

Draft Amendments to Criminal Procedure Code of Serbia

November 16, 2012

Under Article 112 paragraph 1 item 2 of the Constitution of the Republic of Serbia, I hereby adopt the following DECREE on the promulgation of the Criminal Procedure Code.

The Criminal Procedure Code, adopted by the National Assembly of the Republic of Serbia at its sitting of the 12th special session in 2011, on September 26, 2011, is hereby promulgated.

PR Number 89
Belgrade, September 28, 2011
President of the Republic
Boris Tadic, authentic signature

THE CRIMINAL PROCEDURE CODE

Part One

GENERAL PART

Chapter I

BASIC PROVISIONS

Subject-Matter of the Code

Article 1

This Code establishes rules whose aim is to prevent the conviction of any innocent person, and enabling a perpetrator of a criminal offence to be sanctioned in accordance with conditions envisaged by the Criminal Code, based on lawfully and fairly conducted proceedings.

~~This Code also establishes rules on conditional release, rehabilitation, termination of security measures and legal consequences of conviction, exercise of the rights of persons wrongly deprived of liberty and wrongly convicted, confiscation of proceeds from crime, resolution of restitution claims and issuance of wanted circulars and notices.~~

Definitions of Terms

Article 2

Certain terms used in this Code have the following meaning:

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

2) a “defendant” is a person against whom a decision to conduct an investigation has been issued, or against whom an indictment has been filed, or a motion to indict or a

private law-suit has been filed, that is it is a generic term for a suspect, a defendant, a inductee and a convicted person;

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

3) an “indictee” is a person against whom an indictment has been confirmed and a person against whom a trial date has been scheduled in summary criminal proceedings for pronouncing a criminal sanction based on a motion to indict or a private law-suit;

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

4) a “convicted person” is a person determined by a final court decision to have committed a criminal offense;

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

~~5) “a prosecutor” is a public prosecutor, private prosecutor and subsidiary prosecutor;~~

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

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

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

69) “a party” is the defendant, as well as the prosecutor in proceedings before a court of law and;

~~107) “charges” are an indictment, a motion to indict, a private prosecution and a motion to pronounce a security measure, but also a term serving as a general expression for an act by the prosecutor containing the elements of the criminal offence or unlawful offence determined by law as a criminal offence;~~

~~118) “an injured party” is a person whose personal or property right has been violated or jeopardized by a criminal offence;~~

~~129) “a representative” of the injured party is the legal representative and proxy of the injured party, subsidiary prosecutor and private prosecutor;~~

~~1310) “the police” is an authority of the Ministry of the Internal Affairs, an authorised officer of that authority and an authorised officer of a corresponding international authority who, in accordance with international law and this Code, undertakes actions on the territory of the Republic of Serbia, its vessel or aircraft, as well as other public authority with police competences, where provided for by this Code or other statute;~~

~~1411) “proceedings” are pre-investigation proceedings and criminal proceedings;~~

~~1512) “authority conducting proceedings” is the public prosecutor, the court or other public authority before which the proceedings are being conducted;~~

~~1613)~~ “the competent bar association” is the bar association with which a lawyer is registered;

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

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

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

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

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

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

~~2314)~~ “deprivation of liberty” is an arrest, keeping in custody, prohibition of leaving an abode, detention, and a stay in an institution which is under this Code counted into detention;

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

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

~~2615)~~ “an instrument” is every object or computer data suitable for or designated as proof of a fact being determined in proceedings ~~(Article 83 paragraphs 1 and 2);~~

~~2716)~~ “optical recording” is photographic, cinematographic, television or other recording by a technical device which makes a video recording or a video and audio recording;

~~2817)~~ “audio recording” is the recording of speech and other sound effects by technical devices which make an audio recording;

~~2918)~~ “an electronic record” is audio, video or graphical data in electronic (digital) form;

~~3019)~~ “an electronic address” is a set of characters, letters, numbers and signals intended for determining the origin of a connection **in accordance with the law;**

~~3120)~~ “an electronic document” is a set of data which is defined as an electronic document under the law regulating electronic documents;

~~3221)~~ “an electronic signature” is the set of data which is defined as an electronic signature under the law regulating the electronic signature item 2);

~~3322)~~ “an organised criminal group” is a group of three or more persons which exists for a certain period of time and acts in collusion with the aim of committing one or more criminal offences punishable by a term of imprisonment of four years or more, for the purpose of direct or indirect acquisition of pecuniary or other gain;

~~3423)~~ “organised crime” represents the commission of criminal offences by an organised criminal group or its members;

~~3524)~~ “the criminal code” is the Criminal Code and other law of the Republic of Serbia containing provisions of criminal law;

~~3625)~~ “a transaction” is the treatment of property defined as a transaction under the law that regulates the prevention of money laundering item 5);

~~37~~26) “data record” is the record of data on the parties, business relations and transactions maintained by obligors under the law that regulates the prevention of money laundering;

~~38~~27) classified data is secret data and foreign secret data defined in accordance with the law that regulates secrecy items 1) of data.

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

Presumption of Innocence

Article 3

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

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

Ne bis in idem

Article 4

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

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

~~Undertaking and Initiating Criminal Prosecution~~ ~~Authorised Prosecutor~~

Article 5

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

~~Criminal prosecution is initiated:~~

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

~~2) by the submission of private prosecution.~~

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

Legality of Criminal Prosecution

Article 6

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

The public prosecutor is required to conduct a criminal prosecution where there is a grounded suspicion that an individual has committed an *ex officio* prosecutable criminal offense.

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

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

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

Initiating of Criminal Proceedings

Article 7

Proceedings before a court of law are instituted and run only at the prosecutor's request. ~~Criminal proceedings are instituted:~~

- ~~1) by the issuance of an order on undertaking an investigation (Article 296);~~
- ~~2) by the confirmation of an indictment not preceded by an investigation (Article 341 paragraph 1.);~~
- ~~3) by the issuance of a ruling ordering detention before submitting a motion to indict in summary proceedings (Article 498 paragraph 2.);~~
- ~~4) by scheduling a main hearing or a hearing for pronouncing a criminal sanction in summary proceedings (Articles 504 paragraph 1, 514 paragraph 1, and 515 paragraph 1);~~
- ~~5) by scheduling a main hearing in proceedings for pronouncing a security measure of compulsory psychiatric treatment (Article 523.).~~

Advice of Rights

Article 8

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

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

Prohibition of Torture, Inhumane Treatment and Coercion

Article 9

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

Restrictions of the Liberties and Rights of Defendants in Proceedings

Article 10

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

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

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

- 1) the confirmation of the indictment;
- 2) the scheduling of a trial or hearing for pronouncing a criminal sanction in summary proceedings;
- 3) the scheduling of a trial in proceedings for pronouncing a security measure of compulsory psychiatric treatment.

The court shall within three days of issuing its decision notify *ex officio* the authority or employer where the defendant is employed of the circumstances referred to in paragraph 3 items 1) to 3) of this Article or the placement of the defendant in detention. The court will communicate these facts to the defendant and his defence counsel at their request.

The Language and Script Used in Proceedings

Article 11

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

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

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

Translation and interpretation is entrusted to a translator.

Authorisation to Pronounce Criminal Sanctions

Article 12

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

The Defendant's Presence in Court

Article 13

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

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

Trial within a Reasonable Time

Article 14

Courts are required to conduct criminal proceedings without delays and to prevent all abuses of ~~law~~ **rights of the persons who are participating in the criminal proceedings.** ~~aimed at delaying proceedings.~~

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

Evidentiary Actions

Article 15

Evidence is collected and examined in accordance with this Code.

The burden of proof is on the prosecutor.

A court is obliged to base its decision on truthful facts important for passing a lawful decision. Exceptionally, within the limits of the indictment and the rules referred to in Paragraph 2 of this Article, the court may examine evidence to confirm those facts, only when such evidence hasn't been examined by the parties, if it finds the examined evidence to be unclear, contradictory or contrary to other evidence, and when this is necessary in order to thoroughly discuss the subject-matter of the evidentiary procedure.

~~The court examines evidence upon motions by the parties.~~

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

Assessing Evidence and Finding of Fact

Article 16

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

Nor may a court's rulings be based on evidence derived from the unlawful evidence referred to in Paragraph 1 of this Article.

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

The court assesses the evidence examined which is of importance for rendering a decision at its discretion. **The right of a court of law and the state authorities, that take part in criminal proceedings, to determine the existence or non-existence of facts is not linked to or limited by any special formal evidentiary rules.**

A court of law may pronounce **a judgment of conviction**, or a ruling which corresponds with such a judgment, based only on facts which, it is convinced, are certain.

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

Preliminary Legal Question

Article 17

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

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

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

Right to Compensation for Damages

Article 18

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

Duty to Assist a Participant in Proceedings

Article 19

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

Discontinuance of Proceedings due to the Death of the Defendant

Article 20

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

Chapter II

JURISDICTION OF COURTS

1. Composition of Courts

Composition of Trial Panels

Article 21

First-instance courts adjudicate in panels consisting of:

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

Second-instance courts adjudicate in panels consisting of:

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

Third-instance courts adjudicate in panels consisting of:

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

Courts sit in three-judge panels when deciding appeals on rulings of the judge for preliminary proceedings, **the pre-trial conference judge** and other rulings in accordance with this Code, **decides as a pre-trial conference panel in cases involving criminal offences from**

jurisdiction of specialized prosecutor's offices, issuing decisions outside trials, and initiating proposals in cases specified by this Code or other statute.

Courts sit in five-judge panels when deciding appeals on judicial rulings of a five-judge panel.

The Supreme Court of Cassation decides requests for protection of the legality **and requests for reviewing the legality of the final judgment**- in panels consisting of five judges.

Unless specified otherwise by this Code, higher-instance courts also decide in panels consisting of three judges in cases not referred to in paragraphs 1 to ~~5~~-6 of this Article.

Judges

Article 22

An individual judge adjudicates in the first instance for criminal offences punishable by a fine or a term of imprisonment of up to eight years, **as well as in proceedings for criminal offenses which are prosecuted based on a private law-suit.**

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

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

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

2. Substance-matter and Territorial Jurisdiction

Substance-matter Jurisdiction and Location where the Crime was Committed

Article 23

Courts adjudicate within the limits of their substance-matter jurisdiction specified by law.

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

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

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

Defendant's Temporary or Permanent Residence

Article 24

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

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

Defendant's Place of Birth, Arrest or Surrender

Article 25

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

Criminal Offences Committed on Domestic Vessels or Aircraft

Article 26

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

Criminal Offences Committed through Media

Article 27

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

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

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

Criminal Offences Committed in the Republic of Serbia and Abroad

Article 28

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

Designated Jurisdiction

Article 29

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

3. Joinder and Severance of Criminal Proceedings

Joinder of Criminal Proceedings

Article 30

As a rule, joint criminal proceedings shall be conducted:

- 1) where the same person is accused of committing several criminal offences;
- 2) where several persons are accused in connection with the same criminal offence;
- 3) against accomplices, accessories, persons who assisted the perpetrator after the commission of the criminal offence, as well as persons who failed to report the preparation of a criminal offence, commission of the criminal offence or the perpetrator;
- 4) where an injured party had simultaneously committed a criminal offence against the defendant.

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

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

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

Severance of Criminal Proceedings

Article 31

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

The ruling ordering severance of criminal proceedings or denying a motion for severing criminal proceedings is issued by the court after hearing the present prosecutor and defendant.
The ruling referred to in paragraph 2 of this Article is not appealable.

4. Transfer of Territorial Jurisdiction

Inability of Competent Court to Adjudicate

Article 32

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

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

Reasons of Purposefulness

Article 33

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

5. Assessment and Conflict of Jurisdiction

Assessment of Jurisdiction

Article 34

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

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

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

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

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

Conflict of Jurisdiction

Article 35

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

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

Resolution of Conflict of Jurisdiction

Article 36

A conflict of jurisdiction is resolved:

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

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

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

Until conflict of jurisdiction between two courts is resolved, each of them is required to conduct procedural actions that cannot be postponed.

A ruling issued in connection with a conflict of jurisdiction is not appealable.

Chapter III

RECUSAL

Grounds for Recusal

Article 37

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

- 1) where he was injured by the criminal offence;
- 2) where the judge is the spouse or person with whom he lives in a common law marriage or other permanent relationship or a relative by blood to any degree, or collaterally to the fourth

degree, and by marriage to the second degree, or the defendant, defence counsel, the prosecutor, injured parties, their legal representatives or proxies;

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

4) where in the same criminal proceedings the judge had acted as a judge for the preliminary proceedings, **pre-trial conference judge, or a member of the pre-trial panel (Article 343A)**—or had decided on confirming the indictment, or had participated in rendering a decision on ~~the merits of the charges which is being challenged through an appeal or extraordinary legal remedy~~, or had taken part in proceedings as a prosecutor, defence counsel, legal representative or proxy of an injured party or of the prosecutor, or was heard as a witness or an expert witness, unless specified otherwise by this Code.

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

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

Article 38

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

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

Recusal Motions

Article 39

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

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

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

A motion for recusal of a judge of a court deciding on an appeal may be filed by parties and the defence **counsel not later than 8 days prior to the panel's session or a hearing before a court which decides on the appeal.**~~through the appeal or in the response to an appeal.~~

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

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

Article 40

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

Deciding on Recusal Motions

Article 41

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

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

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

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

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

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

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

Analogous Application of Provisions on Recusal

Article 42

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

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

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

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

Chapter IV

THE PUBLIC PROSECUTOR

Rights and Duties of the Public Prosecutor

Article 43

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

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

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

Duty to Act upon a Public Prosecutor's Request

Article 44

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

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

If within 24 hours of the time when the notification referred to in paragraph 2 of this Article was received the police or other public authority fails to comply with the request of the public prosecutor referred to in paragraph 1 of this Article, the public prosecutor may request the

competent authority to institute ~~ion of~~ disciplinary proceedings against the person who he believes is responsible for not complying with his request.

Public Prosecutor's Substance Matter Jurisdiction

Article 45

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

Public Prosecutor's Territorial Jurisdiction

Article 46

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

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

Conflicts of Jurisdiction between Public Prosecutors

Article 47

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

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

Manner of Taking Actions

Article 48

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

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

Dismissing Charges

Article 49

A public prosecutor may dismiss charges:

- 1) from the confirmation of the indictment until the conclusion of the trial;
- 2) at a hearing before a second-instance court in accordance with Article 450 paragraph 5 of this Code.

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

Chapter V

THE INJURED PARTY, THE SUBSIDIARY PROSECUTOR AND THE PRIVATE PROSECUTOR

1. Injured Party

Rights of the Injured Party

Article 50

The injured party is entitled to:

- 1) submit a motion and evidence for realising a restitution claim and a motion for interim measures for securing it;
- 2) present facts and propose evidence of importance for proving the claim;
- 3) retain a proxy from amongst attorneys;
- 4) examine the files and objects serving as evidence;
- 5) be notified about the dismissal of a criminal complaint or abandonment of criminal prosecution by the public prosecutor;
- 6) submit objections to the public prosecutor's decision not to conduct criminal prosecution or to abandon criminal prosecution, **except in cases referred to in Article 283, Paragraph 3, and Article 284A**;
- 7) be advised about the possibility of assuming criminal prosecution and representing the prosecution;
- 8) attend the preparatory hearing;
- 9) attend the trial and participate in examining evidence;
- 10) file an appeal against the decision on the costs of the criminal proceedings and the adjudicated restitution claim;
- 11) be notified about the outcome of the proceedings and be served the final judgment;
- 12) perform other actions where provided for by this Code.

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

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

Objection of the Injured Party

Article 51

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

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

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

Assumption of Criminal Prosecution by the Injured Party

Article 52

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

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

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

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

Motion Initiating Criminal Prosecution

Article 53

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

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

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

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

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

Abandoning a Motion for Criminal Prosecution

Article 54

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

Duty of the Injured Party

Article 55

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

Legal Representative of the Injured Party

Article 56

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

Legal Successor of the Injured Party

Article 57

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

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

2. Injured Party as a Subsidiary Prosecutor

Rights of an Injured Party as a Subsidiary Prosecutor

Article 58

An injured party as a subsidiary prosecutor is entitled to:

- 1) represent the prosecution in accordance with the provisions of this Code;
- 2) submit a motion and evidence for realising a restitution claim and a motion for interim measures to secure it;
- 3) retain a proxy from amongst attorneys;
- 4) request the appointment of a proxy;
- 5) perform other actions provided for by this Code.

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

Appointed Proxy

Article 59

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

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

Termination of Status of Subsidiary Prosecutor

Article 60

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

- 1) by dismissing charges;
- 2) if the public prosecutor assumes criminal prosecution;
- 3) by his death, or the termination of a legal person.

Dismissing Charges

Article 61

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

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

Assumption of Criminal Prosecution by the Public Prosecutor

Article 62

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

Analogous Application of Provisions on the Injured Party

Article 63

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

3. Private Prosecutor

Rights of Private Prosecutors

Article 64

Private prosecutors are entitled to:

- 1) bring and represent a private lawsuit;
- 2) submit a motion and evidence for realising of a restitution claim and a motion for interim measures to secure it;
- 3) retain a proxy from amongst attorneys;
- 4) perform other actions provided for by this Code.

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

Private Prosecution

Article 65

Private lawsuit is filed with the competent court.

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

If the injured party had submitted a criminal complaint or motion for criminal prosecution, and it is established during the proceedings that what is concerned is a criminal offence prosecutable on the basis of private lawsuit, the complaint, or motion, shall be deemed a timely private lawsuit if they were submitted within the time limit prescribed for a private lawsuit.

Counter-suit

Article 66

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

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

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

Article 67

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

Chapter VI

THE DEFENDANT AND DEFENCE COUNSEL

1 The Defendant

The Defendant's Rights

Article 68

The defendant is entitled:

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

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

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

4) to have a defence counsel attend his interrogation;

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

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

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

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

9) to collect evidence for his own defence;

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

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

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

The authority conducting the proceedings is required to advise the defendant before his first interrogation of the rights referred to in paragraph 1, items ~~12~~) to 4) and item 6) of this Article.

Rights of Persons Arrested

Article 69

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

~~1) be informed, at the moment of arrest, in a language he understands that he is not obliged to say anything, that everything he says may be used as evidence and that he has the right to be questioned in the presence of a defence counsel of his choice, or a state funded defence counsel who will be appointed at his request, if he cannot afford one. be informed immediately in a language he understands of the reason for his arrest;~~

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

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

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

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

Duties of a Defendant

Article 70

A defendant is required to:

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

2. Defence Counsel

Rights of the Defence Counsel

Article 71

The defence counsel is entitled to:

- 1) conduct a confidential conversation with the arrested person before his first interrogation (Article 69 paragraph 1 item 2));
- 2) read the criminal complaint, crime scene report and expert witness' finding and opinion, immediately before the first interrogation of the suspect;
- 3) examine case file documents and objects serving as evidence, after the issuance of an ~~order~~**decision on** conducting an investigation or after an indictment was filled directly (Article 331 paragraph **52**); and also before that time if the defendant had been interrogated in accordance with the provisions of this Code;
- 4) **have his case file copied or recorded, or to be enabled to copy or record individual documents;**
- 5) have confidential conversations with the defendant who is in custody (Article 69 paragraph 1 item 2)) and to engage in unimpeded correspondence, unless otherwise provided by this Code;
- 65**) perform on behalf of the defendant all the actions to which the defendant is entitled;
- 76**) perform other actions where provided for by this Code.

