering Detention, Contents of the Ruling on Detention and Right of Appeal against the Ruling

Article 176

(1) Detention shall be ordered upon the motion of the authorized prosecutor by a ruling issued by the court of appropriate jurisdiction, after a previous hearing of the accused.

(2) The ruling ordering detention shall contain: forename and family name, year and place of birth of the persons against whom detention is ordered, criminal offence they are charged with, the legal grounds for detention, the duration of detention, the time the person was placed under arrest, instructions on the right to appeal, the statement of reasons with a separate statement of the grounds for ordering detention, the official seal and the signature of the judge ordering detention.

(3) The ruling ordering detention shall be served on persons to whom it relates immediately after it is issued. The day and the time the ruling was received shall be specified in the files. Detained persons shall acknowledge the receipt of the ruling with their signature.

(4) Detainees and their defence counsels may lodge an appeal against the ruling on detention to the Panel referred to in Article 24, paragraph 7 of this Code within a term of 24 hours from the moment the ruling was served. The appeal, the ruling on detention and other files shall be submitted to the Panel immediately. An appeal shall not suspend enforcement of the ruling.

(5) The Public Prosecutor may lodge an appeal to the Panel referred to in Article 24, paragraph 7 of this Code against the ruling rejecting the motion of the Public Prosecutor to order detention to the accused, within 24 hours as of the moment of serving the ruling. An appeal shall not suspend enforcement of the ruling.

(6) In cases referred to in paragraphs 4 and 5 of this Article, the Panel deciding on the appeal shall pass a decision within 48 hours.

Ordering Detention and Duration of Detention during Investigation

Article 177

(1) On the strength of the ruling of the investigative judge, the accused may be kept in custody at the longest for one month from the day of being placed under arrest. After this term has expired, the accused may be kept in custody only on the strength of a ruling extending detention.

(2) Detention may be extended on basis of the ruling of the Panel referred to in Article 24, paragraph 7 of this Code at the longest for two months and at the substantiated motion of the Public Prosecutor. An appeal against the ruling of the Panel shall be allowed but it shall not suspend enforcement of the ruling.

(3) If the procedure is conducted for a criminal offence punishable by imprisonment for a term of more than five years, the Panel of the Supreme Court may, upon a substantiated motion of the Public Prosecutor, if important reasons exist, extend the detention at the longest for another three months.

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

Termination of Detention

Article 178

(1) In the course of investigation, the investigative judge may terminate the detention at the motion of the Public Prosecutor or of the accused, i.e. their defence counsel. An appeal to the ruling terminating detention shall not suspend enforcement of the ruling.

(2) Before the adoption of the decision on the proposal of the accused or defence counsel for the termination of detention, the investigative judge shall ask the opinion of the Public Prosecutor.

Ordering and Supervising Detention after the Indictment Was Brought

Article 179

(1) After the indictment has been submitted to the court and up until the completion of the main hearing, detention may be ordered or terminated only by the ruling issued by the Panel, provided that the opinion of the Public Prosecutor is obtained if the proceedings are conducted upon his/her charges. Detention may last at the longest for three years from the bringing of indictment until the passing of a first instance judgment.

(2) Upon a motion of the parties or ex officio, the panel shall review whether the grounds for detention still exist and it shall issue a ruling extending or terminating detention, upon expiration every 30 days before the indictment has become final, and every two months from the moment the indictment becomes final.

(3) An appeal on the ruling referred to in paragraphs 1 and 2 of this Article shall not suspend enforcement of the ruling and the court shall pass a decision thereon within three days.

(4) An appeal shall not be allowed against the ruling of the Panel referred to in paragraph 1 of this Article by which the motion to order or terminate detention is rejected.

Obligation to Inform on Deprivation of Liberty

Article 180

(1) Immediately after a person has been placed under arrest and within a term of 24 hours at the latest, police authority, the Public Prosecutor or the court shall inform the family of the detained persons or their common law spouse thereon, unless the detained persons expressly object thereto.

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

7. TREATMENT OF DETAINEES

Respect of Personality and Dignity of Detainees and Their Accommodation

Article 181

(1) Personality and dignity of the detainee shall not be offended in the course of detention.

(2) The only restrictions that may be imposed against detainees shall be only the ones needed to prevent their flight, incitement of third persons to destroy, conceal, alter and fabricate evidence or traces of a criminal offence or to prevent direct or indirect contacts of detainees for the purpose of influencing witnesses, accomplices and accessories by virtue of concealment.

(3) Persons of different sexes shall not be detained in the same room. As a rule, detainees against whom well-founded suspicion exists that they have participated in the same criminal offence shall not be accommodated in the same room; neither shall detainees be accommodated in the same room as persons who are serving an imprisonment. If possible, detainees against whom a well-founded suspicion exists that they are recidivist shall not be accommodated in the same room with other detainees on whom they might have an adverse influence.

Rights of Detainees

Article 182

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

(2) At least two hours of movement in the open air within prison grounds daily shall be provided to detainees.

(3) Detainees shall be entitled to wear their own clothes, to use their own bedding or to obtain and use at their own expense food, books, professional publications, newspapers, stationary and drawing supplies and other things related to their daily needs, with the exception of those suitable for infliction of injures, impairment of health or preparation of flight.

(4) During the investigation, the investigative judge may, ex officio or upon the motion of the Public Prosecutor issue a ruling temporarily suspending or limiting the accused's right to procure and use newspapers if this could be detrimental to the conduct of proceedings. An appeal against the ruling of the investigative judge shall be allowed to the Panel referred to in Article 24, paragraph 7 of this Code.

(5) Detainees may be obliged to maintain in clean condition the premises they are detained in. If required so by the detainees, the investigative judge or the Chair of the Panel with the consent of prison administration may allow the detainees to work within prison grounds in compliance with their mental and physical capacity, providing that this is not detrimental for the course of the procedure. For such a work the detainee is entitled to a fee ordered by the administrator of the prison.

Receiving Visits and Correspondence of Detainees

Article 183

(1) Upon the approval of the investigative judge and where appropriate and under the judge's supervision or the supervision of a person designated by the judge, the detainees may, in compliance with the rules of conduct, be visited by their spouse or common law spouse and their close relatives and upon their requests – by a physician and other persons. Some visits may be prohibited if they could detrimentally affect the conduct of the proceedings.

(2) If required so by the detainees and subject to the knowledge of the investigative judge, diplomatic and consular representatives of foreign states shall be entitled to visit and communicate unsupervised with detainees who are nationals of their state. The investigative judge shall inform the administrator of the detention facility in which the detainee in question is kept about the visit of the diplomatic or consular representative.

(3) Detainees may be visited by representatives of domestic organizations for human rights and fundamental freedoms protection, international anti-torture committees, International Committee of the Red Cross, as well as representatives of international organizations engaged in the protection of human rights when envisaged so by a ratified international agreement. With the approval of the President of the Court, the detainee may receive visits from the representatives of domestic and foreign organizations for human rights protection.

(4) Detainees may exchange letters with persons outside of prison, pursuant to knowledge and under supervision of the investigative judge. Investigative judges may prohibit sending and receiving of letters and other parcels that are detrimental to the conduct of proceedings. The prohibition shall not relate to the letters sent by the detainee to international courts and domestic legislative, judicial and executive authorities or received from them. The sending of a petition, complaint or appeal shall never be forbidden.

(5) After the indictment is brought and until the judgment becomes legally-binding, authorizations referred to in paragraphs 1, 2 and 4 of this Article shall be performed by the Chair of the Panel.

Disciplinary Offences and Disciplinary Sentences

Article 184

(1) In cases of disciplinary offences committed by the detainee, the prison administrator or the person authorized by him/her may impose against the detainee a disciplinary penalty consisting of restrictions of visits or solitary confinement of up to 15 days. Such restriction shall not refer to the communications between the detainees and their defence counsel.

(2) An appeal may be lodged to the investigative judge against the ruling on the sentence referred to in paragraph 1 of this Article within 24 hours from the moment the ruling was received. An appeal shall not suspend enforcement of the ruling. The investigative judge shall decide on the appeal within a term of three days from the day the appeal was lodged.

Supervision over the Enforcement of Detention

Article 185

(1) The President of the Court authorized therefor shall carry out supervision over detainees.

(2) Court Presidents or judges designated by them shall visit the detainees at least twice a year, and if they find it necessary, even without the presence of keepers and guards, they will be informed about the manner in which the detainees are fed, about their fulfilment of other needs and the manner in which they are treated. The President or the judge designated by the President shall take measures necessary for the removal of flaws noticed on the occasion of the prison visit and draw up a report on his/her visit to be submitted to the President of the Supreme Court and delivered to the ministry in charge of judicial affairs.

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

Regulations on Rules of Conduct on the Occasion of the Enforcement of Detention

Article 186

A more detailed manner of executing detention shall be regulated by the ministry competent for judicial affairs.

Title IX

PASSING AND PRONOUNCING DECISIONS

Types of Decisions and Decision-making Authorities

Article 187

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

(2) Only the court shall pass a judgment, while rulings and orders may be passed also by other authorities taking part in the criminal proceedings.

Passing Decisions in Session on Deliberations and Voting

Article 188

(1) The panel shall pass a decision after oral deliberations and voting. A decision shall be deemed passed when made by the majority vote.

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

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

(4) The members of the panel may not abstain from voting on issues presented by the Chair of the Panel but the member of the Panel who voted for the acquittal of the defendant or for the

overruling of the judgment and was outvoted shall not be obliged to vote on the sanction. If s/he fails to vote, s/he shall be deemed as having assented to the vote most favourable to the defendant.

Sequence of Matters Subject to Vote

Article 189

(1) on the occasion of debating, the court shall first vote on whether the court has jurisdiction over the matter, on whether the procedure should be supplemented, and on other preliminary issues. Having decided on the preliminary issues, the court shall proceed with deciding on the *res principale*.

(2) On the occasion of deciding on the *res principale*, the court shall first vote to determine whether the defendant committed the criminal offence and whether s/he is guilty as charged, and subsequently it shall vote on the punishment, other criminal sanctions, the costs of the criminal proceedings, claims under the property law, and other matters subject to passing a decision.

(3) Where the same person has been charged with committing more than one criminal offence, the court shall vote on the guilt and punishment for each offence and thereafter on a cumulative sentence for all the offences.

Closed Session

Article 190

(1) Deliberations and voting shall take place behind closed doors.

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

Pronouncement of Decisions

Article 191

(1) Unless otherwise provided by this Code, decisions shall be conveyed to persons having a legal interest by oral pronouncement where they are present, and by the service of an authenticated transcript where they are absent.

(2) Where a decision is pronounced orally, this shall be specified in the record or the file, and shall be authenticated by the signature of a person entitled to lodging an appeal. If the person makes a statement of waiving the appeal, an authenticated transcript of the orally pronounced decision shall not be served on him, unless otherwise provided by this Code.

(3) Copies of decisions subject to appeals shall be served along with an instruction on the right to appeal. The appeal lodged to the benefit of the accused shall be deemed timely if it is lodged within the time limit specified in the instruction on the right to appeal, provided that the term specified in the instruction exceeds the statutory term.

Title X

SERVICE OF DOCUMENTS AND EXAMINATION OF FILES

Manner of Service

Article 192

(1) Serving of documents shall, as a rule, be effected by a person acting in an official capacity on behalf of the authority which has passed the decision, or directly with such authority, and may be served by mail or an authorized legal person registered for the performance of delivery affairs, by local governance authority, or through other authorities by means of letter rogatory.

(2) The court may also orally serve a summons for main hearing or other summonses to the person present before the court, along with the instructions on the consequences of any failure to appear. The summons served in such a manner shall be entered into the records and signed by the summoned person, unless the summons is entered into the record on the main hearing. The service shall thereby be considered valid.

Service in Person

Article 193

Where this Code envisages that a document be served in person, it shall be served directly to the recipient. If the recipient to be served in person is absent from the due place of delivery, the server shall make an inquiry as to when and where the person can be reached, and shall leave with one of the persons referred to in Article 194 paragraph 1 of this Code a written notice directing the recipient to be accessible in his/her dwelling or work place on a specified date and hour in order to receive the document. If the server cannot reach the recipient thereafter, s/he shall act compliant to Article 194 paragraph 1 of this Code, and the service shall thereby be deemed provided.

Indirect Service

Article 194

(1) Documents that under this Code do not have to be served in person may be handed to any of the adult members of the recipient's household who shall receive the document, if they can not be delivered directly to the person they were sent to or if the recipient is not found in the dwelling. If neither the household members are found in the dwelling, the document shall be left with the building superintendent or a neighbour if they consent to accept it. If the document is served at the recipient's work place and s/he cannot be reached therein, the documents may be handed to the person in charge of mail receipt who shall receive the document, or to another employee thereof, if s/he consents to accept it.

(2) If it is established that the recipient to the document is absent and the persons referred to in paragraph 1 of this Article unable to hand over the document in due time, the document shall be returned with an indication as to the whereabouts of the absent recipient.

Summoning and Summons Service on the Accused

Article 195

(1) The summons for the first hearing in the preliminary proceedings and the summons for the main hearing shall be served on the accused personally.

(2) An indictment, bill of indictment or personal action at law, a judgment and other decisions for which the time limit for an appeal starts running on the date of service, as well as an appeal by the adverse party that is served for reply, shall be served in person to the accused who does not have a defence counsel. Should the accused request that the summons referred to in paragraph 1 and the documents from the same paragraph be served on a person s/he designates, they shall be served on the person designated, and thereby deemed served on the accused.

(3) Should the accused who does not have a defence counsel be served a judgment imposing a sentence of non-suspended imprisonment and the service is impossible at his/her known address, the court shall ex officio assign a defence counsel to the accused who shall perform this duty until the new address of the accused is learnt. The appointed defence counsel shall be given the necessary time limit to acquaint himself with the case file, whereupon the judgment shall be served on the appointed defence counsel, and procedure shall resume. Where there is another decision with a time limit for lodging an appeal starting running from the moment of the service, or an appeal of the adverse party that is being submitted for reply, the decision or

appeal shall be posted on the bulletin board of the court, and it shall be deemed validly served upon the expiry of eight days from the date of its posting.

(4) If the accused has a defence counsel, the indictment, bill of indictment, personal action at law, judgment and all decisions the service of which launches the time limit for lodging an appeal or objection, and also the appeal of the adverse party submitted for response, shall be delivered to the defence counsel and the accused in compliance with Article 194 of this Code. In such a case, the time limit term shall commence on the date when the document is served to the accused or defence counsel. If the decision or a notice of appeal cannot be served on the accused due to his/her failure to report a change of address, the document thereabove shall be posted on the bulletin board of the court, and may be published on the web site of the court, and upon the expiry of eight days from the date of its posting the document shall be deemed validly served.

(5) If a document has is to be served to the defence counsel of the accused, and he has more than one defence counsel, it shall be sufficient to serve the document to one of them.

Service of Documents on Plaintiff and Subsidiary Prosecutor

Article 196

(1) The notice for bringing a personal action at law or indictment as well as a summons for main hearing shall be served personally on a plaintiff and subsidiary prosecutor, or their legal representative as compliant to Article 193 of this Code, and to their proxies as compliant to Article 194 of this Code. The same service procedure shall be followed for the decisions where the time limit for appeal runs from the date of their service, and for an appeal by the adverse party which is served for response.

(2) If the service cannot be carried out on the persons referred to in paragraph 1 of this Article or on the injured party at their last known address, the court shall post a notice, decision or appeal on the bulletin board and after the expiry of eight days from the date of its posting it shall be deemed validly served.

(3) If the injured party, subsidiary prosecutor or plaintiff is represented by a legal representative or proxy, the service shall be made on them, and where there are several, only on one of them.

Certificate of Service

Article 197

(1) Documents shall be served in sealed covers.

(2) Proof service (a certificate of service or return receipt) shall be signed by both the recipient and server. The recipient shall personally specify the date and hour of receipt on the certificate of service.

(3) Should the recipient be illiterate or otherwise unable to sign the certificate of service, the server shall sign the recipient’s name, specify the date and hour of the receipt, and make a note specifying the reasons why the signature was put by the server in lieu of the recipient.

(4) Should a recipient refuse to sign a certificate of service or return receipt, the server shall make a note thereof on the certificate of service or return receipt, specifying the date and hour of the service, thereby the document shall be deemed served.

Refusal of Documents

Article 198

When the recipient or an adult household member refuses to accept a document, the server shall note on the certificate of service the day, hour and reason for such refusal and shall

leave the document in the dwelling of the recipient or at his/her workplace, and thereby the document shall be deemed served.

Special Cases of Service

Article 199

(1) Services of summons on military personnel, guards in the administration authority competent for the enforcement of criminal sanctions and institutions accommodating persons placed under arrest, and on employees of road, river, overseas, and air transportation shall be effected through their command or the immediate superior officer, the same procedure being applicable thereto in the service of other official documents where appropriate.

(2) Documents shall be served on persons placed under arrest in the court or through the administration authority competent for the enforcement of criminal sanctions or institution they are accommodated in.

(3) Service on persons enjoying immunity in Montenegro shall be made through the ministry competent for foreign affairs, unless otherwise provided for by international treaties.

(4) Save letters rogatory of domestic courts for international legal assistance in criminal matters, documents shall be served on the nationals of Montenegro abroad through a diplomatic or consular mission of Montenegro, provided that the foreign state in question does not object to such a manner of service and that the recipient voluntarily consents to be served the document. Where the document is served in a diplomatic or consular mission, the authorized employee thereof shall sign the certificate of service in the capacity of the server, and where the service is made by mail s/he shall confirm this on the certificate of service.

Service on the Public Prosecutor

Article 200

(1) Service of decisions and other documents on the Public Prosecutor shall be effected by their submission to the Registry of the Public Prosecutor's Office.

(2) Should the time limit of a decision run from the date of its service, the date of service shall be the date of the document's submission to the Registry of the Public Prosecutor's Office.

(3) The court shall provide a criminal file to the Public Prosecutor for examination upon the Public Prosecutor's request. Where the time limit for lodging an ordinary legal remedy is running or where so required by other interests of the proceedings, the court may order a time limit for the return of the file by the Public Prosecutor.

Application of Provisions of Other Laws

Article 201

In cases not provided by this Code, service shall be made in compliance with the provisions of the law providing civil proceedings.

Notification by Telephone and Telegram

Article 202

(1) Summonses and decisions issued up to the completion of the main hearing for persons participating in the proceedings, save the accused, may be handed over to a participant to the proceedings who accepts to service them on the addressees, if the authority holds that their service is therewith ensured.

(2) The persons referred to in paragraph 1 of this Article may be informed about the summons for main hearing or another summons as well as on the decision on the postponement of

main hearing or other scheduled actions by telegram or telephone or other means of electronic communication if under the circumstances it can be assumed that the person to whom the notification is sent will thus receive it.

(3) An official annotation shall be made in the file about the summons and service of a decision effected in the manner provided for in paragraphs 1 and 2 of this Article.

(4) Detrimental consequences provided for by this Code may not take effect against a person who was notified pursuant to paragraphs 1 or 2 of this Article, or to whom a decision was sent.

Examining, Transcribing or Recording of Individual Files

Article 203

1) Unless otherwise provided for by this Code, after the indictment has been confirmed, anyone having a justified interest may be allowed to examine, transcribe, copy or record particular criminal files.

(2) Actions referred to in paragraph 1 of this Article shall be authorized by the authority before which the proceedings have been conducted where the proceedings are underway, and by the President of the court or a person acting in an official capacity designated by him upon the completion of the proceedings.

(3) Where the public is excluded from a main hearing or the right to privacy would be severely violated, the actions referred to in paragraph 1 of this Article may be denied or conditioned by a prohibition of making public the names of participants in proceedings. An appeal against a ruling on denial shall be allowed, which shall not suspend enforcement of the ruling.

(4) The actions referred to in paragraph 1 of this Article taken by a plaintiff, subsidiary prosecutor, injured party, and defence counsel shall be subject to the provisions of Article 58 paragraph 3 or Article 72 of this Code.

(5) An accused or suspect, where examined according to the provisions on hearing of an accused, or after a direct indictment referred to in Article 288 of this Code has been brought, shall be entitled to examine the files and observe the collected objects that serve as evidence.

Title XI

PETITIONS AND RECORDS

Submission of and Correction of Petitions

Article 204

1) Personal actions at law, indictments, and bills of indictment of the subsidiary prosecutor, motions, legal remedies and other statements and releases shall be submitted in writing, or given orally and entered into record.

(2) Petitions referred to in paragraph 1 of this Article shall be comprehensible and contain all that is necessary to act upon them.

(3) If the petition is not comprehensible or does not contain all that is necessary to act upon it, the court shall, unless otherwise provided for by this Code, invite the person who submitted the petition to correct or amend it; should s/he fail in doing so within a certain time limit, the court shall dismiss the petition.

(4) In the summons to correct or amend a petition, the person filing the petition shall be cautioned about the consequences of an omission to comply thereto.

Serving Petitions on the Adverse Party

Article 205

Petitions that are to be served on the adverse party pursuant to this Code shall be lodged to the court in a number of copies sufficient for both the court and the adverse party. Where such petitions are not submitted to the court in sufficient number of copies, the court shall transcribe the necessary copies at the expense of the person who submitted the petition.

Protection of Reputation of Court, Parties and Other Participants in Proceedings

Article 206

(1) A court shall protect its reputation, the reputation of the parties and other participants in proceedings from any insult, threat, or attack.

(2) The duty referred to in paragraph 1 of this Article shall be vested in the Public Prosecutor in a preliminary investigation and investigation.

(3) The courts shall punish by a fine not exceeding €1.000 defence counsels, proxies, legal representatives, injured parties, plaintiffs or subsidiary prosecutors who offend the court or a participant in the proceedings, be it in a petition or orally. An investigative judge or Panel before which a statement has been given shall issue a ruling on punishment and, if the offence has been given within a petition, the ruling shall be issued by the court competent in deciding on the petition. Should the Public Prosecutor or the Public Prosecutor's representative offend another person, this shall be subject to notification to a competent Public Prosecutor. The Bar Chamber shall be notified on any punishment against an attorney-at-law.

(4) Should a Public Prosecutor assess during a preliminary investigation or investigation that the defence counsel, proxy, or legal representative of an injured party has offended the court, the Public Prosecutor, or another participating in criminal proceedings, the Public Prosecutor shall provide a copy of the petition or a record of the oral remarks to the investigative judge, who may issue the ruling on punishment referred to in paragraph 3 of this Article.

(5) The ruling referred to in paragraphs 3 and 4 of this Article may be subject to appeal.

(6) The act of punishment referred to in paragraphs 3 and 4 of this Article shall not affect the prosecution and sentencing for a criminal offence committed by insulting.

Obligation of Keeping Records

Article 207

(1) Any action taken in the course of a criminal proceedings shall be entered into a record at the very time of the action or, where impossible, immediately afterwards.

(2) A record shall be made by a court reporter.

(3) Should a search of a dwelling or person be carried out, or an action taken outside the official premises of an authority and it is impossible to provide a court reporter on the spot, the record may be kept by the person who takes the action.

(4) Where a record is kept by a court reporter, this shall be done as follows: the person who takes the action shall dictate to the court reporter what to enter in the record.

(5) A person being heard may be permitted to directly dictate answers for the record. Where abused, this right may be denied.

Record Contents

Article 208

(1) A record shall contain the name of the state body before which the action is taken, the forename and family name of the person who takes the action acting in an official capacity, the location of the action performance, the date and hour of the commencement and end of the action,

the forenames and family names of present persons and the capacity in which they are present, and the designation of the criminal case in which the action is taken.

(2) A record shall include essential data on the course and the contents of the action taken. Only the essentials of given statements shall be entered in the record in the narrative form. Questions shall be entered into the record only where they are needed to understand the answer. Where court deems needed, or upon the request by the parties or the defence counsel, the question asked and the answer thereto shall be entered in the record verbatim. Should such right be abused, it may be denied. Where items or documents were seized on the occasion of taking an action, this shall be entered in the record, the seized items being attached to the record or the location of their safekeeping indicated.

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

(4) On the occasion of taking actions such as a crime scene investigation, search of homes or persons, or the identification of persons or items referred to in Article 115 of this Code, the record shall include the data important in consideration of the nature of such action, or for the determination of sameness of certain items (description, measurements and size of items or traces, labeling of items, etc); where there are sketches, drawings, blueprints, photographs, video footages, etc., these shall also be indicated in the record and attached to the record.

Orderly Record-keeping, Alterations, Corrections and Amendments to Records

Article 209

(1) The records shall be kept orderly. No content shall be erased, added, or altered. Parts that are crossed out shall remain legible.

(2) All alterations, corrections, and amendments shall be entered at the end of records and authenticated by the signatories to the records.

Reading of i.e. Examination of Records and Signing of Records

Article 210

(1) The heard person, persons who mandatorily attend procedural actions, as well as parties, the defence counsel, and the injured party, if present, shall be entitled to read the record, or to request to have it read. They shall be admonished thereon by the performer of the action. It shall be specified in the record whether they have been notified thereof and whether the record was read. The record shall always be read, even in the absence of the court reporter, which shall be specified in the record.

(2) The record shall be signed by the person heard. If the record contains of several pages, the person heard shall sign each page. Should the persons heard refuse to put their signature or fingerprint thereon, this shall be entered in the record, together with the reason for such refusal.

(3) The record shall conclude by the signatures of the interpreter, if any, of the witnesses who mandatorily attended the taking of evidentiary actions, and on the occasion of a search, of the person whose dwelling or who personally is being searched. Where the record is kept by the person referred to in Article 207 paragraph 3 of this Code, the record shall be signed by the persons who attend the course of action. Where there are no such persons or if they cannot understand the contents of the record, the record shall be signed by two witnesses save where impossible to ensure their presence.

(4) In lieu of personal signature, illiterate persons shall put the fingerprint of the right-hand index finger, and court reporters shall enter the forename and family name of the person below the fingerprint. If impossible to put the fingerprint of the right hand index finger, the print of some other finger or the print of left hand finger shall be put instead and the record shall specify which finger and which hand the fingerprint has been taken from.

(5) If the person heard lacks both arms, s/he shall read the record, or, if illiterate, the person shall have the record read, which shall be entered in the record.

(6) If an action could not be performed without any interruption, the record shall specify the date and hour of the interruption as well as the date and hour of the resumption of the action.

(7) Where there are objections with reference to the contents of a record, they as well shall be included therein.

(8) The person who has taken the action and the court reporter shall sign the record at the end thereof.

Exclusion of Records

Article 211

(1) Where this Code envisages that a judgment cannot be based on the statement of an accused, witness or expert witness, or on the record of the search of a dwelling, or the data referred to in Article 161 of this Code, the investigative judge shall, ex officio or upon the motion of the parties, issue a ruling on their exclusion from the file immediately or the latest until the completion of the investigation, or bringing of direct indictment referred to in Article 288 of this Code. This ruling may be subject to a special appeal.

(2) Once a ruling is legally-binding, the excluded records shall be sealed in a separate cover and kept by the investigative judge separately from other files and they may not be examined nor used in the proceedings.

(3) Once the investigation is completed or direct indictment brought referred to in Article 288 of this Code**,** the investigative judge shall proceed according to the provisions referred to in paragraphs 1 and 2 of this Article, and with all the information provided to the Public Prosecutor and police by citizens within the meaning of Article 259 paragraph 1 and Article 271, paragraph 3 of this Code. When the Public Prosecutor brings the indictment without an investigation, s/he shall submit the files containing such information to the investigative judge, who shall proceed compliant to the provisions of this Article.

Audio and Audiovisual Recording

Article 212

(1) All actions taken during the course of criminal proceedings shall, as a rule, be recorded by audio or audiovisual recording devices. Previously, this shall be made known to the person heard, who shall be instructed of his/her right to request the copy of the recording in order to check the statement given.

(2) The Panel may, for justified reasons, decide that certain parts of the main hearing are not to be recorded.

(3) The recording shall contain the data referred to in Article 208 paragraph 1 of this Code, data necessary to establish the identity of the person whose statement is being recorded, and data of the capacity in which the person is being heard. Where statements of several persons are recorded, it shall be ensured that one can easily recognize from the recording who gave the statement.

(4) Upon the request of the person heard, the recording shall be copied immediately, and corrections or explanations offered by the above-mentioned person shall be recorded.

(5) A record about the evidentiary action shall include an entry on the recording conducted, the identity of the person who has recorded it, whether the person heard was previously notified of the act of recording, that the recording has been copied and where it is kept if not attached to the case files.

(6) The Public Prosecutor**,** investigative judge, or the Chair of the Panel may order the recording to be fully or partially transcribed. In such case, the above person shall examine the transcript, authenticate it, and enclose it to the record on the taking of evidentiary action.

(7) The recording shall be kept in court as long as the respective criminal file is kept.

(8) The Public Prosecutor, investigative judge, or Chair of the Panel may allow participants in proceedings who have a justifiable interest to record the course of the evidentiary action by an audio recording device.

(9) The recordings referred to in paragraphs 1 through 8 of this Article may not be publicly presented without a prior written consent of the parties to and participants in the action recorded.

Other Provisions of this Code Applicable to Main Hearing Records

Article 213

Main hearing records shall also be subject to provisions referred to in Articles 331 through 334 of this Code.

Records on Deliberations and Voting

Article 214

(1) A separate record on deliberations and voting shall be made.

(2) The record on deliberations and voting shall contain the course of the voting and the decision made.

(3) The record in question shall be signed by all members of the Panel and the court reporter. Separate opinions shall be attached to the record on deliberations and voting if not entered in the record.

(4) The record on deliberations and voting shall be sealed in a separate cover. This record may be examined only by the High Court when ruling on legal remedy. In that case, the court shall reseal the record in a separate cover and specify thereon that it was examined.

Title XII

TIME LIMITS

Time Limits for Filing Petitions

Article 215

(1) Time limits provided for by this Code may not be extended, save when explicitly allowed by this Code. Should a time limit be set by this Code for the protection of the right to defence and other procedural rights of the accused, this time limit may be shortened if the accused requires so in writing or dictates it into the record before the court.

(2) Where a statement is bound to a time limit, it shall be deemed timely if submitted to an authorized receiver thereof before the time limit expiry.

(3) Where a statement is sent by registered mail, the date of its mailing shall be deemed the date of service on the addressee. Where a regular post office is inexistent, a delivery made to a military post office shall be deemed a delivery to the post by registered mail.

(4) An accused who is in custody may make a statement bound by a time limit also for the record before the court conducting the procedure or hand it to the prison administration, whereas the person serving the sentence or staying in an institution as subject to security or corrective measure may make such a statement to the administration authority competent for the enforcement of criminal sanctions or the institution where s/he is placed. The date of drafting such a record or submitting of such a statement to the administration authority competent for the

enforcement of criminal sanctions or the institution shall be deemed the date of the submission to the authorized recipient authority. The administration authority competent for the enforcement of criminal sanctions or the institution shall issue the detainee a certificate of delivery of the statement.

(5) Should a time-limit-bound petition be submitted or addressed to a court lacking appropriate jurisdiction, due to ignorance or an obvious mistake on the part of the submitter, it being done before the time limit's expiry, and the court of appropriate jurisdiction receives it after the time limit's expiry, the submission shall be deemed timely.

Time Limits Calculation

Article 216

(1) Time limits shall be calculated in hours, days, months and years.

(2) The hour or day of the submission, or act of statement, or the event from which a time limit starts running shall not be calculated into the time limit but it shall start running from the very following hour or day. One day shall be calculated as 24 hours while a month shall be calculated by calendar.

(3) The time limits expressed in terms of months or years shall expire with the expiration of the day of the term's last month or year which by date corresponds to the date when the time limit has started running. Where such a date is inexistent in the term's last month, the time limit shall expire with the expiration of the last day of the month in question.