Duties of the Defence Counsel

Article 72

The defence counsel is required to:

- 1) submit his power of attorney without delay to the authority conducting proceedings;
- 2) provide to the defendant assistance with his defence in a professional, conscientious and timely manner;
- 3) refrain from abusing rights in order to delay the proceedings;

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

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

- ~~1) be informed about the content of evidentiary actions and the content and course of the trial;~~
- ~~2) provide explanation and advice to the defendant in writing, if the defendant refuses to talk to him;~~
- ~~3) attend procedural actions, as well as to present closing arguments, unless the defendant is expressly opposed to that;~~
- ~~4) file an ordinary legal remedy and perform other procedural actions at the request of the defendant, or with his express consent.~~

Capacity to Act as Defence Counsel

Article 73

Only an attorney may be a defence counsel

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

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

The following cannot be a defence counsel:

- 1) co-defendant, injured party, spouse or person who lives with ~~the co-defendant~~, injured party or the prosecutor in a common law marriage or other permanent personal association, their relative by blood in direct line to any degree, or in collateral line to the fourth degree, or an in-law to the second degree;
- 2) persons summoned to the trial as witnesses, except if under this Code they may not be questioned as witnesses, or have been freed from the duty to testify and have duly declared that they will not testify;
- 3) persons who had in the same case acted as judge, public prosecutor, representative of an injured party, police officer, or other persons who had performed actions in the pre-investigation proceedings.
- ~~4) defence counsel of co-defendant charged in the same case with the same criminal offence, unless the authority conducting proceedings concludes that it would not be detrimental to the interests of the defence.~~

Mandatory Defence

Article 74

The defendant must have a defence counsel:

- 1) if he is mute, deaf, blind or incapable to conduct his own defence successfully – from the first interrogation until the final conclusion of the criminal proceedings;
- 2) if the proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of eight years or more – from the first interrogation until the final conclusion of the criminal proceedings;
- 3) if he has been taken into custody, or prohibited from leaving his abode, or is in detention – from the moment of deprivation of liberty until the ruling discontinuing the measure becomes final;
- 4) if he is being tried *in absentia* – from the issuance of a ruling on an *in absentia* trial and for the duration of such trial;
- 5) if the trial is being held in his absence due to reasons he himself induced – from the issuance of a ruling for the trial to be held *in absentia* until the ruling by which the court establishes that reasons for his inability to stand trial have ceased becomes final;
- 6) if he has been removed from the courtroom for disturbing the order, until the conclusion of the evidentiary procedure or the termination of the trial – from the issuance of the order on his removal until his return to the courtroom or the pronouncement of the judgment;
- 7) if proceedings for pronouncing a security measure of compulsory psychiatric treatment are being conducted against him – from the submission of a motion for pronouncing such a measure until the issuance of the decision referred to in Article 526 paragraphs 2 and 3 of this Code or until the ruling pronouncing a security measure of compulsory psychiatric treatment becomes final;
- 8) from the beginning of the negotiations with the public prosecutor on the conclusion of the agreement referred to in Article 313 paragraph 1, Article 320 paragraph 1 and Article 327 paragraph 1 of this Code, until the issuance of a court decision on the agreement;
- 9) if the trial is held in his absence (Article 449 paragraph 3) – from the moment of adoption of the ruling to hold the trial in his absence, to the adoption of the judicial decision on the appeal against the judgment.

Defence Counsel of Choice

Article 75

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

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

Court Appointed Defence Counsel

Article 76

If in the cases referred to in Article 74 of this Code no defence counsel is chosen, or the defendant is left without a defence counsel during the criminal proceedings, ~~or in the case~~

~~referred to in Article 73 paragraph 3 item 4) of this Code, in case of mandatory defence, he fails to agree with co-defendants on a defence counsel or does not select another defence counsel,~~ **the judge for preliminary proceedings** or the president of the court before which the proceedings are being conducted shall issue a ruling appointing a court appointed defence counsel for the remaining part of the proceedings, according to the order on the roster of attorneys provided by the competent bar association.

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

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

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

Defence of Indigent Persons

Article 77

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

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

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

Joint Defence Counsel and Several Defence Counsel

Article 78

Several co-defendants may, in the same proceedings, have a common defence counsel only when this **is not contrary to the interests of their defence.**

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

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

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

Termination of the Rights and Duties of Defence Counsel

Article 79

The rights and duties of defence counsel are terminated:

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

Reasons for disqualifying the defence counsel

Article 80

A defence counsel of choice shall be disqualified if:

- 1) any of the reasons referred to in Article 73 paragraph 3 of this Code exists;
- 2) after being cautioned and fined he continues to disturb the order in the court;
- 3) criminal proceedings are instituted against him based on grounded suspicion that in connection with the same case he had committed the criminal offence of preventing and obstructing evidentiary actions or escape or assisted escape of a person deprived of liberty;
- 4) he has been re-granted a power of attorney after its withdrawal or cancelation, as an obvious abuse of the law (Article 14 paragraph 1);
- 5) a common defence counsel is concerned and the defendants do not act in accordance with Article 78 paragraph 2 of this Code;
- 6) a defendant who has more than five defence counsel fails to decide which defence counsel to retain (Article 78 paragraph 4).

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

- 1) the defendant or person referred to in Article 75 paragraph 1 of this Code retains another defence counsel;
- 2) he fails to perform the duty referred to in Article 72 ~~paragraph 1~~ item 2) of this Code;
- 3) due to a change of the financial status of the defendant the reasons for the defence based on indigence have ceased to exist (Article 77 paragraph 1).

Decision on disqualifying

Article 81

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

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

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

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

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

Chapter VII

EVIDENCE

1. Basic provisions

Proving Facts in Proceedings

Article 82

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

Subject-Matter of Evidentiary Actions

Article 83

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

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

Facts which a court finds to be common knowledge or sufficiently examined don't need to be proven.

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

Unlawful Evidence

Article 84

Evidence collected in contravention of Article 16 paragraphs 1 and 2 of this Code (unlawful evidence) may not be used in criminal proceedings.

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

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

2. Evidentiary Actions

a. Interrogation of the Defendant

Preconditions for the Interrogation of the Defendant

Article 85

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

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

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

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

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

Rules of Interrogating Defendants

Article 86

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

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

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

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

Interrogation through an Interpreter or Translator

Article 87

If a defendant is deaf, he will be questioned in writing, if the defendant is mute, he will be invited to reply in writing and if he is blind, the contents of written evidence will be presented to him orally. If the interrogation cannot be conducted in this manner, a person capable of communicating with the defendant will be invited to serve as an interpreter.

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

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

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

Confession of the Defendant

Article 88

When a defendant confesses to having committed a criminal offence, the authority conducting proceedings is required to continue collecting evidence about the perpetrator and the criminal offence only when grounded suspicion exists about the veracity of the confession or if the confession is incomplete, contradictory, and unclear **or hasn't been corroborated with other evidence** and appears contrary to other evidence.

Confronting the Defendant

Article 89

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

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

Recognition of Persons or Objects

Article 90

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

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

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

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

b. Questioning Witnesses

a) Basic provisions

Witness

Article 91

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

Capacity and Duty to Provide Testimony

Article 92

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

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

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

Exclusion from the Duty of Testifying

Article 93

The duty to testify does not apply to:

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

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

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

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

Exemption from the Duty of Testifying

Article 94

The following are released from the duty of giving evidence:

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

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

3) adopter and adoptee of the defendant.

If the persons referred to in Paragraph 1 of this Article is a minor, he may not be questioned as witnesses if he is in view of his age and mental development not capable of understanding the significance of the right not to have to testify, except if the defendant so demands.

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

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

Preconditions for Questioning Witnesses

Article 95

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

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

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

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

Swearing-in Witnesses

Article 96

Witnesses shall be required to swear in before giving evidence.

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

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

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

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

Witnesses who do not take Oaths

Article 97

The following witness does not have to take an oath:

- 1) a person who has not come of age at the time of the questioning;
- 2) a person unable to comprehend the significance of the oath due to the state of his mental health;

3) A person for whom it was proven or there is well grounded suspicion that he has committed the criminal offense in connection to which he is being questioned.

Rules on Questioning Witnesses

Article 98

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

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

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

Witnesses are always asked for the origin of their knowledge.

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

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

Confronting Witnesses

Article 99

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

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

Identification of Persons or Objects

Article 100

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

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

During the pre-investigation ~~proceedings and the investigation,~~**the proceedings the identification of persons is performed in the presence of the public prosecutor, while in the investigation -also in the presence of a -defence counsel-, when the defendant so requests. If duly summoned prosecutor does not show up, the identification will be done in his absence.**

Punishing Witnesses

Article 101

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

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

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

b) Protection of Witnesses

Basic Protection

Article 102

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

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

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

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

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

Especially Vulnerable Witness

Article 103

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

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

If it deems it necessary for the purpose of protecting the interests of an especially vulnerable witness, the authority conducting proceedings referred to in paragraph 2 of this Article will issue a ruling appointing a proxy for the witness, and the public prosecutor or the

president of the court will appoint a proxy according to the order on the roster of attorneys submitted to the court by the bar association competent for designating court appointed defence counsels (Article 76).

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

Rules on Examining an Especially Vulnerable Witness

Article 104

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

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

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

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

At a trial, when cross-examining an especially vulnerable witness, or a minor, it is prohibited to ask leading questions or questions based on an assumption that the witness stated something which he hasn't stated.

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

Protected Witness

Article 105

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

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

Measures of Special Protection

Article 106

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

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

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

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

Initiating Proceedings for Determining Protected Witness Status

Article 107

A court may, ex officio, grant protected status to a witness, or at the request of the public prosecutor, **the defendant, the defence counsel**, or the witness himself.

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

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

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

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

Deciding on Determining Protected Witness Status

Article 108

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

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

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

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

Examining a Protected Witness

Article 109

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

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

The court will caution all those present that they are required to keep confidential data on the protected witness and persons close to him and on other circumstances which may lead to the exposure of their identities, and that divulging a secret represents a criminal offence. The caution and the names of those present will be entered in the record.

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

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

The protected witness signs the minutes with the pseudonym.

Protecting Data on a Protected Witness

Article 110

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

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

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

Duty of Notification about Special Protection Measures

Article 111

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

Analogous Application of Provisions on a Protected Witness

Article 112

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

3. Expert Examination

a Basic Provisions

Reasons for Expert Examination

Article 113

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

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

Designating Expert Witness

Article 114

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

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

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

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

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

Duty of Conducting Expert Examination

Article 115

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

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

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

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

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

Exemption from the Duty to Conduct Expert Examination

Article 116

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

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

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

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

Ordering an Expert Examination

Article 117

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

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

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

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

If an expert examination is ordered by the court, the order is also delivered to the parties. **When expert examination has been ordered by the public prosecutor, he is obliged to serve the order on the defendant and his defence counsel within three days after having issued it.**

Order on an Expert Examination

Article 118

The order on an expert examination contains:

- 1) the title of the authority which ordered the expert examination;
- 2) the first name and surname of the person designated as an expert witness, or the title of the professional institution or state institution entrusted with the expert examination;
- 3) a designation of the subject-matter of the expert examination;
- 4) the questions which should be answered;
- 5) an obligation for exempted and secured samples, traces and suspicious substances to be transferred to the authority conducting proceedings;
- 6) the time limit for submitting findings and opinions;

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

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

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

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

The Expert Witness's Oath

Article 119

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

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

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

Process of Expert Examination

Article 120

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

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

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

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

Expert Examination in a Professional Institution or State Institution

Article 121

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

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

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

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

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

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

Article 122

The judge for preliminary proceedings, the president of the trial panel or an individual judge, *ex officio* or on a motion of a party or expert witness, may issue a ruling ordering the defendant placed in a health-care institution if it is required for the purpose of medical expert examination, **which is not the examination referred to in Article 131, paragraph 1 of this Code.**

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

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

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

If a defendant who is in detention is being placed in a health-care institution, the judge for preliminary proceedings, the president of the trial panel or an individual judge will notify the head of the institution about the reasons for which the detention was ordered, to ensure that the measures required for realising the purpose of the detention are undertaken.

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

Expert Witness's Findings and Opinion

Article 123

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

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

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

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

Shortcomings in Expert Witness's Findings and Opinion

Article 124

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

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

2) if the opinion is unclear or contradictory.

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

Professional Consultant

Article 125

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

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

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

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

Rights and Duties of the Professional Consultant

Article 126

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

By exception from Paragraph 1 of this Article, a professional consultant, the defendant and the defence counsel may not attend expert examination performed in a state agency or specialised institutions with limited access.

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

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

b. Special Cases of Expert Examination

Expert Examination of Physical Injuries

Article 127

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

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

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

Findings and Opinion of an Expert Witness

Article 128

An expert witness will accurately describe the injuries and if needed document them photographically, and thereafter render an opinion on the type and seriousness of each individual injury and their aggregate effect, in view of their nature or special circumstances of the case, on the usual consequences of such injuries, and their consequences in the concrete case, and on the objects used to inflict the injuries and the manner of their infliction.

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

Inspection and Autopsy of a Corpse ~~Expert Examination of a Corpse~~

Article 129

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

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

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

Findings and Opinion of the Expert Witness

Article 130

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

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

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

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

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

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

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

Psychiatric expert examination

Article 131

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

If, according to the opinion of an expert, a longer observation is necessary, the defendant will be sent to an appropriate health institution for observation. The judge for preliminary proceedings, an individual judge, or a panel renders a decision to that effect. The observation may be extended for over two months only based on the explained proposal of the warden of the health institution, as per previously acquired opinion of an expert, but it may not last longer than six months, no matter what the case might be.

In cases referred to in Paragraph 2 of this Article, Article 122 Paragraphs 3 to 6 of this Code will analogously apply.

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

The examination referred to in Paragraph 4 of this Article of minors may be ordered only with the consent of their guardianship authority or legal representatives.

Findings and Opinion of the Expert Witness

Article 132

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

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

If expert examination was ordered for the purpose **referred to in Article 131, Paragraph 4**, **of the expert witness will** ~~evaluating~~ the capacity of a witness to **observe, to remember and** convey his knowledge or observations ~~in connection with the subject matter of~~

~~the testimony, the expert witness will establish whether the witness is mentally disturbed and issue an opinion whether the witness is capable of testifying.~~

4. Examination

Performing Examination

Article 133

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

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

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

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

Examination of a Person

Article 134

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

Examinations **and physical examinations** of other persons may be performed **even** without their consent only if it has to be established whether their bodies bear a certain trace ~~or consequence~~ of a criminal offence **or for the purpose of establishing particular marks which can help identification thereof.**

When undertaking the actions referred to in Paragraphs 1 and 2, of this Article, the personality and dignity of persons who are subject to those actions will be honored.

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

Examination of Objects

Article 135

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

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

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

An examination of devices for automated data processing and equipment which has been used, or might be used, for data storage of electronic data shall be performed based on a court order, and, if need be, with the assistance of an expert .

Examination of a Location

Article 136

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

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

5. Reconstruction of an Event

Ordering the Reconstruction of an Event

Article 137

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

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

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

6. Record

Using a Record as Proof

Article 138

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

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

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

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

Obtaining a Record

Article 139

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

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

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

7. Obtaining Samples

Obtaining Biometric Samples

Article 140

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

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

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

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

Obtaining Samples of Biological Origin

Article 141

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

If it is necessary to establish the existence of a trace or consequence of a criminal offence on another person, the obtaining of samples of biological origin and performance of other

medical actions in accordance with paragraph 1 of this Article may be conducted even without the consent of the person, except if it would cause harm to his health in some way.

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

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

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

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

Obtaining Samples for Forensic-Genetic Analysis

Article 142

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

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

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

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

The judge for preliminary proceedings, at the public prosecutor's proposal, may order taking samples from the defendant and the injured party, or other persons, for the purpose of a forensic-genetic analysis, if the facts which connect them to the criminal offense exist and under the conditions referred to in Article 141, Paragraph 2 of this Code.

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

1) a defendant sentenced to a term of imprisonment of ~~more than three~~ **years or more** in connection with an intentional criminal offence;

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

3) a person against whom has been imposed a security measure of compulsory psychiatric treatment, **due to a committed unlawful act which is punishable by a law as a criminal offense against sexual freedom, or other actions punishable by law with a term of imprisonment of three years or more.**

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

8. Examination of Accounts and Suspicious Transactions

Object of Examination

Article 143

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

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

- 1) acquiring data;
- 2) monitoring of suspicious transactions;
- 3) temporarily suspending a suspicious transaction.

Acquiring Data

Article 144

If the conditions referred to in Article 143 paragraph 1 of this Code are fulfilled, **the judge for preliminary proceedings, at the public prosecutor's proposal** ~~the public prosecutor~~ may order a bank or other financial organisation to provide him within a certain time limit data:

- 1) about accounts a suspect has or controls and the funds in those accounts;
- 2) from data records.

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

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

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

Monitoring of Suspicious Transactions

Article 145

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

The monitoring referred to in paragraph 1 of this Article is ordered by the judge for preliminary proceedings by a reasoned order. The order contains data on the suspect, designation of the account, the obligation of the bank or financial organisation to submit periodical reports to

the public prosecutor, and the duration of the supervision. The monitoring may last no more than three months, and may for important reasons be extended by another three months at most. The monitoring is discontinued as soon as the reasons for its application cease to exist.

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

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

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

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

Temporary Suspension of a Suspicious Transaction

Article 146

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

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

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

9. Seizure of Objects

Objects Being Seized

Article 147

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

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

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

Duty of a Holder of an Object

Article 148

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

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

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

Exemption from the Duty to Surrender Objects

Article 149

The following are exempted of the duty to surrender objects:

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

Procedure for Seizing an Object

Article 150

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

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

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

Return of Seized Objects

Article 151

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

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

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

10. Search

a. Basic Provisions

Subject-Matter and Grounds for a Search

Article 152

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

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

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

Seizure of Objects and Documents

Article 153

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

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

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

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

Treatment of Objects Belonging to an Unidentified Owner

Article 154

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

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

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

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

b. Search Based on an Order

Search Order

Article 155

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

The search order contains the following:

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

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

Preconditions for a Search

Article 156

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

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

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

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

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

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

The search is attended by two citizens of adult age as witnesses who will before the commencement of the search be advised to observe the course of the search, and that they are entitled before they sign the record of the search to enter their objections on the veracity of the content of the record. **The search may also be performed without the presence of witnesses,** if the conditions referred to in paragraph 3 of this Article are **fulfilled.** ~~the search may also be performed without the presence of witnesses.~~

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

Search Procedure

Article 157

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

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

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

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

the seized objects and will immediately be issued to the person from whom the objects or instruments were seized.

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

c. A Search without an Order

Searching Dwellings and Other Premises

Article 158

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

- 1) with the consent of the holder of the dwelling and other premises;
- 2) if someone calls out for help;
- 3) in **order to arrest a fugitive offender who has been caught committing a criminal offense** that **is prosecutable ex officio**~~in order to directly arrest the perpetrator of a criminal offense;~~
- 4) for the purpose of executing a court decision on the placement of a defendant in detention or on bringing him in;
- 5) for the purpose of eliminating a direct and serious threat to persons or property.

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

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

Searching Persons

Article 159

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

Report to the Judge for Preliminary Proceedings

Article 160

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

11. Special Evidentiary Actions

a. Basic Provisions

Requirements for Ordering

Article 161

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

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

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

Criminal Offences with Respect to Which Special Evidentiary Actions are Applied

Article 162

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

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

2) aggravated murder (Article 114 of the Criminal Code), abduction (Article 134 of the Criminal Code), showing, procurement and possession of pornographic materials and exploiting juveniles for pornography (Article 185 paragraphs 2 and 3 of the Criminal Code), **robbery (Article 206, Paragraphs 2 and 3 of the Criminal Code)**, extortion (Article 214 paragraph 4 of the Criminal Code), counterfeiting money (Article 223 paragraphs 1 to 3 of the Criminal Code), money laundering (Article 231 paragraphs 1 to 4 of the Criminal Code), unlawful production and circulation of narcotic drugs (Article 246 paragraphs 1 to 3 of the Criminal Code), threatening independence (Article 305 of the Criminal Code), threatening territorial integrity (Article 307 of the Criminal Code), sedition (Article 308 of the Criminal Code), inciting sedition (Article 309 of the Criminal Code), subversion (Article 313 of the Criminal Code), sabotage (Article 314 of the Criminal Code), espionage (Article 315 of the Criminal Code), divulging state secrets (Article 316 of the Criminal Code), inciting national, racial and religious hatred or intolerance (Article

317 of the Criminal Code), violation of territorial sovereignty (Article 318 of the Criminal Code), conspiring to conduct activities against the Constitution (Article 319 of the Criminal Code), plotting an offences against the constitutional order and security of Serbia (Article 320 of the Criminal Code), serious offences against the constitutional order and security of Serbia (Article 321 of the Criminal Code), illegal manufacture, possession and sale of weapons and explosive materials (Article 348 paragraph 3 of the Criminal Code), illegal crossing of the national boarder and human trafficking (Article 350 paragraphs 2 and 3 of the Criminal Code), abuse of office (Article 359 of the Criminal Code), trading in influences (Article 366 of the Criminal Code), taking bribes (Article 367 of the Criminal Code), offering bribes (Article 368 of the Criminal Code), human trafficking (Article 388 of the Criminal Code), taking hostages (Article 392 of the Criminal Code) and the criminal offence referred to in Article 98 paragraphs 3 to 5 of the Law on the Secrecy of Data;

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

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

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

Treatment of Collected Materials

Article 163

If the public prosecutor does not initiate criminal proceedings within six months, **or a year for criminal offenses** under **the jurisdiction of specialised prosecutor's offices**, of the date **of receipt of the materials collected** by applying special evidentiary actions or if he declares that he will not use them in the proceedings or that he will not request the conduct of proceedings against the suspect, the judge for preliminary proceedings will issue a ruling on the destruction of the collected materials.

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

If during the performance of the special evidentiary actions it was acted in contravention of the provisions of this Code or an order of the authority conducting proceedings, the court's decision may not be based on the data collected and the collected material will be treated in accordance with Article 84 paragraphs **2 and 3** of this Code.

Accidental Finding

Article 164

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

Confidentiality of Data

Article 165

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

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

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

b. Covert Interception of Communications

Conditions for Ordering

Article 166

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

Order on Covert Interception of Communications

Article 167

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

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

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

Conducting Covert Interception of Communications

Article 168

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

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

Expanding Covert Interception of Communications

Article 169 ~~deleted~~

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

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

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

Delivery of Reports and Materials

Article 170

Upon the termination of the covert interception of communications, the authority referred to in Article 168 paragraph 1 of this Code delivers to the judge for preliminary proceedings recordings of the communications, letters and other parcels and a special report which contains: the time of commencement and termination of the interception, ~~data on~~ **identification code** of the

official who conducted the interception, a ~~description-note~~ -the technical means used, ~~the-number~~ and available data on the persons encompassed by the interception, and an assessment of purposefulness and results of the application of the interception.

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

The ~~public-prosecutor~~ **judge for preliminary proceedings** will order the recordings obtained through use of technical means to be transcribed in full or in part and to be described.

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

c. Covert Surveillance and Audio and Video Recording

Conditions for Ordering

Article 171

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

- 1) detecting contacts or communications of the suspect in public places where access is limited or in premises, except in a dwelling;
- 2) determining the identity of a person or locating persons of things.

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

Order on Covert Surveillance and Audio and Video Recording

Article 172

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

The order referred to in paragraph 1 of this Article contains data on the suspect, legal designation of the criminal offence, reasons on which the suspicion is based, designation of the premises, location or vehicle, authorization to enter and place the technical equipment for recording, manner of conduct, scope and duration of the special evidentiary action **as well as the obligation to disassemble the installed devices after the time limit referred to in Article 172, Paragraph 3 of this Article, has expired.**

Covert surveillance and [audio and video] recording may last three months, and if it is necessary in order to continue collecting evidence, it may be extended by a maximum of three months. If criminal offences referred to in Article 162 paragraph 1 item 1) of this Code are concerned, covert surveillance and recording may exceptionally be extended two more times at

most by three months, respectively. The conduct of surveillance and recording is discontinued as soon as the reasons for their application cease to exist.

Conducting Covert Surveillance and Audio and Video Recording

Article 173

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

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

d. Simulated [Business] Deals

Conditions for Ordering

Article 174

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

- 1) a simulated purchase, sale or rendering of business services;
- 2) a simulated offering or acceptance of bribes.

Order Allowing for Conclusion of Simulated [Business] Deals

Article 175

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

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

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

Implementation of Simulated [Business] Deals

Article 176

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

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

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

Delivery of Reports and Materials

Article 177

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

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

e. Computer Search of Data

Conditions for Ordering

Article 178

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

Order on a Computer Search of Data

Article 179

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

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

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

Conduct of a Computer Search of Data

Article 180

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

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

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

f. Controlled Delivery

Conditions for Ordering

Article 181

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

- 1) be delivered within the territory of the Republic of Serbia;
- 2) enter, transit through and exist from the territory of the Republic of Serbia.

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

Conducting a Controlled Delivery

Article 182

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

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

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

g. Undercover Investigator

Conditions for Ordering

Article 183

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

Order on Engaging an Undercover Investigator

Article 184

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

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

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

Designating an Undercover Investigator

Article 185

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

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

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

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

Delivery of Reports and Materials

Article 186

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

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

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

Examination of an Undercover Investigator as a Witness

Article 187

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

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

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

Chapter VIII

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

1. Basic Provisions

Types of Measures

Article 188

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

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

General Conditions for Ordering Measures

Article 189

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

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

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

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

Article 190

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

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

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

2. Specific Measures

a. Summonses

Content of a Summons

Article 191

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

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

Rights and Duties of the Defendant

Article 192

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

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

Summoning Participants in Proceedings

Article 193

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

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

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

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

An appeal against the ruling referred to in paragraph 4 of this Article is decided by the panel **referred to in Article 21, Paragraph 4 of this Code**. An appeal does not stay execution of the ruling.

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

Summoning by Public Notice

Article 194

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

b. Requiring [a Defendant] to Appear

Order to Require [a Defendant] to Appear

Article 195

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

- 1) if a duly summoned defendant fails to appear, without justifying his absence;
- 2) if service of the summons could not be performed, and the circumstances obviously indicate that the defendant is evading the receipt of a summons;
- 3) if a ruling ordering detention has been issued.

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

Execution of the Order to Require a Defendant to Appear

Article 196

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

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

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

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

Conditions for Ordering

Article 197

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

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

The measures referred to in Paragraphs 1 and 2 of this Article may not limit the defendant's right to unobstructed meetings with his family members, close relatives and his defence counsel, if those persons haven't been subject to the measure referred to in Paragraph 2 of this Article.

Deciding on the Measure

Article 198

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

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

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

The measure referred to in paragraph 1 of this Article may last for as long as a need for it exists, but not longer than the time of the final judgment, or the commitment of the defendant to serve a custodial criminal sanction. The court is required to examine once every three months whether the measure is still justified.

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

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

d. Prohibition on Leaving a Temporary Residence

Conditions for Ordering

Article 199

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

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

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

Deciding on the Measure

Article 200

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

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

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

If the defendant referred to in paragraph 3 of this Article has an urgent need to travel to a foreign country, the court may order his travel documents to be returned to him, if he appoints a proxy to receive mail for him in the Republic of Serbia and promises to respond to every summons of the court, or posts bail.

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

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

Seizure of a Driver's License

Article 201

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

- 1) a criminal offence in connection with whose commission or preparation a motor vehicle was used;
- 2) the criminal offence of threatening public traffic committed with intent.

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

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

e. Bail

Conditions for Ordering

Article 202

A defendant who is to be placed in detention or is already in detention ~~due to the existence of the reasons prescribed in Article 211 paragraph 1 items 1) and 4) of this Code~~, may be left at liberty, or be released, if he personally or another on his behalf offers a bail that he will not **go into hiding, abscond, or obstruct the criminal proceedings as defined in Article 211, Paragraph 1, Items 2) and 3)** until the conclusion of the criminal proceedings, and if the defendant himself ~~issues a~~ **promises** before the court conducting the proceedings that he will not go into hiding or leave his abode without the permission of the court, **or that he will not obstruct the criminal proceedings as defined in Article 211, Paragraph 1, Items 2) and 3).**

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

Content of a Bail

Article 203

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

Proposing Bail

Article 204

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

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

Deciding on Bail

Article 205

During the investigation a reasoned ruling ordering or repealing bail or confiscating bail is issued by the judge for preliminary proceedings, ~~and~~ after the indictment is filed **by the pre-trial conference judge, after the indictment comes into force** by the president of the panel, and at the trial, by the panel.

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

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

Confiscation of Bail

Article 206

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

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

Repealing a Bail

Article 207

Detention will be ordered against a defendant for whom bail was deposited if he fails to **show up based on** a duly served summons without justifying his absence, or if **reasons emerge which clearly point to the fact that only ordering of detention may prevent obstruction of criminal proceedings as defined in Article 211, Paragraph 1, Items 2) and 3) of this Code**~~arises~~.

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

concluded by a final ruling on discontinuing proceedings or a dismissal of the charges or a final judgment.

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

f. Prohibition of Leaving a Dwelling

Conditions for Ordering

Article 208

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

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

Deciding on the Measure

Article 209

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

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

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

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

The parties and defence counsel may appeal against a ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article. The public prosecutor may also

appeal against a ruling denying a motion for ordering the measure. An appeal does not stay the execution of the ruling.

g. Detention

a) Basic Provisions

Basic Rules on Ordering Detention

Article 210

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

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

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

Reasons for Ordering Detention

Article 211

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

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

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

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

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

In the case referred to in paragraph 1 item 1) of this Article, detention ordered solely because the identity of the person cannot be established lasts only until that identity is established, and detention ordered solely because a defendant obviously avoids appearing at the trial may last until the publication of the judgment. In the case referred to in paragraph 1 item 2) of this Article, detention will be revoked as soon as the evidence because of which detention was ordered is secured.

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

Deciding on Detention

Article 212

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

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

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

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

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

Ruling Ordering Detention

Article 213

Detention is ordered by a ruling of the competent court.

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

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

Detention during the Investigation

Article 214

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

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

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

A decision on the appeal is issued within 48 hours.

Duration of Detention during the Investigation and in the Procedure for Confirmation of the Indictment

Article 215

Based on **a** ruling of the judge for preliminary proceedings, a defendant may be kept in detention for a maximum of ~~three months~~ **one months** from the date of being deprived of liberty. **At the public prosecutor's motion the detention may be extended by a ruling of the panel of the same court (Article 21, Paragraph 4) to 2 additional months** ~~The judge for preliminary proceedings is required, even without a motion by the parties or defence counsel, to examine at the end of each 30 days whether the reasons for detention still exist and to issue a ruling extending or repealing detention.~~

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

The court notifies the defendant and his counsel about the public prosecutor's motion referred to in Paragraphs 1 and 2 of this Article, who may respond to the notification within 24 hours after being served with it.

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

Detention between filing and confirmation of the indictment may not last more than three months.

Detention after an Indictment has been filed

Article 216

From the filing of the indictment ~~to its~~ **entry into force, detention may be ordered, extended or repealed by a decision of the pre-trial conference judge, and after that by a ruling of the panel** ~~the court until the commitment of the defendant to serve a custodial criminal sanction, detention may be ordered, extended or repealed by a ruling of the panel.~~

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

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

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

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

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

b) Treatment of Detainees

Basic Rules

Article 217

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

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

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

Rights and Duties of Detainees

Article 218

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

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

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

For the duration of the investigation, the judge for preliminary proceedings may issue a ruling temporarily denying or restricting a detainee's right to newspapers, **radio and television**, if it is probable that it would lead to an obstruction of the investigation. An appeal against the ruling of the judge for preliminary proceedings may be submitted to the panel (Article 21 paragraph 4).

A detainee may be obligated to perform work necessary for keeping the room he is in clean. If the detainee so requests, the judge for preliminary proceedings, or the president of the panel, may in agreement with the warden of the institution, allow him to work within the institution on activities corresponding with his mental and physical properties, provided it does not harm the conduct of the proceedings. The detainee is entitled to compensation for his work determined by the warden of the custodial institution.

Visits to a Detainee

Article 219

On the approval of the judge for preliminary proceedings and under his supervision or the supervision of a person designated by the judge, within the limits of house rules of the institution, a detainee may be visited by close relatives, and upon his request – by a physician and other persons. Certain visits may be prohibited if it is likely that they could lead to an obstruction of investigation. A detainee may appeal a ruling of the judge for preliminary proceedings prohibiting certain visits to the panel (Article 21 paragraph 4) which does not stay the execution of the ruling.

A diplomatic-consular representative of the state whose national the detainee is, or a representative of an authorized organisation of international public law if a refugee or a stateless person is concerned, are entitled in accordance with ratified international agreement and with the knowledge of the judge for preliminary proceedings to visit the detainee and conduct unsupervised conversations with him. The judge for preliminary proceedings will inform the warden of the custodial institution where the defendant is detained about the visit of a diplomatic-consular representative, or a representative of an authorized organization of international public law,

The defence attorney, Protector of Citizens [Ombudsman] and National Assembly Commission on the Control of the Execution of Criminal Sanctions, in accordance with the law, and a representative of an authorized organization of international public law, in accordance with a ratified international agreement, are entitled to have unhampered visits to detained persons and to talk to them without the presence of other persons.

After the indictment is filed, and until the judgment **becomes final**, the competences referred to in paragraphs 1 and 2 of this Article are exercised by the **pre-trial conference judge, and after the indictment becomes final and until it enters into force the** president of the panel.

Correspondence with a Detainee

Article 220.

A detainee may engage in correspondence with persons outside the institution with the knowledge and under the supervision of the judge for preliminary proceedings. The judge for preliminary proceedings may prohibit the dispatch and receipt of letters and other dispatches if it is likely that it would lead to an obstruction of the investigation. A detainee may appeal a ruling of the judge for preliminary proceedings to the panel (Article 21 paragraph 4) which does not stay the execution of the ruling.

The prohibition referred to in paragraph 1 of this Article does not relate to letters a detainee sends to or receives from international courts, authorized organizations of international public law, Protector Citizens and domestic authorities belonging to legislative, judicial and executive branch, as well as to letters he is sending to or receiving from his defence counsel. The dispatch of a petition, complaint or appeal may never be prohibited.

~~After the indictment is filed, and until the judgment becomes final, the competences referred to in paragraphs 1 and 2 of this Article are exercised by the president of the panel.~~

After the indictment is filed and until it becomes final the authority referred to Paragraphs 1 and 2 of this Article is exercised by the pre-trial conference judge, and after the indictment enters into force until the final judgment the president of the panel.

Disciplinary Offences

Article 221

The judge for preliminary proceedings, ~~the pre-trial conference judge~~ or the president of the panel, may pronounce a disciplinary penalty of restricting visits for a disciplinary offence by a detainee. The restriction does not relate to the defence counsel. A detainee may not be sanctioned before being informed about the disciplinary offence of which he is accused, before being given an opportunity to present his defence, and before the court has comprehensively examined the case.

An appeal to the panel (Article 21 paragraph 4) is allowed against the ruling on a penalty issued for a disciplinary offence within 24 hours of the time of receiving the ruling. An appeal does not stay the execution of the ruling. The panel will decide on the appeal within eight days of the date of receiving the appeal.

Monitoring of Detainees

Article 222

Monitoring of detainees is performed by the judge for the execution of criminal sanctions or a judge designated by the president of the court.

The judge referred to in paragraph 1 of this Article is required at least once in 15 days to visit detainees and, if he deems this necessary, and without the presence of employees of the custodial institution, inform himself about the diet of the detainees, fulfilment of their other needs, and their treatment. The judge is required to notify without delay of irregularities detected during a visit to the custodial institution the ministry responsible for the judiciary as well as the Ombudsman. The ministry is required to inform the judge within 15 days from the date of receipt of the notification on irregularities about the measures undertaken to rectify them.

The judge referred to in paragraph 1 of this Article may visit all detainees at any time, talk to them and receive complaints from them.

Adoption of by-laws

Article 223

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

Chapter IX

TIME LIMITS

1. Basic Provisions

Ways of Calculating Time Limits

Article 224

The time limits specified by this Code cannot be extended, except where expressly permitted by the Code. When a time limit determined by this Code for the purpose of protecting the rights of the defence and other procedural rights of the defendant is concerned, that time limit may be shortened if the defendant, **or the defence counsel**, requests that in writing, or orally on the record before the authority conducting proceedings.

Time limits are counted in hours, days, months and years.

The hour or the day of delivery or notification, or when an event from which the calculation of the time limit is to commence takes place, is not counted towards the time limit, but the first following hour or day is taken as the outset of the time limit. One day is counted as 24 hours, and months are counted according to calendar time.

Time limits stipulated in months or years terminate on the expiry of the date of the last month or year which by its number corresponds to the date when the time limit commenced. If there is no such date in the last month, the time limit terminates on the last day of that month.

If the last day of a time limit falls on a national holiday or a Saturday or a Sunday or any other day when a public authority was not working, the time limit shall expire on the first following working day.

Timely Delivery

Article 225

When the filing of a submission is bound by a time limit, it is deemed delivered in time if it is delivered to the person authorized to receive it before the expiry of the time limit.

When a submission is sent through the mail by registered mail or telegraph, the date of delivery to the post office is deemed as the date of delivery to the person to whom it was sent. Delivery to a military post office in places where there is no general post office is deemed as delivery to the post office by registered mail.

When a submission is sent by electronic mail, the date and hour when the device for electronic transmission of data registered the dispatch of the submission is deemed as the date of delivery to the person to whom it was sent.

A defendant in detention may also orally make a submission whose giving is bound by a time limit on the record with the court conducting the proceedings or deliver it through the custodial institution, and a person serving a custodial criminal sanction may deliver such a submission through the custodial institution where he is accommodated. The date when such a record was made, or when the submission was delivered through the custodial institution, shall be deemed as the date of delivery to the authority which is competent to receive it. The custodial institution will issue the defendant with a receipt of delivery of the submission.

If a submission bound by a time limit, due to ignorance or an obvious mistake by the submitter, is delivered or sent to a public prosecutor or court which is not competent before the expiry of a time limit, and is received by the public prosecutor or court which is not competent after the expiry of the time limit, it will be considered as having been submitted in a timely manner.

2. Reinstatement to a Prior Position

Reasons for Reinstatement to a Prior Position

Article 226

Reinstatement to a prior position may be sought by:

1) a defendant who for justifiable reasons could not come to a hearing at which it was decided on the agreement referred to in Article 313 paragraph 1 and Article 320 paragraph 1 of this Code or misses a time limit for submitting an appeal against a judgment or a ruling corresponding to a judgment;

2) an injured party, subsidiary prosecutor or private prosecutor who for justifiable reasons could not notify the court in due time about a change of permanent or temporary residence or could not come to a preparatory hearing, trial, or a hearing from Art. 505 paragraph 1 of this Code (Article 52 paragraph 4, Article 61 paragraph 2 and Article 67);

3) a private prosecutor who for justifiable reasons misses a deadline for correcting shortcomings of a private lawsuit or for collecting evidence (~~Article 333 paragraph 3, Article 337 paragraph 5, and~~ Article 501, paragraphs 2 and 7).

Application for Reinstatement to a Prior Position

Article 227

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

A defendant who missed a time limit for an appeal against a judgment or a ruling corresponding to a judgment is required to submit the appeal together with the application for reinstatement to a prior position.

The application referred to in paragraph 2 of this Article as a rule does not stay execution of the judgment or ruling corresponding to a judgment, but the court which has competence to decide on the application may decide to defer the execution until the issuance of a decision on the application.

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

Deciding on an Application for Reinstatement to a Prior Position

Article 228

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

A ruling allowing reinstatement to a prior position is not appealable.

When a defendant has appealed against a ruling not allowing reinstatement to a prior position, the court is required to deliver the appeal, together with the appeal against the judgment or ruling corresponding to a judgment, and the response to the appeal and the entire case- file, to the immediately higher court for deciding.

Chapter X

SUBMISSIONS AND TRANSCRIPTS

1. Submissions

Basic Rules on Submission

Article 229

Charges, a motion, legal remedy or other declaration or notification is submitted in writing or given orally for the record.

The submission referred to in paragraph 1 of this Article must be comprehensible and contain everything necessary for it to be acted on.

Unless specified otherwise in this Code, the authority conducting proceedings will ask the submitter of the submission which is incomprehensible or does not contain everything necessary for it to be acted on to correct the submission, or amend it, and if he fails to do so within a specified time limit, will dismiss the submission.

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

A submission which under this Code is delivered to the opposing party is submitted to the authority conducting proceedings in a sufficient number of copies for that authority and for the other party. If such a submission is not submitted in a sufficient number of copies, it will be copied at the expense of the submitter.

Electronic Submission

Article 230

A submission which is under this Code composed in written form and signed may be submitted in the form of an electronic document supplied with an electronic signature of the submitter (electronic submission).

An electronic submission is delivered to the authority conducting proceedings by electronic mail at the electronic mail address designated by the authority conducting proceedings for receiving electronic submissions or by other electronic means, in accordance with the law.

An authority conducting proceedings who received an electronic submission confirms to the submitter without delay receipt of the submission by electronic means.

If the submitter does not receive a confirmation of reception, the electronic submission is deemed not to have been sent.

The authority conducting proceedings makes an official note on an electronic submission. In the event of an incomprehensible or incomplete submission it will be acted in accordance with Article 229 paragraphs 3 and 4 of this Code.

The method of submission of and the actions taken with electronic submissions are regulated in detail in the Court Rules of Procedure

Penalizing a Submitter

Article 231

The authority conducting proceedings is required to protect its reputation and the reputations of the parties and other participants in proceedings from insults, threats and every other attack.

The court will fine up to 100,000 dinars a defendant, defence counsel of a defendant, proxy, legal representative, injured party, private prosecutor or subsidiary prosecutor who in his submission insults the authority or a participant in proceedings. The competent bar association is informed about the penalization of a lawyer and it has the obligation to inform the court about the undertaken measures.

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

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

2. Transcripts

a. Basic Provisions

Recording Actions

Article 232

A transcript will be made of every action performed during proceedings simultaneously with the performance of the action, and if that is not possible, then immediately thereafter.

The transcript is written by the record-keeper. Only when an action is being performed outside the official premises of the authority conducting proceedings, and a record-keeper cannot be secured, the transcript may be written by the person performing the action.

When the transcript is written by the record-keeper, the transcript is composed by the person performing the action saying out loud to the record-keeper what to enter in the transcript.

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

By exception from paragraph 1 of this Article, an official note is made of the statements of persons of importance for undertaking criminal prosecution or other actions performed in the pre-investigation proceedings in which besides the essence of the statement or action the data referred to in Article 233 paragraph 1 of this Code are also entered.