(4) Where the last day of the time limit happens to fall on a public holiday or on Saturday or Sunday, or on some other non-working day of the state body, the time limit shall expire with the expiration of the first following working day.

Return to the *status quo ante*

Article 217

(1) The accused who fails to meet the term for lodging an appeal against a judgment, or ruling on effecting a security or corrective measure or on the seizure of proceeds of crime, or for lodging an objection to the ruling on punishment, the court shall allow return to the status quo ante aimed at filing the appeal or lodging the objection if the accused submits the application for return to the status quo ante, together with filing the appeal or lodging the objection, within eight days from the cease of reasons for failing to meet the term.

(2) Return to the *status quo ante* may not be subject to an application after three months from the date of failure to meet the time limit.

Deciding on Return to the *status quo ante*

Article 218

(1) The return to the *status quo ante* shall be decided on by the Chair of the Panel who has passed the judgment or issued the ruling contested by an appeal or objection.

(2) A ruling granting the return to the *status quo ante* may not be subject to appeal.

(3) Where the accused has lodged an appeal against the ruling not granting the return to the *status quo ante*, the court shall forward this appeal, together with the appeal against the judgment or against the ruling on enforcement of security or corrective measure or on the seizure of proceeds of crime or on the objection to the ruling on punishment as well as the response to the appeal and the entire file to the higher court for ruling.

Effect of Filing an Application for Return to the *status quo ante*

Article 219

As a rule, an application for return to the *status quo ante* shall not suspend enforcement of a judgment or ruling on instituting a security or corrective measure or on the seizure of proceeds of crime, and ruling on punishment, but the court competent in ruling on the application may decide to delay the enforcement until a decision on the application is made.

Title XIII

ENFORCEMENT OF DECISIONS

Finality and Enforceability of Judgments

Article 220

(1) The judgment shall become legally-binding when it can no longer be contested by an appeal or when an appeal is not allowed.

(2) The legally-binding judgment shall become enforceable from the date of its service provided that there are no legal obstacles to its enforcement. If an appeal has not been lodged or the parties have waived their right to appeal or have withdrawn the appeal, the judgment shall become enforceable upon the expiry of the time limit for the appeal or from the date of waiver or withdrawal of the lodged appeal.

(3) If the court which passed the first instance judgment is not competent for its enforcement, it shall submit an authenticated transcript of the judgment with a certificate of its enforceability to the court which is competent therein.

(4) If a punishment is imposed on a person serving in the Army of Montenegro, the court shall submit an authenticated transcript of a legally-binding judgment to the state administration authority competent in the affairs of defence.

Enforcement of Decisions with Respect to the Costs of Criminal Proceedings, Claims under Property Law, and Seizure of Items and Proceeds of Crime

Article 221

(1) The enforcement of judgments with respect to the costs of criminal proceedings, seizure of proceeds of crime, and claims under the property law shall be vested in the court of appropriate jurisdiction in compliance with the provisions of the law on the enforcement procedure.

(2) The costs of criminal proceedings shall be compulsory charged ex officio and shall be credited to a separate budget allotment for the work of courts. The costs of compulsory charge shall previously be paid from the separate budget allotment for the work of courts.

(3) If the security measure of seizure of an item has been pronounced by a judgment, the court which has passed the judgment in the first instance shall decide whether such items will be sold pursuant to the provisions of law on the enforcement procedure, or given to a museum of criminology or other institution, or destroyed. The proceeds obtained from such a sale shall be credited to the separate budget allotment for the work of courts.

(4) The provision of paragraph 3 of this Article shall apply accordingly also where there is a decision made on seizure of an object pursuant to Article 477 of this Code.

(5) In addition to a repeating of criminal proceedings or a request for judicial review, a legally-binding decision on seizure of items may be amended in civil proceedings if a dispute arises regarding the ownership of the items seized.

Finality and Enforceability of Other Decisions

Article 222

(1) Unless otherwise provided by this Code, rulings shall be enforced after they become legally-binding. Orders shall be enforced immediately unless otherwise ordered by the issuing authority.

(2) A ruling shall be deemed legally-binding when it may not be contested by an appeal or when an appeal is not allowed.

(3) Unless otherwise provided, rulings and orders shall be enforced by the issuing authorities. If the court decided by means of a ruling on the costs of criminal proceedings, such costs shall be charged according to the provisions referred to in Article 221 paragraphs 1 and 2 of this Code.

Doubts about Permissibility of Enforcement or Doubts about Other Matters in Legally-binding Judgments

Article 223

(1) If doubts arise about the permissibility to enforce a judgment or about the calculation of punishment, or if a legally-binding judgment fails to decide on inclusion of period of detention or a previously served sentence into sentence, or the calculation has not been done correctly, the Chair of the Panel of the court which passed the first instance judgment shall decide on these issues by a separate ruling. An appeal shall suspend enforcement of the ruling unless otherwise ordered by the court.

(2) If doubts arise about the interpretation of a judgment in the course of enforcement, the Chair of the Panel that passed the legally-binding judgment shall decide thereon.

(3) Where enforcement is not allowed due to the statute of limitations, the President of the court competent for the enforcement shall decide thereon by means of a ruling. The President of the higher court shall decide on the appeal against the ruling of the President of the court.

Issuing a Certificate of Enforceability of Judgment to the Injured Party

Article 224

After a decision on a claim under property law becomes legally-binding, the injured party may request the court that passed the decision in the first instance to issue him/her an authenticated transcript of the decision containing a designation that the decision is enforceable.

Penal Records

Article 225

(1) Penal records on persons convicted of criminal offences committed on the territory of Montenegro and offenders convicted by foreign courts shall be kept by the Ministry in charge of judicial affairs.

(2) The manner of keeping penal records shall be regulated by the Government.

Title XIV

COSTS OF CRIMINAL PROCEEDINGS

Types of Costs

Article 226

(1) Costs of criminal proceedings shall be expenditures incurred in relation to the criminal proceedings, from its institution to its completion, and expenditures for the taking of evidentiary actions preceding an investigation.

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

1) costs of witnesses, expert witnesses, interpreters and experts, and the costs of a crime scene investigation, reconstruction, exhumation, and costs of shorthand typing and technical recording, and of record copying;

2) transport costs of the accused;

3) expenditures incurred for apprehending suspects, accused, witnesses, and expert witnesses;

4) travel costs of persons acting in an official capacity;

5) costs of medical treatment of the accused while in custody as well as the costs of childbirth, with the exception of the costs which are charged from the Health Insurance Fund;

6) costs of technical examination of a vehicle, blood analysis, DNA analysis, urine analysis, or other medical analysis, as well as the costs of the transportation of a corpse to the place of autopsy;

7) fees and necessary expenditures of a defence counsel, necessary expenditures of a plaintiff and subsidiary prosecutor and of their legal representatives, as well as fees and necessary expenditures of their proxies;

8) necessary expenditures of the injured party and of legal representative thereof, as well as fees and necessary expenditures of his/her proxy;

9) a lump sum for the costs not included in the previous items of this paragraph.

(3) A lump sum shall be established according to the duration and complexity of the proceedings and the financial standing of the person under the obligation to pay that sum.

(4) In proceedings for criminal offences which are prosecuted ex officio, the costs referred to in paragraph 2, items 1 through 6 of this Article, as well as the fee and necessary expenditures of the appointed defence counsel and appointed proxy of the subsidiary prosecutor referred to in Article 64 paragraph 3, Article 69 paragraph 6 and Article 70 of this Code, shall be paid from the funds of the authority conducting the criminal proceedings upon submitting a request for reimbursement of costs. These costs shall be charged later on the persons under the obligation to compensate them pursuant to the provisions of this Code. The authority conducting the criminal proceedings shall enter all the costs paid in advance in a list which shall be attached to the file.

(5) Where no criminal proceedings are eventually instituted, the costs arising from the evidentiary actions taken in the preliminary examination shall be borne by the authority under the order of which such actions were taken.

(6) The costs of translation and interpretation, incurred pursuant to the provisions of this Code referring to the right of the parties, witnesses and other participants in the proceedings to use their mother tongue, shall not be charged from the persons who, pursuant to the provisions of this Code, are under an obligation to compensate the costs of criminal proceedings.

Decision on Costs

Article 227

(1) The judgment and the decision by which criminal proceedings are discontinued or the indictment is dismissed, shall contain a decision on the person to bear the costs of proceedings and to which amount.

(2) If the data on the amount of costs are lacking, the Public Prosecutor or Chair of the Panel shall issue a separate ruling on the amount of those costs when such data are obtained. The data on the amount of costs that are lacking and a request for their compensation may be submitted not later than 15 days from the day of receipt of the legally-binding judgment or decision referred to in paragraph 1 of this Article.

(3) When a decision on the costs of the criminal proceedings referred to in paragraph 2 of this Article is made in a separate ruling, the Panel referred to in Article 24 paragraph 7 of this Code shall decide on the appeal against such ruling.

(4) When criminal proceedings are not initiated or it is discontinued in the investigation phase, the Public Prosecutor shall decide on the costs. If the Public Prosecutor does not accept the request for the remuneration of costs or does not pass a decision thereon within two months as of the day the request was submitted, the suspect, the accused and the defence counsel may request the investigative judge to decide on the costs.

Incurred Costs

Article 228

(1) Regardless of the outcome of criminal proceedings, the accused, injured party, subsidiary prosecutor, plaintiff, defence counsel, legal representative, proxy, witness, expert witness, interpreter, and expert referred to in Article 282 paragraph 8 of this Code shall bear costs for their bringing before the court, postponing an evidentiary action or main hearing and other costs of the proceedings incurred by their own fault, as well as a proportional amount of the lump sum.

(2) A separate ruling shall be issued on the costs referred to in paragraph 1 of this Article, save when the issue of costs borne by the plaintiff and the accused is to be resolved within the decision on the *res principale*.

(3) The Panel referred to in Article 24 paragraph 7 of this Code shall decide on an appeal against the separate ruling referred to in paragraph 2 of this Article.

Costs of Proceedings When an Accused is Declared Guilty

Article 229

(1) When a court declares the accused guilty, it shall pronounce in the judgment that the accused shall cover the costs of the criminal proceedings which have been paid in advance from the funds referred to in Article 226 paragraph 4 of this Code, as well as the costs of a plaintiff, subsidiary prosecutor and their legal representatives, and fees and necessary expenditures of their proxies.

(2) Persons charged with several criminal offences shall not be convicted to compensate the costs with respect to the offences for which they were acquitted of if such costs may be separated from the overall costs.

(3) In a judgment declaring several accused guilty, the court shall determine a proportion of the costs to be borne by each of them, and, if this is not possible, the court shall sentence all the accused to jointly bear the costs. The payment of a lump sum shall be determined separately for each of the accused.

(4) In a decision on costs, the court may acquit the accused from the duty to compensate, wholly of partially, the costs of criminal proceedings referred to in Article 226 paragraph 2 items 1 through 6 and item 9 of this Code where the payment of these costs could endanger the sustenance of the accused or his/her dependants. If such circumstances become evident after the decision on costs has been passed, the Chair of the Panel may, in a separate ruling, release the accused of the duty to reimburse the costs of criminal proceedings.

Costs of the Proceedings in Cases of Discontinuance of Proceedings,

Judgment of Acquittal or Judgment Rejecting the Charge

Article 230

(1) When criminal proceedings are discontinued or a judgment of acquittal or rejecting the charge is passed, the court shall pronounce in its decision on the discontinuance of proceedings or

in the judgment that the costs of criminal proceedings referred to in Article 226 paragraph 2, items 1 through 6 of this Code, as well as the necessary expenditures of the accused and the necessary expenditures and the fee of the defence counsel shall be paid from a separate budget allotment for the work of courts, save in the cases referred to in paragraphs 2 and 3 of this Article.

(2) A person declared guilty of false reporting shall reimburse the costs of the criminal proceedings that s/he prompted by the false reporting.

(3) A plaintiff shall reimburse the costs of criminal proceedings referred to in Article 226 paragraph 2 items 1 through 6 and item 8 of this Code, the necessary expenditures of the accused and the necessary expenditures and fees of his defence counsel if the proceedings are terminated by a judgment of acquittal or a judgment rejecting the charge or a ruling discontinuing the proceedings, unless the procedure is discontinued or if the judgment rejecting the charge is passed because of the death of the accused or due to the statute of limitations on criminal prosecution due to delays in the proceedings that may not be imputed to the plaintiff. If the proceedings are discontinued due to withdrawal of action, the accused and plaintiff may settle their mutual costs. If there is more than one plaintiff, all of them shall jointly bear the costs.

(4) When a court rejects the charge on the grounds of lacking jurisdiction, the decision on costs shall be made by the court of appropriate jurisdiction.

(5) The amount of necessary expenditures of the accused and necessary expenditures and fee of the defence counsel shall be decided by the President of the Panel by way of a special ruling. An appeal against that ruling shall be decided by the Panel referred to in Article 24, paragraph 7 of this Code.

(6) The request for reimbursement of costs referred to in paragraph 5 of this Article shall be submitted within fifteen days as of the day of receipt of a legally-binding decision referred to in paragraph 1 of this Article.

Fees and Necessary Expenditures of Defence Counsels

Article 231

(1) Fees and necessary expenditures of a defence counsel and proxy to a plaintiff or injured party shall be borne by the person whom they have represented regardless of who, according to the court decision, shall bear the costs of criminal proceedings, save when, pursuant to the provisions of this Code, the fees and necessary expenditures of the defence counsel are to be paid from the separate budget allotment for the work of courts. If court has appointed a defence counsel to the accused, and the payment of fee and necessary expenditures would impose a risk for the sustenance of the accused or the sustenance of his/her dependants, the fee and necessary expenditures of the defence counsel shall be paid from the separate budget allotment for the work of courts. This shall also apply when a proxy to the subsidiary prosecutor has been appointed by court.

(2) A proxy who is not an attorney-at-law or an attorney trainee shall not be entitled to a fee but only to the reimbursement of necessary expenditures.

Costs Incurred before a Higher Court

Article 232

A higher court shall decide on the bearer of costs incurred with the higher court pursuant to the provisions referred to in Articles 226 through 231 of this Code.

Special Regulations on Compensation of Costs

Article 233

The amount of criminal proceedings costs to be compensated and the lump sum amount, as well as the payment method shall be regulated by the Government.

Title XV

CLAIMS UNDER PROPERTY LAW

Subject-matter of Claim under Property Law

Article 234

(1) Claims under property law arising from the commission of a criminal offence shall be considered upon a motion by persons referred to in Article 235 of this Code, provided that this would not considerably delay the proceedings.

(2) Claims under property law may refer to damages, restitution of items or annulment of certain legal procedures.

Persons Entitled to File Petitions for Asserting Claims under Property Law

Article 235

(1) A petition to assert a claim under property law in the criminal proceedings may be lodged by a person entitled to exercise such claim in civil proceedings.

(2) Should state property be damaged due to a criminal offence, the authority authorized by law to protect such property may take part in the criminal proceedings in compliance with the authorizations vested in it under that law.

Proceedings for Asserting Claims under Property Law

Article 236

(1) Petitions for asserting claims under property law shall be submitted to the Public Prosecutor**,** or to the court conducting criminal proceedings.

(2) The petition may be lodged at the latest until the conclusion of the main hearing before the court of the first instance.

(3) Persons authorized to file petitions shall designate their claim with precision and submit evidence.

(4) If the authorized person fails to file a petition for asserting a claim under property law in criminal proceedings before pressing charges, s/he shall be notified of the right to file that petition before the conclusion of the main hearing. If state property has been damaged due to a criminal offence and no petition is lodged, the court shall notify thereon the authority referred to in Article 235 paragraph 2 of this Code.

Withdrawal of Petitions

Article 237

(1) Authorized persons referred to in Article 235 of this Code may withdraw their petition for asserting claims under property law in criminal proceedings until the completion of the main hearing and may try to assert them in civil proceedings. The petition withdrawn may not be lodged again.

(2) If after filing a petition but prior to the completion of the main hearing the right contained in the claim under property law is transferred to another person in compliance with the rules of property law, the person in question shall be summoned to state whether or not s/he abides by the petition. If the duly summoned person does not appear, s/he shall be deemed to have withdrawn the lodged petition.

Inquiry into the Claim under Property Law and Gathering of Evidence

Article 238

(1) The court conducting the proceedings shall hear the accused with respect to the facts specified in the petition and examine the circumstances which are of relevance for the decision on the claim under property law. Even before such a petition has been lodged, the court shall gather evidence and determine what is necessary for passing a decision on the petition.

(2) If an inquiry into a claim under property law would considerably delay the criminal proceedings, the court shall restrict itself to gathering only those data which at a later stage would be impossible or considerably more difficult to determine.

Decisions on Claims under Property Law

Article 239

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

(2) In a judgment declaring the accused guilty, the court may grant the claim under property law in its entirety or partially to the authorized person, and refer him/her to civil proceedings as for the remainder of the case. If the facts established in the criminal proceedings furnish no reliable grounds for either full or partial adjudication, while their establishing would lead to a considerable delay in the proceedings, the court shall instruct the authorized person that s/he may assert the entire claim under property law in civil proceedings.

(3) Where the court passes a judgment of acquittal, a judgment rejecting the charge, or a ruling discontinuing the criminal proceedings, the court shall instruct the authorized person to attain his/her claim under property law in civil proceedings.

(4) When a court declares itself lacking jurisdiction in criminal proceedings, it shall instruct the authorized person that s/he may file the petition on claim under property law in criminal proceedings which shall be instituted or continued by a court of appropriate jurisdiction.

(5) In the course of criminal proceedings or after the completion thereof, the court may, regardless of the type of the decision passed, instruct the injured party, i.e. the petitioner of a claim under property law, and the accused to try to settle their disputable relation which is the subject-matter of that request through mediation process in compliance with the law regulating the rules of the mediation process.

Decision on Delivering Items to Injured Parties

Article 240

If the petition of a claim under property law pertains to the restitution of items, the court shall order in a judgment that the item be delivered to the injured party if the court establishes that the item belongs to the injured party, while kept by the accused or an accomplice in a criminal offence or a person given the item by them for safekeeping.

Annulment of a Legal Transaction

Article 241

If a claim under property law refers to annulment of a specific legal transaction and the court finds the request grounded, it shall pronounce in its judgment a full or partial annulment of that legal transaction, including the consequences deriving therefrom, without affecting the rights of third parties.

Alterations to Decisions on Claims under Property Law

Article 242

(1) The court may alter a legally-binding judgment in criminal proceedings which decided on a petition on a claim under property law only in relation to repeating the criminal proceedings or of the request for judicial review.

(2) With the exception of the case referred to in paragraph 1 of this Article, the convicted person or his/her heirs may request the alterations to the legally-binding judgment of a criminal court deciding on a claim under property law only in civil proceedings, as long as grounds exist for repeating the proceedings under the provisions of the law regulating civil proceedings.

Imposing Temporary Measures

Article 243

(1) Temporary measures securing a claim under property law arising out of the commission of a criminal offence may be ordered in criminal proceedings upon the motion of authorized persons referred to in Article 235 of this Code under the provisions of the law regulating the enforcement procedure.

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

(3) A ruling issued by the Panel on temporary measures of security may not be subject to appeal. In other cases, the Panel referred to in Article 24, paragraph 7 of this Code shall rule on the appeal. An appeal shall not suspend enforcement of the ruling.

Return of Items in the Course of Proceedings

Article 244

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

(2) If several injured parties claim ownership over an item, they shall be instructed to institute civil proceedings and in criminal proceedings the court shall order the safekeeping of items only as a temporary security measure.

(3) Items serving as evidence shall be seized from the owner and returned to him/her after the completion of the proceedings. If such an object is indispensable to the owner it may be returned to him/her even before the completion of the proceedings but s/he shall be liable to obligation to bring it in upon request.

Measures Securing the Claim against a Third Party

Article 245

(1) If the injured party has a claim against a third party for keeping items gained by the commission of a criminal offence, or because that person obtained proceeds of crime, the court may, in criminal proceedings, upon the motion of the persons referred to in Article 235 of this Code and pursuant to the provisions of the law regulating enforcement procedure, order temporary measures securing the claim against that third party as well. The provisions of Article 243 paragraphs 2 and 3 of this Code shall also apply to the abovementioned case.

(2) In a judgment declaring the defendant guilty, the court shall either abolish the measures referred to in paragraph 1 of this Article if these have not already been abolished, or instruct the injured party to institute civil proceedings, and abolish these measures if the civil proceedings are not instituted within a time limit set by the court.

Title XVI

PREJUDICIAL QUESTIONS AND OTHER PROVISIONS

Resolution of Prejudicial Questions

Article 246

(1) If the application of the Criminal Code depends on a prior resolution of a legal matter that falls within the jurisdiction of a court in some other proceedings or within the competences of another state body, the court adjudicating the criminal case may also resolve this issue itself, pursuant to provisions that are valid for the pleading process in criminal proceedings. The resolution of this legal matter by a Criminal Court shall affect only the criminal case that is being tried before this court.

(2) If such a prejudicial question referred to in paragraph 1 of this Article has already been decided by a court in some other proceedings or by another state body, such a decision shall not be binding on the Criminal Court with reference to assessing whether a particular criminal offence has been committed.

Approval to Institute Prosecution

Article 247

(1) Where law provides that prosecution of certain persons and criminal offences requires previous approval of the competent state body, the Public Prosecutor may not order the conduct of an investigation or bring a direct indictment i.e. bill of indictment without presenting evidence that such approval has been granted, unless otherwise provided by ratified international treaties.

(2) When prosecution is based upon a personal action at law or upon a petition by a subsidiary prosecutor, the approval shall be obtained by the court.

(3) A person enjoying the right to immunity may invoke this right before the main hearing starts. If the defendant is granted the right to immunity after the commencement of the main hearing, s/he may invoke immunity immediately, but not later than the completion of the main hearing.

(4) Authorities referred to in paragraphs 1 and 2 of this Article may request an approval to institute prosecution even before the person enjoying the right to immunity invokes such a right.

Notification on Detention, on Entering of Indictment into Effect and on Judgment of Conviction

Article 248

Within a three-day time limit, the court shall notify the authority or employer which employs an accused about his/her placing in detention, entering of an indictment into effect, or a judgment of conviction for a criminal offence subject to prosecution upon a bill of indictment.

Discontinuance of Proceedings due to the Death of the Accused

Article 249

Where in the course of criminal proceedings it has been established that the accused has died, the investigative judge or the Chair of the Panel shall issue a ruling to discontinue criminal proceedings.

Proceeding in Case of Establishing Mental Incapacity of the Accused

Article 250

Should a court, in the course of proceedings, establish on the merit of presented evidence, that the accused has committed a criminal offence but was mentally incapacitated at the time of the commission; the court shall pass a decision in compliance with Article 470 of this Code.

Sanctioning the Delays in the Proceedings

Article 251

(1) In the course of proceedings, the court may impose a fine amounting to €1.000 upon a defence counsel, proxy or legal representative, injured party, subsidiary prosecutor or plaintiff if their actions are manifestly aimed at delaying criminal proceedings.

(2) The Bar Chamber shall be notified of the punishment imposed on an attorney-at-law.

(3) If the Public Prosecutor fails to file motions timely to the court or takes other actions in the course of proceedings with considerable delay, causing therewith a delay in the proceedings, the court shall notify the High Public Prosecutor thereof.

Application of Rules of International Law

Article 252

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

(2) Should there be any doubt as to the status of persons referred to in paragraph 1 of this Article the court shall seek clarification from the state administration authority competent in foreign affairs.

Obligation of State Bodies, Courts and Other Authorities in Detecting Criminal Offences and Offenders

Article 253

All state bodies shall provide necessary assistance to courts and other authorities taking part in criminal proceedings, especially in the matters of detecting criminal offences and finding their offenders.

Part Two

COURSE OF THE PROCEEDINGS

A. PRELIMINARY INVESTIGATION

Title XVII

CRIMINAL CHARGE

Obligation to Report a Criminal Offence

Article 254

(1) Persons acting in an official capacity and responsible persons in state bodies, local self-government authorities, public companies and institutions shall report criminal offences prosecuted ex officio, of which they have been informed or of which they have learned while performing their office.

(2) The duty referred to in paragraph 1 of this Article shall also be incumbent upon all natural and legal persons who are granted certain public authorizations under law, or are professionally involved in the protection and security provision to persons and property or in the health care of persons, as well as in jobs of juveniles care and education, if they learn about a criminal offence in connection with their profession.

(3) Persons filing a criminal charge referred to in paragraph 1 of this Article shall indicate evidence to the best of their knowledge and take measures to preserve traces of the criminal offence, the items upon which or by means of which the criminal offence has been committed, items resulting from the commission of a criminal offence as well as other evidence.

Reporting Criminal Offences by Citizens

Article 255

(1) Everyone shall report a criminal offence which is prosecuted ex officio and shall report a criminal offence the commission of which has caused detriment to a minor.

(2) When the court establishes in the course of criminal proceedings that well-founded suspicion exists that a person has failed to perform the duty referred to in paragraph 1 of this Article and that such omission results in a well-founded suspicion as to the commission of the criminal offence of neglecting and abusing a minor, the court shall notify the competent Public Prosecutor thereof.

Filing a Criminal Charge

Article 256

(1) Criminal charge shall be lodged to the competent Public Prosecutor in writing or orally.

(2) If the charge is lodged orally, the person filing it shall be cautioned as to the consequences of false reporting. A record shall be composed on the oral charge and where the charge is lodged over the phone or via other means of electronic communication, an official annotation shall be made thereon.

(3) If the charge was lodged to the court, the police or a Public Prosecutor lacking competence, they shall receive the charge and immediately forward it to the Public Prosecutor having competence.

Authorizations and Police Actions in Preliminary Investigation

Article 257

(1) If there are grounds for suspicion that a criminal offence which is subject to prosecution ex officio has been committed, the police shall inform the Public Prosecutor and take necessary measures as a self-initiative or upon a request by a Public Prosecutor, with a view to discovering the offender, preventing the offender or accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and items which may serve as evidence, and to gathering all information which could be useful for conducting the criminal proceedings successfully.

(2) In order to fulfil the duties referred to in paragraph 1 of this Article, the police may seek information from citizens, apply polygraph testing, conduct voice analysis, perform anti-terrorist raid, restrict movement of certain persons in a certain area for a relevant term, publicly offer a reward with the view of collecting information, request from the entity delivering telecommunication services to check the identity of telecommunication addresses that have been connected at a certain moment, carry out a necessary inspection of the means of transportation, passengers and luggage, take necessary measures related to the establishment of the identity of persons and the sameness of items, take a DNA sample for analysis, issue a wanted notice for a person or warrant for seizure of items which are subject to a search, inspect, in the presence of the responsible person, certain facilities and premises of state bodies, business organizations, other legal persons and entrepreneurs, examine their documentation and seize it where appropriate, and take other necessary measures and actions in compliance with this Code. Records or an official annotation shall be made on the facts and circumstances established on the occasion of taking individual actions, which may be of importance for the criminal proceedings, as well as on discovered or seized items. The police may also make audio or audiovisual recordings of the taking of certain

actions from this paragraph, in which case such recordings shall be attached to the record or the official annotation thereon.

(3) On the occasion of conducting a crime scene investigation for the criminal offence against traffic safety for which there are grounds for suspicion that it has caused severe consequences or has been committed with guilty mind, the police may seize the driving license of the suspect at the longest for three days.

(4) A person against whom some of the actions or measures referred to in paragraphs 2 and 3 of this Article have been taken shall be entitled to file a complaint with the competent Public Prosecutor.

Holding at the Crime Scene and Other Actions

Article 258

(1) An authorized police official shall be entitled to send persons found at the crime scene to the Public Prosecutor or to hold them at the crime scene until the Public Prosecutor's arrival if these persons may provide data important for the criminal proceedings and if it is likely that their hearing at a later stage might not be possible or might entail considerable delays or other difficulties. Such persons shall not be held at the crime scene for more than six hours.

(2) Where necessary for establishing identity or in other cases of interest for successful conduct of the proceedings, the police may take photos of the suspect and his/her fingerprints, and take other actions necessary in view of establishing the identity of the suspect, and subject to a prior approval of the Public Prosecutor, it may publish a photograph of the suspect.

(3) If necessary to establish the identity of the person whose fingerprints have been left on certain items, the police may take the fingerprints of persons likely to have touched those items.

(4) Any person against whom some of the actions referred to in this Article have been taken shall be entitled to file a complaint with the competent Public Prosecutor or a directly superior police authority.

Gathering Information from Citizens

Article 259

(1) In order to gather information about a criminal offence or an offender, the police may summon citizens. The reason for the summoning shall be specified in the summons. A person who fails to appear as summoned may be brought in by force only where cautioned thereof in the summons.

(2) Gathering information from the person may last as long as necessary to get the information needed, but at the longest for six hours.

(3) Information may not be gathered from citizens by using force, or by means of deception or exhaustion, and the police shall respect the personality and dignity of each citizen. If citizens decline to give information they may not be prevented from leaving in which case the rule on the term referred to in paragraph 2 of this Article shall not be applicable.

(4) If a summoned citizen is accompanied to the police premises by an attorney-at-law, the police shall allow the presence of the attorney while gathering information from the citizen.

(5) An official annotation or record of the information provided shall be read to the person who provided the information. This person may raise objections which shall be entered in the official annotation or record by the police. A copy of the official annotation or record on the information provided shall be issued to the citizen upon request.

(6) A citizen may be re-summoned for the purpose of gathering information on the circumstances of another criminal offence or offender, whereas for the purpose of gathering information related to the same criminal offence may be brought in again involuntarily only with the approval of the Public Prosecutor.

(7) While proceeding in compliance with paragraphs 1 through 6 of this Article, the police may not hear citizens in the capacity of the accused, witness or expert.

Gathering Information from Detainees

Article 260

(1) Upon an approval by the investigative judge or the Chair of the Panel, the Public Prosecutor, and, as an exception, the police, when so authorized by the Public Prosecutor, may gather information from persons held in custody, if that is required for the discovery or clarification of other criminal offences and offenders.

(2) The gathering of information specified in paragraph 1 of this Article shall take place in the prison where the accused is detained, at the time ordered by the investigative judge or the Chair of the Panel and in his/her presence or in the presence of a judge designated by him/her. If so requested by the detainee, the defence counsel may be present in the course of gathering the information.

(3) Gathering of information shall be postponed until the arrival of the defence counsel, but not longer than four hours, and if the defence counsel does not appear in that time the information may be gathered in his/her absence.

Hearing of Suspect in Preliminary Investigation

Article 261

(1) If in the course of gathering information the police assesses that a summoned citizen may be deemed a suspect, they shall immediately notify thereon the Public Prosecutor who shall request the police to bring the suspect before him/her if s/he finds necessary to hear him/her prior to issuing an order for conducting the investigation.

(2) The suspects shall be notified of the criminal offence they are charged with and the grounds for suspicion, that they are not obliged to make statements or answer any questions, that everything they say can be used as evidence against them in criminal proceedings, and on their right to retain a defence counsel who shall be present in the course of their hearing.

(3) The suspects shall be allowed to make contact with their defence counsel by phone or other means of electronic communication either directly or through their family members or a third person whose identity must be revealed and the Public Prosecutor may assist the suspect to find a defence counsel.

(4) If in the case of mandatory defence referred to in Article 69 paragraph 1 of this Code the suspects fails to retain a defence counsel by themselves or the defence counsel fails to appear within four hours from being contacted by the suspect within the meaning of paragraph 3 of this Article, the Public Prosecutor shall at his/her own discretion and ex officio appoint a defence counsel from the Bar Chamber's list and shall hear the suspect without delay.

(5) As an exception, upon the approval by the Public Prosecutor, and with consent of the suspect and in the presence of the defence counsel, the police may hear the suspect. If the suspect fails to retain a defence counsel, the Public Prosecutor shall at his/her own discretion and ex officio appoint a defence counsel from the Bar Chamber's list, and the police shall hear him/her without delay.

(6) A defence counsel appointed ex officio within the meaning of paragraphs 4 and 5 of this Article shall remain in the proceedings as long as there are conditions for mandatory defence, or until the accused selects a defence counsel by himself/herself.

(7) The hearing of a suspect by the Public Prosecutor or police shall be subject to the provisions of this Code which govern the hearing of the accused.

(8) A record shall be kept on the hearing of suspects. The record in question shall be read to the suspects, signed by them and all objections made by the suspect shall be entered in the

record. The course of the hearing may also be recorded with a device for audio or audiovisual recording. The record of the hearing of the suspect shall not be separated from the file and may be used as evidence in the criminal proceedings.

(9) Should the Public Prosecutor assess, after the hearing of the suspect, that there is a well-founded suspicion that the suspect had committed the criminal offence s/he is charged with, the Public Prosecutor shall issue an order for conducting the investigation.

(10) Upon issuing the order referred to in paragraph 9 of this Article, the Public Prosecutor may, if having assessed the conditions referred to in Article 267 paragraph 1 of this Code to be met, issue a ruling on holding the suspect in custody, in which case the Public Prosecutor shall propose to the investigative judge to order detention. The investigative judge shall act in compliance with Article 268 of this Code.

Hearing of Witnesses in Preliminary Investigation

Article 262

(1) Should, in the course of preliminary investigation, the Public Prosecutor find needed that a summoned citizen be heard in the capacity of a witness, the hearing shall be performed by the Public Prosecutor in compliance with Article 113 of this Code and prior to issuing an order on conducting the investigation.

(2) On the occasion of the action taking referred to in paragraph 1 of this Article, the suspect and the defence counsel shall be allowed to attend the hearing, save when there is a risk of delay or this is impossible for other important reasons, whereat they may put questions to the witness and make objections.

(3) The hearing of a citizen in the capacity of a witness shall begin before the expiry of the time limit referred to in Article 259 paragraph 2 of this Code, but such time limit may be extended with the citizen’s consent.

(4) A record shall be kept of the hearing of a witness which shall be signed by the witness. The course of the hearing may be recorded by an audio or audiovisual recording device. The record on the hearing of witness shall not be separated from the file and may be used as evidence in the criminal proceedings.

Seizure of Items, Crime Scene Investigation and Expert Witness Evaluation

Article 263

(1) If there is a risk of delay, the police may seize items pursuant to Article 85 paragraph 9 of this Code and carry out a search of dwelling and persons under the conditions referred to in Article 83 of this Code even before the investigation has been launched.

(2) The police shall immediately return the seized items to their owner or possessor if no criminal proceedings are instituted or if they fail to file a criminal charge with the Public Prosecutor within three months.

(3) If the Public Prosecutor is unable to come immediately to the crime scene, the police may carry out a crime scene investigation by themselves and order necessary expert witness evaluations which allow no postponement, with the exception of autopsy and exhumation. If the Public Prosecutor arrives to the crime scene while crime scene investigation is underway, s/he may take over those actions.

(4) The police or the investigative judge shall notify the Public Prosecutor on the actions referred to in paragraphs 1 through 3 of this Article without any delay.

Deprivation of Liberty and Holding by the Police

Article 264

(1) Authorized police officers may deprive a person of liberty if any of the grounds for detention referred to in Article 175 of this Code exists, but they shall inform the Public Prosecutor thereon without delay, draw up an official annotation that shall contain the time and the place of the deprivation of liberty and to bring that person before the Public Prosecutor without delay. On the occasion of bringing the liberty-deprived person before the Public Prosecutor, an authorized police officer shall submit the official annotation to the Public Prosecutor and the Public Prosecutor shall also enter in the record the statement of the liberty-deprived person as to the time and place of his/her deprivation of liberty.

(2) The person placed under arrest shall be advised on the rights referred to in Article 5 of this Code.

(3) If a person placed under arrest is not escorted before the Public Prosecutor within 12 hours from the deprivation of liberty, the police shall release that person.

(4) In compliance with paragraph 1 of this Article, the person placed under arrest may not be placed under arrest again for the same criminal offence.

Deprivation of Liberty of a Person Caught in the Act of Committing a Criminal Offence

Article 265

Anyone may deprive of liberty a person caught in the act of committing a criminal offence which is prosecuted ex officio. The person placed under arrest shall immediately be brought to the Public Prosecutor or police, and if this is not possible, one of the abovementioned authorities shall immediately be informed thereon. The police shall proceed pursuant to Article 264 of this Code.

Proceeding by the Public Prosecutor upon Bringing a Person Placed under Arrest

Article 266

(1) The Public Prosecutor shall immediately advise a person placed under arrest on his/her right to retain a defence counsel, and enable him/her to inform the defence counsel of his/her deprivation of liberty by phone or via other means of electronic communication, either directly or through his/her family members or a third party whose identity must be relieved to the Public Prosecutor, and shall where necessary assist him/her in retaining a defence counsel.

(2) If the person referred to in paragraph 1 of this Article fails to ensure the presence of a defence counsel within 12 hours from the moment this was made available to him/her within the meaning of paragraph 1 of this Article, or if s/he declares waiver of the right to defence counsel, the Public Prosecutor shall hear him/her without delay, and at the latest within the next 12 hours.

(3) If in a case of mandatory defence referred to in Article 69 paragraph 1 of this Code the person referred to in paragraph 1 of this Article fails to retain a defence counsel within 12 hours from the moment he/she was instructed on that right, or declares the waiver of retaining a defence counsel, s/he shall be appointed a defence counsel ex officio and shall be heard without delay.

(4) The Public Prosecutor shall release the person referred to in paragraph 1 of this Article immediately after the hearing save when the Public Prosecutor assesses there are reasons for the person’s detention.

Holding by the Public Prosecutor

Article 267

(1) As an exception, the suspect placed under arrest may be held by the Public Prosecutor, at the longest for 48 hours from the moment of his/her deprivation of liberty, if the Public Prosecutor finds that any of the reasons referred to in Article 175 paragraph 1 of this Code exist.

(2) A person held and his/her defence counsel shall be issued and served a ruling on holding immediately or within two hours at the latest. The ruling shall specify the offence which the

suspect has been charged of, the grounds for suspicion, the reason of holding, date and hour of deprivation of liberty, and the moment from which the holding starts running.

(3) The ruling on holding may be subject to appeal by the suspect and defence counsel, the appeal being immediately submitted to an investigative judge together with the case file. The investigative judge shall decide on the appeal within four hours from its receipt. The appeal shall not suspend enforcement of the ruling.

(4) A suspect shall have a defence counsel as soon as the ruling on holding is issued, in which case the provisions of Article 261 of this Code shall apply accordingly.

Ordering Detention in Preliminary Investigation

Article 268

(1) Where the Public Prosecutor issues a ruling on holding, and finds that there are still reasons for ordering detention, the Public Prosecutor shall file a motion to the investigative judge for detention of the suspect.

(2) The motion referred to in paragraph 1 of this Article shall be delivered to the investigative judge before the expiration of the holding time limit. Within that time limit the person held must be brought before the investigative judge.

(3) The investigative judge shall, in the presence of the Public Prosecutor, hear the person referred to in paragraph 1 of this Article regarding all the circumstances of significance for the passing of the decision ordering detention. Immediately after hearing and at the latest within 24 hours as of the moment that person was brought before him/her, the investigative judge shall order detention or reject the motion ordering detention.

(4) The person referred to in paragraph 1 of this Article shall be entitled to have his/her defence counsel present during his/her hearing by the judge. With reference to the exercise of this right, provisions of Article 266, paragraphs 2 and 3 of this Code shall apply.

(5) If the Public Prosecutor did not bring and deliver to the court the order of investigation in the course of holding, and does not perform this within 48 hours as of the moment of ordering detention, the investigative judge shall release the detainee.

(6) Where a person placed under arrest is brought to the Public Prosecutor, that person, his/her defence counsel, family member, or a common law spouse may request the Public Prosecutor to order a medical examination. The decision on appointing a medical doctor who will perform the medical checks and the record on the detainee’s hearing shall be attached to criminal case file by the Public Prosecutor.

Ensuring Evidence by Court

Article 269

(1) If there is a risk that due to an older age, illness or other important reasons a person could not be heard at the main hearing, the Public Prosecutor shall file a motion to the investigative judge to hear such person in the capacity of witness in compliance with Article 113 of this Code.

(2) If the investigative judge rejects the motion referred to in paragraph 1 of this Article the Panel referred to in Article 24 paragraph 7 of this Code shall pass a decision on the matter.

Filing of Criminal Charge by the Police

Article 270

(1) Pursuant to information gathered, the police shall draft a criminal charge and file it with the Public Prosecutor, shall notify the Public Prosecutor on the measures taken in the preliminary investigation and specify evidence learned of on the occasion of gathering of information. The items, sketches, photographs, audio and visual recordings, reports obtained, files on the measures

and actions taken, records, official annotations, statements, and other materials which may be useful for a successful conduct of criminal proceedings shall be attached to the criminal charge.

(2) Should the police learn of new facts, evidence or traces of a criminal offence after having lodged a criminal charge, the police shall gather necessary information and to deliver a report thereon to the Public Prosecutor as an amendment to the criminal charge.

Dismissals of and Amendments to Criminal Charges

Article 271

(1) The Public Prosecutor shall, by means of a ruling with the statement of reasons, dismiss the criminal charge if it arises from the charge that the act reported does not constitute a criminal offence or a criminal offence prosecuted ex officio**,** if the statute of limitations on criminal prosecution applies, or if the offence is subject to amnesty or pardon, or if there are other circumstances disqualifying prosecution.

(2) Within eight days, the Public Prosecutor shall deliver the act on the dismissal of a criminal charge to the person who submitted the criminal charge, as well as to the injured party, in compliance with Article 59 of this Code.

(3) If, based on the contents of the criminal charge, the Public Prosecutor is unable to assess whether the allegations in the charge are probable, or if the data from the charge do not contain enough grounds to issue either an order of investigation or a ruling on the dismissal of charge, and particularly if the offender is unknown, the Public Prosecutor shall, either personally or through other authorities, gather necessary information. To this end the Public Prosecutor may summon the person who submitted the charge, the person who was reported, and other persons whom s/he assesses able to provide information relevant to deciding on the charge. If the Public Prosecutor is unable to do it by himself/herself, s/he shall request the police to obtain necessary information and take other measures in order to detect the criminal offence and its offender, in compliance with Articles 257, 258 and 259 of this Code.

(4) In view of clarification of specific expert issues arising on the occasion of deciding on a criminal charge, the Public Prosecutor may ask for relevant explanations from professionals in the field in question.

(5) The Public Prosecutor may at any time require information from the police regarding the measures taken. The police shall respond to the Public Prosecutor without any delay.

(6) If, even after the taking of the actions referred to in paragraphs 3, 4 and 5 of this Article, there are some of the circumstances referred to in paragraph 1 of this Article or if there is no well-founded suspicion that a suspect has committed a criminal offence which is prosecuted ex officio, the Public Prosecutor shall dismiss the charge.

(7) On the occasion of gathering information or providing data, the Public Prosecutor and other state bodies, business organizations and other legal persons shall act with due caution, ensuring that no harm be inflicted on the honour and reputation of persons to whom these data relate.

Deferring Criminal Prosecution

Article 272

(1) The Public Prosecutor may decide to defer criminal prosecution for criminal offences punishable by a fine or imprisonment for a term up to five years, when s/he establishes that it is not effective to conduct criminal proceedings in consideration of the nature of the criminal offence and the circumstances of its commission, the offender’s past and personal attributes, if the suspect accepts to fulfill one or several of the following obligations:

1) to remove a detrimental consequence of the criminal offence or to compensate the damage caused by the criminal offence,

2) to fulfil obligations as to the payables for material support or other liabilities laid down by a legally-binding judgment,

3) to pay a certain amount of money for the benefit of a humanitarian organization, fund or public institution,

4) to carry out some community service or humanitarian work.

(2) The suspect shall fulfil the accepted obligation within a term that may not exceed six months.

(3) The obligations referred to in paragraph 1 of this Article shall be imposed upon the suspect by a decision of the Public Prosecutor. The decision shall be served on the suspect, injured party, if any, or the beneficiary humanitarian organization or public institution.

(4) Before passing the decision referred to in paragraph 3 of this Article, the Public Prosecutor may, assisted by specially trained persons – mediators, carry out the procedure of mediation between the injured party and the suspect, the process being subject to the provisions of the law regulating the rules of mediation procedure for the obligations referred to in paragraph 1 items 1 and 2 of this Article, or obtain the consent of the injured party for the measures referred to in paragraph 1 items 3 and 4 of this Article.

(5) A more detailed manner of fulfilling obligations referred to in paragraph 1, items 1 through 4 of this Article, the contents of the decision referred to in paragraph 3 of this Article as well as a more detailed manner of implementing actions in the application of provisions of this Article shall be regulated by the ministry competent for judicial affairs.

(6) If the suspect fulfils the obligation referred to in paragraph 1 of this Article, within the time limit referred to in paragraph 2 of this Article, the Public Prosecutor shall dismiss the criminal charge. In this case, the provisions of Article 59 of this Code shall not apply, of which the Public Prosecutor shall advise the injured party before obtaining the consent referred to in paragraph 4 of this Article.

Dismissal of Criminal Charge for Reasons of Fairness

Article 273

In cases of criminal offences punishable by a fine or imprisonment of up to 3 years, the Public Prosecutor may dismiss a criminal charge if the suspect, expressing his/her true regret, has prevented a damage from occurring or has already compensated for the entire damage, and the Public Prosecutor has established under the circumstances of the case, that imposing a criminal sanction would not be fair. In such case, provisions of Article 59 of this Code shall not apply.

B. PRELIMINARY PROCEEDINGS

Title XVIII

INVESTIGATION

Purpose of Investigation

Article 274

(1) Investigation shall be conducted on the strength of an order of investigation and against a specific person when there is a well-founded suspicion that the person has committed a criminal offence.

(2) In the course of investigation, such evidence and data shall be gathered as are necessary for the Public Prosecutor in passing a decision as to whether to bring an indictment or discontinue the investigation, and evidence for which there is a risk they may not be available for repetition at the main hearing or whose presentation may involve some difficulties, as well as other evidence which may be of use for the proceedings and which presentation is effective in consideration of the circumstances of a case.

Order of Investigation

Article 275

(1) A Public Prosecutor shall order the launch of an investigation where s/he finds that the allegations in a criminal charge and its enclosures indicate well-founded suspicion that a suspect has committed the criminal offence s/he is charged with.

(2) Before issuing the order referred to in paragraph 1 of this Article, the Public Prosecutor shall hear the suspect save when the suspect has already been heard in the preliminary investigation in compliance with Article 261 of this Code or if there is a risk of delay. If special circumstances of the case so require or if repeated hearing of the suspect is required in order to gather evidence for the defence, the Public Prosecutor may, prior to issuing an order of investigation, again re-hear the suspect who was heard in the preliminary investigation.

(3) The order of investigation shall specify the personal data of the accused, a description of the offence which results in its statutory elements, the statutory title of the criminal offence, and evidence as grounds for the well-founded suspicion.

(4) In the order of investigation, the Public Prosecutor may suggest to the investigative judge to impose on the accused one or several measures referred to in Article 166 paragraph 2 of this Code or to order detention of the accused that is held or placed under arrest.

(5) The order of investigation shall be delivered to the accused and his/her defence counsel.

Competence in Conducting Investigation

Article 276

(1) The Public Prosecutor shall conduct the investigation.

(2) If so requested by the parties, certain evidentiary actions in the investigation may, in compliance with the rules of this Code, be taken by an investigative judge, provided that special circumstances manifestly indicate that it will not be possible to repeat such actions at the main hearing or that the presentation of evidence at the main hearing would be impossible or significantly more difficult.

(3) If the investigative judge does not concur with the request referred to in paragraph 2 of this Article, the decision thereon shall be made within 24 hours by the Panel referred to in Article 24 paragraph 7 of this Code.

(4) An investigation may be conducted by one Public Prosecutor's Office for the territory of several Prosecutor's Offices (the investigative centre), in compliance with law.

Entrusting the Taking of Evidentiary Actions

Article 277

(1) The Public Prosecutor may entrust the taking of certain evidentiary actions to the Public Prosecutor with territorial jurisdiction as to the taking of such actions, or where one Public Prosecutor's Office is designated for conducting investigation for the territories of a number of Public Prosecutor's Offices, then to the Public Prosecutor's Office in question.

(2) Upon request or upon approval of the Public Prosecutor the police shall take photographs of the accused, take their fingerprints or saliva sample for DNA analysis if needed for the purposes of criminal proceedings.

(3) The Public Prosecutor entrusted with the taking of certain evidentiary actions shall, where appropriate, carry out other evidentiary actions connected to or arising from those entrusted with the Public Prosecutor.

(4) If the Public Prosecutor entrusted with taking certain evidentiary actions is not competent in their taking, s/he shall forward the case to the competent Public Prosecutor and notify thereon the Public Prosecutor who entrusted him with the case.

Evidentiary Actions Exclusively Ordered by Investigative Judge

Article 278

(1) The order for a search of dwelling, other premises and persons, as well as well as the order for seizure of objects shall be issued by the investigative judge upon a motion of the Public Prosecutor.

(2) Upon the request of the Public Prosecutor the investigative judge shall issue an order for a corpse exhumation.

(3) If the investigative judge does not approve the motion referred to in paragraph 1 of this Article or the request referred to in paragraph 2 of this Article, the decision thereon shall be made by the Panel referred to in Article 24 paragraph 7 of this Code within 24 hours.

Ordering Detention in Investigation

Article 279

(1) Upon filing a motion for detention of an accused pursuant to Article 275 paragraph 4 of this Code, after ascertaining that other measures referred to in Article 163 paragraph 1 of this Code cannot ensure the presence of the accused or create conditions for a free conduct of criminal proceedings, the Public Prosecutor shall issue a ruling on a temporary holding of the accused in compliance with Article 267 of this Code if the Public Prosecutor has not ordered the holding prior to issuing an order of investigation.

(2) Within the duration of holding, the investigative judge shall hear the accused and decide whether to order detention or reject the motion for ordering detention.

(3) In the case referred to in paragraph 2 of this Article, if the investigative judge fails to issue a ruling ordering detention before the expiry of the holding time limit, the accused shall be released without delay.

Scope of Investigation

Article 280

(1) An investigation shall only be conducted with respect to the criminal offence and against the accused that is subject to the order of investigation.

(2) If in the course of the investigation it becomes evident that it should be expanded to another criminal offence or another person**,** the Public Prosecutor shall issue an order to that effect, subject to the provisions referred to in Article 275 of this Code.

Motions for Evidentiary Actions Lodged by the Accused, Defence Counsel, Injured Party and Proxy of the Injured Party in Investigation

Article 281

(1) In the course of an investigation, the accused, defence counsel, injured party, and proxy of the injured party may file motions to the Public Prosecutor for certain actions to be taken.

(2) The accused, defence counsel, injured party, and proxy of the injured party may file motions referred to in paragraph 1 of this Article also to the Public Prosecutor entrusted with the performance of certain evidentiary actions. If the Public Prosecutor disagrees with the motion, s/he shall notify the person who has lodged the motion thereon, and this person may repeat filing the motion with the Public Prosecutor referred to in paragraph 1 of this Article.

Openness of Investigation

Article 282

(1) The injured party, proxy of the injured party and defence counsel may attend the hearing of the accused.

(2) The injured party, proxy of the injured party, the accused and defence counsel may attend the crime scene investigation, reconstruction and hearing of an expert witness.

(3) The injured party, proxy of the injured party and defence counsel may be present at the search of dwelling.

(4) The accused, defence counsel, injured party, and proxy of the injured party may be present at witness hearings.

(5) The Public Prosecutor shall notify in a convenient manner the defence counsel, the injured party, proxy of the injured party, and the accused of the time and place of taking evidentiary actions they are entitled to attend, save when there is a risk of delay. If the accused has a defence counsel, the Public Prosecutor shall, as a rule, notify only the defence counsel. If the accused is in custody and the evidentiary action is to be performed outside the court seat, the Public Prosecutor shall decide whether the presence of the accused is needed.

(6) The evidentiary action may be taken even in the absence of a duly notified person who fails to appear.

(7) Persons attending the evidentiary actions may propose that the Public Prosecutor poses certain questions to the accused, witness or expert witness for the purpose of clarification, and, upon the approval of the Public Prosecutor, may also pose questions personally. These persons are entitled to request that their objections as to taking certain actions be entered in the record and may propose that certain evidence be presented.

(8) In order to clarify certain technical or other expert issues which arise in relation to the evidence gathered or on the occasion of hearing of the accused or of taking other evidentiary actions, the Public Prosecutor may require that an expert in the relevant field give necessary explanations in regard to those issues. If the parties are present on the occasion of the explanation being conveyed, they may request that the expert provide a more detailed explanation. Where necessary, the Public Prosecutor may require a specialized institution to provide an explanation.

(9) The provisions of paragraphs 1 through 8 of this Article shall also apply if the evidentiary action is taken before the order of investigation is passed.

Obligation to Assist in Investigation

Article 283

If, in conducting the investigation**,** the Public Prosecutor or the investigative judge require police assistance (forensic, etc.) or from other state bodies in relation to conducting the investigation, they shall provide this assistance upon his/her request. When it is estimated that an evidentiary action may not be deferred, the assistance of a business organization or other legal person may be requested.

Obligation of Keeping a Secret in Investigation

Article 284

Should it be in the interests of criminal proceedings, keeping information as secret, public order, moral or protection of personal or family life of the injured party or the accused, the person acting in an official capacity who is taking an evidentiary action shall order the persons who are being heard or who are present while taking evidentiary actions, or who inspect the files of the investigation, to keep as secret certain facts or data they have learned on the occasion of

proceedings and shall advise them that any disclosure of a secret constitutes a criminal offence. This order shall be entered into the record on evidentiary action or shall be entered in the files being inspected, along with the signature of the person cautioned.

Maintaining Order during Investigation

Article 285

(1) During the course of the evidentiary actions, the Public Prosecutor or investigative judge shall maintain order and protect participants in the proceedings from insults, threats and any other form of assault.

(2) A fine not exceeding €1.000 may be imposed on a participant in the proceedings or other person who, during the evidentiary actions and after given caution, has been disturbing order, offending the participants of the proceedings, or endangering their security. The investigative judge shall impose the abovementioned fine at his/her own discretion or upon a motion by the Public Prosecutor. If the participation of such person is not necessary, the person may be removed from the place where the evidentiary action is being taken.

(3) The accused may not be fined but s/he may be removed from the place where the evidentiary action is being taken.

(4) If the Public Prosecutor disturbs the order, the investigative judge shall proceed pursuant to the provision referred to in Article 321 paragraph 5 of this Code.

Recess of Investigation

Article 286

(1) The Public Prosecutor shall recess an investigation by an order if:

1) the accused develops a temporary mental alienation;

2) if the temporary residence of the accused is unknown;

3) if the accused is at large or is otherwise out of reach of the state bodies.

(2) Prior to recessing the investigation referred to in paragraph 1 of this Article, all the obtainable evidence on the criminal offence and the guilt of the accused shall be gathered.

(3) The Public Prosecutor shall continue the investigation as soon as obstacles which resulted in the recess cease to exist.

Indictment by a Subsidiary Prosecutor

Article 287

(1) Where an injured party assumes prosecution in compliance with Article 59 of this Code, s/he may bring a direct indictment.

(2) If the injured party finds necessary to perform certain evidentiary actions prior to bringing the direct indictment, the injured party may file a motion to the investigative judge to take such actions.

(3) If the investigative judge sustains the motion referred to in paragraph 2 of this Article, s/he shall take the necessary evidentiary actions without delay and notify the injured party thereon.

(4) If the investigative judge fails to sustain the motion referred to in paragraph 2 of this Article, s/he shall require that the matter be decided by the Panel referred to in Article 24 paragraph 7 of this Code, which shall pass a decision thereon within three days.

(5) The decision of the Panel referred to in paragraph 4 of this Article may not be subject to appeal.

Bringing a Direct Indictment

Article 288

The Public Prosecutor shall not conduct an investigation if the gathered data referring to a criminal offence and the previously heard accused provide sufficient grounds for bringing a direct indictment.

Obtaining Data on the Accused

Article 289

(1) Before the investigation is concluded, the Public Prosecutor shall obtain data on the accused referred to in Article 100 paragraph 1 of this Code if they are missing or need a check, as well as data on the accused's previous convictions and, if s/he is still serving a sentence or another sanction which is connected to deprivation of liberty, also the data on his/her behaviour while serving the sentence or other sanction. Where appropriate, the Public Prosecutor shall obtain data on the accused's past, his living conditions as well as on other circumstances concerning his personality. The Public Prosecutor may order medical or psychological examinations of the accused when this is needed in order to supplement data on the accused's personality.

(2) Where applicable to impose a cumulative sentence comprising the sentences from previous judgments as well, the Public Prosecutor shall request authenticated transcripts of the legally-binding judgments.

Completion of the Investigation

Article 290

(1) The Public Prosecutor shall conclude the investigation when s/he finds that the case has been sufficiently clarified and shall make an official annotation thereon.

(2) After the completion of the investigation, the Public Prosecutor shall, within fifteen days, bring an indictment or discontinue the investigation.

(3) If the investigation has not been completed within six months, the Public Prosecutor shall notify thereof the directly superior prosecutor as to the reasons for not completing the investigation. The directly superior Public Prosecutor shall take such measures as may be necessary to complete the investigation.

(4) The Public Prosecutor shall order an investigation to discontinue if, during its course or after its completion, s/he finds that:

1) the act the accused is charged with is not a criminal offence or a criminal offence prosecuted ex officio;

2) the statute of limitations on criminal prosecution applies or the act has been granted amnesty or pardon;

3) there are other circumstances that preclude prosecution;

4) there are no evidence which would back a well-founded suspicion that the accused has committed a criminal offence.

5) Within eight days, the order referred to in paragraph 4 of this Article shall be served on the injured party together with an instruction of his/her being entitled to initiate criminal prosecution by bringing a direct indictment within eight days from the date when s/he was served the order. (5) The order shall be delivered to the accused and his/her defence counsel.

Title XIX

INDICTMENT AND REVIEW OF THE INDICTMENT

Indictment

Article 291

After the investigation is completed, or when pursuant to this Code charges may be pressed without investigation in compliance with Article 288 of this Code, the proceedings before the court shall be conducted only on the strength of the indictment brought by the Public Prosecutor or the subsidiary prosecutor.

Contents of the Indictment

Article 292

(1) The indictment shall contain:

1) the forename and family name of the accused with his/her personal data referred to in Article 100 of this Code, as well as data about whether and since when s/he has been in custody or whether s/he is at liberty, and if s/he was released from prison before the indictment was brought, for how long s/he had been detained,

2) a description of the act which results in the statutory elements of a criminal offence, the time and place of commission of criminal offence, the object upon which and instrument by means of which the criminal offence was committed as well as other circumstances necessary for a precise description of the criminal offence,

3) the statutory title of the criminal offence accompanied by the relevant provisions of the law which according to the Prosecutor's motion are to be applied,

4) an indication of the court before which the main hearing shall be held,

5) motion on evidence to be presented at the main hearing, including the list of the names and addresses of witnesses and expert witnesses, documents to be read and objects serving as evidence,

6) a statement of reasons describing the state of affairs according to the results of the investigation, indicating the evidence necessary to establish the determinative facts, presenting the accused's defence and the Prosecutor's position on the points of defence.

(2) If the accused is at liberty, it may be proposed in the indictment that s/he be detained or that measures referred to in Article 166, paragraph 2 of this Code be ordered, and if the accused is already in custody, it may be proposed that s/he be released or that other measures referred to in Article 166, paragraph 2 of this Code be ordered. The indictment may contain a proposal to extend the detention of the accused, in which case the prosecutor must demonstrate that other measures cannot serve the purpose for which the detention is ordered.

(3) Several criminal offences or several accused may be covered by one indictment only if, pursuant to the provisions of Article 31 of this Code, a joinder is possible and if a single judgment may be passed.

Control of the Indictment

Article 293

(1) The indictment shall be submitted to the Panel referred to in Article 24 paragraph 7 of this Code for control and confirmation.

(2) When the Panel determines that there are errors or errors in the indictment referred to in Article 292 of this Code or in the proceedings itself or that a better clarification of the facts of the case is necessary in order to examine the grounds for the indictment, it shall return the indictment ordering the errors to be corrected or that the investigation be supplemented or conducted. The Prosecutor shall, within a term of three days from the day the decision of the Panel is conveyed to him/her, submit an amended indictment or to supplement or conduct the investigation within two

months. For justifiable reasons, upon a Prosecutor's request, this term may be extended. If the Public Prosecutor fails to comply with this term, s/he shall notify the High Public Prosecutor of the reasons of the failure. If the subsidiary prosecutor fails to comply with this term it shall be deemed that s/he withdrew from prosecution and the proceedings shall be discontinued.

(3) If matters need to be clarified further in order to examine the grounds of the indictment of the subsidiary prosecutor, the Panel shall submit the indictment to the investigative judge to take certain evidentiary actions within two months.

(4) If the Panel determines that some other court has jurisdiction over the criminal offence which is the object of charges, it shall declare the court to which the indictment was brought lacking jurisdiction and after the ruling becomes legally-binding it shall refer the case to the court of appropriate jurisdiction.

(5) If the Panel determines that the files contain records or information referred to in Article 211 of this Code it shall issue a ruling that they be excluded from the files. This ruling shall be subject to a separate appeal which shall be decided by the Panel of directly superior court. After the ruling becomes legally-binding the Chair of the Panel referred to in Article 24, paragraph 7 of this Code shall make sure that the excluded records and information be sealed in a separate cover and be handed over to the investigative judge for the purpose of keeping them apart from other files. The excluded records and information shall not be examined or used in the criminal proceedings.

Discontinuance of Proceedings on the Basis of Control of the Indictment

Article 294

(1) When acting in terms of Article 293 paragraph 1 of this Code, the Panel shall decide that there are no grounds for an indictment and shall discontinue criminal proceedings if it establishes that:

1) the act the accused is charged with is not a criminal offence,

2) the statute of limitations on criminal prosecution applies or that the offence is covered by amnesty or pardon or that there are other circumstances which permanently exclude prosecution,

3) there is no sufficient evidence supporting well-founded suspicion that the accused has committed the offence s/he has been charged with.

(2) If the Panel ascertains that the request or the motion of an authorized Prosecutor or an approval for prosecution is lacking, or that other circumstances exist that temporarily bar prosecution, it shall dismiss the indictment by a ruling.

Legal Qualification of the Offence not Binding

Article 295

On the occasion of issuing a ruling referred to in Article 293, paragraph 4 and Article 294 of this Code, the Panel shall not be bound by the legal qualification of the offence as stated by the Prosecutor in the indictment.

Confirmation of the Indictment

Article 296

(1) If the Panel does not issue the ruling referred to in Articles 293 paragraph 4 and Article 294 of this Code, it shall issue a ruling confirming the indictment within 8 days and in complex cases within 15 days after the receipt of the indictment.

(2) The indictment shall enter into force at the moment a ruling on confirmation issued.

(3) By way of the same ruling the Panel shall decide on motions for a joinder or separation of the proceedings.