Contents of a Transcript

Article 233

The following are entered in the transcript: the title of the authority conducting proceedings before which the action is being undertaken, the place where the action is being undertaken, the date and hour when the action was commenced and terminated, the first names and surnames of the persons present and their capacities, as well as a designation of the criminal case in connection with which the action is being undertaken.

The transcript should contain essential data on the course and content of the action undertaken. Only the essential content of the testimony and statements made is entered in the transcript in a narrative form. Questions are entered in the transcript only if it is necessary for understanding the answer. When the authority conducting proceedings deems it necessary, or on a motion by the parties or defence counsel, a question asked and the answer given will be entered in the transcript *verbatim*. In the case of abuse, this right may be denied to them. If objects or documents were seized during the performance of the action, it will be stated so in the transcript, and the objects seized will be attached to the transcript or it will be noted where they are being kept.

In undertaking an action such as an examination, taking of samples, search or recognition, data which are of importance given the nature of the action or for establishing the identities of certain objects (description, measurements and size of objects or traces, placement of markings on objects etc.) will be entered in the transcript, and if sketches, drawings, plans, photographs, film and other technical recordings were made – this will be stated in the transcript and attached to the transcript.

Manner of Keeping a Transcript

Article 234

A transcript must be kept in an orderly manner. Nothing in a transcript may be erased, added or changed. Everything crossed out must remain legible.

All changes, corrections and amendments are entered at the end of the transcript and must be certified by the persons who sign the transcript.

Determining the Authenticity of Transcripts

Article 235

Persons who have been questioned or examined, persons who are required to attend actions in proceedings, as well as the parties, defence counsel and injured party if they are present, are entitled to read a transcript or to request that it be read out to them. The person undertaking the action is required to advise them thereof, and it will be noted in the record whether the advice was given and whether the transcript was read.

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

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

An illiterate person instead of signing places a print of the index finger of his right hand, and the record-keeper will write his first name and surname under the print. If, because it is not possible to make a print of the index finger of the right hand, the print of another finger is being made, or a print of a finger of the left hand, it will be noted in the record from which finger of which hand the print was taken.

If a person questioned or examined has no hands – he will read the transcript, and if he is illiterate – the transcript will be read to him, and it will be stated so in the transcript.

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

At the end of the transcript it will be signed by the translator or interpreter, if one was present, witnesses whose presence is obligatory in the undertaking of evidentiary actions, and during a search also the holder of a dwelling and other premises or the person being searched. If the transcript is not being written by a record-keeper (Article 232 paragraph 2), the transcript is signed by the persons attending the action. If there are no such persons or they are not able to understand the contents of the transcript, the transcript is signed by two witnesses, except if it is not possible to secure their presence.

If it was not possible to undertake the action without interruptions, the date and hour when the interruption began will be noted in the transcript, as well as the date and hour when the action is resumed.

If there were objections in respect of the contents of the transcript, those objections will be entered in the transcript.

The transcript is signed at the end by the person who undertook the action and the record-keeper.

Audio or Video Recording

Article 236

The authority conducting proceedings may order that the undertaking of an evidentiary or other action be recorded by a device for audio or video recording. Audio recording of the

interrogation of a defendant and examination of a witness and expert witness in the proceedings in connection with criminal offences referred to in Article 162 paragraph 1 item 1) of this Code is mandatory.

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

Audio or video recording may be performed at a trial only when it is authorised for a particular trial by the president of the panel. If recording at a trial has been authorised, the trial panel may for justifiable reasons decide that certain parts of the trial are not recorded. Audio recording of a trial at which offences referred to in Article 162 paragraph 1 item 1) of this Code are being discussed is mandatory.

The recording referred to in paragraph 1 of this Article must contain the data referred to in Article 233 paragraph 1 of this Code, data required for the identification of persons whose statements are being recorded and data on the capacity in which they are being questioned or examined, as well as data on the duration of the recording. When statements made by several persons are being recorded, it must be ensured that it can be discerned easily from the recording who made which statement.

At the request of the person questioned or examined, the recording will be played back immediately, and that person's corrections and explanations will be recorded.

It will be entered in the record of an evidentiary or other action or the trial that a recording was made, who performed the recording, whether the person questioned or examined had been informed in advance about the recording, whether the recording was played back and where the recording is kept, unless it is attached to the case file.

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

The recording is kept in the public prosecution or the court for as long as the crime documentation is kept.

The public prosecutor or the court may allow participants in proceedings with a justifiable interest to use audio or video recording devices to record the undertaking of an evidentiary or other action or the trial.

Besides the needs of the proceedings, the recording referred to in paragraphs 1 to 9 of this Article in proceedings which have been ended with final decisions may also be shown publicly for professional and scientific purposes. In that case the identities of the parties and participants of the recorded action must be concealed.

Excluding Transcripts and Information

Article 237

When it is prescribed in this Code that certain evidence may not be used in criminal proceedings or that a court decision may not be based on it, the judge for preliminary proceedings will *ex officio* or on a motion of the ~~parties~~ **public prosecutor, the defendant** and the defence counsel issue a ruling on excluding the transcript of those actions from the file immediately, or no later than the conclusion of the investigation. **A special appeal against the ruling accepting or rejecting a motion on excluding evidence is allowed** ~~A special appeal against this ruling is allowed.~~

After the ruling becomes final, the excluded transcripts are placed under a separate sealed cover and kept by the judge for preliminary proceedings separate from other documents and may not be examined or used in the proceedings. After the criminal proceedings are ended by a final decision, the excluded transcripts will be treated in accordance with Article 84 paragraph 2 and 3 of this Code.

After the conclusion of the investigation, the judge for preliminary proceedings will act in accordance with provisions of paragraphs 1 and 2 of this Article also in respect of all information which was within the meaning of Article 282 paragraph 1 item 2) and paragraph 4 and Article 288 of this Code provided to the public prosecutor and police by citizens, except for the transcripts referred to in Article 289 paragraph 4 of this Code. When the public prosecutor files an indictment without conducting an investigation (Article 331 paragraph 52), he will deliver documentation with such information to the judge for preliminary proceedings, who will act in accordance with provisions of this Article.

3. Special Types of Transcripts

a. Trial Transcript

Recording the Trial

Article 238

A transcript of the trial is kept in which is entered, in essence, the content of the work and the entire course of the trial.

The course of the trial may also be recorded by means of stenography. Stenographic notes will within 48 hours be translated, examined, signed by the stenographer and attached to the file.

The provisions of Article 236 of this Code are applied accordingly to the audio recording of the course of the trial. Permission for audio recording is issued by the president of the panel.

Contents of the Trial Transcript

Article 239

The introductory part of the transcript must contain the indication of the court where the trial is being held, the time and place of the session, the first names and surnames of the president of the panel, members of the panel and the record-keeper, prosecutor, defendant and defence counsel, injured party and his legal representative or proxy, translator, interpreter, the criminal offence which is the subject-matter of the trial, as well as whether the trial is public or held *in camera*.

The transcript must in particular contain data on which indictment was read at the trial, or presented verbally, and whether the prosecutor altered or amended the charges, what motions were made by the parties and what decisions were made by the president of the panel or the panel, which evidence was examined, whether records and other documents were examined, whether video or audio or other recordings were played and what objections the parties made in respect of the records, documents or recordings. If the public is excluded from the trial, it must

be noted in the transcript that the president of the panel cautioned those present about the consequences of revealing without authorisation what they learnt at the trial as a secret.

Statements given by the defendant, witness, expert witness or other person are entered in the transcript if they contain deviations from or amendment to their earlier statement, so that their basic content is presented.

The president of the panel may, on a motion of the parties, **the defence counsel**, or *ex officio*, order statements he deems particularly important to be entered in the transcript *verbatim*.

The entire summary judgment (Article 428. paragraphs 3 to 5.) is entered in the trial transcript, with a designation of whether the judgment was made public. The summary judgment contained in the trial transcript represents the original.

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

The information about the beginning and end of the trial, participants who are present and evidence presented, rulings on the management of proceedings and a transcript of the audio recording which is made within 72 hours and represents an integral part of the transcript of the trial held in connection with the offences referred to in Article 162 paragraph 1 item 1) of this Code is entered in the trial transcript.

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

Determining the Authenticity of the Trial Transcript

Article 240

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

The parties **and the defence counsel** are entitled to examine a completed transcript and its attachments, to voice objections in respect of its content and to request corrections of the transcript. The parties **and the defence counsel are** entitled to a copy of the transcript after the conclusion of the session, if they so request.

Corrections of incorrectly entered names, numbers and other obvious writing errors may be ordered by the president of the panel on a motion of the parties **and the defence counsel**, or the person who gave the statement, or *ex officio*. Other corrections of and amendments to the transcript may be ordered only by the panel.

Objections and motions of the parties **and the defence counsel** respect of the transcript, as well as corrections of and amendments to the transcript, must be entered after the end of a concluded transcript. In the continuation of the transcript also the reasons for which certain motions and objections were not approved will be entered. The president of the panel and the record-keeper also sign the continuation of the transcript.

b. Minutes of Deliberation and Voting

Composing the Minutes of Deliberation and Voting

Article 241

Separate minutes will be composed of deliberation and voting.

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

These minutes are signed by all the members of the panel and the record-keeper.

A dissenting opinion of a panel member who was in minority during the voting will be attached to the minutes of deliberation and voting, unless it is entered in the transcript. The panel member who has the dissenting opinion has the obligation to send his written rationale within eight days from the date of the vote at the latest.

The minutes of deliberation and voting will be sealed under a separate cover. These minutes may be examined only by the court of legal remedy when it is adjudicating on a legal remedy and in that case it is required to re-seal the minutes in a separate cover and to designate on the cover that it had examined the minutes.

If the written reasoning **of the dissenting opinion** is not sent to the president of the panel by the expiry of the deadline from paragraph 4 of this Article, the minutes of deliberation and voting will be sealed under a separate cover without the written reasoning.

Chapter XI

DELIVERY OF DOCUMENTS AND REVIEWING CASE FILES DOCUMENTS

1. Delivery of Documents

a. Basic Provisions

Basic Rules on Delivery

Article 242

Documents are as a rule delivered by an official of the authority conducting proceedings which issued the decision or directly at that authority, through the post office or other organisation registered to deliver documentation, authorities of local self-government, by letter rogatory through another public authority, by telecommunication or electronic means, and exceptionally also through the police.

Summons for a trial or other summons may also be verbally communicated by the authority conducting proceedings to a person who is before it, with a caution about the consequences of not attending. The summons and caution will be entered in the record which will be signed by the person summoned, except if it is designated in the trial transcript, and the service is thereby deemed executed.

Delivery may also be undertaken by posting on a notice board or webpage of the authority conducting proceedings, and, with the consent of the person to whom the delivery is to be made, also through a proxy for receiving documents, through a post office box or electronic mail. Delivery is deemed executed by the expiry of a time limit of eight days from the date of the posting of the document on the notice board or webpage of the authority conducting proceedings, or from the reception of a receipt that the document was served on the proxy for receiving documents, delivered to a post office box, or to an electronic mail address.

Delivery

Article 243

A document is served by delivering it directly to the person to whom it was dispatched.

If the person referred to in paragraph 1 is not present at the place where the delivery is to be executed, the document may be delivered to an adult member of his household who is required to accept it. ~~If no member of the family household is present, the document will be delivered to a doorman, neighbour or president of the house council if they agree to it, and the delivery is thereby deemed executed.~~

If the delivery is being conducted at the workplace of the person referred to in paragraph 1 of this Article, and that person is not present, the document may be delivered to a person authorised for receiving mail, who is required to accept the document, or a person employed there, if he agrees to receive the document, and the delivery is thereby deemed executed.

If the person referred to in paragraph 2 and 3 of this Article who is not required to accept a document refuses in writing to accept it, the process server will leave a notice that he will post the document on the notice board of the court, and, if possible, also on the internet site of the authority conducting proceedings. At the expiry of a time limit of eight days from the date of posting of the document, the delivery is deemed executed.

When the person referred to in paragraph 1 of this Article or person referred to in paragraphs 2 and 3 of this Article who is required to accept a document refuses in writing to do so, the process server will mark on the delivery slip the date, hour and reason of the refusal to accept, and leave the document in the dwelling of the person referred to in paragraph 1 of this Article or in the premises where he is employed, and the delivery is thereby executed.

If in the place where a delivery is to be executed the person referred to in paragraph 2 and 3 of this Article who is required to receive a document is not present, the delivery will be effected in the manner specified in paragraph 4 of this Article.

Receipt of Delivery

Article 244

Documents delivered by direct delivery are delivered in a sealed cover.

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

If the recipient is illiterate or unable to sign the document, the process server will sign it, designating the date of receipt and placing a remark explaining why he signed it on behalf of the recipient.

If the recipient refuses to sign the receipt referred to in paragraph 2 of this Article, the process server will so note on the receipt and designate the date of delivery, whereby the delivery is executed.

The certificate of receipt of a document delivered through a post office box is a document certified by the post office on the date and hour of the delivery of the document to the post office box.

The certificate of receipt of a document delivered by electronic means is a printed electronic record of the date and hour when the device for electronic transmission of data marked

that the document was sent to the recipient, the names of the sender and the recipient and the title of the document.

Special Means of Notification Delivery

Article 245

If the authority conducting the proceedings holds that a delivery will be executed, until the conclusion of the trial documents may be delivered to a participant in proceedings through another participant in the proceedings who agrees to deliver them. Delivery may not be executed in this manner to the defendant.

If the authority conducting the proceedings rules that a notice will be received, a participant in proceedings, and if there is a danger of a delay exceptionally also the defendant, may be notified by a telegram, ~~or~~ telephone, **or some other electronic medium for transmission of messages**, about **holding or postponement** ~~a summons to a~~ trial or **about some other action that is to be taken** ~~other summons, or a decision to defer a trial or other actions.~~

The authority conducting proceedings will make an official note in the file on delivery or notice made in accordance with the provisions of this Article.

If the delivery or notice was executed in a timely manner in accordance with the provisions of this Article, the consequences prescribed for omission are applied only if the person referred to in paragraphs 1 and 2 of this Article was cautioned about them.

b. Special Rules on Delivery

Service upon a Defendant

Article 246

If service of documents upon a defendant cannot be executed at the address about which the defendant has informed the authority conducting proceedings, the process server will leave a notice stating he will post the document on the notice board and, if possible, on the webpage of the authority conducting proceedings. At the expiry of eight days from the date of posting the document, the service is deemed executed.

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

By exception from paragraph 1 of this Article, if a defendant who has no defence counsel needs to be served a judgment pronouncing a custodial criminal sanction, and the service cannot be executed at the address about which the defendant informed the court, a defence counsel will be appointed for him *ex officio* until the defendant informs the court about the new address.

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

Service upon a Prosecutor

Article 247

Documents are served upon the public prosecutor by delivery to the clerk's office of the public prosecution.

When decisions from whose time of delivery a time limit begins to run are being served, the date of delivery of the document to the clerk's office of the public prosecution is deemed the date of delivery.

The court will at the request of the public prosecutor serve upon him a criminal file for examination. If a time limit for filing a regular legal remedy is running, or if it is so required by other interests of the proceedings, the court may determine the time limit within which the public prosecutor should return the file.

If a subsidiary prosecutor or private prosecutor has a proxy, documents are served only upon the proxy, and if there are more than one, then only to one of them.

In accordance with paragraph 4 of this Article, documents are served upon an injured party who has a proxy.

Service upon Persons with a Certain Status

Article 248

Documents are served upon military personnel, personnel of the police, the Security Information Agency, the Military Security Agency, Military Intelligence Agency, or members of the guards of the institution where persons deprived of liberty are held, and persons employed in river and air transport through their commands, direct superiors or managing officials or the seat of the legal person.

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

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

Documents are served upon persons included in a programme of protection of participants in criminal proceedings through the protection unit, in accordance with this Code and other regulations.

Delivery of Documents Abroad

Article 249

Documents are served upon to a participant in proceedings who is at a known address in a foreign country in accordance with the provisions of a separate law, unless it is regulated by a ratified international agreement.

Together with the document referred to in paragraph 1 of this Article, the authority conducting proceedings may order a defendant to appoint within a certain time limit a proxy for

the receipt of documents in the Republic of Serbia and to inform thereof the authority conducting proceedings, with a caution of the consequences referred to in paragraph 3 of this Article.

If the defendant does not act in accordance with paragraph 2 of this Article, the authority conducting proceedings will appoint a proxy for him. Service of a document upon the appointed proxy is deemed execution of the delivery.

2. Examination of Case File Documents

Conditions for Examining Case File Documents

Article 250

Everyone who has a justified interest may examine, ~~copy or record certain~~ [case file] documents, **may request specific [case file] documents to be copied or recorded, or may request to be enabled to copy or record specific [case file] documents**, except those bearing an indication of secrecy level.

Permission to examine, **copy and record** the documents referred to in paragraph 1 of this Article during the proceedings is issued by the public prosecutor or the court, and after the conclusion of the proceedings, the president of the court or an official appointed by him.

If the public had been excluded from the trial or there could be a substantial violation of the right to privacy, examination of the documents referred to in paragraph 1 of this Article may be denied or made conditional on a ban on the public use of the names of participants in the proceedings. A ruling on denying the examination of [case file] documents is appealable, but the appeal does not stay execution.

Examining Case File Documents and Viewing Objects

Article 251

A defendant or suspect questioned in accordance with provisions on the questioning of a defendant and his defence counsel, are entitled to examine [case file] documents, **request documents to be copied or recorded for them, or request to be enabled to copy or record them** and view collected objects serving as evidence.

The injured party (Article 50 paragraph 1 item 4) and paragraph 2), the subsidiary prosecutor (Article 58 paragraph 2) and the private prosecutor (Article 64 paragraph 2) also exercise the right referred to in paragraph 1 of this Article

Chapter XII

RESTITUTION CLAIM

General Conditions and Subject-Matter of a Restitution Claim

Article 252

A claim for restitution which arose as a result of commission of a criminal offence or of a wrongful act designated by law as a criminal offence will be considered on a motion by authorised persons in criminal proceedings if those proceedings would not be substantially prolonged thereby.

A claim for restitution may relate to the compensation of damage, return of objects or annulment of a certain legal transaction.

Authorised Claimants

Article 253

A claim for restitution in proceedings may be submitted by a person authorised to pursue such a claim in civil litigation.

The person referred to in paragraph 1 of this Article is required to designate his claim in a certain manner and to submit evidence.

If due to the criminal offence or wrongful act designated by law as criminal offence damage was inflicted to public property, the authority authorised by a law or other regulation to look after the protection of this property may participate in proceedings in accordance with the authorisation it possesses pursuant to that law or other regulation.

Submitting a Claim for Restitution

Article 254

A claim for restitution is submitted to the authority conducting proceedings.

A claim for restitution may be submitted no later than the conclusion of the main hearing before the court of first instance.

If an authorised person has not submitted a claim for restitution until the charges are filed, he will be notified that he can submit it by the end of the trial. If due to a criminal offence or wrongful act designated by law as a criminal offence damage was inflicted to public property, and no claim for restitution was submitted, the court will notify thereof the authority referred to in Article 253 paragraph 3 of this Code.

Disposal of a Claim for Restitution

Article 255

Authorised persons (Article 253) may until the end of the main hearing desist from a claim for restitution in criminal proceedings and pursue it in civil litigation. In the case of desisting, a claim for restitution may not be submitted again.

If the claim for restitution has after its submission, and before the conclusion of the main hearing, been transferred to another person according to the rules of property law, that person will be called to declare himself whether he intends to pursue the claim. If a duly summoned person does not respond, it is deemed that he has desisted from the claim for restitution already submitted.

Examining Circumstances on a Claim for Restitution

Article 256

The authority conducting proceedings will question the defendant in respect of facts in connection with a claim for restitution and examine the circumstances of importance for adjudicating it. The authority conducting proceedings is required to collect evidence for adjudicating a claim even before it is submitted.

If the collection of evidence and examination of circumstances regarding a claim for restitution would substantially prolong proceedings, the authority conducting proceedings will limit itself to collecting those data whose determination at a later date would be impossible or substantially difficult.

Temporary Measures

Article 257

Upon a motion of the authorised persons (Article 253), temporary measures of securing a claim for restitution which arose due to the commission of a criminal offence or wrongful act designated by law as a criminal offence may be ordered in criminal proceedings in accordance with provisions of the law that regulates the procedures of enforcement and security.

The judge for preliminary proceedings rules on the motion referred to in paragraph 1 of this Article by a ruling during the investigation, and after the indictment is filed, the panel.

An appeal against a ruling on temporary measures does not stay the execution of the ruling.

If an injured party has a claim against a third person because he holds things acquired by a criminal offence or a wrongful act designated by law as a criminal offence, or because due to that act he acquired material gains, the court may in criminal proceedings, on a motion by the person referred to in paragraph 1 of this Article and in accordance with provisions of the law that regulates the procedures of enforcement and security order temporary measures of security also against the third person. The provisions of paragraphs 2 and 3 of this Article also apply in this case.