Appeal against the Decision of the Panel

Article 297

(1) An appeal may be lodged against the Panel decision referred to in Article 293, paragraph 4 of this Code, and an appeal may be lodged by the Prosecutor and the injured party against the decisions referred to in Article 294 of this Code. Other decisions of the Panel in relation to the control of the indictment shall not be appealable.

(2) If only the injured party lodged an appeal against the ruling of the Panel and if this appeal is upheld, it shall be deemed that s/he has assumed prosecution by lodging the appeal.

Bringing an Indictment and Detention

Article 298

(1) If an indictment contains a motion to order detention against the accused or a motion to release him/her, the Panel performing control over the indictment shall decide on it immediately or within 48 hours at the latest.

(2) If the accused is in custody and the indictment does not contain the motion to release him/her, the Panel referred to in paragraph 1 of this Article shall, ex officio and within a term of three days from the day of the receipt of the indictment, examine whether grounds for detention still exist and issue a ruling by which a detention shall be extended or terminated. An appeal against this ruling shall not suspend its enforcement.

Serving an Indictment on the Accused

Article 299

(1) The Panel shall have the indictment served on the accused who is not detained without delay, and it shall serve it on the accused that is in custody within a term of 24 hours from the confirmation of the indictment.

(2) If detention is ordered against an accused by a ruling of the Panel referred to in Article 298 of this Code, the indictment shall be served on the accused on the occasion of his/her deprivation of liberty, together with the ruling ordering detention.

Title XX

PLEA BARGAIN

Entering into a Plea Bargain

Article 300

(1) In the case of criminal proceedings conducted for one criminal offence or for concurrent criminal offences for which imprisonment of up to 10 years is envisaged, the accused and his/her defence counsel may be proposed that a plea bargain be entered into, or the accused and his/her defence counsel may propose entering into such agreement to the Public Prosecutor.

(2) When the motion referred to in paragraph 1 of this Article has been made, the parties and the defence counsel may negotiate the conditions of admitting guilt for the criminal offence or criminal offences the accused is charged with.

(3) The plea bargain shall be made in writing and must be signed by the parties and the defence counsel, and may be submitted not later than the first hearing for the main hearing before the court of first instance.

(4) If an indictment has not been brought yet, the plea bargain shall be submitted to the Chair of the Panel referred to in Article 24 paragraph 7 of this Code and after the indictment has been brought, it shall be submitted to the Chair of the Panel.

Subject-matter of the Plea Bargain

Article 301

(1) By way of a plea bargain, the accused shall fully confess the criminal offence s/he is charged with, or confess one or more concurrent criminal offences s/he is charged with, whereas the accused and the Public Prosecutor agree on the following:

1) the severity of sentence and other criminal sanctions which will be imposed on the accused in compliance with the provisions of the Criminal Code;

2) the costs of the criminal proceedings and claims under property law;

3) denouncing the right of appeal by the parties and defence counsel against the court ruling made pursuant to the plea bargain when the court has fully accepted the plea bargain.

(2) Plea bargain shall also contain an obligation of the accused to return within a certain time limit the material benefit acquired by the commission of the criminal offence as well as objects that have to be seized under the Criminal Code.

(3) By means of the plea bargain the accused may take upon oneself the obligation to fulfil the obligations referred to in Article 272 paragraph 1 of this Code, provided that the nature of the obligations is such that it allows the accused to fulfil or start fulfilling them before the submission of a plea bargain to the court.

Adjudication on the Plea Bargain

Article 302

(1) The court shall decide by a ruling whether a plea bargain should be dismissed, rejected or upheld.

(2) If a plea bargain has been submitted before an indictment has been brought, the Chair of the Panel referred to in Article 24 paragraph 7 of this Code shall decide on it. In such a case, a special item of the plea bargain shall contain all the data referred to in Article 292, paragraph 1 of this Code.

(3) If a plea bargain has been submitted after the indictment has been brought, the Chair of the first instance Panel shall decide thereon.

(4) The Chair of the Panel shall dismiss a plea bargain submitted after the expiry of the term specified in Article 300 paragraph 3 of this Code. The ruling dismissing the plea bargain shall not be appealable.

(5) The court shall decide on the plea bargain without delay at a hearing attended by the Public Prosecutor, accused and his/her defence counsel, while the injured party and his/her proxy shall be informed of the hearing.

(6) Provisions of Art. 313 through 316 of this Code shall apply on the holding of a hearing referred to in paragraph 5 of this Article.

(7) The court shall dismiss a plea bargain by way of ruling if the duly summoned accused does not appear at the hearing. The ruling dismissing the plea bargain shall not be appealable.

(8) The court shall uphold a plea bargain and pass a decision which is in compliance with the contents of the plea bargain, if it establishes the following:

1) that the accused confessed to the criminal offence or offences s/he is charged with voluntarily and consciously, that the confession is in compliance with the evidence contained in the

case files and that there is no possibility that the confession was made as a consequence of an error on the part of the accused;

2) that the plea bargain was concluded in compliance with Article 301 of this Code;

3) that the accused fully understands the consequences of the plea bargain, and particularly that s/he waives the right to a trial and that s/he may not lodge an appeal against the court ruling passed pursuant to the plea bargain;

4) that the plea bargain does not violate the rights of the injured party and

5) that the plea bargain is in compliance with the interests of fairness and the sanction serves the purpose for which criminal sanctions are imposed.

(9) If one or more conditions referred to in paragraph 8 of this Article have not been met, the court shall reject the plea bargain by a ruling, and the admission of guilt contained in the plea bargain may not be used as evidence in criminal proceedings. The plea bargain and all supporting files shall be destroyed by the Chair of the Panel, of which a record shall be made.

(10) The court shall enter into a record the ruling upholding, rejecting or dismissing the plea bargain. The ruling upholding the plea bargain may be appealed by the injured party, whereas the ruling rejecting the plea bargain may be appealed by the Public Prosecutor and by the accused.

(11) The Panel referred to in Article 24 paragraph 7 of this Code shall decide on the appeal referred to in paragraph 10 of this Article, not including the judge who issued the ruling referred to in paragraph 10 of this Article.

Judgment Passed in Virtue of the Plea Bargain

Article 303

(1) When a ruling upholding a plea bargain becomes legally-binding, the Chair of the Panel shall, without delay, and not later than within three days, pass a judgment declaring the defendant guilty in compliance with the upheld plea bargain.

(2) The judgment referred to in paragraph 1 of this Article shall be appealable insofar as it is not in compliance with the concluded plea bargain.

V. THE MAIN HEARING AND THE JUDGMENT

Title XXI

PREPARATIONS FOR THE MAIN HEARING

Scheduling of the Main Hearing

Article 304

(1) The Chair of the Panel shall schedule the day, hour and place of the main hearing by an order.

(2) The Chair of the Panel shall schedule the main hearing at the latest within a term of two months from the day the indictment was confirmed. If within this term no main hearing is scheduled, the Chair of the Panel shall inform the President of the Court of the reasons thereof. The President of the Court shall take the measures to schedule the main hearing, where appropriate.

(3) If the Chair of the Panel establishes that the files contain records or information referred to in Article 211 of this Code, s/he shall issue a ruling on their exclusion from the files before the scheduling of the main hearing and when the ruling becomes legally-binding, s/he shall seal them in a separate cover and hand them over to the investigative judge for the purpose of keeping them apart from other files.

Preparatory Hearing for the Main Hearing

Article 305

(1) If s/he deems it necessary in view of laying down the future course of the main hearing and planning as to which evidence, in what manner and at what time shall be presented at the main hearing, the Chair of the Panel shall, within the term specified in Article 304 paragraph 2 of this Code, summon to a preparatory hearing the parties, defence counsel, injured party, proxy of the injured party, and, where appropriate, an expert witness and other persons.

(2) At the hearing referred to in paragraph 1 of this Article, which is held behind closed doors and of which record is made and signed by the parties and other persons present, the Chair of the Panel shall inform the participants of the planned course of the main hearing and ask for their comments thereon and for their proposals as to motions for evidentiary actions, and shall especially invite them to state whether they are available to respond to the court summons and attend the main hearing on certain days and at a certain time.

(3) At the hearing referred to in paragraph 1 of this Article the parties shall particularly be cautioned that they must, as a rule, make all motions for evidentiary actions at the preparatory hearing and that if they submit new motions for evidentiary actions at the main hearing they shall justify in detail why they did not do so at the preparatory hearing, as well as that the court shall reject such motions unless the parties demonstrate that at the time of the preparatory hearing they did not know or could not have known of certain evidence or facts that should be proven.

(4) Persons referred to in paragraph 1 of this Article may be orally informed at the preparatory hearing as to the time of holding one or more planned hearings of the main hearing, which shall be entered in the record, in which case these persons shall be deemed duly summoned to the main hearing.

(5) If a preparatory hearing has been held, the term of time specified in Article 304 paragraph 2 of this Code shall start to run after the completion of the preparatory hearing.

Place of Holding the Main Hearing

Article 306

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

(2) If, in certain cases, the premises of the courthouse are considered inappropriate for the main hearing, the President of the Court may order the main hearing to be held in another building.

(3) The main hearing may also be held in another location within the territory of the court of appropriate jurisdiction, provided that the President of the higher court allows so following a substantiated motion of the President of the Court.

Summoning to the Main Hearing

Article 307

(1) The defendant and his/her defence counsel, the Prosecutor and the injured party and their proxies and representatives as well as the interpreter shall be summoned to the main hearing. The proposed witnesses and expert witnesses shall also be summoned to the main hearing, with the exception of those whose hearing at the main hearing is considered to be unnecessary according to Chair of Panel’s opinion.

(2) With regard to the contents of the summons for the defendant and the witnesses, the provisions of Articles 112, paragraph 1 and Article 164 paragraph 2 of this Code shall apply. When defence is not mandatory, the defendant shall be instructed in the summons on his/her right to retain a defence counsel, as well as that the main hearing will not have to be deferred if the defence counsel fails to appear at the main hearing or if the defendant engages a defence counsel at the main hearing only.

(3) A summons shall be served on the defendant in such a manner that between the moment it was served and the day of the main hearing there is sufficient time to prepare the defence, but not less than eight days. Upon the motion of the defendant or the Prosecutor, and with the consent of the defendant, this term may be shortened.

(4) The injured party who is not summoned to appear as a witness shall be informed in the summons by the court that the main hearing shall be held in his/her absence and that his/her statement on a claim under property law shall be read. The injured party shall be cautioned that his/her failure to appear shall be considered as unwillingness to continue prosecution in the case where the Public Prosecutor withdraws the charge.

(5) The subsidiary prosecutor and the plaintiff shall be cautioned in the summons that if they fail to appear at the main hearing or fail to send their proxy they shall be deemed to have withdrawn the charge.

(6) The defendant, the witness and expert witness shall be cautioned in the summons about the consequences of failure to appear at the main hearing referred to in Articles 324 and 327 of this Code.

Obtaining New Evidence

Article 308

(1) Even after the scheduling of the main hearing, the parties and the injured party may request that new witnesses or expert witnesses be summoned to the main hearing and that other new evidence be obtained. The parties must state in their substantiated request which facts are to be proved and by which of proposed evidence.

(2) The Chair of the Panel may order the obtaining of new evidence for the main hearing even if there is no motion by the parties.

(3) The parties shall be informed of the decision ordering additional evidence to be obtained before the commencement of the main hearing.

Assignment of Alternate Judges

Article 309

If the main hearing is expected to last for a longer term of time, the Chair of the Panel may request the President of the Court to assign one or two judges to attend the main hearing in order to replace members of the Panel in case of their inability to perform their duties.

Hearing of Witnesses and Expert Witnesses outside the Main Hearing

Article 310

(1) If it is known that a witness or expert witness summoned to the main hearing but not yet heard will not be able to appear at the main hearing due to a long-term illness or some other impediments, s/he may be heard in the place where s/he resides.

(2) A witness or expert witness shall be heard and, where appropriate, be sworn in by the Chair of the Panel or a judge who sits as a member of the Panel, or s/he shall be heard by the investigative judge of the court in whose jurisdictional territory the witness or expert witness resides.

(3) The parties and the injured party shall be notified about the time and place of the hearing if this is possible in consideration of the urgency of the proceedings. If the defendant has been put in custody, the Chair of the Panel shall decide on the need for his/her presence at the hearing. When the parties and the injured party are present at the hearing they shall be entitled to rights referred to in Article 282, paragraph 7 of this Code.

Postponement of the Main Hearing

Article 311

The Chair of the Panel may, for important reasons and upon the motion of the parties and defence counsel or ex officio, postpone the main hearing by an order at the longest for 15 days. All summoned persons shall immediately be informed of the postponement.

Withdrawing an Indictment before the Commencement of the Main Hearing

Article 312

(1) If the Public Prosecutor withdraws the indictment before the commencement of the main hearing, the Chair of the Panel shall notify thereon all persons who were summoned to the main hearing. The injured party shall particularly be instructed of his/her right to assume the prosecution in compliance with Articles 59 and 61 of this Code.

(2) If the injured party does not assume prosecution, the Chair of the Panel shall discontinue the criminal proceedings by a ruling and shall serve it to the parties and the injured party.

(3) If the subsidiary prosecutor has withdrawn the indictment before the commencement of the main hearing, the Chair of the Panel shall discontinue criminal proceedings by means of a ruling and deliver the ruling to the parties and defence counsel.

Title XXII

THE MAIN HEARING

1. PUBLIC NATURE OF THE MAIN HEARING

General Public

Article 313

(1) The main hearing shall be open to the public.

(2) Only adults may attend the main hearing.

(3) Persons attending the main hearing shall not carry arms or dangerous tools, with the exception of the guards of the accused who may be armed.

Exclusion of Public

Article 314

From the opening of the session until the conclusion of the main hearing, the Panel may at any time, ex officio or upon the motion of the parties but always after hearing their statements, exclude the public from the entire main hearing or one part of it, if that is necessary for keeping information secret, protecting public order, protecting morality, protecting the interests of a minor or protecting the personal or family life of the accused or the injured party.

Limited Exclusion of Public

Article 315

(1) Exclusion of the public shall not relate to parties, the injured party, their representatives, proxies and the defence counsel.

(2) The Panel may grant permission that certain officials and scholars, and upon the request of the defendant, his/her spouse or close relatives or his/her common law spouse, attend the main hearing which is held behind closed doors.

(3) The Chair of the Panel shall caution the persons attending a main hearing held behind closed doors that they shall keep secret everything learned at the main hearing, and that failure to do so constitutes a criminal offence.

Ruling on the Exclusion of Public

Article 316

(1) The Panel shall decide on the exclusion of the public by a ruling which shall contain a statement of reasons and which shall be publicly disclosed.

(2) The ruling on the exclusion of the public may be contested only in the appeal against the judgment.

2. DIRECTION OF THE MAIN HEARING

Mandatory Presence at the Mean Hearing

Article 317

(1) The President, members of the Panel, the court reporter and judges designated pursuant to Article 309 of this Code shall sit continuously during the main hearing.

(2) It is the duty of the Chair of the Panel to determine whether the Panel is composed in compliance with this Code and whether reasons exist for the recusation of members of the Panel and the court reporter within the meaning of Article 38, items 1 through 5 and Article 43, paragraph 1 of this Code.

Direction of the Main Hearing

Article 318

(1) The Chair of the Panel shall direct the main hearing, hear the defendant, witnesses and expert witnesses and shall give the floor to the members of the Panel, the parties, the injured party, legal representatives, proxies, the defence counsel and expert witnesses.

(2) The parties shall be entitled to make objections during the presentation of evidence.

(3) The Chair of the Panel shall decide on the motions and objections of the parties if the Panel does not decide on them.

(4) The Panel shall decide on a motion about which the parties dissent and about concurring motions of the parties which are not upheld by the Chair of the Panel. The Panel shall also decide on an objection to measures taken by the Chair of the Panel relating to the direction of the main hearing.

(5) The rulings of the Panel shall always be publicly disclosed and entered in the record on the main hearing along with a short statement of reasons.

(6) It shall be the duty of the Chair of the Panel to take care that the case is thoroughly examined, that the truth is established and that everything is eliminated that delays the proceedings but does not serve to clarify the matter.

Determining the Order for Taking Actions of the Main Hearing

Article 319

The main hearing shall be carried out in the order provided in this Code, but the Panel may order that the regular course of deliberations be altered due to special circumstances and particularly due to the number of defendants, the number of criminal offences and the scope of evidence.

Protection of Honour of the Court and Participants in the Proceedings

Article 320

(1) The court shall protect its honour, the honour of the parties and other participants in the proceedings from an insult, threat and any other assault.

(2) It shall be the duty of the Chair of the Panel to take care of maintenance of order in the courtroom. S/he may order a search of persons attending the main hearing, and immediately after the opening of the session s/he may caution the present persons to behave properly and not to disturb the functioning of the court.

(3) The Panel may order that all those attending the main hearing as an audience be removed from the session if the measures for maintaining order envisaged in this Code could not suffice for ensuring that the main hearing is not disrupted.

(4) Audio and audio-visual devices shall not be allowed in the courtroom, save when approved so by the President of the Supreme Court for a particular main hearing. If recordings at the main hearing are approved, the Panel may, for justified reasons, decide that certain parts of the main hearing not be recorded.

Maintenance of Order and Imposition of Punishment due to Disruption of Order and Procedural Discipline

Article 321

(1) If the defendant, defence counsel, the injured party, legal representative, proxy, witness, expert witness, interpreter or other person attending the main hearing disrupts order, insults the court, parties and other participants to the proceedings or fails to comply with the orders of the Chair of the Panel concerning the maintenance of order, the Chair of the Panel shall admonish him/her thereof. If such a caution fails to be successful, the Panel may order the defendant to be removed from the courtroom, while other persons may be removed but also punished by a fine in the amount not exceeding €1.000.

(2) By a decision of the Panel, the defendant may be removed from the courtroom for a certain term of time, and if s/he has already been heard at the main hearing, than during the evidentiary procedure. Before the completion of evidentiary procedure, the Chair of the Panel shall call in the defendant and inform him/her about the course of the main hearing. If the defendant continues to disrupt order and offend the dignity of the court, the Panel may remove him/her again from the session. In such a case, the main hearing shall be completed in the absence of the defendant, and the judgment shall be communicated to him/her by the Chair of the Panel or by a judge, who is the member of the Panel, in the presence of the court reporter.

(3) The Panel may deny further defence or representation at the main hearing to a defence counsel or proxy who after being punished continues to disrupt order, and in such a case the party shall be called on to retain another defence counsel or proxy. If the defendant who has not been heard is not able to do so, or if in the case of mandatory defence it is impossible for the court to assign a new defence counsel without prejudicing the defence, the main hearing shall be recessed or postponed, and the defence counsel shall be ordered to pay the costs incurred due to the recession or postponement of the main hearing. If the plaintiff or subsidiary prosecutor does not retain another proxy, the Panel may decide to continue the main hearing in the absence of a proxy, if it establishes that this would not prejudice the interests of the person whom s/he represents. A ruling thereon, containing the statement of reasons shall be entered into the record on the main hearing. An interlocutory appeal may not be lodged against this ruling.

(4) If the court removes the subsidiary prosecutor or the plaintiff or their legal representative from the courtroom, the main hearing shall continue in their absence, but the court shall instruct them that they may retain a proxy.

(5) If the Public Prosecutor or a person acting on his/her behalf disrupts order, the Chair of the Panel shall notify the competent Public Prosecutor thereof, and s/he may recess the main hearing and request the competent Public Prosecutor to appoint other person to represent the prosecution.

(6) Where the court punishes an attorney-at-law who disrupted order, the court shall notify the Bar Chamber thereof.

(7) A ruling imposing punishment shall be subject to an appeal. The Panel may revoke such a ruling.

(8) Other decisions concerning the maintenance of order and the direction of the main hearing shall not be subject to an appeal.

3. PREREQUISITES FOR HOLDING A MAIN HEARING

Opening of the Session

Article 322

The Chair of the Panel shall open the session and announce the case of the main hearing and the composition of the Panel. Thereafter, s/he shall determine whether all summoned persons have appeared, and if not, shall check whether the summons were duly served and whether those absent have justified their absence.

Failure of the Prosecutor to Appear at the Main Hearing

Article 323

(1) If the Public Prosecutor or person acting on his/her behalf fails to appear at the main hearing scheduled on the strength of an indictment brought by the Public Prosecutor, the main hearing shall be postponed. The Chair of the Panel shall inform the Public Prosecutor thereof.

(2) If a subsidiary prosecutor or a plaintiff or their proxy fails to appear at the main hearing although duly summoned, the Panel shall discontinue the procedure by a ruling.

Failure of the Defendant to Appear at the Main Hearing and Trying in Absence

Article 324

(1) If a duly summoned defendant fails to appear at the main hearing without justifying his/her absence, the Panel shall order him/her to be brought to the court by force. If bringing him/her cannot be effected immediately, the court shall decide to postpone the main hearing and that the accused be brought to the next hearing by force. If the defendant justifies his/her absence before being brought to the court, the Chair of the Panel shall revoke the order on bringing him/her by force.

(2) The defendant may be tried in absence only if s/he is at large or otherwise out of reach of state bodies and if especially important reasons exist for trying him/her, although s/he is absent.

(3) Upon a motion of the Public Prosecutor, the Panel shall issue a ruling on the trial in absence of the defendant. An appeal shall not suspend enforcement of the ruling.

Failure of a Defence Counsel to Appear

Article 325

(1) If a duly summoned defence counsel fails to appear at the main hearing without informing the court of the reason for his/her absence as soon as s/he learns about it, or if the defence counsel leaves the main hearing without authorization, the defendant shall be called on to immediately retain other defence counsel. If the defendant fails to do so, the Panel may decide to hold the main hearing without the defence counsel if the defendant agrees with that. If in the case of mandatory defence, if the defendant cannot immediately retain another defence counsel, or if the court cannot appoint a defence counsel without prejudicing the defence, the main hearing shall be postponed.

(2) The Panel shall punish by a fine in the amount not exceeding €1.000 a duly summoned defence counsel whose unjustified failure to appear causes a postponement of the main hearing and shall order him/her to bear the costs incurred by the postponement of the main hearing. A ruling thereon containing a brief statement of reasons shall be entered into the main hearing record.

Holding of the Main Hearing while Expecting Passing of a Judgment Rejecting the Charge

Article 326

Where conditions for a postponement of the main hearing referred to in Article 324, paragraph 1 and Article 325, paragraph 1 of this Code exist, due to the absence of the defendant or the defence counsel, the Panel may nevertheless decide to hold the main hearing if, according to the evidence in the files, it is obvious that a judgment rejecting the charge or a ruling referred to in Article 367 of this Code shall have to be passed.

Failure of a Witness and an Expert Witness to Appear

Article 327

(1) If a duly summoned witness or expert witness fails to appear without justified reasons although being duly summoned, the Panel may order him/her to be immediately brought by force.

(2) The main hearing may commence even in the absence of a summoned witness or expert witness, and in such a case, the Panel shall decide in the course of the main hearing whether the main hearing should be recessed or postponed due to the absence of the witness or expert witness.

(3) The Panel may punish by a fine in the amount not exceeding €1.000 a duly summoned witness or expert witness who fails to justify his/her absence and it may order that s/he be brought in by force for the next main hearing. The Panel may revoke its decision on punishment in justifiable cases.

4. POSTPONEMENT AND RECESS OF THE MAIN HEARING

Postponement

Article 328

(1) With the exception of cases referred to in Article 311, Art. 324 paragraph 1 and Art. 325 paragraph 1 of this Code, the Panel shall issue a ruling ordering a postponement of the main hearing if it is necessary to obtain new evidence or if the court determines in the course of the main hearing that the defendant, after committing the criminal offence, has been struck by a temporary mental alienation or if other impediments to the successful completion of the main hearing exist.

(2) A ruling on the postponement of the main hearing shall, as a rule, state the date and hour of the resumption of the main hearing.

(3) In the ruling referred to in paragraph 2 of this Article, the Panel may order evidence which could be lost in the meanwhile to be obtained.

(4) The ruling referred to in paragraph 2 of this Article shall not be subject to an appeal.

Holding the Main Hearing that Has Been Postponed

Article 329

(1) The main hearing that has been postponed shall be resumed if the composition of the Panel has changed.

(2) Upon hearing the parties in the case referred to in paragraph 1 of this Article, the Panel may decide that witnesses or expert witnesses shall not be heard again and that the crime scene investigation shall not be conducted anew, but rather the statements of witnesses and expert witnesses given at the previous main hearing be read as well as the records on the crime scene investigation.

(3) If the previously postponed main hearing is held before the same Panel, it shall be resumed and the Chair of the Panel shall summarize the course of the previous main hearing, but even in such a case the Panel may order that the main hearing recommence anew.

(4) If the postponement lasted more than three months, or if the main hearing is held before other Chair of the Panel, it shall be recommenced anew and all evidence shall be presented anew.

Recess of the Main Hearing

Article 330

(1) With the exception of cases provided for by this Code specifically, the Chair of the Panel may order a recess of the main hearing for purposes of rest or expiration of working hours or to obtain certain evidence within a short term of time or for preparation of prosecution or defence.

(2) A recessed main hearing shall always continue before the same Panel.

(3) If the main hearing may not be resumed before the same Panel, or if a recess of the main hearing lasted for more than eight days, it shall be proceeded pursuant to the provisions of Article 329 of this Code.

5. RECORD ON THE MAIN HEARING

Manner of Keeping the Record

Article 331

(1) A record shall be kept of the main hearing and it shall in essence contain the contents of work and the entire course of the main hearing.

(2) The Chair of the Panel may order the entire course of the main hearing or some parts of it to be recorded stenograhically. The stenographic records shall be transcribed, inspected and attached to the record within 48 hours.

(3) Regarding audio or audiovisual recording of the course of the main hearing, the provisions of Article 212 of this Code shall apply.

(4) The Chair of the Panel may, upon a motion of the party or ex officio, order that statements s/he considers particularly important be entered into the record verbatim.

(5) If necessary, and especially if statements of a certain person are entered in the record verbatim, the Chair of the Panel may order that this part of the record be read aloud immediately, and it shall be read if the party, defence counsel or the person whose statement is entered into the record so requires.

Corrections and Examination of Records

Article 332

(1) A record shall be completed simultaneously with the closing of the session. The record shall be signed by the Chair of the Panel and the court reporter.

(2) The parties, the defence counsel and the persons heard shall be entitled to inspect the completed record and its appendices, to make remarks regarding their contents as well as to request a correction of the record. After the closing of the session, the parties and defence counsel shall be entitled to be provided with a copy of the record in an electronic or print form, if they require so.

(3) Corrections of incorrectly written names, numbers and other obvious errors in writing may be ordered by the Chair of the Panel upon a motion of the parties or the person heard or ex officio. Other corrections and supplements of the record may be ordered only by the Panel.

(4) Remarks and motions of the parties regarding the record, as well as corrections and supplements made to the record, shall be entered in the supplement of the completed record. The reasons for not upholding certain motions and remarks shall also be entered in the supplement to the record. The Chair of the Panel and the court reporter shall sign the supplement to the record, as well.

Contents of the Record

Article 333

(1) The introduction to the record shall specify the court before which the main hearing is being held, the time and place of the session, the forename and family name of the Chair of the Panel, members of the Panel, court reporter, Prosecutor, defendant and defence counsel, injured party and his/her legal representative or proxy, interpreter, the criminal offence in consideration, and whether the main hearing is being held in public or behind closed doors.

(2) The record shall contain in particular the data on the indictment which was read or orally presented at the main hearing and on whether the Prosecutor amended or extended the charge, which motions were lodged by the parties, and which decisions were passed by the Chair of the Panel or the Panel, the evidence presented, whether records or other documents were read, whether audio or other recordings were reproduced and what remarks the parties made with reference to the records or documents read or the recordings reproduced. If the main hearing was held behind closed doors, the record shall specify that the Chair of the Panel cautioned those present of the consequences of unauthorized disclosure of a secret or another data they learned about at the main hearing, due to which the main hearing was held behind closed doors.

(3) The statements of the defendant, witness and expert witness shall be entered into the record in such a manner as to present their substantive content. These statements shall be entered in the record only if they contain variations or supplements to their previous statements. Upon a motion of a party and after the hearing of these persons, the Chair of the Panel shall order the record of their previous statement to be read in part or in whole.

(4) Upon a motion of a party, the court shall enter into the record a question and an answer which the Panel rejected as impermissible.

Enacting Terms of Judgment

Article 334

(1) The record on the main hearing shall state the entire enacting terms of judgment referred to in Article 379, paragraphs 3, 4 and 5 of this Code, along with a note on whether the judgment was publicized. The enacting terms of judgment entered in the record on the main hearing shall be considered to be the original one.

(2) If the ruling on detention referred to in Article 376 of this Code was issued, it shall be entered into the record on the main hearing as well.

6. COMMENCEMENT OF THE MAIN HEARING AND HEARING OF THE DEFENDANT

Entering of a Judge or a Panel into the Courtroom

Article 335

(1) Upon the invitation of the authorized person, all present shall rise on the occasion of a judge or a Panel entering or leaving the courtroom.

(2) The parties and other participants in the proceedings shall stand up when addressing the court, save when justifiable impediments exist or if the hearing is differently arranged.

Establishing the Identity of the Defendant and Giving Directions

Article 336

(1) When the Chair of the Panel establishes that all summoned persons have appeared at the main hearing, or when the Panel decides to hold the main hearing in the absence of some of the summoned persons or when the Panel decides to postpone a decision on such issues, it shall call on the defendant to give his/her data referred to in Article 100, paragraph 1 of this Code in order to establish his/her identity.

(2) After the identity of the defendant is established, the Chair of the Panel shall direct the witnesses and the expert witnesses to designated place for them where they shall wait until called upon for hearing. If necessary, the Chair of the Panel may keep the expert witnesses to observe the course of the main hearing.

(3) If the injured party is present and has not submitted his/her claim under property law yet, the Chair of the Panel shall instruct him/her that s/he may file such a claim in the criminal proceedings and shall instruct him/her of the rights referred to in Article 58 of this Code.

(4) If the subsidiary prosecutor or plaintiff has to be heard as a witness they shall not be removed from the session and shall be heard immediately after the defendant has been heard.

(5) The Chair of the Panel may take measures necessary to prevent communication of the witnesses, expert witnesses, accused, subsidiary prosecutor or plaintiff with each other.

Instructions on Motions for Evidentiary Actions at the Main Hearing

Article 337

(1) The Chair of the Panel shall caution the defendant to follow the course of the main hearing carefully and shall instruct him/her that s/he may present the facts and offer evidence in his/her favor, put questions to co-defendants, witnesses and expert witnesses, give objections and explanations with reference to their statements.

(2) The Chair of the Panel shall caution the parties, the injured party, the proxy of the injured party and the defence counsel that they shall communicate their proposals as to what evidence should be presented immediately, and not later than the completion of the main hearing, and shall particularly caution them of the provision of Article 399 of this Code.

Commencement of the Main Hearing and Reading of an Indictment

Article 338

(1) The main hearing shall commence by reading the indictment referred to in Article 292, paragraph 1, items 1, 2 and 3 of this Code or by reading a personal action at law.

(2) As a rule, the Prosecutor shall read the indictment and the personal action at law, but if the case concerns the subsidiary prosecutor or a personal action at law, the Chair of the Panel may instead orally present the contents of the indictment. The Prosecutor shall be allowed to add his/her statement to the presentation of the Chair of the Panel.

(3) If the injured party is present, s/he may give reasons for his/her claim under property law and if s/he is absent, his/her motion shall be read by the Chair of the Panel.

Clarification of the Indictment and Entering a Plea

Article 339

(1) After the indictment or the personal action at law is read or its contents are orally presented, the Chair of the Panel shall ask the defendant if s/he understands the charge. If the Chair of the Panel is convinced that the defendant has not understood the charge, s/he shall present its contents to him/her once again in a manner that is the easiest for the defendant to understand.

(2) After the clarification of the indictment, the Chair of the Panel shall call on the defendant to, if s/he wishes, enter his/her plea in relation to each count of the charge, to state whether s/he admits that s/he has committed the offence s/he is being charged with and whether s/he pleads guilty, and if s/he pleads guilty to provide the necessary clarifications and if s/he pleads not guilty to present his/her defence.

(3) The defendant shall not be bound to enter his/her plea or to present his/her defence.

(4) Co-defendants who have not been heard yet may not be present during the hearing of the defendant.

The Defendant Pleading Guilty

Article 340

(1) If the defendant has pleaded guilty to all counts of the indictment, the Panel may, upon having heard the defendant and after the prosecutor and the defence counsel make a statement thereon, decide not the present the evidence relating to the criminal offence covered by the indictment and to the guilt of the defendant, but solely the evidence that can affect the decision on a criminal sanction, if it finds the confession to be:

1) clear and complete and that the defendant has unequivocally explained all the determinative facts which relate to the offence and his/her guilt;

2) made voluntarily and consciously and that the defendant has fully understood all possible consequences of his/her confession, including those consequences relating to the decision on the claim under property law and costs of criminal proceedings;

3) in compliance with the evidence contained in the indictment and that there are no evidence indicating that the confession could be false.

Hearing of the Defendant and Reading of a Previous Statement

Article 341

(1) On the occasion of the hearing of the defendant at the main hearing, the provisions regulating hearing of the accused referred to in Articles 100 through 106 of this Code shall apply accordingly.

(2) If the defendant refuses to answer the questions at all or refuses to answer to particular questions, his/her previous statement or a part of it shall be read.

(3) If the defendant departs from his/her earlier statement, s/he shall be reminded of his/her earlier statement, i.e. the variations will be pointed out to him/her and s/he shall be asked to give reasons for making a different statement at the main hearing and, where appropriate, the record of his/her earlier statement shall be read to him/her.

(4) After the hearing is completed, the Chair of the Panel shall ask the defendant whether s/he has anything else to add to his/her defence.

Putting Questions to the Defendant

Article 342

(1) After the defendant has presented his/her defence, questions may be put to him/her. The Prosecutor shall put the questions first and then the defence counsel. After them the Chair of the Panel and the members of the Panel may put their questions to the defendant with a view of eliminating voids, contradictions and vagueness in his/her statement. The injured party, his/her legal representative or proxy, co-defendant and expert witness may directly put questions to the defendant subject to prior approval of the Chair of the Panel. The questions to the defendant, in the same order referred to in this paragraph may be put several times.

(2) The Chair of the Panel shall forbid a question or an answer to a question already asked if it is considered impermissible in terms of Article 101, paragraph 1 of this Code or if it is not related to the criminal proceedings case. If the Chair of the Panel forbids that a certain question be asked or an answer be given, the parties may request the Panel to decide on it.

Hearing of Co-defendants and Their Confrontation

Article 343

(1) When the hearing of the first defendant is completed, the court shall begin to hear the co-defendants in order, if any. After each hearing, the Chair of the Panel shall inform the person heard of the statements given by the previously heard co-defendants and ask him/her whether s/he has anything to comment. The co-defendant who was previously heard shall be asked by the Chair of the Panel whether s/he has any comment regarding the statement of the subsequently heard co-defendant. Each co-defendant shall be entitled to put questions to other heard co-defendants.

(2) If the statements of some of the co-defendants differ regarding the same event, the Chair of the Panel may confront the co-defendants.

Temporary Removal of the Defendant due to Refusal of a Co-defendant or Witnesses to Make Their Statements

Article 344

As an exception, the Panel may decide that the defendant be temporarily removed from the courtroom if the co-defendant or witness refuses to make a statement in his/her presence or if the circumstances indicate that they would not tell the truth in the presence of the defendant. Upon the return of the defendant to the session, the statement of the co-defendant or witness shall be read to him/her. The defendant has the right to put questions to the co-defendant or witness and the Chair of the Panel shall ask him/her whether s/he has anything to comment regarding their statements.

Consultation of the Defendant with the Defence Counsel

Article 345

In the course of the main hearing the defendant may consult with his/her defence counsel upon the approval of the President of the Panel.

7. EVIDENTIARY PROCEDURE

Presentation of Evidence

Article 346

(1) After the hearing of the defendant, the proceedings shall be continued with the presentation of evidence.

(2) The pleading process shall comprise all facts deemed by the court to be important for a fair adjudication.

(3) The evidence shall be heard in the order determined by the Chair of the Panel. As a rule, the evidence proposed by the Prosecutor shall be presented first, and thereafter the evidence proposed by the defence, and at the end the evidence ordered to be presented by the court ex officio. If the injured party who is present should testify in the capacity of a witness, his/her hearing shall be carried out immediately after the hearing of the defendant.

(4) Until the completion of the main hearing the parties and the injured party may propose that new facts be clarified and new evidence be obtained and they may repeat motions already rejected by the Chair of the Panel or the Panel.

(5) The Panel may decide to present the evidence that have not been proposed or evidence withdrawn by their proposer.

(6) If a preparatory hearing for the main hearing was held, the parties and other persons submitting proposals referred to in paragraph 3 of this Article shall act in compliance with Article 305 paragraph 3 of this Code, and if the conditions specified in that Article are not met, the Chair of the Panel shall refuse to allow presentation of the proposed evidence.

Hearing of Witnesses and Expert Witnesses

Article 347

(1) On the occasion of the hearing of witnesses and expert witnesses at the main hearing, the provisions of this Code regulating their hearing shall apply accordingly.

(2) A witness, who has not yet been heard, shall not, as a rule, be present when evidence is presented.

(3) If a witness who is being heard happens to be minor, the Panel may decide to exclude the public during his/her hearing.

(4) If a minor is present at the main hearing in the capacity of the witness or injured party, s/he shall be removed from the courtroom as soon as his/her presence is no longer needed.

Duties of a Witness

Article 348

(1) Before a witness is heard, the Chair of the Panel shall admonish him/her of the duty to present to the court everything s/he knows relating to the case and shall caution juveniles that giving false testimony constitutes a criminal offence.

(2) The Chair of the Panel may call on the witness to take an oath before the hearing if s/he has not taken an oath during the investigation, and if s/he has already taken such an oath during the investigation, the Chair of the Panel may admonish him/her about this oath.

Presentation of Findings and Opinions of Expert Witnesses and

Duties of Expert Witnesses

Article 349

(1) Before an expert witness is heard, the Chair of the Panel shall admonish him/her of the duty to give his/her expert opinion to the best of his/her knowledge and caution him/her that giving false expert opinion constitutes a criminal offence.

(2) The Chair of the Panel may call on the expert witness to take an oath before his/her expert evaluation in compliance with Article 140 paragraph 2 of this Code.

(3) The expert witness shall present orally at the main hearing his/her expert opinion. If the exert witness has put his/her expert opinion in writing before the main hearing, s/he may be allowed to read it aloud, in which case his/her written opinion shall be attached to the record.

(4) In lieu of summoning the expert of the institution or state body assigned to provide expert witness evaluations, the Panel may decide that opinion shall only be read if, because of the nature of expert evaluation a more complete elaboration of their written opinion is not likely to be expected. If it is deemed necessary in consideration of other evidence that have been presented and objections of the parties in terms of Article 358 of this Code, the Panel may decide to directly hear experts who gave their expert evaluation.

Putting Questions to Witnesses and Expert Witnesses

Article 350

(1) After the witness or expert witness has been heard, the parties, Chair of the Panel and members of the Panel may put questions to him/her directly, in the order referred to in Article 342, paragraph 1 of this Code. The injured party, legal representative, proxy and expert witnesses may ask questions directly, subject to the approval of the Chair of the Panel.

(2) The Chair of the Panel shall forbid a question or reject the answer to the question that has already been asked if the question is impermissible in terms of Article 101 of this Code, or if it does not relate to the case. If the Chair of the Panel forbids a certain question or an answer, the parties may request a decision on it to be taken by the Panel.

Alteration of Testimonies of Witnesses and Expert Witnesses and

Presentation of Previously Given Testimonies

Article 351

Where on the occasion of a previous hearing the witness or expert witness stated the facts which s/he is not able to recall, or if s/he changes his/her previous testimony, the previous testimony shall be presented to him/her or the variations shall be indicated to him/her and they shall be asked to explain why s/he is not making the same testimony as previously and, where appropriate, his/her previous testimony or part of it shall be read.

Releasing, Temporary Removing and Calling on of Witnesses and Expert Witnesses

Article 352

(1) Witnesses or expert witnesses who have been heard shall remain in the courtroom unless the Chair of the Panel, upon hearing the parties, releases them or order that they be temporarily removed from the courtroom.

(2) Upon a motion of the parties or ex officio, the Chair of the Panel may order that the witnesses or expert witnesses who have been heard be removed from the courtroom and be called on later to be heard again in the presence or absence of other witnesses or expert witnesses.

Hearing of Witnesses and Expert Witnesses outside the Courtroom

Article 353

(1) If it becomes known at the main hearing that a witness or expert witness is unable to appear before the court or that his/her appearance involves considerable difficulties, the Panel may, if it deems his/her statement to be important, order that s/he be heard by the Chair of the Panel or judge-Panel member out-of-the main hearing, or that the hearing be conducted by an investigative judge of the court within whose jurisdictional territory the witness or expert witness resides.

(2) If it is necessary to carry out a crime scene investigation or reconstruction out-of-the-main hearing, it shall be carried out by the Chair of the Panel or judge-Panel member.

(3) The parties, defence counsel and the injured party shall always be informed when and where the witness shall be heard and the crime scene investigation or reconstruction be performed, and they shall be cautioned of their right to attend these actions. If the defendant is in custody, the Panel shall decide whether his/her presence at these actions is needed. When the parties and the injured party are present at the performance of these actions, they shall be entitled to rights provided for in Article 282, paragraph 7 of this Code.

Evidentiary Actions Taken by the Investigative Judge Outside the Main Hearing

Article 354

(1) In the course of the main hearing and after the hearing of the parties, the Panel may decide to request from an investigative judge to take specific actions necessary to clarify certain facts, if taking of these actions at the main hearing would be connected with a considerable delay in the proceedings or with other considerable difficulties.

(2) When the investigative judge acts upon a request referred to in paragraph 1 of this Article, the provisions related to the taking of evidentiary actions shall apply.

Reading of a Record of Evidentiary Actions Taken Outside the Main Hearing and Examination of Documents and Objects Which Serve as Evidence

Article 355

(1) The records of an out-of-the-main hearing crime scene investigation, of a search of a dwelling and a person and of seizure of objects, as well as documents, books, files and other documents serving as evidence shall be read at the main hearing in view of establishing their contents, and if so decided by the Panel, their contents may be orally summarized. If possible, documents of evidentiary value shall be submitted in their original form.

(2) Objects which may serve to clarify the case during the main hearing shall be shown to the defendant and where appropriate to the witnesses and expert witnesses. If identification of objects is to be carried out at the main hearing, it shall be proceeded pursuant to Article 115 of this Code.

Exceptions to the Immediate Presentation of Evidence

Article 356

(1) With the exception of cases specifically provided for in this Code, records containing the testimonies of witnesses, co-defendants or already convicted participants in the criminal offence as well as records and other documents regarding expert witness opinions may be read, if the Panel so decides, in the following cases:

1) if the heard person has deceased, developed a disease of the mind or can not be found or if his/her appearance before the court is impossible or significantly complicated due to old age, illness or for other important reasons;

2) if the witnesses or expert witnesses refuse to testify at the main hearing without legal grounds;

3) if the parties consent to reading of the record about statements of already heard witnesses or the record of opinion of the expert witness;

4) if the accused avails of the right to remain silent during the main hearing, upon the Panel's decision, the record of the statement of the accused given in the investigation may be read and used as evidence at the main hearing only if the accused was cautioned in compliance with Article 100 paragraph 2 of this Code on the occasion of his/her hearing in the investigation, but the judgment may not be based solely on this evidence.

(2) As an exception, after having heard the parties who do not consent thereto, the Panel may decide that the record of the hearing of a witness or expert witness during a previous main hearing be read, although the term of time referred to in Article 329, paragraph 4 of this Code has expired, provided that the Panel finds that in consideration of other presented evidence it is necessary to learn of the contents of the record or written opinion. After the record or written opinion have been read and objections of the parties heard, the Panel shall, taking into account other presented evidence, decide whether to examine the witness or expert witness directly.

(3) In cases referred to in paragraph 1 of this Article, an audio or audiovisual recording of the hearing shall be reproduced if the hearing was recorded in compliance with Article 212 of this Code.

(4) Records of the previous hearing given by persons granted exemption from the duty to testify referred to in Article 109 paragraph 1 of this Code may not be read if those persons have not been summoned to the main hearing at all or if, before the first hearing at the main hearing, they have availed themselves of their right to refuse to testify. After the completion of evidentiary procedure, the Panel shall decide that such records be excluded from the files and be kept separately in compliance with Article 211 of this Code. The Panel shall proceed in the same way with reference to other records and information referred to in Article 211 of this Code if a decision on their exclusion has not been previously passed. An interlocutory appeal may be lodged against the ruling of the exclusion of the records and information. After the ruling becomes legally-binding, the excluded records and information shall be sealed in a separate cover and handed over to the investigative judge to keep them apart from other files and they may not be examined or used in the course of the proceedings. The exclusion of records and information must be performed before the files are submitted to the higher court in relation to an appeal lodged against the judgment.

(5) The reasons for reading the record and other documents shall be stated in the records of the main hearing, and on the occasion of reading, it shall be stated whether the witness or expert witness has taken an oath.

Reading a Record and Reproducing a Tape Recorded Hearing

Article 357

In the cases referred to in Articles 341 and 351 of this Code as well as in other cases when necessary, the Panel may decide that besides reading the record at the main hearing, a tape recorded hearing be reproduced as well if the hearing was recorded in compliance with Article 212 of this Code.

Objections of the Parties and of the Injured Party

Article 358

After having heard the testimony of each of the witnesses or expert witnesses and after having read each of the records or other documents**,** or reproduced an audio or audiovisual recording, the Chair of the Panel shall ask the parties and the injured party if they have any comments to make.

Motions to Supplement the Evidence

Article 359

(1) After the evidentiary procedure is completed, the Chair of the Panel shall ask the parties and the injured party whether they have any motions to supplement the evidentiary procedure.

(2) If nobody has additional evidentiary motions or if the motion is rejected and the Panel finds that the subject-matter has been sufficiently clarified, the Chair of the Panel shall announce that the evidentiary procedure is completed.

Amendments of the Charge

Article 360

(1) If the evidence presented at the main hearing indicate that the factual situation as described in the indictment has changed, the Prosecutor may orally amend the indictment at the main hearing or may propose a recess of the main hearing for the purpose of the preparation of a new indictment.

(2) In case new charges are pressed, the court shall ensure that the accused and defence counsel have enough time to prepare the defence, and if necessary, upon their request, in the case of amended charge, as well.

(3) If the Panel allows a recess of the main hearing for the purpose of the preparation of a new indictment, it shall set the term within which the Prosecutor must bring an indictment. A copy of the new indictment shall be served on the defendant, but the confirmation of the indictment is not performed in this case. If the Prosecutor fails to bring the indictment within the term that is set, the Panel shall continue to conduct the main hearing on the strength of the previous indictment.

8. CLOSING ARGUMENTS

Sequence of Closing Arguments

Article 361

After the completed evidentiary procedure, the Chair of the Panel shall call on the parties, the injured party and defence counsel to present their closing arguments. The Prosecutor presents his/her closing arguments first, followed by the injured party and his/her proxy if s/he has one, defence counsel and eventually the defendant.

Closing Arguments of the Prosecutor

Article 362

(1) In the closing arguments, the Prosecutor shall present his/her assessment of the evidence presented at the main hearing and thereafter shall present his/her conclusions about the facts relevant to the decision and present and substantiate a motion as to culpability of the defendant, the provisions of the Criminal Code and other statutes that should be applied, as well as the aggravating and mitigating circumstances which should be taken into account on the occasion of fixing a sentence.

(2) The Prosecutor shall propose the type and severity of sentence in his/her closing arguments, and may also propose a judicial admonition or suspended sentence or security measures in compliance with the Criminal Code.

Closing Arguments of the Injured Party

Article 363

The injured party or his/her proxy may in his/her closing arguments make a statement of reasons to support a claim under property law and point out the evidence regarding the culpability of the defendant.

Closing Arguments of the Defence

Article 364

(1) In their closing arguments, the defence counsel or the defendant personally shall present the defence and they may comment the allegations made by the Prosecutor, injured party and proxy of the injured party.

(2) Following the defence counsel, the defendant shall be entitled to present his/her closing argument himself/herself, to state whether s/he concurs with the defence presented by his/her defence counsel as well as to supplement it.

(3) The Prosecutor, injured party and proxy of the injured party shall be entitled to respond to the defence while the defence counsel or the defendant shall be entitled to comment on these responses.

(4) The defendant shall always have the last word.

Closing Arguments and Procedural Discipline

Article 365

(1) There shall be no time limits of the closing arguments of the parties, the defence counsel, injured party and proxy of the injured party**.**

(2) The Chair of the Panel may, upon a previously issued warning, interrupt a person who in his/her closing argument offends public order and morality, or offends another person, repeats himself/herself, or elaborates on obviously irrelevant matters. The record of the main hearing shall specify the interruption of the closing argument and the reasons for it.

(3) When more than one person represent the prosecution or more than one defence counsel represent the defence, closing arguments may not be repeated. The representative of the prosecution or defence shall by mutual agreement select the issues about which each shall speak.

(4) After all the closing arguments are completed the Chair of the Panel shall ask whether anyone wishes to make any further statement.

Closing of the Main Hearing

Article 366

(1) If, after having heard the closing arguments from the parties, defence counsel, injured party and proxy of the injured party, the Panel finds that no additional evidence need to be presented, the Chair of the Panel shall declare that the main hearing is closed.

(2) If the Panel decides that additional evidence are to be presented, the Panel shall continue the evidentiary procedure and after it is completed it shall again proceed pursuant to the provision of Article 361 of this Code. The Prosecutor, the injured party, proxy of the injured party, the defence counsel and the defendant may only supplement their closing arguments with regard to the evidence subsequently presented.

(3) After having declared the main hearing closed, the Panel shall retire for deliberations and voting for the purpose of reaching a judgment.

9. DISMISSAL OF THE INDICTMENT

Article 367

In the course of the main hearing or after the completion of the main hearing, the Panel shall dismiss the indictment by a ruling if it establishes that:

1) the court lacks subject-matter jurisdiction,

2) the proceedings were conducted without the charge of the competent Prosecutor, or the approval of the competent state body or that the competent state body has withdrawn the approval given,

3) other circumstances exist that temporarily prevent prosecution.

THE JUDGMENT

1. PRONOUNCEMENT OF THE JUDGMENT

Pronouncement and Publication of the Judgment

Article 368

(1) Unless the court decides in the course of deliberations that the main hearing should be reopened in order to supplement the proceedings or to clarify specific issues, it shall pronounce a judgment.

(2) The judgment shall be pronounced and announced on behalf of Montenegro.

Identity of the Judgment and Charges

Article 369

(1) The judgment shall refer only to the defendant and to the offence the defendant is charged with as specified in the indictment that has been brought or amended at the main hearing.

(2) The court shall not be bound by the Prosecutor's motions with reference to legal qualification of the offence.

Evidence which Serve as Grounds for the Judgment

Article 370

(1) The court shall base its decision only on facts and evidence which were directly presented at the main hearing or which are contained in the records or other materials and which were read and appropriately presented at the main hearing in compliance with this Code.

(2) The judgment may not be based exclusively on the witness testimony that is obtained in the manner provided for in Article 262 of this Code and read in compliance with Article 356 paragraph 1, item 1 of this Code.

(3) The court shall conscientiously evaluate every item of evidence individually and its correspondence to the rest of evidence and, pursuant to such assessment, it shall reach a conclusion on whether a certain fact has been proved.

2. TYPES OF JUDGMENTS

Judgments on the Merits and Procedural Judgments

Article 371

(1) The charge shall be rejected or the defendant acquitted of the charge or declared guilty by means of the judgment.

(2) If the charge contains more than one criminal offence, the judgment shall specify whether and for which offence the charge is rejected or whether and for which offence the defendant is acquitted or whether and for which offence the defendant is declared guilty.

Judgment Rejecting the Charge

Article 372

The court shall pronounce a judgment rejecting the charge if:

1) the Prosecutor withdrew the charge in the course of the main hearing,

2) the defendant has already been convicted or acquitted for the same offence by a legally-binding judgment, or the charge was rejected by a legally-binding judgment or if the proceedings against him/her was discontinued by a legally-binding ruling;

3) the defendant has been exempted from prosecution by an amnesty or pardon, or if prosecution is not possible due to statute of limitations, or if there are other circumstances that permanently exclude prosecution.

Judgment Acquitting the Defendant

Article 373

The court shall pronounce a judgment of acquittal if:

1) the offence for which the defendant is charged with is not a criminal offence according to law,

2) it has not been proven that the defendant committed the offence s/he is charged with.

Judgment Declaring the Defendant Guilty

Article 374

(1) In a judgment declaring the defendant guilty the court shall specify:

1) the offence for which the defendant is declared guilty, along with a citation of the facts and circumstances that constitute the elements of the criminal offence and those on which the application of a particular provision of the Criminal Code depends,

2) the statutory title of the criminal offence and the provisions of the Criminal Code that were applied,

3) the sentence to which the defendant is convicted to or released from sentence under the provisions of the Criminal Code,

4) a decision on a suspended sentence,

5) a decision on security measures and seizure of material benefit,

6) a decision on inclusion of period of detention into sentence or already served sentence, as well as any other deprivation of liberty in connection with the criminal offence,

7) a decision on the costs of the criminal proceedings and on the claim under property law.

(2) If the defendant has been fined, the judgment shall specify the term for payment and the manner to substitute the fine.

3. PUBLICATION OF JUDGMENT

Time, Place and Manner of Publication of the Judgment

Article 375

(1) After the court pronounces a judgment, the Chair of the Panel shall announce it immediately. If the court is unable to pronounce a judgment on the same day the main hearing has been completed, it shall postpone the announcement of the judgment at the longest for three days and shall set the time and place of the announcement. If the judgment is not announced within the term of three days from the completion of the main hearing, the Chair of the Panel shall inform the President of the Court and state reasons thereof immediately after the term has expired.

(2) The Chair of the Panel shall, in the presence of the parties, their legal representatives, proxies, and defence counsel, read out the enacting terms of judgment in open court and briefly state the reasons for such a judgment.

(3) The judgment shall be announced even if the party, proxy, legal representative or defence counsel is absent. If the defendant is absent, the Panel may order that s/he be orally informed of the judgment by the Chair of the Panel or that the judgment only be served on him/her.

(4) If the main hearing was held behind closed doors, the enacting terms of judgment shall be read out in a public session. The Panel shall decide on whether the publication of reasons of the judgment shall be closed to the public.

(5) All those present shall stand to hear the reading of the enacting terms of judgment.

Detention after Pronouncement of the Judgment

Article 376

(1) When the court pronounces a judgment of imprisonment for a term of less than five years, the Panel shall order detention to the defendant who is at liberty if the reasons referred to in Article 175, paragraph 1, items 1 and 3 of this Code exist, and it shall do the same for the defendant who was imposed an imprisonment of five years or a more serious one by a court of first instance if grounds exist referred to in Article 175, paragraph 1, item 4. The Panel shall terminate detention of the defendant who is in custody if the reasons for which detention was ordered do not exist any longer.

(2) The Panel shall always terminate detention and order that the defendant be released if s/he is acquitted, or if the charge is rejected, or if s/he is declared guilty but remitted of penalty or if s/he is convicted only to a fine, or community service or judicial admonition or suspended sentence is imposed or s/he has already served a sentence due to inclusion of period of detention other deprivation of liberty into sentence or the charge has been dismissed in compliance with Article 367 of this Code, save in the case of lack of the subject-matter jurisdiction.

(3) After the announcement of the judgment and until it becomes legally-binding, the detention shall be ordered or terminated pursuant to the provision of paragraph 1 of this Article. The decision thereon shall be made by the Panel of the court of first instance referred to in Article 24, paragraph 7 of this Code.

(4) In the cases referred to in paragraphs 1 and 3 of this Article, before issuing a ruling by which a detention is ordered or terminated, the opinion of the Public Prosecutor shall be obtained if the proceedings are conducted upon his/her charges.

(5) If the defendant is already in custody and the Panel establishes that the grounds for which detention was ordered still exist, or that the grounds referred to in paragraph 1 of this Article exist, it shall issue a separate ruling on extension of detention. The Panel shall issue a separate ruling when it is necessary to order or terminate detention, as well. An appeal against the ruling shall not suspend its enforcement, and the court shall decide on the appeal within a term of three days.

(6) Detention ordered or extended pursuant to the paragraphs 1 through 5 of this Article may last until a judgment becomes legally-binding, but at the longest until the term of the sentence imposed by the judgment in the first instance expires.

(7) Upon a request of the defendant, who is in custody after being convicted to imprisonment, the Chair of the Panel may issue a ruling on his/her transfer to the penitentiary institution even before the judgment becomes legally-binding.

Instruction on the Right to Appeal and Other Cautions

Article 377

(1) After the judgment is announced, the Chair of the Panel shall instruct the parties of their right to appeal and of their right to respond to an appeal.

(2) If the defendant has been given a suspended sentence, the Chair of the Panel shall caution him/her of the meaning of a suspended sentence and on the conditions s/he has to adhere to.

(3) The Chair of the Panel shall caution the parties that they have to report to the court any change of address until the proceedings are completed with legally-binding force.

4. WRITTEN PRODUCTION AND DELIVERY OF THE JUDGMENT

Term for Producing the Judgment and Entities to Whom the Judgment is Delivered

Article 378

(1) The announced judgment shall be produced in writing and dispatched within a month as of its publication, and in complicated matters and as an exception, within two months. If the judgment is not produced within these terms, the Chair of the Panel shall inform in writing the President of the Court as to why this has not been done. The President of the Court shall take measures in order to have a judgment produced as soon as possible.

(2) The judgment shall be signed by the Chair of the Panel and the court reporter.

(3) An authenticated transcript of the judgment shall be delivered to the Prosecutor and as provided in Article 195 of this Code to the defendant and defence counsel. If the defendant is in custody, authenticated transcripts of the judgment shall be sent within terms specified in paragraph 1 of this Article.

(4) An instruction regarding the right to appeal shall be sent to the defendant, plaintiff and subsidiary prosecutor.

(5) The court shall send an authenticated transcript of the judgment along with an instruction on the right to appeal to the injured party if s/he is entitled to appeal, to the person who was imposed a security measure of seizure of object under the judgment and to the legal person against which the seizure of material benefit was imposed. A transcript of the judgment shall be delivered to the injured party who is not entitled to appeal in the case referred to in Article 60, paragraph 2 of this Code with an instruction on his/her right to petition for return to the *status quo ante*. The legally-binding judgment shall be delivered to the injured party if so requested by him/her.

(6) If, by application of the provisions for fixing a cumulative sentence for concurrent criminal offences, the court imposes a sentence taking into account the judgments passed by other courts, an authenticated transcript of the legally-binding judgment shall be sent to these courts.

Contents of the Judgment

Article 379

(1) A written copy of the judgment shall correspond fully to the judgment which was announced. The judgment shall be composed of the introduction, enacting terms and the reasoning of judgment.

(2) The introduction of the judgment shall contain: the coat of arms of Montenegro, the title of the court, the statement that the judgment is pronounced on behalf of Montenegro, the forename and family name of the Chair and the members of the Panel and of the court reporter, the forename and family name of the defendant, the criminal offence s/he is charged with, whether s/he was present at the main hearing, the date of the main hearing, whether the main hearing was open to the public, the forename and family name of the Prosecutor, defence counsel, proxy and legal representative present at the main hearing and the date on which the pronounced judgment was announced.

(3) The enacting terms of judgment shall contain the data of the defendant referred to in Article 100, paragraph 1 of this Code and the decision declaring the defendant guilty of the offence s/he is charged with or acquitting him/her of the charge, or rejecting the charge against him/her.

(4) If the defendant is declared guilty, the enacting terms of judgment shall also contain the necessary data referred to in Article 374 of this Code, and if s/he is acquitted or the charge is rejected, it shall contain a description of the offence s/he was charged with and the decision on the costs of the criminal proceedings, as well as the decision on the claim under property law if such a claim was submitted.

(5) In the case of concurrence of criminal offences, the court shall indicate in the enacting terms of judgment the sentences imposed for each individual offence and afterwards the cumulative sentence imposed for all the concurrent offences.

(6) In the reasoning of judgment the court shall present the reasons for each count of the judgment individually.

(7) The court shall clearly and thoroughly indicate which facts and for what reasons are considered to be proven or not proven, especially assessing the plausibility of contradictory evidence, the reasons for which the motions of the parties were rejected, the reasons for its decision not to hear directly a witness or expert witness but to read the written statement or expert witness opinion in compliance with Article 356 of this Code, the reasons for its decision on legal issues, especially on the occasion of ascertaining whether the criminal offence was committed and whether the defendant was criminally responsible and in applying specific provisions of the law to the defendant and to his/her act, and the reasons for referring the injured party to the civil proceedings.

(8) If the defendant has been convicted to a sentence, the reasoning of judgment shall indicate the circumstances the court considered on the occasion of fixing a sentence. The court shall especially justify the reasons for its decision to impose a more severe sentence than the one laid down in case of multi recidivism in terms of the Criminal Code, or for the decision that the punishment be mitigated or the defendant be remitted of penalty or to impose a suspended sentence, or for the decision that a security measure or seizure of material benefit be imposed or parole be revoked.

(9) If the defendant is acquitted, the reasoning of judgment shall particularly indicate the reason for such a decision referred to in Article 373 of this Code.

(10) In the reasoning of judgment rejecting the charge and in the statement of reasons for the ruling dismissing the charge, the court shall not assess the *res principale*, but shall restrict itself solely to the grounds for rejecting the charge or dismissing the charge.

Corrections in the Judgment

Article 380

(1) Errors in names and numbers and other obvious errors in writing and arithmetic, formal defects and discrepancies between the written copy of the judgment and the original judgment shall be corrected through a special ruling by the Chair of the Panel, upon a request of the parties or ex officio.

(2) If there is a discrepancy between the written copy of the judgment and the original of the judgment with reference to data referred to in Article 374, paragraph 1, items 1 through 5 and item 7 of this Code, the ruling on the correction shall be delivered to the persons referred to in Article 378 of this Code. In that case, the term allowed for appeal shall commence from the date of delivery of the ruling against which no interlocutory appeal is allowed.

G. PROCEEDINGS UPON LEGAL REMEDIES

Title XXIV

ORDINARY LEGAL REMEDIES

1. APPEAL AGAINST THE JUDGMENT OF A COURT OF FIRST INSTANCE

1) Right to Appeal

Right to Appeal and Term for Appeal

Article 381

(1) An appeal against the first instance judgment may be lodged within 15 days from the date when the transcript of the judgment was delivered.

(2) An appeal lodged in due time shall suspend enforcement of the judgment.

Entities of the Appeal

Article 382

(1) An appeal may be lodged by the parties, the defence counsel, the legal representative of the defendant and the injured party.

(2) The spouse of the defendant, direct relative in blood, adoptant parent, adopted child, brother, sister, foster parent and his/her common law spouse may lodge an appeal to the benefit of the defendant. In this case, the term allowed for the appeal shall run from the day when the defendant or his/her defence counsel was delivered a transcript of the judgment.