In a judgment convicting a defendant or a ruling pronouncing a security measure of compulsory psychiatric treatment the court will either revoke the measures referred to in paragraph 4 of this Article, if they were not already revoked, or refer the injured party to civil litigation, with the proviso that the measures will be revoked if civil litigation is not initiated within a time limit determined by the court.

Deciding on a Claim for Restitution

Article 258

The court decides on a claim for restitution.

When a court declares itself incompetent for a criminal proceeding, it will refer an authorised person to submit a claim for restitution in criminal proceedings which will commence or be resumed before a competent court.

When a court issues a judgment acquitting a defendant or rejecting the charges or discontinues criminal proceedings by a ruling, it will refer an authorised person to pursue a claim for restitution in civil litigation.

In a judgment convicting a defendant or ruling pronouncing a security measure of compulsory psychiatric treatment, the court will award the claim for restitution to the authorised person in full or in part, and refer him to civil litigation for the remaining part. If the facts of the criminal proceedings do not provide a reliable basis either for full award or partial award, the court will refer the authorised person to pursue the claim for restitution in full in civil litigation.

If the claim for restitution relates to the return of objects, and the court determines that an object belongs to an injured party and that it is held by the defendant or other participant in the criminal offence or a person to whom they gave it for safekeeping, it will in the judgment or ruling referred to in paragraph 4 of this Article order the object transferred to the injured party.

If the claim for restitution relates to the annulment of a certain legal transaction, and the court finds the claim justified, it will pronounce in the judgment or ruling referred to in paragraph 4 of this Article a full or partial annulment of that legal transaction, with consequences emanating from that, without affecting the rights of third persons.

Changing a Final Decision on a Restitution Claim

Article 259

The court may change a final judgment or ruling deciding on a claim for restitution in criminal proceedings only in connection with a retrial or a request for protecting legality.

As an exception from the case referred to in paragraph 1 of this Article, the convicted person, or his successors, may only request in civil litigation an alteration of a final judgment or ruling of a criminal court deciding on a claim for restitution, and only if the necessary conditions exist for repeating the proceedings in accordance with provisions of the law which regulates civil litigation.

Return of Objects to an Injured Party

Article 260

If objects which indubitably belong to an injured party are concerned, and they do not serve as evidence in criminal proceedings, they will be transferred to the injured party even before the conclusion of the proceedings.

If several injured parties are in dispute over possession of objects, they will be referred to civil litigation, and the court in criminal proceedings will only order the safekeeping of the objects as a temporary security measure.

Chapter XIII

COSTS OF PROCEEDINGS

Definition and Types of Costs

Article 261

The costs of criminal proceedings are the expenses incurred in connection with the proceedings from its initiation until its conclusion.

The costs of criminal proceedings include the:

- 1) costs of witnesses, expert witnesses, professional consultants, translators, interpreters and professionals and costs of inquests;
- 2) costs of transporting the defendant;
- 3) costs of bringing in the defendant;
- 4) travel expenses of official persons;
- 5) costs of medical treatment of a defendant in detention, as well as the costs of giving birth, except from those which are collected from the health insurance fund;
- 6) costs of technical inspections of vehicles, analyses of samples (Articles 140 to 142) and transportation of a cadaver to the site of the autopsy;
- 7) fee of an expert witness, the fee of a professional consultant, the fee and necessary expenses of a defence counsel, the necessary expenses of a private prosecutor and subsidiary prosecutor and their legal representatives, as well as the fee and necessary expenses of their proxies;
- 8) necessary expenses of an injured party and his legal representative, as well as the fee and necessary expenses of his proxy;
- 9) lump sum for costs not encompassed by items 1) to 8) of this paragraph.

The lump sum is determined according to the duration and complexity of the proceedings and the financial standing of the person required to pay that sum.

The costs referred to in paragraph 2 items 1) to 6) of this Article, as well as the **awards and** necessary expenses of an appointed defence counsel (Article 76) and appointed proxy (Article 59 and Article 103 paragraph 3), in proceedings in connection with criminal offences prosecutable *ex officio*, are paid out in advance from the funds of the authority conducting proceedings, and collected later from persons required to indemnify them in accordance with provisions of this Code. The authority conducting proceedings is required to enter all costs paid out in advance into an inventory to be attached to the file.

The costs of translation and interpretation as well as the costs of defence of an indigent defendant (Article 77 paragraph 1) will not be collected from the persons who are under the provisions of this Code required to indemnify the costs of the criminal proceedings.

The costs of the pre-investigation proceedings relating to the fee and necessary expenses of the defence counsel appointed by the police are paid out by that authority.

Deciding on the Costs of Proceedings

Article 262

It will be decided in every judgment or ruling corresponding to a judgment who will bear the costs of the proceedings and what their amount is.

If data on the amount of the costs are missing, a separate ruling on the amount of costs will be issued by the president of the panel or individual judge when those data are obtained. Data on the amount of costs and the claims for their restitution may be submitted no later than

one year from the date when the judgment or referred to in paragraph 1 of this Article becomes final.

When the costs of criminal proceedings have been decided by a separate ruling, an appeal against that ruling is decided by the panel (Article 21 paragraph 4).

Costs for Which Participants are Liable

Article 263

A defendant, injured party, subsidiary prosecutor, private prosecutor, defence counsel, legal representative, proxy, witness, expert witness, translator, interpreter and professional, irrespective of the outcome of the criminal proceedings, bear the costs of being brought in, deferment of an evidentiary action or a trial hearing, and other costs of the proceedings for which they were responsible, as well as a corresponding part of the lump sum.

A separate ruling is issued on the costs referred to in paragraph 1 of this Article, except if the costs borne by a private prosecutor and the defendant are decided in the decision on the principal matter.

An appeal against the separate ruling referred to in paragraph 2 of this Article is decided by the panel (Article 21 paragraph 4).

Obligation of the Defendant to Indemnify Costs

Article 264

When a court convicts a defendant, it will pronounce in the judgment that he is required to indemnify the costs of the criminal proceedings.

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

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

In the decision in which it decides on costs, the court may relieve a defendant of the duty to indemnify in full or in part the costs of criminal proceedings referred to in Article 261 paragraph 2 items 1) to 6) and item 9) of this Code, as well as the fees of an expert witness and appointed professional consultant, if their payment would bring into question the support of the defendant or a person he is required to support. If these circumstances are established after the issuance of a decision on costs, the president of the panel or individual judge may issue a separate ruling relieving the defendant of the duty to indemnify the costs of criminal proceedings.

Compensation of Costs from the Budget and at the Expense of Other Persons

Article 265

When criminal proceedings are discontinued or charges are dismissed or a defendant is acquitted, it will be pronounced in the ruling or judgment that the costs of the criminal proceedings referred to in Article 261 paragraph 2 items 1) to 6) of this Code, necessary expenses of the defendant and the necessary expenses and the fee of the defence counsel and proxy (Article 103 paragraph 3), as well as the fees of the expert witness and professional consultant, are covered from the budget funds ~~of the court~~.

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

A private prosecutor is required to indemnify the costs of criminal proceedings referred to in Article 261 paragraph 2 items 1) to 6) and item 9) of this Code, necessary expenses of the defendant, necessary expenses and fee of his defence counsel and proxy (Article 103 paragraph 3), as well as the fee of an expert witness and professional consultant, if the proceedings were discontinued or the charges dismissed of the defendant acquitted of the charges, except if the proceedings were discontinued or the charges dismissed due to the death of the defendant or the expiry of the statute of limitations on criminal prosecution due to the delay of proceedings for which the private prosecutor cannot be blamed. If the proceedings were discontinued because the prosecutor abandoned the charges, the defendant and the private prosecutor may settle their mutual expenses. If there are several private prosecutors, they will all bear the costs jointly.

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

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

If a motion for the restitution of necessary expenses and the fee referred to in paragraph 1 of this Article is not approved, or the court does not issue a decision on it within three months of the date of submission of the motion, the defendant and defence counsel are entitled to pursue their claims in civil litigation against the Republic of Serbia.

Payment of Fees and Necessary Expenses

Article 266

The person represented is required to pay the fee and necessary expenses of the defence counsel and proxy of the injured party, subsidiary prosecutor or private prosecutor, irrespective of who, according to the decision of the court, is required to bear the costs of the criminal proceedings, unless under the provisions of this Code the fee and necessary expenses of the defence counsel are paid from budget funds. If a defence counsel was appointed for the defendant, and payment of a fee and necessary expenses would bring into question the support of the defendant or the support of a person he is required to support, the fee and necessary expenses of the defence counsel will be paid from budget funds of the court. It will also be acted in this manner if a proxy was appointed for a subsidiary prosecutor.

Costs before a Court of Legal Remedy

Article 267

The court of legal remedy decides on the payment of costs incurred before that court, pursuant to the provisions of Articles 261 to 266 of this Code.

Issuance of Regulations

Article 268

The restitution of the costs of proceedings and the amount of the lump sum is regulated in more detail in a regulation issued by the minister in charge of the judicial affairs.

Chapter XIV

RENDERING, ANNOUNCEMENT AND EXECUTION OF DECISIONS

1. Rendering and Announcing Decisions

Types of Decisions

Article 269

Decisions are issued in proceedings in the form of a judgment, ruling and order.

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

Preconditions for Deciding

Article 270

The court deliberates and votes in a closed session.

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

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

Order in Which Issues will be decided

Article 271

In deciding on the subject-matter of proving, it is first voted on whether the court is competent, if it is necessary to amend the proceedings, and other preliminary questions. When a decision on preliminary questions is made, it is moved to resolving the principal matter.

In deciding on the principal matter, a vote will first be taken on whether the defendant committed the criminal offence, then on a penalty, other criminal sanctions, and costs of the criminal proceedings, claim for restitution and other questions on which a decision should be issued.

If one person is charged with several criminal offences, a vote will be taken on a penalty for each of those offences, and then on a single penalty for all the offences.

Deliberation and Voting

Article 272

A panel issues its decisions after oral deliberation and voting. A decision is rendered when a majority of the panel's members vote in favour of it.

If in respect of certain questions being voted on the votes are divided into several different opinions, so that none of them has majority, the questions will be separated and the voting will be repeated until majority is achieved. If a majority is not achieved in this manner, a decision will be taken in such manner that the most unfavourable votes for the defendant will be added to the votes less unfavourable than them, until the necessary majority is achieved.

Panel members may not refuse to vote on questions posed by the president of the panel, but a member of the panel who voted to acquit the defendant or reject the charges and remained in minority is not required to vote on the criminal sanction. If he does not vote, it will be deemed that he accepted the vote which is the most favourable for the defendant.

Dissenting Opinion

Article 273 ~~deleted~~

~~A judge of the Supreme Court of Cassation, who at a session of the panel during a vote remains in minority in connection with the question on whether a violation of the law exists, is entitled to dissent from the majority and explain his dissenting opinion in writing.~~

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

~~———The judge is required to deliver the written explanation of his dissenting opinion to the president of the panel within 15 days from the date of the issuance of the decision.~~

~~———If the written explanation of his dissenting opinion is not delivered to the president of the panel until the expiry of the time limit referred to in paragraph 3 of this Article, the decision is dispatched, and a dissenting opinion delivered at a later date is attached to the court case and represents its integral part.~~

Announcement of Decisions

Article 274

Unless specified otherwise by this Code, decisions are made public by oral announcement to the persons who have a legal interest in it, if they are present, and by the delivery of a certified copy, if they are absent.

If a decision was announced orally, it will be noted in the record or file, and a person entitled to file an appeal will confirm so by his signature. If that person declares that he will not

appeal, a certified copy of the orally announced decision will not be delivered to him, unless specified otherwise by this Code.

Copies of decisions which are appealable are delivered with a remedial clause. An appeal submitted in favour of the defendant will be deemed timely if it is filed in the time limit specified in the remedy clause although that time limit is longer than the statutory time limit.

2. Enforcement of Decisions

Finality and Enforceability of a Judgment

Article 275

A judgment becomes final when it can no longer be challenged by an appeal and when an appeal is not permitted.

A final judgment becomes enforceable from the date of its delivery, if there are no legal obstacles for enforcement. If no appeal was filed or the parties waived an appeal or abandoned an appeal, a judgment is enforceable from the expiry of the time limit for an appeal, or the date of the waiver or abandoning of an appeal already filed.

If the court which issued a judgment in the first instance is not competent for its enforcement, it will deliver a certified copy of the judgment with a certificate of enforceability to the court competent for enforcement.

Enforcement of Certain Decisions Contained within a Judgment

Article 276

Enforcement of a judgment in respect of the costs of criminal proceedings, seizure of pecuniary gains, confiscation of proceeds from crime and claims for restitution is performed by a competent court or other public authority in accordance with the law.

The costs of criminal proceedings are collected forcibly for the benefit of the budget of the Republic of Serbia *ex officio*. The costs of the forced collection are paid in advance from the budget funds of the court.

When a decision by which a decision on a claim for restitution becomes final, an injured party may request the court which rendered the decision in the first instance to issue to him a certified copy of the decision, with the specification that the decision is enforceable .

If a security measure of confiscation of objects was pronounced in a judgment, the court which pronounced the judgment in the first instance will decide whether the objects will be sold in accordance with the law or transferred to a certain public institution or destroyed. The proceeds from the sale of objects are paid into the budget of the Republic of Serbia.

The provision of paragraph 4 of this Article will be applied accordingly when a decision on confiscation of objects in accordance with Article 535 of this Code is issued.

A final decision on the confiscation of objects may, apart from the case of a repeat of criminal proceedings or deciding on a request to protect legality, be changed in civil litigation if a dispute appears in connection with the ownership of the confiscated objects.

Finality and Enforceability of a Ruling or an Order

Article 277

A ruling becomes final when it can no longer be challenged by an appeal or when an appeal is not allowed.

Unless specified otherwise by this Code, a ruling is enforceable when it becomes final. An order is enforceable immediately after it is issued, unless specified otherwise by the authority which issued the order.

Rulings and orders, unless specified otherwise, are enforced by the authorities who issued those decisions. In the enforcement of a ruling corresponding to a judgment, the provisions of Article 276 of this Code are applied accordingly.

Special Ruling on Permissibility of Enforcement

Article 278

If doubt appears about the permissibility of the enforcement of a court decision or the calculation of a penalty, or if no decision was made in a final judgment or ruling corresponding to a judgment on counting detention or penalty already served towards a penalty, or the calculation was not performed correctly, the court which adjudicated in the first instance will decide thereon in a special ruling. An appeal does not stay the execution of the ruling, unless specified otherwise by the court.

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

Issuance of Regulations

Article 279

The manner of keeping criminal records is regulated by the Government.

Part Two

COURSE OF THE PROCEEDINGS

Chapter XV

PRE-INVESTIGATION PROCEEDINGS

1. Criminal Complaint

Submitting a Criminal Complaint

Article 280

State and other bodies, legal and natural persons report criminal offences which are prosecutable *ex officio* about which they were informed or they learn in other manner, under the conditions stipulated by law or other regulation.

It is stipulated by the Criminal Code in which cases a failure to report a criminal offence represents a criminal offence.

The submitter of the criminal complaint referred to in paragraph 1 of this Article will relate details known to him and undertake measures to preserve the traces of the criminal offence, objects on which or by means of which the criminal offence was committed, and other evidence.

Manner of Submitting and Recording a Criminal Complaint

Article 281

A criminal complaint is submitted to the competent public prosecutor, in writing, orally, or by other means.

If a criminal complaint is submitted orally, a transcript will be made thereof and the submitter will be cautioned about the consequences of false reporting. If the criminal complaint is communicated by telephone or other **telecommunications** medium an official note will be made, and if the complaint was submitted by electronic mail it will be saved on an appropriate recording medium and printed.

If a criminal complaint was submitted to the police, an incompetent public prosecutor or a court, they will receive the complaint and deliver it to the competent public prosecutor immediately.

Actions to be taken by the Public Prosecutor upon Receiving a Criminal Complaint

Article 282

If the public prosecutor cannot assess from the criminal complaint if its assertions are probable, or if the data in the complaint do not provide sufficient grounds to decide whether to conduct an investigation, or if he finds out in some other way that a criminal offence has been committed, the public prosecutor may:

- 1) collect the necessary data himself;
- 2) request citizens [to provide information], under the conditions referred to in Article 288 paragraphs 1 to 6 of this Code;
- 3) submit a request to public and other authorities and legal persons to provide necessary information.

A responsible person may be fined up to 150,000 dinars for failing to comply with the request of the public prosecutor referred to in paragraph 1 item 3) of this Article, and if after being fined he still refuses to provide the necessary information, another fine in the same amount may be imposed on him once again.

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

If he is not able to undertake the actions referred to in paragraph 1 of this Article by himself, the public prosecutor will request the police to collect the necessary information and to undertake other measures and actions with the aim of uncovering the criminal offence and the perpetrator (Articles 286 to 288).

The police are required to act in accordance with the request of the public prosecutor and to notify him, **without any delay**, about the measures and actions they had undertaken. ~~not later than 30 days from the date of receiving the request. In the case of a failure to act in accordance with the request, the public prosecutor will act in accordance with Article 44 paragraphs 2 and 3 of this Code.~~

The public prosecutor, public and other authorities or legal persons, are required during the collection of information or provision of data to act with due care and ensure that no damage is done to the honour and reputation of the person to whom the data relate.

Deferring Criminal Prosecution

Article 283

The public prosecutor may, **after obtaining the opinion of the injured party**, defer criminal prosecution for criminal offences punishable by a fine or a term of imprisonment of up to five years, **when he finds that, in terms of general interest, it is inappropriate to conduct criminal proceedings, in view of the nature of the criminal offense and circumstances under which it has been committed, the degree of culpability, the suspect's earlier life and his personal traits and his attitude towards the injured party, if the suspect-defendant accepts** one or more of the following **obligations before the trial commences**:

- 1) to rectify the detrimental consequence caused by the commission of the criminal offence or indemnify the damage caused;
- 2) to pay a certain amount of money to the benefit of a humanitarian organisation, fund or public institution;
- 3) to perform certain community service or humanitarian work;
- 4) to fulfil maintenance obligations which have fallen due;
- 5) to submit to an alcohol or drug treatment programme;
- 6) to submit to psycho-social treatment ~~for the purpose of eliminating the causes of violent conduct;~~
- 7) to fulfil an obligation determined by a final court decision, or observe a restriction determined by a final court decision.

In the ~~order deferring~~ **decision deferring** criminal prosecution the public prosecutor will determine a time limit during which the ~~suspect-defendant~~ must fulfil the obligations undertaken, with the proviso that the time limit may not exceed ~~one year~~ **six months**. Oversight of the fulfilment of obligations is performed by an officer of the authority in charge of the execution of criminal sanctions, in accordance with a regulation issued by the minister responsible for the judiciary.

If the ~~suspect-defendant~~ fulfils the obligation referred to in paragraph 1 of this Article within the prescribed time limit, the public prosecutor will dismiss the criminal complaint by a

ruling, ~~decide not to conduct a~~ or abandon criminal prosecution, and notify the injured party and the person who had filed the criminal report thereof, and the provision of Article 51 paragraph 2 of this Code will not be applied.

When the public prosecutor renders a decision as defined in paragraph 3 of this Article, the person subject of the rejected criminal report or criminal prosecution may not be prosecuted again for the criminal offense referred to in Paragraph 1 of this Article.

Dismissing a Criminal Complaint

Article 284

The public prosecutor will dismiss a criminal complaint by a decision if it proceeds from the complaint that:

- 1) the reported offence is not a criminal offence which is prosecutable *ex officio*;
- 2) the statute of limitations has expired, or the offence is encompassed by an amnesty or a pardon, or there exist other circumstances which permanently exclude prosecution;
- 3) there are no grounds for suspicion that a ~~criminal offence~~**reported person has committed a criminal offense** which is prosecutable *ex officio*~~has been committed~~.

The public prosecutor will notify the injured party within eight days about the dismissal of the criminal complaint and the reasons thereof and advise him of his rights (Article 51 paragraph 1), and if the criminal complaint was submitted by a police authority, he will also notify that authority.

~~In the case of criminal offences punishable by a term of imprisonment of up to three years, the public prosecutor may dismiss the indictment if the suspect, as a result of a genuine remorse, has prevented a damage to be inflicted, or has already fully indemnified it, and the public prosecutor, in view of the circumstances of the case, finds that criminal sanctioning would not be fair. In this case Article 51, Paragraph 2 of this Code will not be applied.~~

Dismissing a Criminal Complaint due to Fairness

Article 284A

In the case of criminal offences punishable by a term of imprisonment of up to three years, the public prosecutor may, **after obtaining the opinion of the injured party, dismiss party, dismiss** a criminal complaint if the ~~suspect, as~~**suspect, as** a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full, and in view of the circumstances of the case the public prosecutor finds that pronouncing a criminal sanction would not be fair. In this case the provision of Article 51 paragraph 2 of this Code will not be applied.