(3) The Public Prosecutor may lodge an appeal to the benefit or to the prejudice of the defendant.

(4) The injured party may contest a judgment only regarding the court ruling on the costs of the criminal proceedings, save when the Public Prosecutor assumed the prosecution from the subsidiary prosecutor in compliance with Article 62, paragraph 2 of this Code or if the judgment acquitting the defendant is passed, when the injured party may lodge an appeal for all the reasons referred to in Article 385 of this Code.

(5) An appeal may also be lodged by a person who was imposed a security measure of seizure of object or from whom the material benefit obtained by a criminal offence was seized.

(6) The defence counsel and persons referred to in paragraph 2 of this Article may lodge an appeal without the special authorization of the defendant, but not against his/her will, with the exception of when the longest imprisonment sentence is imposed on the defendant.

Waiving and Abandoning an Appeal

Article 383

(1) The defendant may waive the right to appeal only after the judgment was delivered to him/her. The defendant may waive his/her right to appeal even before that when s/he is entitled to lodge an appeal due to all the grounds referred to in Article 385 of this Code, if the Prosecutor and the injured party have waived their right to appeal, save when the defendant must serve an imprisonment sentence under the judgment. The defendant may abandon an appeal already lodged until the decision of the court of second instance is passed. The defendant may also abandon an appeal lodged by his/her defence counsel or the persons referred to in Article 382, paragraph 2 of this Code.

(2) The Prosecutor and the injured party may waive the right to appeal from the moment the judgment is announced until the expiry of the term for lodging an appeal and they may abandon an appeal that has already been lodged until the decision of the court of second instance is passed.

(3) A waiver and abandonment of an appeal may not be revoked.

(4) The defendant may not waive his/her right to appeal or abandon an appeal that has already been lodged if the longest imprisonment sentence was pronounced on him/her.

(5) If the defendant, prosecutor and an injured party entitled to lodge an appeal for reasons also that go beyond the costs have waived their right of appeal before a written judgment has been made, the reasoning of judgment shall not contain all the data referred to in Article 379 paragraphs 6, 7 and 8 of this Code, but only a short statement of reasons which have led the court to impose a certain criminal sanction, i.e., type and measure of sentence.

2) Contents of an Appeal

Contents of an Appeal and Proceeding upon an Incomplete Appeal

Article 384

(1) An appeal shall contain:

1) the indication of the judgment the appeal has been lodged against,

2) the ground for contesting the judgment referred to in Article 385 of this Code,

3) the reasons for the appeal,

4) the motion to fully or partially overrule the contested judgment or to reverse it,

5) the signature of the appellant.

(2) If the defendant or other person referred to in Article 382, paragraph 2 of this Code lodges an appeal and the defendant does not have a defence counsel or if the appeal is lodged by the injured party, subsidiary prosecutor and plaintiff without a proxy, or the proxy is not an attorney-at-law, and if the appeal is not composed pursuant to the provisions of paragraph 1 of this Article, the court of first instance shall call on the appellant to supplement the appeal within a specified term with a written petition or orally in the record at that court. If the appellant fails to comply with such a summons, the court shall dismiss the appeal if it does not contain the signature of the appellant, and if the appeal does not contain the indication of the judgment the appeal is being lodged against, it shall be dismissed only if it cannot be established to which judgment it relates.

(3) If the appeal was lodged by the Public Prosecutor, defence counsel or the injured party, subsidiary prosecutor or a plaintiff who has a attorney-at-law as his/her proxy and the appeal does not contain the data referred to in paragraph 1 of this Article, the court shall dismiss the appeal.

(4) New facts and new evidence may be presented in the appeal, but appellant shall cite the reasons for failing to present them earlier. The defendant who has admitted the merits of charge in whole in compliance with Article 340 of this Code may present in the appeal only the new facts and evidence that are relevant to the decision on the punishment. When pointing to new facts, the appellant shall present evidence supporting these facts, and when proposing new evidence, s/he shall state the facts to be proven by that evidence.

3) Grounds for Contesting the Judgment

Article 385

A judgment may be contested on the grounds of:

1) substantive violations of the criminal proceedings provisions,

2) violations of the Criminal Code,

3) the factual situation being erroneously or incompletely established,

4) the decisions on criminal sanctions, seizure of material benefit, costs of criminal proceedings, claims under property law.

Substantive Violations of the Criminal Proceedings

Article 386

(1) The following constitute a substantive violation of the provisions of criminal proceedings:

1) if the court was improperly composed or if a judge who did not participate in the main hearing or who was recused from the proceedings by a legally-binding judgment participated in passing of the judgment,

2) if the main hearing was held in the absence of a person whose presence at the main hearing was mandatory under this Code,

3) if the court violated the regulations of the criminal proceedings with reference to whether a charge of an authorized prosecutor or the approval of competent authority existed,

4) if the judgment was passed by the court which could not have adjudicated the matter in question due to the lack of subject-matter jurisdiction,

5) if the charge has been exceeded in terms of Article 369, paragraph 1 of this Code,

6) if the judgment violates the provision of Article 400 of this Code,

7) if the judgment is grounded on evidence on which according to this Code it cannot be grounded, unless it is obvious, in consideration of other evidence, that the same judgment could have been passed without that evidence as well,

8) if the enacting terms of judgment is incomprehensible, internally contradictory or contradicted to the grounds for the judgment, if the judgment failed to state any reasons or failed to state reasons relating to the determinative facts or if these reasons are entirely unclear or contradictory to a considerable degree or if there is a significant factual contradiction between what has been stated in the statement of reasons of the judgment on the contents of certain documents or records on statements made in the proceedings and the documents themselves.

(2) There is also a substantive violation of the provisions of the criminal proceedings if the court, in the preparation of the main hearing or in the course of the main hearing or on the occasion of passing the decision fails to apply or incorrectly applies any of the provisions of this Code, provided that this affected the lawful and proper passing of the judgment.

Violations of the Criminal Code

Article 387

The following points shall constitute a violation of the Criminal Code:

1) as to whether the act for which the defendant is being prosecuted constitutes a criminal offence,

2) as to whether the circumstances exist that preclude prosecution, and especially as to whether the statute of limitation on criminal prosecution applies, or as to whether prosecution is precluded because of amnesty or pardon, or as to whether the cause has already been decided by a legally-binding judgment,

3) if a law that could not be applied has been applied to the criminal offence that is the subject-matter of the charge,

4) if the decision pronouncing the criminal sanction, seizure of material benefit or revocation of parole, has exceeded the authorization the court has according to the law,

5) if provisions have been violated concerning the inclusion of period of detention into sentence, imprisonment served and any other deprivation of liberty in connection with the criminal offence.

Erroneously or Incompletely Established Factual Situation

Article 388

(1) The judgment may be contested on the grounds of erroneous or incomplete establishment of factual situation when the court has established a determinative fact erroneously or has failed to establish such a fact at all.

(2) It shall be taken that the factual situation has been incompletely established when new facts or new evidence so indicate.

Contesting a Judgment by Reason of the Decision on Criminal Sanctions, Seizure of Material Benefit, Costs of the Criminal Proceedings and the Claim under Property Law

Article 389

(1) The judgment or the ruling on judicial admonition may be contested by reason of the decision on punishment, suspended sentence or judicial admonition when the court, in passing this decision, does not exceed its statutory authorization referred to in Article 387, item 4 of this Code, but has improperly fixed the sentence in consideration of the circumstances that had a bearing on greater or lesser punishment, or when the court has applied or failed to apply provisions relating to the mitigation of punishment, release from punishment, suspended sentence, revocation of a parole or to a judicial admonition, although legal conditions for it existed.

(2) A decision on a security measure or seizure of material benefit may be contested even though there is no violation of law referred to in Article 387, item 4 of this Code, if the court passed this decision incorrectly or did not impose a security measure or the seizure of material benefit although legal conditions for it existed.

(3) A decision on costs of the proceedings may be contested when it is passed incorrectly or in breach of statutory provisions.

(4) A decision on the claim under property law may be contested if it has been passed contrary to law.

4) Appellate Proceedings

Lodging an Appeal

Article 390

(1) An appeal shall be lodged with the court which passed the first instance decision in a sufficient number of copies for the court, the adverse party and the defence counsel.

(2) A lapsed and impermissible appeal in terms of Articles 404 and 405 of this Code shall be dismissed by a ruling of the Chair of the first instance Panel.

Response to an Appeal

Article 391

If the appeal has not been dismissed, the court of first instance shall deliver a copy of the appeal to the adverse party in compliance with Articles 195 and 196 of this Code which may, within a term of eight days from receiving the copy submit a response to the court. The appeal and the response, together with all the files, shall be delivered by the court of first instance to the court of second instance.

Proceeding Before a Court of Second Instance

Article 392

(1) When the files and an appeal reach the court of second instance, the judge reporter shall be designated immediately in the laid down manner. If a criminal offence that is prosecuted on the grounds of the charge brought by the Public Prosecutor is involved, the judge rapporteur shall deliver the files to the Public Prosecutor, who shall review it, submit his/her motion or declare that s/he shall submit the motion at the Panel session and return the files to the court without delay.

(2) When the Public Prosecutor returns the file, the Chair of the Panel shall schedule the session of the Panel and notify the Public Prosecutor, accused and his/her defence counsel thereon.

(3) The judge rapporteur may, where appropriate, obtain a report on the violations of the criminal proceedings provisions from the court of first instance, and may also, through the same court or through the investigative judge of the court in whose jurisdictional territory the action is to be taken, or in other way, check on the allegations stated in the appeal with reference to new evidence and new facts or obtain necessary reports or files from other authorities or organizations.

(4) If the judge rapporteur establishes that the files contain records and information referred to in Article 211 of this Code, s/he shall deliver the files to the court of first instance before the session of the second instance Panel is held so that the Chair of the first instance Panel may issue a ruling on their exclusion from the files, and when the ruling becomes legally-binding s/he shall hand them over to the investigative judge in a sealed cover for the purpose of keeping them apart from other files.

Session of the Panel

Article 393

(1) The defendant and his/her defence counsel, subsidiary prosecutor or plaintiff who, within the term for appeal or for a reply to an appeal, requested that they be notified of the session or proposed that a hearing be held before the court of second instance in compliance with Article 395 of this Code shall be notified of the Panel session. The Chair of the Panel or the Panel may decide that the parties be notified of the Panel session, even if they have not so requested, or that a party who has not requested so, be notified of the Panel session if their presence would be beneficial to the clarification of the case.

(2) If the defendant who is in custody or serving an imprisonment sentence is notified of the Panel session, the Chair of the Panel shall order that his/her presence be ensured.

(3) The session of the Panel shall begin with the report of the judge rapporteur on the facts of the case. The Panel may request from the parties present at the session necessary explanations as to allegations of the appeal. The parties may propose that certain files be read in order to supplement the report and may, subject to the approval of the Chair of the Panel, give necessary explanations for their positions stated in the appeal or the response to the appeal, without repeating contents of the report.

(4) The session may be held in the absence of the parties who were duly summoned. If the defendant did not report to the court changes of his/her temporary residence or address, the Panel session may be held although s/he was not informed of the session.

(5) The court may exclude or restrict the public from the session at which the parties are present under the conditions set forth in Articles 314 and 315 of this Code**.**

(6) The record of the Panel session shall be attached to the files of the first and court of second instance.

(7) The rulings referred to in Articles 404 and 405 of this Code may be issued even without the notification of the parties of the Panel session.

Deciding at the Panel Session or at the Hearing

Article 394

(1) The court of second instance shall pass a decision either at the session of the Panel or pursuant to a held hearing.

(2) The court of second instance shall decide at the session of the Panel whether to hold a hearing, unless otherwise provided by this Code.

Second Instance Hearing and Summoning of Certain Persons

Article 395

(1) A hearing before a court of second instance shall be held only if it is necessary to present new evidence or to repeat previously presented evidence due to erroneous or incomplete establishment of the factual situation, and if there are justifiable reasons not to refer the case to the court of first instance for a repeated main hearing.

(2) The following persons shall be summoned for the hearing before a court of second instance: the defendant and his/her defence counsel, the Prosecutor, the injured party, legal representatives and proxies of the injured party, of the subsidiary prosecutor and plaintiff, as well as those witnesses and expert witnesses the court decides to hear.

(3) If the defendant is in custody, the Chair of the court of second instance Panel shall take necessary measures to ensure the defendant is present at the hearing.

(4) If the subsidiary prosecutor or the plaintiff fails to appear at the hearing before the court of second instance, the provision of Article 323, paragraph 2 of this Code shall not apply.

Sequence of Actions at the Hearing before a Court of Second Instance

Article 396

(1) A hearing before a court of second instance shall commence with the report of the judge rapporteur, who shall present the facts of the case without expressing his/her opinion on the merits of the appeal.

(2) Upon a motion or ex officio, the judgment or part of the decision which the appeal pertains to shall be read out and, where appropriate, the record of the main hearing shall be read out as well.

(3) After that, the appellant shall be called on to substantiate his/her appeal and then the adverse party shall be called on to reply to him/her. The defendant and his/her defence counsel shall always have the last word.

(4) The parties may present new evidence and facts at the hearing.

(5) Prosecutors may, in consideration of the result of the hearing, withdraw the charge completely or partially or amend the charge to the benefit of the defendant. If the Public Prosecutor completely withdraws the charge, the injured party shall be entitled to the rights referred to in Article 60 of this Code.

Relevant Application of the Provisions Governing Main Hearings to Proceedings before Courts of Second Instance

Article 397

Unless otherwise provided for by the provisions of Articles 395 and 396 of this Code, the provisions regulating the main hearing before a court of first instance shall apply accordingly to the hearing before a court of second instance.

5) Scope of Appellate Review of the First Instance Decision

Scope of Reviewing the Judgment

Article 398

(1) A court of second instance shall review the part of the judgment contested by the appeal, but it shall always review ex officio the following points:

1) as to whether there has been a violation of the provisions of the criminal proceedings referred to in Article 386, paragraph 1 of this Code,

2) as to whether the Criminal Code has been violated to the detriment of the defendant in terms of Article 387 of this Code.

(2) If an appeal lodged to the benefit of the defendant does not contain the grounds for contesting a judgment referred to in Article 385 of this Code and the statement of reasons for the appeal, the court of second instance shall limit its review to the violations referred to in paragraph 1, items 1 and 2 of this Article, and to the review of the decision on punishment, security measures and the seizure of material benefit referred to in Article 389 of this Code.

Limitation on the Right to Invoke an Appellate Reason

Article 399

Reasons provided for in Article 388, paragraph 2 of this Code can be invoked as grounds for an appeal only if the appellant demonstrates in the appeal that at the time of the main hearing s/he did not know of the evidence on which his/her appeal is based or that s/he did propose that certain evidence be presented immediately upon learning of it at the main hearing but his/her proposal was rejected by the Chair of the Panel.

Prohibition to Reverse the Judgment to the Prejudice of the Defendant

Article 400

If an appeal has been lodged only in favour of the defendant, the judgment may not be modified to the detriment of the defendant with reference to a legal qualification of the criminal offence and the criminal sanction.

Extended Effect of an Appeal

Article 401

An appeal lodged in favour of the defendant due to the factual situation being erroneously or incompletely established or due to the violation of the Criminal Code shall contain an appeal against the decision concerning the criminal sanction and seizure of material benefit referred to in Article 389 of this Code.

Benefit of Coherence (*Beneficium Cohaesionis)*

Article 402

If the court of second instance, in relation to an appeal ascertains that the grounds on which the decision was passed in favour of the defendant, are also of benefit to any of the co-defendants who did not lodge an appeal or did not lodge an appeal along the same lines, it shall proceed ex officio as if such an appeal has been lodged.

6) Decisions of a Court of Second Instance on the Appeal

Second Instance Decisions

Article 403

(1) Courts of second instance may, at the session of the Panel or pursuant to a held hearing:

1) dismiss an appeal as lapsed or inadmissible;

2) reject an appeal as groundless and confirm the court of first instance judgment;

3) overrule the court of first instance judgment and remand the case to the court of first instance for retrial;

4) reverse the first instance judgment.

(2) The court of second instance shall decide by a single decision on all the appeals that have been lodged against the same judgment.

Dismissal of a Lapsed Appeal

Article 404

A ruling shall be passed to dismiss the appeal for being untimely if it is found that it was lodged after the lawful term.

Dismissal of an Inadmissible Appeal

Article 405

A ruling shall be passed to dismiss the appeal as inadmissible if it is found that the appeal was lodged by a person not authorized to lodge an appeal or a person who waived the right to appeal, or if it is found that the appeal was abandoned or if after the abandonment the appeal was lodged again or the appeal is not allowed according to law.

Rejection of an Appeal

Article 406

When it establishes that the grounds for contesting the judgment and that the violations of law referred to in Article 398**,** paragraph 1 of this Code do not exist, the court of second instance shall pass a decision rejecting the appeal as groundless and confirm the court of first instance judgment.

Overruling the First Instance Judgment and Remanding the Case for Retrial

Article 407

(1) The court of second instance shall, when upholding an appeal or ex officio, overrule the first instance judgment by a ruling and remand the case for retrial if it establishes a substantial violation of provisions of the criminal proceedings, save in cases referred to in Article 409, paragraph 1 of this Code or if it considers that, for reasons of the factual situation being erroneously or incompletely established, a new main hearing should be held before the court of first instance.

(2) The court of second instance may order that a new main hearing before the court of first instance be held before a completely changed Panel.

(3) The court of second instance may also partially overrule the first instance judgment if certain parts of the judgment can be set aside without causing a detriment to a proper adjudication.

(4) If the defendant is in custody, the court of second instance shall review whether the reasons for detention still exist and issue a ruling on the extension or termination of detention. This ruling shall not be subject to an appeal.

(5) When a first instance judgment was overruled twice, the court of second instance shall pass a judgment on its own, at a Panel session or after the held hearing.

Other Decisions of the Court of Second Instance

Article 408

(1) If the court of second instance establishes that some of the reasons referred to in Article 367 of this Code exist, it shall overrule the first instance judgment by a ruling and dismiss the charge.

(2) If, on the occasion of reviewing an appeal, the court of second instance establishes that it has subject-matter jurisdiction over the case in the first instance, it shall overrule the first instance judgment, remand the case to the Panel of that court and notify the court of first instance thereof.

(3) If an appeal has been lodged only in favour of the defendant, and if it is established that a higher court has jurisdiction over the case in the first instance, the first instance judgment may not be overruled for this reason only.

Reversing the First Instance Judgment

Article 409

(1) The court of second instance shall, when upholding an appeal or ex officio, reverse the first instance judgment by a judgment if it establishes that the determinative facts have been correctly ascertained in the first instance judgment, and that in consideration of the factual situation established, a different decision must be passed when the law is properly applied, and, according to the state of the facts, also in the case of violations referred to in Article 386, paragraph 1, items 3, 5 and 6 of this Code.

(2) If a court of second instance establishes that legal conditions for imposing a judicial admonition exist, it shall reverse the first instance judgment by a ruling and impose a judicial admonition.

(3) If, due to reversing of the first instance judgment, conditions are met for ordering or termination of detention pursuant to Article 175, paragraph 1 item 4 and Article 376 paragraph 2 of this Code, the court of second instance shall issue a separate ruling thereon against which an appeal shall not be allowed.

Statement of Reasons of a Second Instance Decision

Article 410

(1) In the reasoning of judgment or in the statement of reasons of the ruling, the court of second instance shall assess the allegations in the appeal and cite the violations of law which it took into account.

(2) When the first instance judgment is overruled due to substantial violations of provisions of the criminal proceedings, the reasoning of judgment shall indicate which provisions have been violated and what these violations referred to in Article 386 of this Code consist of.

(3) When the first instance judgment is overruled due to the factual situation being erroneously or incompletely established, the failures in establishing the factual situation shall be stated or why new evidence and facts are important and of influence for passing a proper decision, and omissions of the parties that influenced the court of first instance’s decision may also be indicated.

Returning the Files to the Court of First Instance

Article 411

(1) The court of second instance shall return all files to the court of first instance, together with sufficient number of authenticated transcripts of its decision required for delivery to the parties and other interested persons.

(2) The court of second instance shall deliver its decision together with the files to the court of first instance within a term of four months at the latest, and if the defendant is in custody, at the latest within a term of three months from the day it received the files from that court.

Repeated Main Hearing before the Court of First Instance

Article 412

(1) The court of first instance to which the case was remanded for trial shall proceed on the basis of the previous indictment. If the first instance judgment was partially overruled, the court of

first instance shall proceed on the basis of the part of the indictment to which the overruled part of the judgment relates.

(2) At the repeated main hearing the parties may present new facts and new evidence.

(3) The court of first instance shall take all procedural actions and debate on all disputed issues which were indicated by the court of second instance in its decision.

(4) On the occasion of passing a new decision, the court of first instance shall be bound by the prohibition referred to in Article 400 of this Code.

(5) If the defendant is in custody, the Panel of the court of first instance shall proceed pursuant to Article 179, paragraph 2 of this Code.

2. APPEAL AGAINST THE JUDGMENT OF A COURT OF SECOND INSTANCE

Appeal Lodged with a Court of Third Instance

Article 413

(1) An appeal may be lodged against the judgment of a court of second instance with a court of third instance only in the following cases:

1) if the court of second instance has imposed the longest sentence of imprisonment or if it has confirmed the first instance judgment that imposed such a sentence,

2) if the court of second instance, upon conducting the main hearing, has established the factual situation differently from the court of first instance and has based its judgment on the newly established factual situation,

3) if the court of second instance has reversed the judgment of acquittal passed by the court of first instance and passed a judgment declaring the defendant guilty.

(2) A third instance court shall decide on the appeal lodged against the second instance judgment pursuant to the provisions of this Code regulating the second instance proceedings.

(3) Provisions of Article 402 of this Code shall apply to the co-defendant who was not entitled to lodge an appeal or did not lodge an appeal against the second instance judgment.

3. AN APPEAL AGAINST THE RULING

Admissibility of the Appeal against a Ruling

Article 414

(1) Parties and persons whose rights have been violated may lodge an appeal against a ruling of the investigative judge and against other rulings of the court of first instance, unless the appeal is explicitly declared to be inadmissible by this Code.

(2) Unless otherwise provided by this Code, rulings issued by the Panel prior to and in the course of the investigation shall not be subject to an appeal.

(3) The investigative judge shall decide on appeals against the rulings of the Public Prosecutor, unless otherwise provided by this Code.

(4) Rulings issued for the purpose of preparing the main hearing and the judgment may be contested solely in an appeal against the judgment.

(5) Rulings issued by the Supreme Court shall not be subject to an appeal.

General Term for Lodging an Appeal

Article 415

(1) An appeal shall be lodged with the court that issued the ruling.

(2) Unless otherwise provided by this Code, an appeal against the ruling shall be lodged within three days from the day the ruling was delivered.

Suspending Enforcement of a Ruling

Article 416

Unless otherwise provided by this Code, an appeal lodged against a ruling shall suspend enforcement of the ruling in question.

Deciding on an Appeal against a Ruling

Article 417

(1) Unless otherwise provided by this Code, the court of second instance shall decide at a session of the Panel on an appeal against a ruling of the court of first instance.

(2) Unless otherwise provided by this Code, an appeal against the ruling of an investigative judge shall be decided by the Panel referred to in Article 24, paragraph 7 of this Code.

(3) When deciding on an appeal, the court may issue a ruling dismissing the appeal as lapsed or inadmissible or rejecting the appeal as groundless or may uphold the appeal and reverse or overrule the ruling and, where appropriate, remand the case for retrial.

(4) When reviewing an appeal, the court shall ex officio pay attention as to whether the court of first instance had subject-matter jurisdiction for issuing the ruling or whether the ruling was issued by an authorized authority.

Relevant Application of Other Provisions

Article 418

(1) The provisions of Articles 382, 384, 390 and 392, paragraphs 1, 3 and 4 and Articles 400 and 402 of this Code shall apply accordingly to the proceedings on an appeal against a ruling.

(2) If an appeal is lodged against the ruling referred to in Article 471 of this Code, the Public Prosecutor shall be notified of the Panel' session while other persons shall be notified under the conditions referred to in Article 393 of this Code.

(3) Unless otherwise provided by this Code, the court shall deliver its decision on the appeal together with the files to the court that issued the ruling at the latest within one month from the day it received the files from that court.

Application of the Provisions of this Code

Article 419

Unless otherwise provided by this Code, the provisions of Articles 414 and 418 of this Code shall apply to all other rulings issued pursuant to this Code.

Title XXV

EXTRAORDINARY LEGAL REMEDIES

1. CRIMINAL REHEARING

General Provision

Article 420

Criminal proceedings that were completed with a legally-binding ruling or legally-binding judgment may be repeated upon the request of an authorized person only in cases and under the conditions provided for by this Code.

Reversing a Judgment without a Rehearing

(Quasi Criminal Rehearing)

Article 421

(1) A legally-binding judgment may be reversed without a criminal rehearing, if:

1) in two or more judgments against the same convicted person, several legally-binding sentences were imposed, without having applied the provisions on fixing a cumulative sentence for concurrent criminal offences;

2) on the occasion of imposing a cumulative sentence, by means of applying the provisions on concurrent criminal offences from the Criminal Code, the sentence already covered in the sentence imposed on basis of provisions on concurrent criminal offences in a previous judgment was considered as determined;

3) the legally-binding judgment imposing a cumulative sentence for several criminal offences could partly not be enforced due to amnesty, pardon or for other reasons.

(2) In case referred to in paragraph 1, item 1 of this Article, the court shall reverse the previous judgments by means of a new judgment as regards the decision on the sentence and it shall impose a cumulative sentence. For the passing of a new judgment, a court of first instance that has adjudicated in the matter in which the most severe type of sentence was imposed shall have jurisdiction, and in congenial sentences, the court that has imposed the highest sentence, and if the sentences are equal, the court which was the last to impose a sentence.

(3) In case referred to in paragraph 1, item 2 of this Article, a court shall reverse its judgment if it has wrongfully considered the sentence already included in a previous judgment on the occasion of imposing a cumulative sentence.

(4) In case referred to in paragraph 1, item 3 of this Article, a court that has adjudicated in the first instance shall reverse its previous judgment regarding the decision on the sentence and impose a new sentence or it shall establish how much of the sentence imposed by means of a previous judgment is to be enforced.

(5) A new judgment shall be passed by the court sitting in a Panel, at the motion of the Public Prosecutor or of the convicted person, after the adverse party has been heard.

(6) In case referred to in paragraph 1, items 1 and 2 of this Article, if judgments of other courts were considered on the occasion of imposing a sentence, an authenticated transcript of the new legally-binding judgment shall be delivered to those courts as well.

Resuming Proceedings

Article 422

(1) If the indictment was dismissed due to the lack of an authorized Prosecutor’s charge or lack of a required approval of a state body or some other circumstances existed which temporarily precluded the prosecution, criminal proceedings shall be resumed as soon as the reasons for passing the afore-mentioned decision cease to exist.

(2) If the indictment was dismissed by a legally-binding ruling in compliance with Article 367, paragraph 1, item 1 of this Code because the court lacked subject-matter jurisdiction, the proceedings shall be resumed before the court having subject-matter jurisdiction, upon the charge of an authorized prosecutor.

Rehearing Completed by a Ruling

Article 423

(1) If, besides the cases referred to in Article 422 of this Code, the criminal proceedings was irrevocably discontinued during the investigation or prior to the commencement of the main hearing, upon the charge of the authorized Prosecutor, the criminal rehearing may be granted in compliance with Article 428, paragraph 3 of this Code if new evidence is submitted on the merit of which the court may be convinced that the conditions are met for the criminal rehearing.

(2) The criminal proceedings irrevocably discontinued prior to the commencement of the main hearing may be reopened when the Public Prosecutor has abandoned prosecution, and the injured party has not assumed prosecution, if it is proven that the abandonment resulted from the criminal offence of abuse of official position by the Public Prosecutor. With regards to proving the criminal offence abuse of official position by the Public Prosecutor, provision of Article 424, paragraph 2 of this Code shall apply.

(3) If the proceedings were discontinued because the subsidiary prosecutor has abandoned prosecution, or it is considered pursuant to this Code that the subsidiary prosecutor has abandoned prosecution, the subsidiary prosecutor cannot request the rehearing.

Criminal Rehearing in Favour of the Accused

Article 424

(1) The criminal proceedings completed by a legally-binding judgment may be reopened in favour of the accused if:

1) the judgment is based on a false document or false testimony of a witness, expert witness or interpreter,

2) the judgment resulted from a criminal offence committed by the judge or person who took evidentiary actions,

3) if new facts are presented or new evidence submitted which on their own or in relation to previous evidence appear likely to bring about the acquittal of the person who was convicted or to his/her conviction on the basis of a less severe criminal law,

4) if a person was tried more than once for the same criminal offence or if more than one person were convicted of the criminal offence which could have been committed only by one person or by some of them,

5) if, in the case of a conviction for a continuing criminal offence or any other offence which according to law includes several acts of the same kind or several acts of a different kind, new facts are presented or new evidence submitted indicating that the convicted person did not commit an act covered by the adjudicated offence, provided that these facts are likely to lead to the application of a less severe law or are likely to affect substantially the fixing of punishment,

6) if the decision of the European Court of Human Rights or another court established under a ratified international treaty laid down that human rights and fundamental freedoms have been violated in the course of the criminal proceedings and that the judgment is based on such violations, provided that the rehearing can remedy such violation.

(2) In the cases referred to in paragraph 1, items 1 and 2 of this Article, it must be proven by a legally-binding judgment that the abovementioned persons were declared guilty of the criminal offences related to the aforementioned actions. If the proceedings against these persons cannot be conducted due to their death or circumstances barring their prosecution, the facts referred to in paragraph 1, items 1 and 2 of this Article may be established via other evidence as well.

Criminal Rehearing to the Detriment of the Accused

Article 425

(1) The criminal proceedings completed by a legally-binding judgment may be reopened to the detriment of the accused if:

1) it is proven that the judgment resulted from the criminal offence committed by the judge, or person who took evidentiary actions,

2) the judgment dismissing the charge was passed because the Public Prosecutor abandoned prosecution, and it is proven that this abandonment resulted from the criminal offence of abuse of an official position by the Public Prosecutor,

3) new facts are presented or new evidence submitted, which alone, or in relation to the previous evidence, can bring about the conviction of the acquitted person or the punishment of the convicted person under more severe criminal law,

(2) Criminal rehearing to the detriment of the acquitted or convicted person shall not be allowed if more than six months have passed from the day when the Prosecutor learned the new facts or received the new evidence.

Persons Entitled to Submit a Request for Criminal Rehearing

Article 426

(1) A request for criminal rehearing may be submitted by the parties and defence counsel and, after the death of the convicted person, in his favour, by the Public Prosecutor and the persons referred to in Article 382, paragraph 2 of this Code.

(2) A request for criminal rehearing to the benefit of the accused may also be submitted after the convicted person has served an imprisonment sentence, notwithstanding the statute of limitations, amnesty or pardon.

(3) If the court which would have jurisdiction to decide on the criminal rehearing referred to in Article 427, paragraph 1 of this Code learns that reason for the criminal rehearing exists, it shall notify thereon the convicted person or person authorized to submit a request in favor of the convicted person.

Contents of the Request and the Court Having Jurisdiction to Decide upon the Request

Article 427

(1) The Panel referred to in Article 24, paragraph 7 of this Code of the court that tried the case in the first instance in the previous proceedings shall decide upon the request for criminal rehearing.

(2) The request shall state the legal grounds on which the rehearing of the trial is sought and what evidence substantiate the facts on which the request is founded. If the request fails to contain these data, the court shall call upon the requester to supplement his request within a specified term.