When the public prosecutor renders a decision as defined in paragraph 1 of this Article, the person subject to the dismissed criminal report or abandoned criminal prosecution may not be prosecuted again for the criminal offense referred to in Paragraph 1 of this Article.

2. Authority of the Authorities Conducting Pre-investigation Proceedings

Authority of the Public Prosecutor

Article 285

The public prosecutor leads the pre-investigation proceedings **and has the right and obligation of continuously supervising the actions he ordered the police to perform**.

For the purpose of exercising the authority referred to in paragraph 1 of this Article the public prosecutor undertakes necessary actions aimed at prosecuting the perpetrators of criminal offences.

The public prosecutor may assign to the police the undertaking of certain actions aimed at detecting criminal offences and locating suspects. The police are required to execute the order of the public prosecutor **in the shortest possible time period, and to notify him** about measures undertaken **without delay**.

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

During the pre-investigation proceedings the public prosecutor is authorised to assume from the police the performance of an action which the police had undertaken on its own pursuant to the law.

Authority of the Police

Article 286

If there are grounds for suspicion that a criminal offence which is prosecutable *ex officio* has been committed, the police is required to implement necessary measures to locate the perpetrator of the criminal offence, for the perpetrator or accomplice not to go into hiding or abscond, to detect and secure traces of the criminal offence and objects which may serve as evidence, as well as to collect all information which could be of benefit for the successful conduct of criminal proceedings.

For the purpose of fulfilling the duty referred to in paragraph 1 of this Article, the police may: seek necessary information from citizens; perform necessary inspection of vehicles, passengers and luggage; restrict movement in a certain space for a necessary period of time and up to a maximum of eight hours; undertake necessary measures in connection with the establishment of the identity of persons and objects; post a wanted circular for a person and r objects being searched for; in the presence of a responsible person inspect certain facilities and premises of public authorities, enterprises, shops and other legal persons, inspect their documentation and if needed seize it; undertake other necessary measures and actions. A transcript or an official note will be made of facts and circumstances established during the performance of certain actions, as well as objects found or seized, which may be of interest for the criminal proceedings.

Acting on an order of **the judge for preliminary proceedings issued at the request of** the public prosecutor the police may for the purpose of fulfilling the duty referred to in paragraph 1 of this Article obtain a record of telephone communications or the base stations used, or location of the place from where a communication is being conducted.

The police immediately, or no later than 24 hours after performing them, shall notify the public prosecutor about the performance of the measures and actions referred to in paragraphs 2 and 3 of this Article, **and the judge for preliminary proceedings about the measures referred to in Paragraph 3 of this Article.**

A person against whom any of the measures and actions referred to in paragraphs 2 ~~and 3~~ of this Article has been applied is entitled to submit a complaint to the competent public prosecutor, **and once the measure and action referred to Paragraph 3 of this Article has been imposed, a complaint may be filed to the judge for preliminary proceedings.**

Evidentiary Actions of the Police

Article 287

If the police conduct an evidentiary action during the pre-investigation proceedings, they will inform the public prosecutor thereof without delay.

~~Evidence obtained by the police by conducting evidentiary actions may be used in the further course of the criminal proceedings if the evidentiary actions were conducted in accordance with this Code.~~

Collecting Information from Citizens

Article 288

The police may summon citizens for the purpose of collecting information. The summons must contain the reason for summoning the citizen and the capacity in which the citizen is being summoned. A person who did not respond to a summons may be brought in forcibly only if he had been cautioned accordingly in the summons.

In acting according to the provisions of this Article, the police may not question a citizen in a capacity of defendant, or in a capacity of witness or expert witness, except in the case referred to in Article 289 of this Code.

Collection of information from a person may last for as long as it is necessary to obtain the necessary information, but not longer than four hours, or longer with the consent of the person providing the information.

No coercion may be used in collecting information from citizens.

If a citizen, invited to provide information, comes to the police together with his attorney, the police will allow the attorney to be present while the citizen is providing information.

An official note on the information provided will be read out to the citizen who provided the information, and he may make remarks, which the police is required to enter in the official note. A copy of the official note about the information provided will be issued to the citizen, if he so requests.

The citizen may be summoned again for the purpose of collecting information about the circumstances of another criminal offence or perpetrator, but with respect to the same criminal offence he may not be brought in forcibly again for the purpose of collecting information about it.

Acting on the approval of the judge for preliminary proceedings, the president of the panel or an individual judge, the police may also collect information from detainees, if it is

necessary for detecting other criminal offences or other perpetrators. This information will be collected in the institution in which the defendant is detained, at a time determined by the court, in the presence of the defence counsel.

Based on the information collected, the police draft a criminal complaint in which they specify the evidence it learnt during the collection of information. The content of statements made by individual citizens during the collection of information is not entered in the criminal complaint, except for the statement given by the suspect in accordance with Article 289 of this Code.

Objects, sketches, photographs, reports obtained, documents about the measures and actions undertaken, official notes, statements and other materials which may be of benefit for the successful conduct of proceedings are delivered with the criminal complaint.

If after submitting the criminal complaint the police learn about new facts, evidence or traces of the criminal offence, they are required to collect necessary information and deliver to the public prosecutor a report thereof, as a supplement to the criminal complaint.

Questioning the Suspect

Article 289

When the police collect information from a person for whom there exist grounds for suspicion that he is the perpetrator of a criminal offence, or undertake towards that person actions in the pre-investigation proceedings stipulated by his Code, they may summon him only in the capacity of a suspect. The suspect will be advised in the summons that he is entitled to obtain a defence counsel.

If during collection of information the police find that the citizen summoned may be deemed a suspect, they are required to advise him immediately of the rights referred to in Article 68 paragraph 1 items 1) and 2) of this Code and of the right to obtain a defence counsel who will attend his questioning.

The police will notify the competent public prosecutor without delay about acting within the meaning of the provisions of paragraphs 1 and 2 of this Article. The public prosecutor may conduct the suspect's questioning ~~or~~; attend the questioning ~~he delegates the questioning~~ to the police.

If the suspect agrees to make a statement, the authority conducting the questioning will act in accordance with the provisions of this Code relating to the questioning of a defendant provided that the consent of the suspect to be questioned and his statement during the questioning are given in the presence of his defence counsel. The transcript of this questioning is not excluded from the files and may be used as evidence in criminal proceedings.

If the public prosecutor is not present at the questioning of a suspect, the police will deliver to him without delay the transcript of the questioning.

Holding Persons at a Crime Scene

Article 290

The police may take persons found at a crime scene to a public prosecutor or hold them until his arrival, if those persons could provide data of importance for the proceedings and if it is

probable that their questioning could subsequently not be performed or would entail substantial delays or other difficulties.

The persons referred to in paragraph 1 of this Article may not be held at a crime scene for longer than six hours **after the police arrived at the crime scene-**

Police Arrest

Article 291

The police may arrest a person if there exist a reason for ordering detention (Article 211), but it is required to take such a person without delay to the competent public prosecutor. When bringing the person in, the police will submit to the public prosecutor a report on the reasons for and time of the arrest.

The person arrested must be advised of the rights referred to in Article 69 paragraph 1 of this Code.

If the taking of the arrested person [to the prosecutor] lasts more than eight hours, due to unavoidable obstacles, the police are required to explain the delay in detail to the public prosecutor, concerning which the public prosecutor will draft an official note. The public prosecutor will enter in the note the arrested person's statement about the time and place of the arrest.

Arrest during the Commission of a Criminal Offence

Article 292

Any person may arrest a person found committing a criminal offence which is prosecutable *ex officio*.

The arrested person will be taken to the public prosecutor or the police immediately, and if that is not possible, one of those authorities must be notified immediately and will act in accordance with the provisions of this Code (Articles 291 and 293).

Questioning the Arrested Person

Article 293

The public prosecutor is required to advise an arrested person brought before him about the rights referred to in Article 69 paragraph 1 of this Code and to make it possible for him to use a telephone or other electronic message communicator, in his presence, to notify a defence counsel directly or through members of the family or a third person whose identity must be revealed to the public prosecutor, and if necessary also to assist him to find a defence counsel.

If the arrested person does not secure the presence of a defence counsel within 24 hours of the time when it was made possible to him within the meaning of paragraph 1 of this Article, or declares that he does not wish to obtain a defence counsel, the public prosecutor is required to question him without delay.

A transcript of the arrested person's questioning as defined in Paragraph 2 of this Article is not excluded from the case file and may be used as evidence in criminal proceedings.

If in the case of mandatory defence (Article 74) the arrested person does not obtain a defence counsel within 24 hours of the time he was advised of this right or declares that he will not obtain a defence counsel, an *ex officio* defence counsel will be appointed for him.

Immediately after the questioning, the public prosecutor will decide whether to release the arrested person or request that the judge for the preliminary proceedings order detention.

Acting on a request of the arrested person or his defence counsel, a member of the family of the arrested person or the person with whom the arrested person is living in a common law marriage or other permanent personal association, or *ex officio*, the public prosecutor may order the arrested person to be examined by a physician.

The public prosecutor will attach to the files the decision determining the physician who will conduct the examination and a transcript of the questioning of the physician.

Keeping a Suspect in Custody

Article 294

The public prosecutor may exceptionally keep in custody for the purpose of questioning a person arrested in accordance with Article 291 paragraph 1 and Article 292 paragraph 1 of this Code, as well as the suspect referred to in Article 289 paragraphs 1 and 2 of this Code, not more than 48 hours from the time of the arrest, or the response to a summons.

The public ~~prosecutor, or upon his authorisation, the police, issues~~ **prosecutor issues** and serves a decision on custody immediately, or not more than two hours after the suspect was told that he would be kept in custody. The decision must specify the offence, of which the suspect is accused, grounds for suspicion, **reasons for being kept in custody**, date and time of deprivation of liberty or response to a summons, as well as time of commencement of the custody.

The suspect and his defence counsel are entitled to appeal against the decision on custody within six hours of the delivery of the decision. A decision on the appeal is issued by the judge for the preliminary proceedings within four hours of receiving the appeal. The appeal does not stay the execution of the decision.

The suspect is entitled to the rights referred to in Article 69 paragraph 1 of this Code.

The suspect must have a defence counsel as soon as the authority conducting proceedings referred to in paragraph 2 of this Article issues a decision on custody. If the suspect does not retain a defence counsel on his own within four hours, the public prosecutor will secure one for him *ex officio*, according to the order on the list of lawyers submitted by the competent bar association.

Chapter XVI

INVESTIGATION

1. Basic Provisions

Purpose of the Investigation

Article 295

An investigation is **initiated against** a specific person for whom there ~~is a well grounded suspicion~~ ~~grounds for suspicion~~ that he has committed a criminal offence prosecutable *ex officio*;

~~2) against an unknown perpetrator when there are grounds for suspicion that a criminal offence has been committed.~~

During the investigation, evidence and data necessary for deciding on whether to file an indictment, to discontinue the investigation, or not to prosecute the defendant (Article 308, Paragraph 2), are collected, as well as evidence for which there is a risk that it could not be repeated at the trial or that its examination would be hampered.~~During the investigation the following are collected: evidence and data necessary for deciding whether to file an indictment or discontinue proceedings, evidence necessary for establishing the identity of the perpetrator, evidence for which there is risk that it could not be repeated at the trial or that its examination [at trial] would be hampered, as well as other evidence which could be of benefit to the proceedings, whose examination, in view of the circumstances of the case, proves appropriate.~~

~~Order~~ Decision to Conduct an Investigation

Article 296

An investigation is initiated by a **decision**~~n-order~~ issued by the competent public prosecutor.

The public prosecutor will question the defendant before he issues a decision to conduct an investigation, except if he hasn't already questioned him during the preliminary - investigation proceedings in accordance with Article 289 of this Code or if there is a risk of deferral.

~~An order to conduct an investigation is issued before or immediately after the first evidentiary action undertaken by the public prosecutor or the police in the pre-investigation proceedings, but not later than 30 days after the public prosecutor was notified about the first evidentiary action undertaken by the police.~~

The **decision** to conduct an investigation must specify the following: the personal data of the suspect, ~~if his identity is known~~, the description of the act on which the legal elements of a criminal offence are based, the legal qualification of the criminal offence and the circumstances from which the **well grounded** ~~sfor~~ suspicion are derived **and the existing evidence**.

Service of the ~~Order~~ Decision on the ~~Suspect~~ Defendant

Article 297

The decision to conduct an investigation is served on the defendant and his defence counsel, without delay, with an advice about the right to appeal.~~The order to conduct an investigation is delivered to the suspect and his defence counsel, if he has one, together with a summons or notice about the first evidentiary action which they may attend (Article 300).~~

The defendant and his defence counsel may file an appeal against the decision to conduct an investigation to the judge for preliminary proceedings, within three days after receiving the decision.

The judge for preliminary proceedings will ~~rule~~ decide that there is no room for an investigation if he finds that:

- 1) An offense subject to the investigation is not a criminal offense prosecutable ex officio, and the conditions for the application of a security measure do not exist;
- 2) The statute of limitations has expired or the offense has been covered by amnesty or pardon or there are other circumstances which permanently rule out criminal prosecution;
- 3) There is no well grounded suspicion that the defendant has committed the criminal offense he has been charged with.

When the judge for preliminary proceedings finds the reasons referred to in the previous Paragraph of this Article are missing, he will issue a ruling rejecting the complaint as unfounded.

The court will issue a ruling on the complaint referred to in Paragraph 2 of this Article within 3 days after filing of the complaint.

The judge for preliminary proceedings issues a ruling suspending the investigation when the reasons referred to in Article 307, Paragraphs 1 and 2 exist, and when impediments which caused the suspension cease to exist, a public prosecutor will continue the investigation.

~~If the identity of an unidentified perpetrator is established during the investigation, the public prosecutor will amend the order to conduct an investigation within the meaning of Article 296 paragraph 3 of this Code and act in accordance with paragraph 1 of this Article.~~

Simultaneously with the delivery of the ~~order~~ **decision to** conduct an investigation to the ~~suspect~~ **defendant and** his defence counsel, the public prosecutor will notify the injured party about the initiation of the investigation and advise him about the rights referred to in Article 50 paragraph 1 of this Code.

Conducting the Investigation

Article 298

The investigation is conducted by the competent public prosecutor.

One public prosecutor's office may be designated by law to conduct investigations on the territory of several public prosecutors' offices (the investigation centre).

As a rule the public prosecutor undertakes evidentiary actions only on the territory which is within the competence of the court before which he acts. If the interest of the investigation so requires, he may undertake certain evidentiary actions outside the territory of competence of this court, but is required to notify the public prosecutor acting before the court in whose territory he is undertaking the evidentiary actions about it.

If the public prosecutor needs assistance from the police (forensic, analytical, etc.) or other state authorities in connection with the conduct of the investigation, they are required to provide such assistance at his request. At the request of the public prosecutor, a legal person is required to render assistance in conducting an evidentiary action which cannot be delayed.

Referral of Certain Evidentiary Actions

Article 299

During the investigation a public prosecutor may refer the conduct of certain evidentiary actions to the public prosecutor acting before the court in whose territory the actions are to be conducted, and if one court has been designated for providing legal aid on the territory of several courts – to the public prosecutor acting before that court.

The public prosecutor to whom conduct of certain evidentiary actions has been referred to will undertake as needed other evidentiary actions which are connected to the ones taken earlier or stem from them.

If the public prosecutor to whom conduct of certain evidentiary actions has been referred to is not competent to conduct them, he will submit the case to the competent public prosecutor and notify the public prosecutor who gave him the case of that.

The public prosecutor may refer conduct of certain evidentiary actions to the police, in accordance with the provisions of this Code.

~~The public prosecutor, the defendant and the defence counsel may propose that the judge for preliminary proceedings examine a witness if it is very likely that he will not be able to testify at the trial, due to illness, old age, or other significant reasons.~~

~~Should the judge for preliminary proceedings decline to agree with the proposal referred to in Paragraph 5 of this Article, he will ask the panel referred to in Article 21, Paragraph 4 of this Code, to render a decision which is obliged to do so within 48 hours.~~

~~The judge for preliminary proceedings will notify the public prosecutor, the defendant, the defence counsel about the place and time of witness examination, warning them that the activity will take place even without them being present. referred to in Paragraphs 5 and 6 of this Article occur, the judge for preliminary proceedings will enable the parties and the defence counsel to attend it and receive the records from the witness examination.~~

Attending Evidentiary Actions

Article 300

The public prosecutor is required to serve on the defence counsel of a ~~suspect~~ **defendant and the defence counsel of the previously questioned co-defendant** summons to attend the questioning of the ~~suspect~~**defendant**, or to ~~send~~ **serve** a summons to the ~~suspect~~ **defendant and** his defence counsel, and to notify the injured party about the time and place of the questioning of a witness or an expert witness.

~~By exception from paragraph 1 of this Article, in proceedings in connection with criminal offences in which a prosecutor's office of special jurisdiction acts in accordance with a special law the public prosecutor may question a witness even without summoning the suspect and his defence counsel to attend the questioning if he assesses that their presence may influence the witness. In such a case the court's decision may not be based only or to a decisive extent on the statement of the witness.~~

The ~~suspect~~**defendant**, his defence counsel and the injured party may attend an examination.

If the ~~suspect~~ **defendant has** a defence counsel, the public prosecutor will as a rule summon or notify only the defence counsel. If the ~~suspect~~ **defendant is** in detention, and the

evidentiary action is being conducted outside the seat of the court, the public prosecutor will decide whether the presence of the ~~suspect~~ **defendant** is necessary.

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

~~If a summons to a suspect **defendant** and his defence counsel was not delivered in accordance with the provisions of this Code, or if the investigation is being conducted against an unknown perpetrator, the public prosecutor may undertake questioning of a witness or expert witness only on the basis of prior authorisation by the judge for the preliminary proceedings.~~

If a person ~~to~~ **on whom** a summons **had been served** or **has been notified** ~~notice~~ about an evidentiary action was ~~sent~~ not present, the action may also be undertaken in his absence.

Persons undertaking evidentiary actions may propose to the public prosecutor to ask a ~~suspect~~ **defendant**, witness or expert witness certain questions in order to clarify matters; and with the permission of the public prosecutor may also pose questions directly. These persons are entitled to request that their remarks in respect of the conduct of certain actions be entered in the transcript, and may also propose that certain evidence be obtained.

In order to clarify certain technical and other expert questions which are being posed in connection with obtained evidence or during questioning of a ~~suspect~~ **defendant** or conduct of other evidentiary actions, the public prosecutor may request from a person holding appropriate qualifications necessary explanations about those questions. If the ~~suspect~~ **defendant or his** defence counsel is present during the provision of explanations, they may request that that person provide more detailed explanations. If necessary, the public prosecutor may also request explanations from an appropriate professional institution.

Gathering of Evidence and other Materials by the Defence

Article 301 ~~deleted~~

~~The suspect and his defence counsel may collect on their own evidence and materials for the benefit of the defence.~~

~~For the purpose of enforcing the right referred to in paragraph 1 of this Article, the suspect and his defence counsel are entitled:~~

~~1) to talk to a person who can provide them data that can be useful for the defence and to obtain from that person written statements and information, with his consent;~~

~~—— 2) to enter private premises or areas which are not open to the public, a dwelling or premises linked with a dwelling, with the consent of their holder;~~

~~—— 3) to take over from a legal or natural person objects and instruments and obtain information possessed by that person, with their consent, as well as with an obligation to issue that person a certificate with a list of the objects and instruments taken.~~

~~The authorisation referred to paragraph 2 item 1) of this Article does not relate to the injured party and persons already questioned by the police or public prosecutor.~~

~~The written statement and opinion referred to in paragraph 2 item 1) of this Article may be used by the defendant and his counsel during the questioning of a witness or a test of the authenticity of his statement, or for issuing a decision to question a certain person as a witness by the public prosecutor or the court.~~

Undertaking Evidentiary Actions for the Benefit of the Defence

Article 302

If the ~~suspect~~ **defendant and** his defence counsel believe that a certain evidentiary action needs to be taken, they will propose to the public prosecutor that it be undertaken.

If the public prosecutor rejects the proposal for conducting certain evidentiary action or does not decide on the proposal within ~~eight~~ **three days** of the date of its submission, the ~~suspect~~ **defendant and** his defence counsel may ~~submit the proposal~~ to the judge for preliminary proceedings **to conduct an evidentiary action.- The judge for preliminary proceedings rules on the proposal within three days. , who issues a decision thereon within eight days.** **When the judge for preliminary proceedings accepts the proposal referred to in Paragraph 2 of this Article, he will conduct the proposed action and will notify the public prosecutor about it delivering minutes and other materials of the conducted evidentiary action.**

Discovery

Article 303

The public prosecutor is required to enable, within a time limit sufficient for the preparation of defence, a ~~suspect~~ **defendant who** has been questioned and his defence counsel, To examine case- file documents and view objects which will be used as evidence. In case several persons are ~~suspects~~ **charged** with the same criminal offence, examination of case- file documents and viewing of objects which will be used as evidence may be deferred until the public prosecutor has questioned the last of the ~~suspects~~ **defendants who** is accessible.