(3) If possible, a judge who participated in passing the judgment in the previous proceedings shall not sit as a member of the Panel that decides upon the request.

Deciding on the Request

Article 428

(1) The court shall dismiss a request by a ruling if it determines on the basis of the request itself and the file of the previous proceedings that the request was submitted by an unauthorized person, or that there are no legal grounds for rehearing, or that the facts and evidence on which the request is founded have already been presented in a previous request for rehearing which was rejected by a legally-binding court ruling, or that the facts and evidence presented are manifestly inadequate to allow for the rehearing, or that the requester did not proceed in compliance with Article 427, paragraph 2 of this Code.

(2) If the court does not dismiss the request, it shall serve a transcript of the request to the adverse party who is entitled to reply to the request within a term of eight days. When the court

receives the reply the request or when the term for the reply expires, the Chair of the Panel shall order that facts be clarified and evidence be obtained that were called upon in the request and the reply thereto.

(3) After the clarification of facts and obtaining the evidence referred to in paragraph 2 of this Article, the court shall decide immediately by a ruling upon the request for criminal rehearing pursuant to Article 423 of this Code. In other cases, with regard to the criminal offences that are prosecuted ex officio, the Chair of the Panel shall order that the files be delivered to the Public Prosecutor, who shall return the files with his opinion without delay or within a term of one month at the latest.

Permission for Rehearing

Article 429

(1) When the Public Prosecutor returns the files, the court shall, unless it orders that the clarification of facts and the obtaining of evidence referred to in Article 428, paragraph 2 of this Code be supplemented, either uphold the request for criminal rehearing or reject the request.

(2) If the court establishes that the reasons for which it allowed the rehearing also exist for some of co-accused who did not submit the request for rehearing, it shall proceed ex officio as if such a request exists.

(3) In the ruling granting the criminal rehearing, the court shall decide that a new main hearing be scheduled immediately, or that the case be referred back for investigation, or it shall order that an investigation be conducted if there was no investigation before.

(4) If the request for criminal rehearing was filed on behalf of a convicted person, and the court deems in consideration of the evidence submitted that in the reopened proceedings the convicted person may receive such a punishment that would call for his/her release once time already served had been included in the sentence, or that s/he might be acquitted of the charge, or that the charge might be rejected, it shall order that enforcement of the judgment be postponed or terminated.

(5) When a ruling granting criminal rehearing becomes legally-binding, the enforcement of sentence shall be discontinued, but the court shall, upon the motion of the Public Prosecutor, order detention if the conditions referred to in Article 175 of this Code exist.

Rules of the Reopened Proceedings

Article 430

(1) The new proceedings conducted on the strength of a ruling granting the criminal rehearing shall be conducted in compliance with the same provisions of the law that have been applied in the previously completed legally-binding procedure. In the course of the new proceedings, the court shall not be bound by rulings issued in the previous proceedings.

(2) If the new proceedings are discontinued before the beginning of the main hearing, the court shall overrule the previous judgment by a ruling discontinuing the proceedings.

(3) When the court passes a judgment in the new procedure, it shall decide that the previous judgment is partially or entirely revoked or that it remains in force. When fixing the sentence imposed by the new judgment, the court shall credit the sentence served against it, and if the rehearing was permitted only for some of the offences for which the defendant was convicted, the court shall impose a new cumulative sentence pursuant to the provisions of the Criminal Code.

(4) If the request for the rehearing was submitted in favour of the convicted person, in the new proceedings, the court shall be bound by the prohibition referred to in Article 400 of this Code.

Rehearing in Cases when Trial was Conducted in the Absence of the Accused

Article 431

(1) The criminal proceedings within which a person has been convicted while absent, pursuant to Article 324, paragraphs 2 and 3 of this Code, shall be reopened notwithstanding the requirements provided for by Article 424 of this Code if:

1) the convicted person and his/her defence counsel submit a request for the rehearing within six months from the day the conditions are met for trial in the presence of the convicted person,

2) a foreign state approves the issuance of the request provided the proceedings is reopened.

(2) Upon the expiry of the term referred to in paragraph 1, item 1 of this Article, the rehearing shall be granted solely under the conditions referred to in Article 424 and 426 of this Code.

(3) Within the ruling granting criminal rehearing in cases referred to in paragraph 1 of this Article, the court shall order that the indictment be served to the convicted person in case it has not been served before, or the court may order the case to be remanded for further investigation, or to conduct investigation in case it has not been conducted.

(4) On the occasion of passing a new judgment, in cases referred to in paragraph 1 of this Article, the court shall be bound to proceed pursuant to the prohibition referred to in Article 400 of this Code.

Relevant Application

Article 432

The provisions of this Code referring to the criminal rehearing shall apply accordingly also in the case where a request is submitted to alter a legally-binding judgment based on a law or other regulation which has ceased to be valid on the basis of a decision of the Constitutional Court of Montenegro (hereinafter referred to as the: Constitutional Court).

2. EXTRAORDINARY MITIGATION OF PUNISHMENT

Permissibility of Request

Article 433

Mitigation of a legally-binding punishment which has not been enforced or served, shall be permitted when, after the judgment becomes legally-binding, circumstances appear which did not exist at the time the judgment was pronounced or did exist but were unknown to the court, provided that they would manifestly lead to a less severe sentence.

Persons Authorized to Submit the Request

Article 434

(1) A request for extraordinary mitigation of punishment may be submitted by a Public Prosecutor, convicted person and his/her defence counsel, as well as the persons referred to in Article 382 paragraph 2 of this Code.

(2) A request for extraordinary mitigation of punishment shall not suspend enforcement of punishment.

Deciding on a Request

Article 435

(1) The court designated by law shall decide on a request for extraordinary mitigation of punishment.

(2) A request for extraordinary mitigation of punishment shall be submitted to the court which passed the first instance judgment.

(3) The Chair of the Panel of the court of first instance shall dismiss by a ruling a request submitted by an unauthorized person.

(4) The court of first instance shall ascertain whether grounds for mitigation exist and, after having obtained the opinion of the Public Prosecutor if the proceedings were conducted upon his charge, it shall deliver the files along with its substantiated motion to the court having jurisdiction to decide upon the request for extraordinary mitigation of punishment.

(5) If a criminal offence for which the proceedings were conducted upon the charge of the Public Prosecutor is involved, the court that decides on a request for extraordinary mitigation of punishment, before issuing a ruling, shall deliver the files to the Public Prosecutor which represents prosecution before that court. The Public Prosecutor may submit a written motion to the court.

(6) The court shall reject a request by a ruling if it establishes that legal conditions for extraordinary mitigation of punishment are not met. If the request is upheld, the court shall pass a judgment reversing the legally-binding judgment regarding the decision on punishment.

Revocation of Judgment

Article 436

The court shall revoke a judgment upholding the request for extraordinary mitigation of punishment if it is proved in compliance with Article 424, paragraph 2 of this Code, that the judgment was based on a false document or the false testimony of a witness or expert witness.

3. REQUEST FOR JUDICIAL REVIEW

Reasons for Submitting a Request for Judicial Review

Article 437

(1) The Supreme Public Prosecutor’s Office may submit a request for judicial review against legally-binding judgments and against the judicial proceedings which preceded such legally-binding decisions, if law has been violated.

(2) The Supreme Public Prosecutor’s Office may submit the request referred to in paragraph 1 of this Article if the European Court of Human Rights or another court established under a ratified international treaty has found in its decision that human rights and fundamental freedoms have been violated in the course of the criminal proceedings and that the judgment was based on such violations, and the court of appropriate jurisdiction did not allow criminal rehearing, or if the violation committed in the judgment can be removed through the overruling of the decision or its reversal without rehearing.

(3) The Supreme Public Prosecutor’s Office may also submit the request referred to in paragraph 1 of this Article if a judgment is based on the law or other regulation which has ceased to be valid on the basis of a decision of the Constitutional Court, if the court did not allow criminal rehearing, of if the violation committed in the judgment can be removed by overruling the decision or through its reversal without rehearing.

Motion of the Accused for the Submission of the Request for Judicial Review

Article 438

(1) The accused who is convicted to an effective jail sentence of one year or more or to juvenile custody and the defence counsel of such an accused may, within a month of receiving the legally-binding judgment, request from the Supreme Public Prosecutor’s Office, in a written and

substantiated motion, to file a request for judicial review against the legally-binding judgment if they deem that it has violated the criminal law to the detriment of the accused or that in the criminal proceedings which preceded the passing of a legally-binding judgment a right of the accused to defence was violated and this violation affected the passing of a lawful and proper judgment.

(2) The motion referred on paragraph 1 of this Article may not be submitted by the accused who has not lodged an appeal against the judgment, unless the court of second instance has imposed imprisonment of a year or a more severe sentence, in lieu of exemption from a penalty, judicial admonition, suspended sentence or a fine, or juvenile custody in lieu of a corrective measure.

(3) The Supreme Public Prosecutor's Office shall dismiss by a ruling the motion referred to in paragraph 1 of this Article if s/he finds there is no reason to file a request for judicial review.

(4) The accused and their defence counsel may lodge an appeal with the Supreme Court against the ruling referred to in paragraph 3 of this Article within eight days from the receipt of the ruling.

(5) The appeal referred to in paragraph 4 of this Article shall be decided by a three-judge Panel of the Supreme Court which shall either reject the appeal as groundless and confirm the ruling referred to in paragraph 3 of this Article 3 or shall uphold the appeal if it establishes that the obvious reasons invoked by the accused or his/her defence counsel are likely to exist.

(6) If the Panel of the Supreme Court referred to in paragraph 5 of this Article upholds the appeal referred to in paragraph 4 of this Article, it shall proceed as if a request for judicial review has been submitted, in which case the Supreme Public Prosecutor's Office shall have both the right and the duty to participate in the proceedings as if a request for judicial review has been submitted.

The Court of Appropriate Jurisdiction for Decision

Article 439

(1) The Supreme Court shall decide upon the request for judicial review.

(2) The request for judicial review shall not be allowed against a judgment passed by the Supreme Court in relation to a request for judicial review.

Deciding upon the Request for Judicial Review

Article 440

(1) The Supreme Court shall decide on a request for judicial review at its session.

(2) Prior to presenting a case for decision, the judge rapporteur shall deliver a copy of the request for judicial review to the accused and his defence counsel, and where appropriate, s/he may obtain additional information on the violations of law specified in the request.

(3) The Public Prosecutor shall be notified of the session.

(4) The Supreme Court may, in consideration of the contents of the request for judicial review, order the enforcement of a legally-binding judgment to be postponed or discontinued.

(5) The Supreme Court shall deliver its decision on the request for judicial review along with the files to a court of first instance or a court of second instance within four months from the day the request was submitted at the latest.

Limitation of Deciding, Privilege of Cohesion and Ban on *reformatio in peius*

Article 441

(1) On the occasion of deciding on a request for judicial review, the Supreme Court shall limit itself only to reviewing those violations of the law that the Public Prosecutor invokes in his/her request.

(2) If the Supreme Court finds that the grounds on which it passed a decision in favor of the convicted person also exist for any co-defendants regarding whom a request for judicial review was not submitted, it shall proceed ex officio as if such a request was submitted.

(3) On the occasion of passing a decision, the court shall be bound by the prohibition referred to in Article 400 of this Code.

Rejection of the Request

Article 442

The Supreme Court shall pass a judgment rejecting as groundless the request for judicial review if it establishes that the violation of law which the Public Prosecutor invokes in his/her request does not exist.

Upholding the Request for Judicial Review

Article 443

(1) If the Supreme Court establishes that a request for judicial review is well-grounded, it shall pass a judgment whereby it shall, according to the nature of the violation, either reverse the legally-binding judgment or overrule in whole or in part both the decisions of the court of first instance and the court of second instance or only the decision of the court of second instance and remand the case for a new decision or trial to the court of first instance or the court of second instance, or it shall confine itself only to establish the violation of law.

(2) If a request for judicial review was submitted to the detriment of the accused and the Supreme Court finds that it was well -grounded, it shall only establish that the violation of law exists, without affecting the legally-binding judgment.

(3) If, pursuant to the provisions of this Code, the court of second instance was not authorized to remove the violation of law made by the first instance decision or in the court proceedings that preceded it, and the Supreme Court on the occasion of deciding upon the request for judicial review which was submitted in favor of the accused finds that the request was well-grounded and that, in order to remove the violation of law which occurred, the first instance decision should be overruled or reversed, it shall overrule or reverse the decision in the second instance as well, although the latter did not violate the law.

Criminal Rehearing by Virtue of a Request for Judicial Review

Article 444

If, on the occasion of deciding on a request for judicial review, submitted in favor of the accused, a grounded suspicion arises as to the accurateness of the determinative facts established in the decision against which the request was submitted, so that it is not possible to decide upon the request for judicial review, the Supreme Court shall pass a judgment deciding upon the request for judicial review overrule such a decision and order that a new main hearing be held before the same court or another court of first instance having subject-matter jurisdiction.

Retrial

Article 445

(1) If the legally-binding judgment is overruled and the case is remanded for retrial, the previous indictment or the part of it which relates to the overruled part of the judgment shall be taken as the basis for trial.

(2) The court shall take all procedural actions and discuss all issues pointed out by the Supreme Court in the decision upon the request for judicial review.

(3) Parties may present new facts and submit new evidence before the court of first instance or the court of second instance.

(4) On the occasion of passing a new decision, the court shall be bound by the prohibition provided for in Article 400 of this Code.

(5) If, in addition to the decision of the court of first instance, the decision of the court of second instance was also overruled, the case shall be delivered to the court of first instance through the court of second instance.

D. SPECIAL PROVISIONS ON SUMMARY PROCEEDINGS, PROCEEDINGS FOR SANCTIONING WITHOUT THE MAIN HEARING, AND PROCEEDINGS FOR THE IMPOSITION OF JUDICIAL ADMONITION

Title XXVI

SUMMARY PROCEEDINGS

Cases where Summary Proceedings is Conducted

Article 446

In the proceedings for criminal offences punishable by a fine or incarceration for a term not exceeding five years as a principal punishment, the provisions of Articles 447 through 460 of this Code shall apply, and other provisions of this Code shall apply accordingly to procedural matters that are not specially regulated by these provisions.

Motions to Indict in the Summary Proceedings

Article 447

(1) The criminal proceedings shall be instituted on the basis of the bill of indictment of the Public Prosecutor, a subsidiary Prosecutor or upon a personal action at law.

(2) A bill of indictment and a personal action at law shall be submitted in the number of copies as needed for the court and for the accused.

Detention in the Summary Proceedings

Article 448

(1) For the purpose of a free conduct of the criminal proceedings detention may be ordered against a person against whom there is a well-founded suspicion of having committed a criminal offence if:

1) s/he is in hiding or his/her identity cannot be established or if there are other circumstances manifestly indicating a risk of flight,

2) if special circumstances indicate that the accused shall complete the attempted criminal offence or perpetrate the criminal offence he threatens to commit.

(2) Before a bill of indictment is submitted, detention may last only for the time necessary to conduct evidentiary actions, but not longer than eight days. The Panel referred to in Article 24, paragraph 7 of this Code shall decide on an appeal against a ruling on detention.

(3) From the moment a bill of indictment is submitted until the pronouncement of the first instance judgment, the provisions of Article 179 of this Code shall apply accordingly in respect of

ordering, extending and terminating detention, whereat the Panel shall review every month whether the grounds for detention exist.

(4) When the accused is in custody, the court shall proceed with special urgency.

Assuming Prosecution

Article 449

(1) If a criminal charge was submitted by an injured party and the Public Prosecutor fails to submit a bill of indictment within a term of one month after the receipt of the charge, or to notify the injured party of the dismissal of the criminal charge, the injured party shall be entitled to assume prosecution in the capacity of a prosecutor by submitting a bill of indictment to the court.

(2) In the case referred to in paragraph 1 of this Article, if the injured party abandons prosecution, or it is considered according to law that the injured party has abandoned prosecution, the Public Prosecutor may, irrespective of the conditions provided for the rehearing, re-initiate the proceedings, if the charge of the injured party has not been dismissed.

Contents of the Motion to Indict

Article 450

(1) A bill of indictment or a personal action at law shall contain: the forename and family name of the accused along with his/her personal data if known, a brief description of the criminal offence, an indication of the court before which the main hearing is to be held, a motion on the evidence to be presented at the main hearing and the motion that the accused be declared guilty and convicted according to law.

(2) A bill of indictment may contain a motion to order detention against the accused. If the accused is in custody or was in custody while evidentiary actions were taken, the bill of indictment shall specify for how long s/he was in custody.

(3) When the Public Prosecutor finds that the main hearing is not required s/he may propose in the bill of indictment that a ruling on sanctioning, or on pronouncing a criminal sanction be issued in compliance with Articles 461 and 462 of this Code.

Preliminary Examination of the Bill of Indictment

Article 451

(1) When the court receives a bill of indictment or a personal action at law, the judge shall previously examine whether the court has jurisdiction to try the case and whether there are grounds for the dismissal of the bill of indictment or the personal action at law.

(2) If the judge does not issue a ruling on the dismissal of the bill of indictment or private action at law pursuant to previous examination referred to in paragraph 1 of this Article, s/he shall deliver the charge to the accused and immediately schedule the main hearing. If the main hearing is not scheduled within a term of one month from the day of receipt of the bill of indictment or the personal action at law, the judge shall inform the President of the Court on the reasons thereof, who will take measures for the main hearing to be held as soon as possible.

Assignment of Case to a Court of Appropriate Jurisdiction

Article 452

(1) If the judge establishes that another court has jurisdiction over the case, s/he shall declare him/herself lacking competence and refer the case to that court after the ruling becomes legally-binding, and if s/he establishes that a higher court has jurisdiction over the case, s/he shall refer the case to the Public Prosecutor representing prosecution before the higher court for further

action. If the Public Prosecutor considers that the court which referred the case to him/her has jurisdiction to try the case, s/he shall request a decision of the Panel of the court before which he represents prosecution.

(2) After the main hearing is scheduled, the court may not declare its lack of territorial jurisdiction ex officio.

Rejection or Dismissal of the Bill of Indictment

Article 453

(1) The judge shall issue a ruling rejecting the bill of indictment or the personal action at law if s/he finds that the reasons referred to in Article 294, paragraph 1, items 1 and 2 of this Code exist, and if evidentiary actions have been taken, s/he shall do the same for the reason referred to in paragraph 1, item 3 of that Article.

(2) The judge shall issue a ruling dismissing the bill of indictment or a personal action at law if s/he finds that reasons referred to in Article 294, paragraph 2 of this Code exist.

(3) A ruling with a concise statement of reasons shall be delivered to the Public Prosecutor, subsidiary prosecutor, plaintiff and the accused.

Summons to the Main Hearing

Article 454

(1) The judge shall summon to the main hearing the accused and his/her defence counsel, the Prosecutor, the injured party and their legal representatives and proxies, witnesses, expert witnesses and interpreters, and where appropriate s/he shall obtain objects that should serve as evidence at the main hearing.

(2) The summons served on the accused shall specify that s/he may appear at the main hearing with evidence in his/her favour, or that s/he should inform the court in a timely manner on the evidence so that it can be obtained for the main hearing. The accused shall be cautioned in the summons that the main hearing will be held even in his/her absence if conditions therefor referred to in Article 457 of this Code exist. Along with the summons the accused shall also be served the bill of indictment or the personal action at law, and s/he shall be instructed that s/he is entitled to retain a defence counsel, but in the case of a non-mandatory defence, the main hearing need not be postponed due to the defence counsel's failure to appear at the main hearing or due to the fact that a defence counsel has been engaged at the main hearing only.

(3) A summons shall be served on the accused in such a way as to leave him/her enough time between the serving of the summons and the day of the main hearing for the preparation of defence, but not less than eight days. Upon the accused's consent, this term may be shortened.

Place of Holding the Main Hearing

Article 455

The main hearing shall be held in the seat of the court. In urgent cases, particularly when a crime scene investigation should be carried out, or when it is in the interest of facilitating the conduct of evidentiary procedure, the main hearing may, with approval of the President of the Court, also be held at the place of the commission of the criminal offence, or at the place where the crime scene investigation should be carried out if these places fall within the territory of the court in question.

Objection Regarding Territorial Jurisdiction

Article 456

(1) Objection regarding territorial jurisdiction may be raised until the commencement of the main hearing at the latest.

(2) The judge who has taken evidentiary actions shall not be exempted from participation in the main hearing.

Failure of the Accused to Appear

Article 457

If the accused fails to appear at the main hearing, even though s/he was duly summoned or if the summons could not be delivered to him/her for failure to report to the court his/her change of address or temporary residence, the court may decide that the main hearing be held in his/her absence as well, under the condition that his/her presence is not necessary and that s/he was heard beforehand.

The Course of the Hearing

Article 458

(1) The main hearing shall commence with the announcement of the main contents of the bill of indictment or personal action at law. Where possible, the main hearing shall proceed in an uninterrupted sequence.

(2) In the case of the accused's complete confession made in the course of the main hearing, the court shall, along with the consensual motion of the parties, recess the evidentiary procedure and impose a criminal sanction unless there is a suspicion as to the truthfulness of the confession.

(3) Under the conditions referred to in paragraph 2 of this Article, the court may impose a judicial admonition, a suspended sentence, a fine, a community service and an imprisonment for a term not exceeding one year, and along with those, one or several of the following security measures: seizure of objects, prohibition to drive a motor vehicle and seizure of material benefit.

(4) If in the course of the main hearing or after its completion the judge finds that a higher court has jurisdiction to try the case, s/he shall refer the files to the competent Public Prosecutor. When the judge establishes that some of the reasons referred to in Article 367 of this Code exist, s/he shall dismiss the charge by a ruling.

(5) After the completion of the main hearing, the court shall pronounce a judgment immediately, and announce it followed by substantial reasons thereof. The judgment shall be developed in writing within eight days from the day of its publication.

(6) An appeal may be lodged against the judgment within eight days from the day the transcript of the judgment is served.

(7) Immediately upon the announcement of the judgment, the parties and injured party may waive the right to appeal. In such a case a transcript of the judgment shall be delivered to the party and injured party only if they so require. If, after the announcement of the judgment, both parties and the injured party waive their right to appeal and if none of them has required that the judgment be served on them, the written copy of the judgment need not contain the reasoning of judgment.

(8) After the judgment has been pronounced, provisions of Article 376 of this Code shall apply accordingly to the termination of detention.

(9) When the court imposes an imprisonment sentence, it may order detention to the accused, or prolongation of detention, provided that the grounds referred to in Article 448, paragraph 1 of this Code exist. In such a case detention may last until the judgment becomes legally-binding, but at the longest until the imprisonment sentence imposed to the accused by the court of first instance expires.

Reconciliation Hearing

Article 459

(1) Before scheduling a main hearing for criminal offences subject to a personal action at law, the judge may summon only the plaintiff and the accused to come to the courtroom on a certain day for the preliminary clarification of the matter if s/he considers it effective for a prompt completion of the proceedings. Along with the summons, the accused shall be served a transcript of the personal action at law.

(2) If a reconciliation of the parties and the withdrawal of the personal action at law do not take place, the judge shall take statements from the parties and call on them to submit their motions regarding the evidence to be obtained.

(3) If the judge does not find that conditions exist for the dismissal of the charge, s/he shall pass a decision with regard to the evidence to be presented at the main hearing and shall, as a rule, immediately schedule the main hearing and notify the parties thereon.

(4) If a plaintiff and the accused do not propose evidence to be presented before appearing in court nor when they appear before the court and the judge deems that obtaining evidence is not necessary and no other reasons exist for the explicit scheduling of the main hearing, the judge may immediately open the main hearing and after presenting the available evidence, pass a decision in relation to the personal action at law. The plaintiff and the accused shall explicitly be cautioned of this possibility in the summons.

(5) If the plaintiff fails to appear upon summoning pursuant to paragraph 1 of this Article, the provision of Article 57 of this Code shall apply.

(6) If the accused fails to appear, the provision of Article 45 of this Code shall apply, provided that the judge decided to open the main hearing.

Presence of the Parties at the Session of the Appeal Panel Allowed as an Exception

Article 460

(1) When a court of second instance decides on an appeal against a judgment of the court of first instance passed in the summary proceedings, both parties shall be notified of the session of the Panel of the court of second instance only if the Chair of the Panel or the Panel considers that the presence of the parties or one of the parties would be advantageous for the clarification of the matter.

(2) Before the session of the Panel the Chair of the Panel shall submit the files to the Public Prosecutor if a criminal offence is involved for which the proceedings are carried out upon his/her request, and the Public Prosecutor may submit his/her written motion.

Title XXVII

PROCEEDINGS FOR IMPOSITION OF A CRIMINAL SANCTION

WITHOUT A MAIN HEARING

Penal Order

Article 461

(1) The judge may issue a penal order without holding a main hearing for criminal offences punishable by a fine or incarceration for a maximum term not exceeding three years as a principal punishment, upon a motion of the Public Prosecutor, and with the consent of the accused.

(2) The Public Prosecutor shall submit the motion for the issuance of a penal order referred to in paragraph 1 of this Article in a bill of indictment if s/he finds that it is not necessary to hold a main hearing.

(3) If a claim under property law is submitted, an authorized person shall be referred to the civil proceedings.

Imposition of Sanctions and Measures

Article 462

(1) By way of the order referred to in Article 461, paragraph 1 of this Code, the judge may impose a fine, community service, suspended sentence or a judicial admonition, and the seizure of material benefit and one or more of the following security measures: seizure of objects and prohibition to drive a motor vehicle.

(2) A fine may be imposed in the amount not exceeding €3,000, and prohibition to drive a motor vehicle for a maximum term not exceeding two years.

Prerequisites for the Issuance of a Penal Order and its Contents

Article 463

(1) Prior to determining whether the prerequisites are met for the issuance of the penal order, the judge shall examine the bill of indictment pursuant to Article 451, paragraph 1 and determine whether grounds for proceeding referred to in Art. 452 and 453 of this Code exist. If the judge determines that prerequisites for the issuance of a penal order are not met, s/he shall submit the charge to the accused and schedule the main hearing immediately.

(2) If the judge concurs with the motion of the Public Prosecutor, s/he shall obtain data on previous convictions and, where appropriate, on the personality of the accused, and thereafter s/he shall, subsequent to the hearing of the accused, and with his/her consent, issue a penal order.

(3) The penal order shall contain: that the Public Prosecutor's motion was upheld, personal data of the accused, the criminal offence for which he is declared guilty, the facts and circumstances which constitute the elements of the criminal offence and on which depends the application of a particular provision of the Criminal Code, the statutory title of the criminal offence and the provisions of the Criminal Code and other laws that have been applied, the decision on a fine or measure imposed as well as the decision on referring the authorized person to the civil proceedings with regard to his/her claim under property law, the statement of reasons for the imposed punishment or measure.

Serving the Penal Order and the Right to Appeal

Article 464

(1) The penal order shall be delivered to the Public Prosecutor and the accused.

(2) An appeal against the penal order may be lodged within a term of eight days. The appeal may be lodged only against the decision on punishment and due to the violation of the provisions of Article 461 of this Code.

Title XXVIII

SPECIAL PROVISIONS ON IMPOSITION OF JUDICIAL ADMONITION

Imposition of Judicial Admonition

Article 465

(1) Judicial admonition shall be imposed by a ruling.

(2) Unless otherwise provided for in this Title, the provisions of this Code concerning the judgment declaring the defendant guilty shall apply accordingly to the ruling on judicial admonition.

Contents of the Ruling on Judicial Admonition

Article 466

(1) The ruling on judicial admonition, together with substantial reasons thereof, shall be announced immediately after the completion of the main hearing. On this occasion, the accused shall be cautioned that a punishment is not imposed on him/her for the criminal offence s/he has committed, because it is expected that a judicial admonition shall influence him/her to the sufficient extent not to commit criminal offences any more. If the ruling on judicial admonition is announced in the absence of the accused, the court shall include such a caution in the statement of reasons to the ruling. The provision of Article 458, paragraph 7 of this Code shall apply accordingly to the waiver of the right to appeal and to the issuance of a written copy of the ruling.

(2) Beside the personal data of the accused, the operative part of the ruling on judicial admonition shall only state that judicial admonition is imposed on the accused for the offence s/he is charged with and the statutory title of the criminal offence. The operative part of the ruling on judicial admonition shall also contain the data referred to in Article 374, paragraph 1, items 5 and 7 of this Code.

(3) In the statement of reasons to the ruling, the court shall state the reasons it was guided by while imposing the judicial admonition.

Grounds for Contesting the Ruling on Judicial Admonition

Article 467

(1) The ruling on judicial admonition may be contested for the reasons referred to in Article 385, items 1, 2 and 3 of this Code, but also because the circumstances which justify the imposition of judicial admonition did not exist.

(2) If the ruling on judicial admonition contains a decision on security measures, on the seizure of material benefit, on the costs of criminal proceedings, or on a claim under property, this decision may be contested because the court did not properly apply the security measure or the seizure of material benefit, or because it passed a decision on the costs of criminal proceedings or on a claim under claim under property law in breach of the legal provisions.

Violations of the Criminal Code

Article 468

Violation of the Criminal Code shall exist in the case of imposition of judicial admonition if the Criminal Code was violated concerning the issues referred to in Article 387, items 1 through 4 of this Code.

Decision of Court of Second Instance on Appeal

Article 469

(1) If an appeal against the ruling on judicial admonition was lodged by the Prosecutor to the detriment of the accused, the court of second instance may pass a decision declaring the accused guilty and imposing a punishment or suspended sentence if it establishes that the court of first instance correctly established the determinative facts, and that upon the correct application of the law punishment or suspended sentence may be imposed.

(2) In relation to an appeal against the ruling on judicial admonition, the court of second instance may issue a ruling dismissing the charge, or a judgment rejecting the charge or acquitting the accused if it finds that the court of first instance correctly established the determinative facts and that the pronouncement of one of these decisions is conceivable upon the correct application of the law.

(3) When the conditions referred to in Article 406 of this Code are met, the court of second instance shall issue a ruling rejecting the appeal as groundless and confirming the ruling of the court of first instance on judicial admonition.

Part Three

SPECIAL PROCEEDINGS

Title XXIX

PROCEEDINGS FOR ENFORCEMENT OF SECURITY MEASURES, SEIZURE OF MATERIAL BENEFIT,

CONFISCATION OF PROPERTY WHOSE LEGAL ORIGIN HAS NOT BEEN PROVED, AND

REVOCATION OF A SUSPENDED SENTENCE

1. PROCEEDINGS FOR ENFORCEMENT OF SECURITY MEASURES

General Provisions on the Imposition of the Security Measure of Mandatory Treatment and Confinement in a Medical Institution, or of Outpatient Psychiatric Treatment

Article 470

(1) If an accused committed a criminal offence in the state of mental incapacity, the Public Prosecutor shall submit to the court a motion to impose a security measure of mandatory psychiatric treatment and confinement of that offender in a medical institution or a motion for mandatory psychiatric treatment of the offender at liberty, if conditions for the imposition of such a measure provided for by the Criminal Code are fulfilled.

(2) In the case referred to in paragraph 1 of this Article, the accused who is in custody shall be temporarily placed in an appropriate psychiatric institution or in some other suitable premises until the completion of the proceedings for enforcement of security measures.

(3) After the motion referred to in paragraph 1 of this Article is submitted, the accused shall have a defence counsel.

Imposition of Security Measure of Mandatory Treatment and

Confinement in a Medical Institution, or of Outpatient Psychiatric Treatment and Discontinuance of Proceedings for the

Imposition of Such Measures

Article 471

(1) The court of appropriate jurisdiction to adjudicate in the first instance shall, upon holding the main hearing, decide on the imposition of security measures of mandatory psychiatric treatment and confinement in a medical institution or mandatory outpatient psychiatric treatment.