After **the expiry of the time limit for** examination of case-file documents and viewing of objects, the public prosecutor will call on the ~~suspect~~ **defendant and** his defence counsel to file, within a specific time limit, a motion for conduct of certain evidentiary actions.

~~A suspect who has been questioned and his defence counsel are required after collecting evidence and materials for the benefit of the defence (Article 301) to notify the public prosecutor thereof and to enable him before the conclusion of the investigation to examine the case file documents and view objects that will be used as evidence.~~

If the motion referred to in paragraph 2 of this Article is rejected (Article 302 paragraph 2) ~~or if the suspect and his defence counsel do not act in accordance with paragraph 3 of this Article,~~ the public prosecutor will decide on concluding the investigation ~~(Article 310).~~

Maintaining Confidentiality

Article 304

If it is necessary in order to protect the interests of national security, public order and morality, interests of minors, privacy of participants in proceedings, or for other justified interests in a democratic society, the authority conducting proceedings which conducts an evidentiary action shall order persons he is questioning or examining or who are attending evidentiary actions or are examining the case-file to maintain confidentiality of certain facts or

data learnt on the occasion, and warn them that disclosure of a secret represents a criminal offence under the law.

The order referred to in paragraph 1 of this Article will be entered into transcript of the evidentiary action, or will be marked on the case-file documents which are being examined and accompanied by a signature of the person warned.

Sanctions for Disturbing the Order

Article 305

A public prosecutor will warn a person disturbing the order during the conduct of an evidentiary action, and if he continues to disturb the order the ~~court~~**-judge for preliminary proceedings** may, **by its own will or at the proposal of the public prosecutor**, fine him up to 150,000 dinars.

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

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

No fines may be imposed on the defendant.

Expanding the Investigation

Article 306

An investigation is conducted only with respect to the ~~suspect~~**-defendant** and the criminal offence to which the ~~order~~**-decision** to conduct an investigation refers.

If it turns out during the investigation that the proceedings should be expanded to include another criminal offence or another person, the public prosecutor will expand the investigation by issuing ~~an order~~**a decision**.

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

Suspending an Investigation

Article 307

An investigation will be suspended if:

1) after committing a criminal offence **the defendant** ~~a-suspect~~ gets a mental disease or disorder or another serious illness which makes it impossible for him to participate in the proceedings;

2) there is no motion by an injured party or authorisation by a competent state authority for prosecution, or if other circumstances which temporarily prevent prosecution appear.

An investigation may be suspended if:

1) the temporary residence of the ~~suspect~~**-defendant** is not known;

2) the ~~suspect~~**-defendant** is at large or otherwise inaccessible to the public authorities.

Before issuing ~~an order~~**a decision** to suspend an investigation, the public prosecutor will collect all available evidence about the criminal offence of the ~~suspect~~**defendant**. If the

investigation has been suspended due to the reasons referred to in paragraph 2 item 2) of this Article, the public prosecutor will propose the ordering of detention against the ~~suspect~~**defendant**.

When obstacles which caused the suspension cease to exist, the public prosecutor will resume the investigation.

Discontinuing an Investigation

Article 308

During the investigation, the public prosecutor **will discontinue criminal** prosecution of a ~~suspect~~**defendant and by rendering a decision -will** discontinue the investigation if:

- 1) the offense **for** which **the investigation is being conducted** ~~constitutes the subject matter of the indictment is~~ not a criminal offense **prosecutable ex officio** and the conditions for the application of a security measure do not exist;
- 2) statute of limitations has expired or the offense has been covered by amnesty or pardon or there are other circumstances which rule out criminal prosecution permanently;

~~there is insufficient evidence for filing an indictment.~~

When the public prosecutor finds insufficient evidence for filing an indictment, he will issue a decision annulling the decision to conduct investigation.

~~In the case referred~~ **When he issues the decisions referred to** -in paragraphs 1 and 2 of this Article, the public prosecutor will ~~issue an order discontinuing the investigation and~~ notify thereof the **defendant, defence council, suspect** and the injured party (Article 51 paragraph 1).

Obtaining Data on the ~~Suspect~~Defendant

Article 309

The public prosecutor will before concluding an investigation obtain data about the ~~suspect~~**defendant**(Article 85 paragraph 1) if they are missing or should be checked, as well as data about prior convictions, and if the ~~suspect is~~ **defendant is** already serving a criminal sanction involving incarceration – data about his conduct during the service of the criminal sanction.

The public prosecutor will as needed obtain data about the ~~suspect's~~**defendant's** prior life, his personal circumstances and other circumstances relating to his personality. If it is necessary to gather additional data on the personality of the ~~suspect~~**defendant**, the public prosecutor may order examinations or psychological testing of the ~~suspect~~**defendant**.

If the pronouncement of a single penalty encompassing penalties from earlier convictions may be considered, the public prosecutor will request the files of the cases in which the said convictions were made, or certified copies of the final judgments.

Concluding an Investigation

Article 310

When the public prosecutor finds that the subject matter of the investigation has been sufficiently cleared up he will close the investigation and make an official record about it. He will notify the defendant and his defence counsel, if there is one, and the injured party about the conclusion of the investigation.

~~When he finds that the subject matter of the investigation has been cleared up sufficiently, the public prosecutor will issue an order on the conclusion of the investigation which he will deliver to the suspect and his defence counsel, if he has one, and will notify the injured party about the conclusion of the investigation.~~

If the public prosecutor does not conclude an investigation against a suspect within six months, or within one year in relation to a criminal offence within jurisdiction of the public prosecutor's office of special jurisdiction year according to a separate law, he will be required to notify the immediately superior public prosecutor of reasons due to which the investigation has not been concluded.

The immediately superior public prosecutor is required to undertake measures to conclude the investigation.

If the public prosecutor decides to discontinue prosecution after the conclusion of the investigation, he will notify the ~~suspect~~ **defendant, defence council, and** the injured party about it (Article 51 paragraph 1)

Supplemental Investigation

Article 311

The public prosecutor will issue ~~an order~~ **a decision** supplementing the investigation when after concluding the investigation he finds that new evidentiary actions need to be undertaken.

The ~~suspect~~ **defendant and his** defence counsel may propose to the public prosecutor that the investigation be supplemented. In that case the provisions of Article 302 of this Code are applied accordingly.

~~Objecting~~ **Complaining about** ~~to~~ Irregularities during the Investigation

Article 312

The ~~suspect~~ **defendant and** his defence counsel may **in the course of** ~~immediately after learning about it, but no later than the conclusion of~~ the investigation, submit ~~an objection~~ **a complaint** to the ~~immediately superior~~ **competent public** prosecutor on delays of the proceedings or other irregularities during the investigation.

~~The immediately superior public prosecutor will within eight days of receiving the objection issue a ruling rejecting or granting the objection. No appeal or objection against this ruling of the public prosecutor is allowed. By the ruling granting the objection, the public prosecutor will issue a mandatory instruction to the competent public prosecutor to rectify the established irregularities that occurred during the investigation.~~

~~In case the objection is rejected, the suspect and his defence counsel may within eight days of receiving the ruling referred to in paragraph 2 of this Article submit a complaint to the~~

~~judge for the preliminary proceedings. If the judge for the preliminary proceedings finds the complaint well founded, he will order the undertaking of measures to rectify the irregularities.~~

2. Agreements of the Public Prosecutor and the Defendant

a. Plea Agreement

Concluding an Agreement

Article 313

A plea agreement may be concluded by the public prosecutor and the defendant ~~from the moment of issuance of an order to conduct an investigation until~~ **up to the point that** the defendant states his position in relation to the charges at trial.

A defendant must have a defence counsel (Article 74 item 8)) during the conclusion of the agreement referred to in paragraph 1 of this Article.

The plea agreement, done in writing, shall be submitted by the public prosecutor to the judge for the preliminary proceedings before an indictment is confirmed, and after the confirmation of the indictment to the president of the panel.

If a plea agreement is concluded before an indictment is filed, the public prosecutor will together with the agreement, file with the court the indictment, which constitutes an integral part of this agreement.

Provisions relating to examination of the indictment (Articles 337 to 341) are not applicable to the indictment referred to in paragraph 4 of this Article.

If the authorised person (Article 253 paragraph 1) has not filed a restitution claim, the public prosecutor will invite him to file the claim before the agreement is concluded.

Contents of the Agreement

Article 314

The plea agreement contains the following:

- 1) a description of the criminal offence which is the subject-matter of the charges;
- 2) a confession of the defendant that he committed the criminal offence referred to in item 1) of this paragraph;
- 3) an agreement on the type **and** ~~;~~ extent ~~or scope~~ of the penalty or other criminal sanction; **on the manner of serving the penalty or on the single penalty for multiple criminal offenses**
- 4) **an agreement on the measure which will ensure the defendant's presence in the criminal proceedings (Article 188, Items 3-7),**
- 5) an agreement on the costs of the criminal proceedings, on confiscation of the pecuniary benefits from the crime **that is a basis of the agreement being concluded,** ~~and the restitution claim, if one has been submitted;~~
- 6) a statement on the parties' and defence counsel's waiver of the right to appeal against a decision with which the court has accepted the agreement in its entirety, except in the case referred to in Article 319 paragraph 3 of this Code;

76) the signatures of the parties and defence counsel.

In addition to the data referred to in paragraph 1 of this Article, the plea agreement may also contain:

1) a statement of the public prosecutor on desisting from criminal prosecution for criminal offences not covered by the plea agreement;

2) a statement of the defendant on acceptance of the obligation referred to in Article 283 paragraph 1 of this Code, provided that the nature of the obligation makes it possible to commence its execution before submitting the agreement to the court;

3) an agreement in respect to the ~~proceeds~~ **property which has resulted from the criminal activity** which ~~will be confiscated from the defendant~~ **may be confiscated in accordance with a separate law;**

4) an agreement on the restitution claim.

Deciding on the Agreement

Article 315

The judge for the preliminary proceedings rules on the plea agreement, and if the agreement was submitted to the court after the confirmation of the indictment – the president of the panel.

The ruling on the plea agreement is rendered at a hearing to which the public prosecutor, defendant and his defence counsel are summoned, **and about which the injured party and his proxy are notified.**

The hearing referred to in paragraph 2 of this Article is held in a closed session.

Dismissing an Agreement

Article 316

The court will dismiss a plea agreement by a ruling if:

1) the agreement does not contain the data specified by Article 314 paragraph 1 of this Code;

2) a duly summoned defendant has not appeared at the hearing and failed to justify his absence.

Accepting the Agreement

Article 317

The court will accept a plea agreement by a reasoned ruling against which an appeals is not allowed if it determines: ~~The court will accept a plea agreement by a judgment and declare the defendant guilty if it determines:~~

1) that the defendant has knowingly and voluntarily confessed to the criminal offence or criminal offences which are the subject-matter of the charges;

2) that the defendant is aware of all the consequences of the concluded agreement, especially that he has waived his right to a trial and that he accepts a restriction of his right to file an appeal (Article 319 paragraph 3) against the decision of the court based on the agreement;

3) that other existing evidence **corroborates** the defendant's ~~do not run contrary to the~~ confession on having committed the criminal offence;

4) that the penalty of the other criminal sanction or other measure in respect of which the public prosecutor and the defendant had reached an agreement was proposed in line with the criminal and other law.

Based on the ruling referred to in Paragraph 1 of this Article, the court issues a judgment pronouncing the defendant guilty, and explains in its rationale that the judgment has been issued based on the plea agreement. In addition to elements referred to in Article 428 paragraphs 2, 3 and 5 of this Code, the judgment referred to in paragraph 1 of this Article also contains the reasons which led the court to accept the agreement.

Rejecting an Agreement

Article 318

The court will reject a plea agreement by a ruling if it determines:

1) that the reasons referred to in Article 338 paragraph 1 of this Code, exist;

2) that one or more of the conditions referred to in Article 317 paragraph 1 of this Code have not been fulfilled;

3) that the criminal sanction, the type or the extent of the penalty, or the manner of execution thereof, specified in the agreement, are obviously disproportionate to the criminal offense.

When the ruling referred to in paragraph 1 of this Article becomes final, the plea agreement and all file documents related to it are destroyed in the presence of the judge who issued the ruling and a transcript is made thereof, while proceedings return to the stage which preceded the conclusion of the agreement.

The judge referred to in paragraph 2 of this Article may not participate in the further course of the proceedings.

Appeal against the Decision on the Agreement

Article 319

The court's decision on the plea agreement is delivered to the public prosecutor, the defendant and his defence counsel.

The public prosecutor, the defendant and his defence counsel may file an appeal to ~~Aa~~ **ruling dismissing (Article 316) or rejecting (Article 318) the plea agreement eight days after the ruling has been served on them.** ~~is not appealable.~~

The persons referred to in paragraph 1 of this Article ~~-may,~~ within eight days of the date of delivery of the judgment, appeal against the judgment **issued in line with** ~~accepting the plea agreement (Article 317), Paragraph 2, if the judgment is not in accordance with the concluded plea agreement for the existence of reasons referred to in Article 338 paragraph 1 of this Code, or if the judgment does not relate to the subject matter of the agreement (Article 314).~~

A panel **of the directly superior court** (referred to in Article 21, Paragraph 4) decides the appeal referred to in Paragraphs ~~2 and 3~~ of this ~~Article, which may not include the judge who passed the decision subject to the appeal~~ **Article**.

b. Agreement on Testifying of Defendant

Concluding an Agreement

Article 320

An agreement on testifying in connection with the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code may be concluded by the public prosecutor and the defendant from the moment of issuance of ~~an order~~ **a decision** to conduct an investigation up until the end of the trial.

The agreement referred to in paragraph 1 of this Article may be concluded with the defendant who has confessed in entirety to having committed a criminal offence, provided that the significance of his testimony for detecting, proving or preventing the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code outweighs the consequences of the criminal offence he had committed (cooperating defendant).

A defendant for whom there is a grounded suspicion that he is the organiser of an organised criminal group may not be proposed to be a cooperating defendant.

When concluding the agreement referred to in paragraph 1 of this Article the defendant must have a defence counsel (Article 74 item 8)).

The public prosecutor will, before concluding the agreement on testifying, ask the defendant to, within a time limit which may not exceed ~~30 days~~ **a month**, autonomously ~~and in his own writing~~, in as much detail as possible, truthfully describe everything he knows about the criminal offence in connection with which the criminal proceedings are being conducted and about other offences referred to in Article 162 paragraph 1 item 1) of this Code, **which he is familiar with, which will be recorded in the transcript, or in an audio or video recordings**. ~~An illiterate defendant will dictate the preliminary testimony into a voice recording machine.~~

An agreement on testifying is concluded in written form and submitted to the court by the conclusion of the trial. A transcript of the testimony given by the defendant in accordance with paragraph 5 of this Article is attached to the agreement.

Contents of the Agreement

Article 321

An agreement on testifying by a defendant contains:

- 1) a description of the criminal offence which is the subject-matter of the charges;
- 2) a statement of the defendant that he confesses in entirety to the criminal offence, that he will testify to everything he knows about the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code and will omit nothing, that he has been warned about the duties referred to in Article 95 paragraph 1 and Article 96 of this Code and privileges referred to in item 3) of this paragraph, that he may not invoke the privilege of being relieved of the duty of giving

testimony (Article 94 paragraph 1) and that of being relieved of the duty to answer certain questions (Article 95 paragraph 2);

3) an agreement on the type and extent ~~or scope~~ of the penalty or other sanction which will be issued, on being relieved from serving the penalty, or on an obligation of the public prosecutor to discontinue criminal prosecution of the defendant in the case of providing testimony at trial in accordance with the obligations referred to in item 2) of this paragraph;

4) an agreement on the costs of the criminal proceedings, confiscation of the pecuniary benefits from his crime, and about the restitution claim, if one has been submitted;

5) a statement of the parties and defence counsel waiving the right to an appeal against the decision of the court accepting the agreement in entirety;

6) the signatures of the parties and the defence counsel.

In addition to data specified in paragraph 1 of this Article, an agreement on testifying may also contain an agreement with respect to the proceeds from crime which will be confiscated from the defendant.

Deciding on the Agreement

Article 322

A ruling on an agreement on testifying by a defendant is issued by the judge for the preliminary proceedings, and if the agreement was submitted to the court after the confirmation of the indictment, the decision is issued by the president of the panel.

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

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

Accepting the Agreement

Article 323

The court will accept the agreement on testifying by a defendant with a ruling if it determines:

1) that the defendant has knowingly and voluntarily agreed to testify under the conditions specified in Article 321 paragraph 1 item 2) of this Code;

2) that the defendant is fully aware of all the consequences of the agreement concluded, in particular the waiver of the right to file an appeal against a decision of the court issued on the basis of the agreement;

3) that the penalty or other sanction or measure, remission from serving the penalty, or discontinuance of criminal prosecution by the public prosecutor was proposed in accordance with the provisions of this Code or the Criminal Code;

4) -that other evidence exists which corroborates the confession referred to in Article 320, Paragraph 2 of this Code.

Rejecting the Agreement

Article 324

The court will reject the agreement on testifying by a defendant with a ruling if it determines:

- 1) that the reasons referred to in Article 338 paragraph 1 of this Code exist;
- 2) that one or more of the conditions referred to in Article 323 of this Code has not been fulfilled.

When the ruling referred to in paragraph 1 of this Article becomes final, the agreement on testifying and all case-file documents connected with it are destroyed in the presence of the judge (Article 322 paragraph 1) who issued the ruling, and a record are made thereof.

The judge referred to in paragraph 2 of this Article may not participate in the further course of the proceedings.

Examination of a Cooperating Defendant

Article 325

The cooperating defendant is required to tell the truth and not to omit anything known to him in relation to the subject-matter of the trial.

The cooperating defendant is examined after questioning of defendants and **stays in the courtroom, unless he himself asks to be** removed from the courtroom ~~after the examination~~.

Court is bound by the Decision on Acceptance of the Agreement

Article 326

A court of first instance and a court of legal remedy are bound by a ruling on acceptance of an agreement on testifying by a defendant in issuing a decision on a criminal sanction, costs of the criminal proceedings, confiscation of the pecuniary benefit from crime, restitution claim and confiscation of proceeds deriving from a criminal ~~offence~~**activity**, provided that the cooperating defendant has fully fulfilled the obligations specified in the agreement.

The court will annul the ruling on acceptance of the agreement and act in accordance with Article 324 paragraphs 2 and 3 of this Code if:

- 1) the cooperating defendant has not fulfilled the obligations specified in the agreement;
- 2) the public prosecutor initiates an investigation against the cooperating defendant or learns about a prior conviction and files a motion with the court to annul the agreement.

c. Agreement on Testifying by a Convicted Person

Concluding an Agreement

Article 327

The public prosecutor and a convicted person may conclude an agreement on testifying if the significance of the convicted person's testimony for detecting, proving or preventing the criminal offences referred to in Article 162 paragraph 1 item 1) of this Code outweighs the consequences of the criminal offence for which he was convicted (cooperating convicted person).

A person convicted as the organizer of an organized criminal group may not be proposed as a cooperating convicted person.

The convicted person must have a defence counsel (Article 74 item 8)) during the conclusion of the agreement referred to in paragraph 1 of this Article.

The agreement on testifying is done in writing and submitted to the court by the conclusion of the trial.

Contents of the Agreement

Article 328

The agreement on testifying by a convicted person contains the following:

- 1) a description of the criminal offence which is the subject matter of the charges;
- 2) a statement of the convicted person that he will testify about everything known to him about the criminal offence referred to in Article 162 paragraph 1 item 1) of this Code and that he will omit nothing, that he has been warned about the duties referred to in Article 95 paragraph 1 and Article 96 of this Code, that he may not invoke the privilege of being relieved of the duty of giving testimony (Article 94 paragraph 1) and that of being relieved of the duty to answer certain questions (Article 95 paragraph 2);
- 3) an agreement on the type and extent ~~or scope~~ of the reduction of penalty or other sanction, or ~~on the convict being relieved from serving a penalty~~, in case he provides testimony at the trial in accordance with the obligation proceeding from item 2) of this Article;
- 4) a statement by the public prosecutor that he will within 30 days from the date of the final conclusion of proceedings ending in a conviction in which the convicted person provided testimony in accordance with the obligation from item 2) of this Article submit a request in accordance with Article 557 of this Code;
- 5) a statement of the parties and defence counsel waiving the right to an appeal against a decision of the court based on the agreement on testifying, when the court has accepted the agreement in full;
- 6) the signatures of the parties and defence counsel.

Ruling on the Agreement

Article 329

The judge for the preliminary proceedings rules on an agreement on testifying by a convicted person, and if the agreement was submitted to the court after the confirmation of the indictment, the decision is issued by the president of the panel.