(2) Along with the persons who must be summoned for the main hearing, physiatrists from the psychiatric institution entrusted to provide an expert witness opinion on the mental capacity of the accused shall also be summoned as expert witnesses. The accused shall be summoned if s/he is capable to be present at the main hearing. The spouse of the accused, his/her parents or guardian shall be notified of the main hearing, and with respect to the circumstances, other close relatives as well.

(3) If the court, on the merit of presented evidence, establishes that the accused has committed a certain criminal offence and that at the time of the perpetration of the criminal offence s/he was mentally incapacitated, it shall decide, after hearing of the summoned persons and on basis of opinions of expert witnesses, whether to impose on the accused a security measure of mandatory psychiatric treatment and confinement in a medical institution or mandatory outpatient psychiatric treatment. On the occasion of deciding which of these security measures to impose, the court shall not be bound by the motion of the Public Prosecutor.

(4) If the court finds that the accused was not mentally incapacitated, it shall discontinue the proceedings for the imposition of security measures.

(5) With the exception of the injured party, all other persons referred to in Article 382 of this Code shall be entitled to lodge an appeal against the ruling of the court within eight days from the day the ruling is served.

Imposition of Measures after Amendment of the Motion to Indict at the Main Hearing

Article 472

The security measures referred to in Article 470, paragraph 1 of this Code, may also be imposed when the Public Prosecutor amends the indictment brought or the bill of indictment at the main hearing by submitting a motion for the imposition of those measures.

Imposition of Punishment and Security Measures

Article 473

When the court imposes a punishment on a person who has committed a criminal offence in the state of considerably diminished mental capacity, it shall also pass a judgment imposing a security measure of mandatory psychiatric treatment and confinement in a medical institution by the same judgment, provided that it establishes that the statutory conditions, provided for by the Criminal Code, are met.

Submitting a Decision to the Court Deciding on Deprivation of Capacity to Exercise Rights

Article 474

The legally-binding judgment by which the security measure of mandatory psychiatric treatment and confinement in a medical institution or mandatory outpatient psychiatric treatment was imposed referred to in Articles 471 and 473 of this Code, shall be submitted to the court of appropriate jurisdiction to decide on the deprivation of capacity to exercise rights. The guardianship authority shall also be notified of the decision.

Examining the Justification of Imposed Measures

Article 475

(1) Every nine months, the court which imposed a security measure shall, ex officio, review whether the treatment and confinement in a psychiatric institution are still necessary. The psychiatric institution, the guardianship authority and person against whom the security measure is imposed may submit a motion on discontinuance of measure to such court. After the Public Prosecutor is heard, the court shall discontinue this measure and order the offender to be released from the psychiatric institution, provided that it establishes, upon the opinion of a psychiatrist, that the need for treatment and confinement in that medical institution ceased to exist, or it may order his/her mandatory outpatient psychiatric treatment. If the motion for discontinuance of the measure is rejected, it may be re-submitted after the expiry of six months from the day the decision has been passed.

(2) When the offender with considerably diminished mental capacity is being released from the psychiatric institution in which s/he spent less time than the term of imprisonment s/he has been convicted to, the court shall issue a ruling on release deciding whether this person is to serve the rest of the sentence or shall be released on parole. The security measure of mandatory outpatient psychiatric treatment may be imposed against the offender who is released on parole, if the statutory conditions are met.

(3) After the hearing of the Public Prosecutor, the court may, ex officio or upon a motion of the psychiatric institution in which the accused is treated or should have been treated, impose on the offender against whom the security measure of mandatory outpatient psychiatric treatment was applied the security measure of mandatory psychiatric treatment and confinement in a medical institution, provided that it establishes that the offender has failed to undergo the treatment or has discontinued it wilfully, or that notwithstanding the treatment s/he has remained dangerous for other people to the extent that his/her confinement and treatment in a psychiatric institution is needed. Where appropriate, before it passes a decision, the court shall also obtain an opinion of the psychiatrist and hear the accused, provided that his/her condition allows so.

(4) The court shall pass the decisions referred to in paragraphs 1, 2 and 3 of this Article at the Panel session referred to in Article 24, paragraph 7 of this Code. The Public Prosecutor and the defence counsel shall be notified of the Panel session. Before passing a decision, if necessary and possible, the offender shall be heard.

Proceedings in Case of Motion to Impose the Security Measure of Mandatory Treatment of Alcoholics or Security Measure of

Mandatory Treatment of Drug Addicts

Article 476

(1) The court shall decide on the imposition of the security measure of mandatory treatment of alcoholics and drug addicts after it has obtained the opinion of an expert witness. The expert witness shall also give a statement regarding the possibilities for the accused's treatment.

(2) If the mandatory outpatient treatment was ordered against the offender by a suspended sentence, and s/he failed to undergo the treatment or has discontinued it wilfully, after having heard the Public Prosecutor and the offender, the court may ex officio or upon a motion of the institution in which the offender was treated or should have been treated, order revocation of the suspended sentence or coercive enforcement of the imposed measure of mandatory treatment of alcoholics and drug addicts in a medical institution or other specialized institution. Where appropriate, before passing a decision, the court shall obtain an opinion of the expert witness.

Proceedings for the Imposition of the Security Measure of Seizure of Objects

Article 477

(1) Objects which must be seized according to the Criminal Code shall also be seized when the criminal proceedings are not completed with a judgment declaring the defendant guilty, provided that this is required by the interests of general security or by ethical reasons.

(2) The authority before which proceedings have been conducted shall issue a separate ruling thereon at the time the procedure was terminated or discontinued.

(3) The ruling on the seizure of objects referred to in paragraph 1 of this Article shall be issued by the Panel referred to in Article 24 paragraph 7 of this Code also when a judgment declaring the defendant guilty failed to render such a decision.

(4) An authenticated transcript of the decision on the seizure of objects shall be delivered to the owner of the object if s/he is known.

(5) The owner of the object shall be entitled to lodge an appeal against the decision referred to in paragraphs 2 and 3 of this Article if s/he considers that there is no legal grounds for the seizure of the object. If the ruling referred to in paragraph 2 of this Article was not issued by a court, the Panel referred to in Article 24, paragraph 7 of this Code which had jurisdiction for first instance adjudication shall decide on the appeal. If the ruling on the seizure of object was issued by the Panel from a court of first instance referred to in Article 24 paragraph 7 of this Code concerning the case referred to in paragraph 3 of this Article, the appeal against that ruling shall be decided by the Panel of the directly superior court.

2. PROCEEDINGS FOR THE SEIZURE OF MATERIAL BENEFIT

General Provisions on Seizure of Material Benefit

Article 478

(1) Material benefit obtained through the commission of a criminal offence shall be established as such in the preliminary investigation, preliminary proceedings and at the main hearing ex officio.

(2) In the course of the preliminary investigation, preliminary proceedings and at the main hearing, the court and other authorities shall obtain evidence and determine circumstances that are relevant to the establishment of material benefit as such.

(3) If the injured party submits a claim under property law regarding the restitution of items acquired in consequence of the commission of a criminal offence or regarding the payment of amount which corresponds to the value of the items, the material benefit shall only be established for the part not covered by the claim under property law.

Seizure of Material Benefit from Third Persons

Article 479

(1) In cases of seizure of material benefit obtained through the commission of a criminal offence from other persons, the person to whom the material benefit was transferred or the person for whom it was obtained, or the representative of the legal person shall be summoned for hearing in the investigation and at the main hearing. The summons shall contain a caution that the proceedings will be held even in his/her absence.

(2) The representative of the legal person shall be heard at the main hearing after the accused. The court shall proceed in the same manner regarding the other person referred to in paragraph 1 of this Article, unless s/he is summoned in the capacity of a witness.

(3) The person to whom the material benefit was transferred or the person for whom it was obtained or the representative of the legal person shall be entitled to offer evidence concerning the establishment of the material benefit and, upon the authorization of the Chair of the Panel, to put questions to the accused, witnesses and expert witnesses.

(4) Exclusion of the public from the main hearing shall not relate to the person to whom the material benefit was transferred or for whom it was obtained or to the representative of the legal person.

(5) If the Court establishes that grounds for seizure of material benefit exist while the main hearing is in progress, it shall adjourn the main hearing and summon the person to whom the material benefit was transferred or for whom it was obtained, or the representative of the legal person.

Determining the Amount of Material Benefit at the Discretion of the Court

Article 480

The amount of material benefit shall be fixed by the court at its discretion, if its determination entails disproportionate difficulties or a significant delay in the proceedings.

Imposing Provisional Security Measures

Article 481

When the conditions for the seizure of material benefit are met**,** the court shall, ex officio or upon the motion of the Public Prosecutor, impose provisional security measures, pursuant to the provisions of the law governing the enforcement procedure. In such a case, the provisions of Article 243 of this Code shall apply accordingly.

Imposing Seizure of Material Benefit

Article 482

(1) Court may order the seizure of material benefit by a judgment declaring the defendant guilty, by a ruling on sentencing issued without a main hearing, by a ruling on a judicial admonition or by a ruling on the application of a corrective measure, as well as by a ruling imposing of a security measure of mandatory psychiatric treatment and confinement in a medical institution, or mandatory outpatient psychiatric treatment.

(2) In the enacting terms of judgment or operative part of the ruling, the court shall state which valuable items, amount of money or other material benefit is to be seized.

(3) An authenticated transcript of the judgment or the ruling shall also be delivered to the person to whom the material benefit was transferred or for whom it was obtained, and to the representative of the legal person, provided that the court has imposed the seizure of material benefit from such a person or a legal person.

Request for Rehearing Regarding the Seizure of Material Benefit

Article 483

The person referred to in Article 479 of this Code may submit a request for criminal rehearing regarding the decision on the seizure of material benefit.

Relevant Application of Provisions Regulating Appeals

Article 484

The provisions of Article 383, paragraphs 2 and 3 and Articles 391 and 395 of this Code shall apply accordingly in regard to an appeal lodged against the decision on the seizure of material benefit.

Application of Other Provisions of this Code

Article 485

Unless otherwise provided by the provisions of this Title, with regard to the imposition of security measures or the seizure of material benefit, other provisions of this Code shall apply accordingly.

3. CONFISCATION OF PROPERTY WHOSE LEGAL ORIGIN HAS NOT BEEN PROVED

Request for Confiscation of Property and Contents of Request

Article 486

(1) After the finality of the judgment declaring the accused guilty of the criminal offence for which the Criminal Code provides for the possibility of extended seizure of property from the convicted person, his/her legal successor or the person to whom the convicted person has transferred the property and who cannot prove the legality of its origin, the Public Prosecutor shall, at the latest within one year, submit the request for confiscation of the property of the convicted person, his/her legal successor or a person to whom the convicted person has transferred the property for which there is no evidence on the legality of its origin.

(2) The request referred to in paragraph 1 of this Article shall contain the data on the convicted person, his/her legal successor or the person to whom the convicted person has transferred the property, indication of property to be seized, evidence on the property owned by the

convicted person, his/her legal successor or the person to whom the property has been transferred, and on their legal proceeds, as well as circumstances indicating the obvious discrepancy between the total property and the legal proceeds of the convicted person, his/her legal successor and the person to whom the convicted person has transferred the property.

(3) The request referred to in paragraph 1 of this Article shall be served without delay to the convicted person, his/her legal successor or the person to whom the convicted person has transferred the property, along with a caution stating that s/he shall prove the legal origin of the property at the Panel session referred to in Article 24, paragraph 7 of this Code, as well as that the property will be seized if its legal origin has not been proved.

Deciding upon the Request for Confiscation of Property

Article 487

(1) Pursuant to Article 314 of this Code, the Panel referred to in Article 24, paragraph 7 of this Code shall decide upon the request referred to in Article 486 of this Code at the session held behind closed doors.

(2) The following shall be invited to the Panel session: Public Prosecutor, convicted person, his/her legal successor or a person to whom the convicted person has transferred his/her property, and his/her proxy.

(3) If the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property does not prove by plausible documents or in absence of plausible documents, in some other manner, the legal origin of the property, the Panel shall issue a ruling on the confiscation of the property.

(4) If the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property proves by plausible documents or in some other manner the legality of the property origin or of the part of property, the Panel shall issue a ruling on total or partial rejection of the request referred to in Article 486, paragraph 1 of this Code.

(5) The Panel referred to in Article 24, paragraph 7 of this Code shall dismiss the request if it was submitted after the expiry of the term referred to in Article 486, paragraph 1 of this Code.

Contents of the Ruling on Confiscation of Property

Article 488

(1) The ruling referred to in Article 487, paragraph 3 of this Code shall contain the data on the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property, on the property being seized, and the decision on the costs of safekeeping and administration of the seized property referred to in Article 96 of this Code. If the seizure of the property would bring into question the sustenance of the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property or their statutory dependants, the ruling shall indicate that a portion of the property is exempted from seizure.

(2) The ruling on property confiscation shall be delivered to the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property, his/her proxy, Public Prosecutor, and the state body which, pursuant to the law, administrates the seized property.

Appeal against the Ruling on Confiscation of Property

Article 489

(1) Convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property and his/her proxy may appeal against the ruling referred to in Article 487, paragraph 3 of this Code within eight days, whereas the Public Prosecutor may lodge an appeal against the ruling referred to in Article 487, paragraph 4 of this Code.

(2) A directly superior court shall decide on the appeal referred to in paragraph 1 of this Article.

4. PROCEEDINGS FOR REVOCATION OF SUSPENDED SENTENCES

Article 490

(1) When a court orders in a suspended sentence that the punishment will be enforced if the convicted person does not restore material benefit, does not make compensation for damages or does not fulfil other obligations, and if the convicted person fails to fulfil these obligations within a specified term, the court which tried the case in the first instance shall conduct the proceedings for the revocation of the suspended sentence upon a motion of the authorized prosecutor or ex officio.

(2) The judge assigned to the case shall hear the convicted person, if s/he is available, and take the necessary actions in view of establishing facts and obtaining evidence important for the decision.

(3) Thereafter, the Chair of the Panel shall schedule a session of the Panel and notify the Prosecutor, the convicted person and the injured party thereon. If the duly notified parties and the injured party fail to appear, this shall not prevent the session of the Panel from being held.

(4) If the court establishes that the convicted person has failed to fulfil an obligation ordered by the judgment, the court shall pass a judgment revoking the suspended sentence and order the punishment determined to be imposed, or order a new term within which the obligation must be fulfilled, or abolish that condition and replace the obligation with other obligation. If the court finds that there are no grounds for passing any of these decisions, it shall issue a ruling discontinuing the proceedings for the revocation of the suspended sentence.

(5) An appeal against the judgment referred to in paragraph 4 of this Article may also be lodged by the injured if his/her interests have been affected by the judgment.

Title XXX

PROCEEDINGS FOR REHABILITATION, TERMINATION OF LEGAL CONSEQUENCES OF CONVICTION AND SECURITY MEASURES

Issuing a Ruling on Legal Rehabilitation *Ex Officio*

Article 491

(1) In cases when, under the Criminal Code, rehabilitation occurs by the expiration of a certain term of time and provided that the convicted person did not commit a new criminal offence within that term, the authority in charge of keeping penal records shall issue a ruling on rehabilitation ex officio, with the exception of the case when a suspended sentence was imposed.

(2) Before issuing a ruling on rehabilitation, the necessary checks shall be made and, in particular, data shall be obtained on whether the criminal proceedings are pending against the convicted person for any new criminal offence committed before the completion of the rehabilitation proceedings.

Issuing a Ruling on Legal Rehabilitation upon the Request of the Convicted Person

Article 492

(1) If the competent authority fails to issue a ruling on rehabilitation, the convicted person may request that a determination be made that the rehabilitation has occurred under the Criminal Code.

(2) If the competent authority fails to comply with the request of the convicted person within a term of one month from the day of receipt of the request, the convicted person may request that the court which passed the judgment in the first instance issue a ruling on the rehabilitation.

(3) The court shall decide upon the request of the convicted person after receiving the opinion of the Public Prosecutor.

Rehabilitation of a Person on whom a Suspended Sentence was Imposed

Article 493

If the suspended sentence is not revoked even one year after the expiration of the probation term, the court which tried the case in the first instance shall issue a ruling on the rehabilitation. This ruling shall be served on the convicted person, the Public Prosecutor and the authority competent for keeping the penal records.

Rehabilitation on the Strength of a Judgment

Article 494

(1) The proceedings for the judicial rehabilitation shall be instituted upon a petition of the convicted person.

(2) The petition shall be submitted to the court that tried the case in the first instance.

(3) The judge assigned to the case shall previously inquire whether the probation term regulated by law has expired, and thereafter s/he shall conduct the necessary actions in view of establishing facts invoked by the convicted person and obtain evidence on all circumstances important for the decision.

(4) The judge may request a report on behaviour of the convicted person from the police authority in whose territory the convicted person has resided after serving the sentence, and may request such a report from the administration authority competent for the enforcement of criminal sanctions in which the convicted person has served the imprisonment.

(5) After taking of actions referred to in paragraph 3 of this Article have been made, and after having heard the Public Prosecutor, the judge shall submit the files with a substantiated motion to the Panel of the court which tried the case in the first instance.

(6) The convicted person and the Public Prosecutor may lodge an appeal against the court ruling on the petition for rehabilitation.

(7) If the court rejects the petition because the convicted person does not deserve the rehabilitation due to his/her behaviour, the convicted person may re-submit the petition after the expiry of one year from the day the ruling on the rejection of the petition becomes legally-binding.

Prohibition of Disclosing Data on Rehabilitation and Discontinuance of Legal Consequences of Conviction

Article 495

A certificate issued on the basis of the penal records shall not mention the decision on rehabilitation and the discontinued legal consequences of conviction.

Discontinuance of Security Measures

Article 496

(1) A petition for discontinuance of the security measure of prohibition of performing profession, activity or duty or the security measure of prohibition against operating a motor vehicle

or a petition for discontinuance of the legal consequence of conviction regarding the acquirement of a certain right shall be submitted to the court which tried the case in the first instance.

(2) The judge assigned to the case shall previously inquire whether the probation term regulated by law has expired, and thereafter s/he shall conduct the necessary actions in view of establishing facts invoked by the convicted person and obtain evidence on all circumstances important for the decision.

(3) The judge may request a report on behaviour of the convicted person from the police authority in whose territory the convicted person has resided after the principal sentence was served, remitted or barred by the statute of limitations, and may request such a report from the administration authority competent for the enforcement of criminal sanctions in which the convicted person has served the imprisonment.

(4) After taking the actions referred to in paragraph 2 of this Article and after obtaining the opinion of the Public Prosecutor, the judge shall submit the files with a substantiated motion to the Panel of the court which tried the case in the first instance.

New Petition for Discontinuance of Security Measures

Article 497

When the court rejects the petition for discontinuance of security measures or legal consequences of a conviction, a new petition may be submitted after the expiry of one year from the day the ruling on the rejection of the previous petition becomes legally-binding.

Title XXXI

PROCEEDINGS FOR DAMAGES, REHABILITATION AND EXERCISE OF OTHER RIGHTS OF GROUNDLESSLY CONVICTED PERSONS, PERSONS ILLEGALLY OR GROUNDLESSLY PLACED UNDER ARREST

Persons Entitled to Damages for Groundless Conviction

Article 498

(1) The right to damages for groundless conviction shall be held by a person against whom a legally-binding criminal sanction was imposed or who was declared guilty but remitted, and subsequently, in relation to an extraordinary legal remedy, the new proceedings was irrevocably discontinued or the convicted person was acquitted by a legally-binding judgment or the charge was rejected, save when:

1) the proceedings was discontinued or the judgment rejecting the charge was passed because in the new proceedings the subsidiary prosecutor or plaintiff waived the prosecution, provided that the waiver occurred in virtue of an agreement with the accused,

2) in the new proceedings the charge was dismissed by a ruling because the court lacked jurisdiction and the authorized Prosecutor has assumed prosecution before the court of appropriate jurisdiction.

(2) A convicted person or an acquitted person shall not be entitled to damages if s/he caused the criminal proceedings to be conducted through a false confession in the preliminary investigation or otherwise, or caused his conviction through such statements during the proceedings, unless s/he was forced to do so.

(3) In the case of conviction for concurrent criminal offences, the right to damages may also relate to individual criminal offences in regard to which the conditions for acknowledgment of remuneration are met.

Statute of Limitations of Claims

Article 499

(1) The right to damages shall be barred by the statute of limitations within three years from the day of finality of the judgment in the first instance acquitting the accused or rejecting the charge, or from the day of finality of the ruling in the first instance discontinuing the proceedings, and, if a higher court decided in relation to an appeal - from the day of receipt of the decision of the higher court.

(2) Before bringing a compensation claim to the court, the injured party shall submit his/her request to the ministry competent for judicial affairs in view of reaching a settlement on the existence of damage and the type and amount of remuneration.

(3) In the case referred to in Article 498, paragraph 1, item 2 of this Code, the request may be decided only if the authorized Prosecutor has not assumed prosecution before a court of appropriate jurisdiction within a term of three months from the day of receipt of the legally-binding decision. If, after this term has expired, the authorized prosecutor assumes prosecution, the proceedings for damages shall be discontinued until the completion of the criminal proceedings.

Damages by Means of Action

Article 500

(1) If the request for damages is not upheld or if the ministry competent for judicial affairs fails to pass a decision within a term of three months from the day the request was submitted, the injured party may bring a compensation claim to the court of appropriate jurisdiction. If a settlement was only reached on one part of the claim, the injured party may bring an action regarding the rest of the claim.

(2) While the proceedings referred to in paragraph 1 of this Article are pending, the term of statute of limitations referred to in Article 499, paragraph 1 of this Code shall not run.

(3) The compensation claim shall be brought against Montenegro.

Inheritance of the Right to Damages

Article 501

(1) Heirs shall inherit only the right of the injured party to compensation of property damage. If the injured party has already lodged a claim, the heirs may resume the proceedings only within the limits of the lodged compensation claim.

(2) Pursuant to the rules on the damages provided for by the Law of Obligations, after the death of the injured party, his/her heirs may resume the proceedings for damages or institute the proceedings provided that the injured party died before the term of statute of limitations expired and provided that the injured party did not waive this claim.

Persons Entitled to Damages

Article 502

(1) Entitled to damages shall also be the person who:

1) was in custody or placed under arrest by the police or the Public Prosecutor or his/her liberty was limited by a court ruling as a consequence of a criminal offence, but criminal proceedings were not instituted or were discontinued by a legally-binding ruling or such person was acquitted by a legally-binding judgment or the charge was rejected;

2) served a sentence of imprisonment, and in relation to the criminal rehearing, or a request for judicial review a sentence of imprisonment of a shorter duration than the sentence served was imposed on him/her, or a non-custodial criminal sanction was imposed or s/he was declared guilty but the punishment was remitted;

3) due to an error or an unlawful action of authorities, was groundlessly placed under arrest, or kept in custody or administration authority competent for the enforcement of criminal sanctions or an institution for the enforcement of measures for a longer term of time;

4) spent time in custody which exceeds the sentence of imprisonment s/he was sentenced to.

(2) A person placed under arrest pursuant to Article 264 of this Code without legal grounds shall be entitled to damages if detention was not ordered against him/her or if the time during which s/he was placed under arrest was not included in the punishment for the criminal offence or misdemeanour.

(3) A person who caused his/her deprivation of liberty, i.e. detention by illicit acts shall not be entitled to damages. In the cases referred to in paragraph 1, item 1 of this Article, a person shall not be entitled to damages, even in cases of the existence of circumstances referred to in Article 498, paragraph 1 of this Code, or if the proceedings were discontinued pursuant to Article 249 of this Code.

(4) In the damages proceedings regarding the cases referred to in paragraphs 1 and 2 of this Article, the provisions of this Title shall apply accordingly.

Publication of the Decision Declaring Previous Conviction Groundless in the Media

Article 503

(1) If the case related to groundless conviction or groundless deprivation of liberty of a person is publicized in the media and the reputation of that person is thereby damaged, the court shall, upon his/her request, publish in the media the announcement on a decision declaring that the previous conviction was groundless or that the deprivation of liberty was groundless. If the case was not publicized in the media, such an announcement shall, upon this person's request, be delivered to a state body, local self-government authority, business organization, other legal person or natural person the person is employed by, and, if necessary for his/her rehabilitation – to other organizations. After the death of a convicted person, his spouse, children, parents, brothers and sisters shall be entitled to submit such a request.

(2) The request referred to in paragraph 1 of this Article may also be submitted if the compensation claim was not filed.

(3) Besides the conditions referred to in Article 493 of this Code, the request referred to in paragraph 1 of this Article may also be submitted when the legal qualification of the offence was altered in relation to an extraordinary judicial remedy if, due to the legal qualification, the original judgment seriously damaged the reputation of the convicted person.

(4) The request referred to in paragraphs 1, 2 and 3 of this Article shall be submitted to the court which tried the case in the first instance in the criminal proceedings within six months from the day the decision referred to in Article 499, paragraph 1 of this Code becomes legally-binding. The Panel referred to in Article 24, paragraph 7 of this Code shall decide upon the request. On the occasion of deciding upon the request, the provisions of Article 498, paragraphs 2 and 3, and Article 502, paragraph 3 of this Code shall apply accordingly.

Annulment of Entry of a Groundless Conviction in the Penal Records

Article 504

The court which tried the case in the first instance in the criminal proceedings shall issue a ruling ex officio which annuls the entry of a groundless conviction in the penal records. The ruling shall be delivered to an authority competent for keeping the penal records. Data from the penal records concerning the annulled entry shall not be available to anyone.

Limitation on the Occasion of Reviewing, Transcribing or Copying Certain Files

Article 505

A person allowed to review, transcribe and copy files in compliance with Article 203 of this Code concerning groundless conviction or groundless deprivation of liberty may not use data from such files in a manner which would be detrimental to the rehabilitation of the person against whom the criminal proceedings was conducted. The President of the Court shall remind thereof the person allowed to review, transcribe or copy the files, and this shall be noted on the file and signed by this person.

Recognition of Employment Related Rights

Article 506

(1) A person whose employment or social security was terminated due to a groundless conviction or groundless deprivation of liberty shall have the same years of service or years of social security recognized as if s/he had been employed during the time of the loss of years of service due to a groundless conviction or groundless deprivation of liberty. A term of unemployment shall also be included in the years of service or social security if caused by the groundless conviction or groundless deprivation of liberty but not by the guilt of this person.

(2) On the occasion of deciding on a right affected by the length of years of service or years of social security, the competent authority or organization shall take into account the years of service or social security recognized by the provision of paragraph 1 of this Article.

(3) If the authority or organization referred to in paragraph 2 of this Article does not take into account the years of service or social security recognized by the provision of paragraph 1 of this Article, the injured party may request that the court referred to in Article 500, paragraph 1 of this Code establishes that the recognition of such a term occurred by force of law. An action shall be brought against the authority or organization contesting the recognition of years of service, and against Montenegro.

(4) Upon the request of the authority or organization before which the right referred to in paragraph 2 of this Code is exercised, the specified contribution shall be paid out from budget funds for the term of time for which years of service or social security have been recognized pursuant to the provision of paragraph 1 of this Article.

(5) The years of social security recognized pursuant to the provision of paragraph 1 of this Article shall be fully included in the years of pension.

Title XXXII

PROCEEDINGS FOR THE ISSUANCE OF A WANTED NOTICE AND MISSING PERSON NOTICE

Finding the Accused and Notification of His/Her Address

Article 507

If permanent or temporary residence of the accused is unknown, when it is necessary pursuant to the provisions of this Code, the court or the Public Prosecutor shall request the police authority to search for the accused and inform them on his/her address.

Conditions for the Issuance of Wanted Notices

Article 508

(1) The issuance of a wanted notice may be ordered when the accused is at large and when criminal proceedings were instituted against him/her for a criminal offence punishable by imprisonment for a term of three years or a more severe sentence according to law, provided that a warrant for his/her apprehension or a ruling ordering his/her detention exists.

(2) The issuance of a wanted notice shall be ordered by the court before which the criminal proceedings are conducted.

(3) The issuance of a wanted notice shall also be ordered if the accused escapes from the administration authority competent for the enforcement of criminal sanctions where s/he is serving the sentence, regardless of the severity of the punishment, or escape from the institution where s/he is serving an institutional measure. In such a case, the order shall be issued by the head of that institution.

(4) The order of the court or the head of the institution for the issuance of a wanted notice shall be delivered to the police authorities for execution.

Issuance of Missing Person Notices

Article 509

(1) When data concerning particular objects related to a criminal offence are required or if these objects need to be located, and in particular if this is necessary to determine the identity of a found unidentified corpse, the issuance of a missing person notice shall be ordered, containing a request that the data and information be delivered to the authority conducting the proceedings.

(2) The police may also publicize photographs of corpses and missing persons if grounds for suspicion exist that the death or disappearance of such persons occurred because of a criminal offence.

Withdrawal of the Order on the Issuance of a Wanted Notice or Missing Person Notice

Article 510

The authority which ordered the issuance of a wanted notice or a missing person notice shall withdraw it immediately after the wanted person or the object has been found, or when the statute of limitations on criminal prosecution or enforcement of sentence applies, or for other reasons making the wanted notice or the missing person notice no longer necessary.

Issuance of Wanted Notice and Missing Person Notice

Article 511

(1) Wanted notices and missing person notices shall be issued by the police.

(2) Media may be used in view of informing the public of the wanted notice or missing person notice.

(3) If it is likely that the person in regard to whom a wanted notice has been issued is abroad, an international wanted notice may also be issued, provided that the approval of the ministry competent for judicial affairs is obtained.

(4) Upon a petition of a foreign authority, a wanted notice may also be issued with regard to the person for whom a suspicion exists that s/he is in Montenegro, provided that the petition contains a statement that his/her extradition shall be requested in the case s/he is founded.

Title XXXIII

TRANSITIONAL AND FINAL PROVISIONS

Specific Provisions on the Counting of Terms

Article 512

If on the day this Code enters into force any term is still running, such a term shall be counted pursuant to the provisions of this Code, save when the term was longer pursuant to previous regulations.

Application of the Provisions of the Previously Valid Code

Article 513

(1) If a request for conducting an investigation has been submitted under the provisions of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro, 71/03 and 47/06) up to the day this Code starts to be applied, the investigation shall be completed in compliance with those provisions.

(2) If a decision has been passed before the day this Code enters into force against which, according to the provisions of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro, 71/03 and 47/06) a legal remedy was allowed, and if such a decision is not yet delivered or the term for submitting the legal remedy is still running, or the legal remedy has been submitted but the decision has not been passed yet, the provisions of that Code shall apply regarding the right to legal remedy and the proceedings upon a legal remedy.

Adoption of Secondary Legislation

Article 514

The secondary legislation envisaged by this Code shall be adopted within a term of nine months from the day of this Code's entry into force.

Cessation of Validity of a Previous Regulation

Article 515

On the day of entry into force of this Code, the Criminal Procedure Code (Official Gazette of the Republic of Montenegro, 71/03 and 47/06) shall cease to be valid with the exception of the provisions of Title XXIX which shall apply until the adoption of a law regulating the proceedings against juveniles and other issues related to the position of juvenile offenders.

Application of Certain Provisions

Article 516

(1) Provisions of Articles 90, 486, 487, 488 and 489 of this Code shall apply from the day of application of the provisions of the Criminal Code which will govern the extended seizure of property.

(2) Provisions of Title XX of this Code shall apply after six months from the day of entry into force of this Code.

(3) Provisions of Article 109, 158, 272, 273 and 461 of this Code shall apply as of the day of its entry into force.

Entry into Force

Article 517

This Code shall enter into force on the eighth day following its publication in the Official Gazette of Montenegro, and it shall be enforced one year following the day of its entry into force.