A ruling on dismissing, accepting or rejecting the agreement on testifying by a convicted person is issued at a hearing to which the public prosecutor, the convicted person and the defence counsel are summoned.

The provisions of Articles 316, 323 and 324 of this Code are applied accordingly during the issuance of the ruling referred to in paragraph 2 of this Article.

Court is bound by the Decision on Acceptance of the Agreement

Article 330

The court is bound by a ruling whereby an agreement on testifying by a convicted person is accepted in issuing a decision on a criminal sanction in repeated proceedings, provided that the cooperating convicted person has fully fulfilled the obligations specified in the agreement.

Chapter XVII

INDICTING

Filing an Indictment

Article 331

The public prosecutor files an indictment, **after the investigation has been concluded**, when there is a justified suspicion that a certain person has committed a criminal offence.

If the data collected about the criminal offence and the offender provide sufficient grounds for filing an indictment, an indictment may be filed even without having to conduct an investigation.

The defendant **must be questioned before filing of the indictment, unless he is tried in absentia (Article 381).**

An indictment is filed within 15 days **or 30 days in particularly complex cases, from** ~~of~~ the date when the investigation was concluded. ~~In particularly complex cases this time limit may be extended by another 30 days on the basis of authorisation by the immediately superior public prosecutor.~~

If the public prosecutor does not file an indictment within the time limit referred to in paragraph ~~2-4~~ of this Article and does not state that he is discontinuing the criminal prosecution, the defendant, his counsel and the injured party may, within eight days of the date of expiry of the time limit for filing an indictment, submit a ~~objection to~~ **complaint to** the ~~immediately superior~~ **competent** public prosecutor. ~~If the injured party has not been notified about the conclusion of the investigation (Article 310 paragraph 1), he may submit an objection within three months of the date when the public prosecutor issued an order concluding the investigation.~~

~~The immediately superior public prosecutor will within 15 days of the date of receiving the objection referred to in paragraph 3 of this Article issue a ruling rejecting or adopting the objection. No appeal or objection is allowed against the public prosecutor's ruling. By the ruling accepting the objection the public prosecutor will issue a mandatory instruction to the competent public prosecutor to file an indictment within a specified time limit, which may not exceed 30 days.~~

~~If the data collected about the criminal offence and the perpetrator provide sufficient grounds for filing charges, an indictment may be filed even without having to conduct an investigation.~~

~~—The provisions on the indictment and examination of the indictment will apply accordingly to a private lawsuit, unless it is being brought in connection with a criminal offence for which summary proceedings are conducted.~~

Contents of the Indictment

Article 332

The indictment contains:

1) the first name and surname of the defendant, with personal data (Article 85 paragraph 1), and data on whether and as of when he is in detention, or is at liberty, and, in case he was released before the filing of the indictment, information on the duration of detention;

2) a description of the act on which the legal elements of a criminal offence are based, time and place of the commission of the criminal offence, object on which and the means by which the criminal offence was committed, as well as other circumstances needed to determine the criminal offence as precisely as possible;

3) the legal qualification of the criminal offence, citing the provisions of the law that should be applied according to the prosecutor's proposal;

4) a designation of the court before which the trial will be held;

5) a proposal for the evidence to be examined at the trial, specifying the names of the witness and expert witness, file documents and objects that should be used as evidence;

6) a rationale describing the state of the matter according to the results of the investigation, specifying **collected and examined** evidence that will serve to establish the determining facts, ~~describing the defence of the defendant and the prosecutor's position on the allegations of the defence.~~

If the defendant is at liberty, it may be proposed in the indictment that detention be ordered, and if he is in detention, it may be proposed that he be released.

One indictment may encompass several criminal offences or several defendants only if under the provisions of Article 30 of this Code, joint proceedings may be conducted and a single judgment rendered.

Filing the Indictment with the Court

Article 333

The indictment is submitted to the **pre-trial conference judge panel** ~~(Article 21 paragraph 4)~~ of the competent court in as many copies as there are defendants and their defence counsel (Article 78 paragraph 3), and one copy for the court. The case files made by the public prosecutor during the investigation are delivered to the ~~court~~ **pre-trial conference judge** together with the indictment.

Immediately on receiving the indictment the ~~panel~~ **pre-trial conference judge** will examine whether the indictment has been composed correctly (Article 332), and if he determines that it has was not, return it to the prosecutor to rectify the shortcomings within three days. On a

motion of the prosecutor the ~~panel~~**pre-trial conference judge** may extend this limit for justified reasons.

If the public prosecutor misses the time limit referred to in paragraph 2 of this Article, **or files -an uncorrected indictment, the pre-trial conference judge** ~~the panel~~ will issue a ruling dismissing the indictment, ~~and in case a private prosecutor misses the aforesaid time limit, it will be deemed that he has desisted from the prosecution and the charges will be rejected by a ruling.~~

Proposal to Order Detention or Release a Defendant

Article 334

If the indictment contains a proposal to order placement of the defendant in detention or his release from detention, the ~~panel (Article 21 paragraph 4)~~ **pre-trial conference judge** rules on it immediately, and not later than within 48 hours.

If the defendant is in detention, and no proposal is made in the indictment for his release, the ~~panel~~**pre-trial conference judge** will *ex officio*, within three days from the day of receiving the indictment, examine whether the grounds for detention continue to exist and issue a ruling extending or terminating detention. An appeal against this ruling does not stay its execution.

If the indictment has been returned to the public prosecutor, the pre-trial conference judge will examine on a monthly basis whether reasons for detention still exist.

Delivery of the Indictment to the Defendant

Article 335

The ~~president of the panel (Article 21 paragraph 4)~~ **pre-trial conference judge** delivers an indictment which is properly composed to the defendant **and the defence counsel. The defendant** who is at liberty **is served** without delay, and if he is in detention - within 24 hours. ~~In of receiving the indictment, and in particularly~~**In particularly** complex cases, **the indictment is served** within no longer than three days ~~from the date of receipt of the indictment.~~

If detention has been ordered against the defendant by a ruling of the ~~panel~~**pre-trial conference judge**(~~Article 334 paragraph 1~~), the indictment is served to the defendant during his arrest, together with the ruling ordering detention.

If during his arrest the defendant is not in an institution in the territory of the court where the trial will be held, the ~~panel (Article 21 paragraph 4)~~**pre-trial conference judge** will order the defendant to be immediately brought to that institution where he will be served the indictment.

~~Defendant's Response to the Indictment~~ Conference on Examination of the Indictment

Article 336

The defendant is entitled to submit a written response to the indictment within eight days from the delivery of the indictment. Advice of his right to respond will be provided to him together with the indictment. A response to the indictment may also be submitted by the defence counsel, without any special authorisation of the defendant, but not against his will.

The pre-trial conference judge will hold a conference on examination of the indictment within fifteen days, if the defendant is in prison, and within 30 days from the day when the indictment has been served if the defendant is defending him/herself from liberty. He will summon the public prosecutor, the defendant and the defence counsel to attend the conference. The summons, served on the defendant together with the indictment, will contain a warning to the served persons that the hearing will take place even in his/her absence.

If the indictment has been filed for criminal offenses from the jurisdiction of specialised prosecutor's offices the pre-trial conference judge will hold a conference on examination of the indictment within a month's time, if the defendant is in prison, and within two months from the day when the indictment has been served if the defendant defending him/herself from liberty.

The pre-trial conference judge opens the conference on examining the indictment and determines whether all summoned persons are present and whether they have been duly summoned. If the public prosecutor, defendant or his defence counsel have not appeared, and the pre-trial conference judge has determined that the summon was not been duly delivered, the conference will be ~~is~~ postponed.

After opening the conference, the public prosecutor briefly presents the indictment, based on the results of investigation or preliminary investigation, and presents to the pre-trial judge collected and examined evidence justifying the filing of an indictment.

The defendant and his defence counsel may briefly state reasons on which they base their challenge that there is sufficient evidence from which justified suspicion that the defendant committed a criminal offence ensues, warn of illegal evidence used to establish the indictment and point out omissions of the investigation.

After the pre-trial has assessed that the state of the matter has been clarified up to the point to enable ruling on justification of the indictment, the pre-trial judge will announce that the conference is closed.

Once initiated, the conference on examination of the indictment cannot be postponed.

Examination of the Indictment

Article 337

While his ruling during the examination of the indictment is taking place -the pre-trial conference judge considers files and records delivered together with the indictment, as well as collected and examined evidence.

If the pre-trial conference judge determines that another court is competent for the criminal offence which is the subject-matter of the charges, it will issue a ruling on the incompetence of the court and after the ruling becomes final, he will deliver the case to the competent court.

When the pre-trial conference judge determines that the factual description of the offence in the criminal complaint has not been based on collected and examined evidence, or a better clarification of the state of the matter is required, it will return the indictment to the public prosecutor indicating the reasons for rejecting the confirmation of the criminal complaint.

When the public prosecutor has undertaken necessary evidentiary actions or conducted an investigation, if there hasn't been any investigation before, he may uphold the filed indictment, file a modified indictment, or file a new one.

The pre-trial conference judge is obliged to examine whether the files contain records or information which according to Article 237 paragraphs 1 and 3 of this Code are to be excluded.

The defendant and his defence counsel may propose to the pre-trial conference judge excluding the files referred to in Paragraph 5 of this Article.

If the pre-trial conference judge finds that the files include transcripts or notifications referred to in Article 237, Paragraphs 1 and 3 of this Code, he will issue a ruling excluding them from the files.

A special appeal is allowed against a ruling to exclude records and a ruling to deny excluding records.

After a ruling referred to in Paragraph 7 of this Article has become final, the pre-trial conference judge will act in accordance with Article 237, Paragraphs 2 and 3 of this Code.

Excluded documents may not be used in preliminary proceedings or in the further proceedings before the court.

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

~~—— If the panel determines that another court is competent for the criminal offence which is the subject matter of the charges, it will issue a ruling on the incompetence of the court and after the ruling becomes final it will deliver the case to the competent court.~~

~~—— When the panel determines that a better clarification of the state of the matter is required in order to assess whether the indictment is justified, it will order a supplemental investigation, or an investigation to be conducted, or certain evidence be collected.~~

~~The public prosecutor will, within three days from the day the decision of the panel referred to in paragraph 3 of this Article is communicated to him, issue an order to supplement or to conduct an investigation, and a private prosecutor will collect evidence within 30 days from the date of announcement of the decision. At the request of the prosecutor, the panel may extend this time limit, for justified reasons.~~

~~—— If the public prosecutor misses the deadline referred to in paragraph 4 of this Article, he is required to notify the immediately superior public prosecutor of the reasons for missing the~~

~~deadline, and in case a private prosecutor misses the aforesaid time limit, it will be presumed that he has decided to desist from prosecution and the charges will be dismissed by a ruling.~~

~~If the panel determines that the files contain transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, it will issue a ruling excluding them from the files. A special appeal against this ruling is allowed.~~

~~Once the ruling referred to in paragraph 6 of this Article becomes final the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.~~

~~Discontinuing Proceedings~~ Rejecting the Indictment

Article 338

In examining the indictment, the ~~panel~~ **pre-trial conference judge will reject the charges** ~~decide by a ruling that the charges are unfounded and that the criminal proceedings are being terminated~~ if he determines that:

1) the offence which is subject-matter of the charges is not a criminal offence, and that conditions for applying a security measure do not exist;

2) the statute of limitation for criminal prosecution has expired, or that the offence is covered by amnesty or pardon, or that the other circumstances exist which permanently preclude criminal prosecution;

3) there is insufficient evidence for a justified suspicion that the defendant committed the offence which is the subject-matter of the charges.

~~If after the examination of an indictment filed without an investigation an investigation is conducted (Article 337 paragraphs 3 and 4), and the panel, after the conducted investigation, finds that the reasons referred to in paragraph 1 item 3 of this Article exist, it will decide by a ruling that the charges are unfounded and that the criminal proceedings are being discontinued.~~

~~Rejecting Charges~~ Dismissing the Indictment

Article 339

~~When it examines an indictment of the public prosecutor submitted without conducting investigation or a private lawsuit, the panel (Article 21 paragraph 4) will reject the charges by a ruling if it determines that there are the reasons referred to in Article 338 paragraph 1 items 1) and 2) of this Code, and where evidentiary actions have been conducted – also for reason referred to in Article 338 paragraph 1 item 3) of this Code.~~

If the ~~panel~~ **pre-trial conference judge** determines that there is no request by an authorised prosecutor, no requisite motion or approval for criminal prosecution, or there are other circumstances temporarily preventing prosecution, it will dismiss the indictment ~~or private lawsuit~~ by a ruling.

~~Court is Not Bound by the Legal Qualification of the Offence~~ Confirming the Indictment

Article 340

If the pre-trial conference judge finds a justified ~~suspicion~~ that the defendant has committed the criminal offence he has been charged for in the criminal proceedings, he will issue the ruling of confirmation of the indictment, in its entirety or individual counts thereof.

In the ruling of confirmation of the indictment the pre-trial conference judge will decide on motions for joinder or severance of proceedings. No special appeal is allowed against the ruling of the pre-trial conference judge.

The indictment, in its entirety or its accounts which had been confirmed, enters into force by issuing a ruling of confirmation of the indictment or by issuing a court ruling of acceptance of the plea agreement.

~~In rendering the ruling referred to in Article 337 paragraph 2 and Articles 338 and 339 of this Code, the panel (Article 21 paragraph 4) is not bound by the legal qualification of the offence which the prosecutor specified in the indictment or private prosecution.~~

~~Confirming the Indictment~~ Court is not bound by the Legal Qualification of the Offense

Article 341

In rendering the ruling referred to in Article 337, Paragraph 2, and Articles 338,339 and 340 of this Code, the pre-trial conference judge is not bound by the legal qualification of the offense which the prosecutor specified in the indictment.

~~If none of the rulings referred to in Article 340 of this Code are issued, the panel (Article 21 paragraph 4) will confirm the indictment by a ruling.~~

~~———— In the same ruling the panel will also decide on motions for joinder or severance of proceedings.~~

Substantiating a Ruling

Article 342

All rulings issued in the procedure of examining the indictment must be substantiated, **and the ruling of confirmation of the indictment has to contain a rationale** ~~but~~ in a manner not impacting in advance the resolution of the issues which will be the subject-matter of examination at the trial.

Appealing against a Ruling

Article 343

The **parties and the defence counsel** may appeal against the ruling referred to in Article 337 paragraph 2 and **the public prosecutor may appeal against the ruling referred to in Articles 338 and 339 of this Code.** ~~, and the defendant may appeal against the ruling referred to in Article 341 of this Code.~~ No appeal is allowed against the ruling referred to in Article 341. The panel referred to in Article 21, Paragraph 4 of this Code decides the appeal against the ruling referred to in Paragraph 1 of this Article, and if the ruling referred to in Paragraph

1 of this Article has been issued by a pre-trial panel (Article 343A) the appeal is decided by the panel referred to in Article 21, Paragraph 4 of the directly superior court.

Confirmation of the Indictment Filed by a Specialised Prosecutor's Office

343A

When an indictment is filed for a criminal offense from the jurisdiction of a specialised prosecutor's office, the procedure of confirmation of the indictment (Art. 333-341) will be conducted by a pre-trial panel.

Chapter XVIII

TRIAL AND JUDGMENT

1. Trial

a. Preparations for the Trial

Authority of the President of the Panel

Article 344

The president of the panel begins preparations for the trial immediately after receiving the confirmed indictment and the case file.

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

No appeal is allowed against the decisions issued by the president of the panel during preparations for the trial, unless specified otherwise by this Code.

a) Preparatory Hearing

Basic Rules

Article 345 deleted

~~A preparatory hearing may be scheduled by the president of the panel for criminal offenses punishable by a term of imprisonment of more than twelve years, when he finds that the preparatory hearing is necessary considering collected evidence, contentuous facts and legal issues or complexity of the case.~~

~~At the preparatory hearing the parties state their positions in relation to the subject matter of the charges, explain the evidence which will be examined at the trial and propose new evidence, the factual and legal questions which will be the subject matter of discussion at the trial are determined, a decision is rendered on a plea agreement, on detention and on discontinuing~~

~~criminal proceedings, as well as on other questions the court finds of relevance for holding a trial.~~

~~—— The preparatory hearing is held before the president of the panel, *in camera*.~~

~~—— In the summons for the preparatory hearing the president of the panel will caution the parties and the injured party that the trial [main hearing] may be held at the preparatory hearing (Article 350 paragraph 6).~~

~~Provisions on the trial are applied accordingly to the preparatory hearing, unless specified otherwise by this Code.~~

Scheduling a Preparatory Hearing

Article 346 ~~deleted~~

~~**A preparatory hearing is scheduled not later than thirty days as of the date of receipt of the confirmed indictment, and/or not later than fifteen days if the defendant is in detention.**~~ The president of the panel will schedule a preparatory hearing not later than 30 days if the defendant is in detention, or 60 days if the defendant is at liberty, counting from the date of receipt of the confirmed indictment by the court.

~~—— If the president of the panel does not schedule a preparatory hearing within the time limit referred to in paragraph 1 of this Article, **or does not schedule a trial**, he will notify thereof the president of the court, who will undertake measures for the preparatory hearing to be scheduled immediately.~~

~~—— By exception from paragraph 1 of this Article, if an indictment has been filed in connection with a criminal offence punishable by a term of imprisonment of up to twelve years and if the president of the panel holds that in view of the evidence collected, the controversial factual and legal questions, or the complexity of the case the holding of a preparatory hearing is not necessary, he will issue an order scheduling a trial.~~

~~**If the public prosecutor and the defendant have concluded the plea agreement (Article 313, Paragraph 1) after the indictment has been confirmed, the president of the panel will act in accordance with Articles 315 to 318 of this Code.**~~

~~If the public prosecutor, the defendant and his defence counsel have concluded a plea agreement (Article 313 paragraph 1) in respect to certain counts of the indictment, the president of the panel will order a preparatory hearing for the part of the indictment not encompassed by the agreement.~~

~~—— If the president of the panel determines that the files contain transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, he will issue a ruling on their exclusion from the files. A special appeal is allowed against this ruling **on exclusion of documents and the ruling to deny the motion for exclusion.**~~

~~—— Once the ruling referred to in paragraph 5 of this Article becomes final, the president of the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.~~

Summons for a Preparatory Hearing

Article 347 ~~deleted~~

~~The parties and defence counsel, the injured party, legal representative and proxy of the prosecutor and injured party, and if needed a translator and an interpreter, will be summoned to the preparatory hearing.~~

~~— The parties will be advised in the summons for the preparatory hearing that they may propose new evidence at the preparatory hearing if they learnt about it after the confirmation of the indictment.~~

~~If it is necessary to obtain for the preparatory hearing files, instruments or objects held by the court or other state authority, the president of the panel will on a motion of the parties order those objects or instruments to be obtained in a timely manner.~~

Commencement of the Preparatory Hearing

Article 348 ~~deleted~~

~~The president of the panel checks whether all the persons summoned are present, and in the event of the absence of any of them whether the conditions prescribed by this Code for holding the preparatory hearing in their absence are fulfilled (Articles 379 to 382 and Article 383 paragraph 1).~~

~~— By exception from paragraph 1 of this Article, if the defendant has been duly summoned, and does not appear at the preparatory hearing and does not justify his absence, the president of the panel may decide that the preparatory hearing be held if the defence counsel is present.~~

~~— If the conditions referred to in paragraph 1 of this Article for holding a preparatory hearing have been fulfilled, the president of the panel checks the data referred to in Article 332 paragraph 1 item 1) of this Code.~~

~~— The president of the panel will advise, within the meaning of Article 50 paragraph 1 item 1) of this Code, an injured party who has not submitted a restitution claim~~

~~— If the public prosecutor and the defendant have concluded a plea agreement (Article 313 paragraph 1) they will notify thereof the president of the panel, who will act in accordance with the provisions of Articles 315 to 318 of this Code.~~

~~— If the plea agreement relates to only some counts of the indictment, the proceedings for those offences will be severed in accordance with Article 31 of this Code, and for the other counts of the indictment it will be acted in accordance with the provisions of this Code on holding the preparatory hearing or, in the case referred to in Article 346 paragraph 3 of this Code, on the scheduling of the trial.~~

Parties' Declarations

Article 349 ~~deleted~~

~~The public prosecutor quotes from the indictment the description of the act which meets the legal elements of a criminal offence and the legal qualification of the criminal offence, and presents the evidence supporting the indictment, and may propose the pronouncement of a certain type and extent of criminal sanction. In the case of charges filed by a subsidiary prosecutor or a private prosecution, the president of the panel may summarize their contents.~~

~~— If the injured party is present, he may submit a restitution claim, and if he is not present, the president of the panel will read out the claim, if one has been submitted.~~

~~After advising the defendant about his rights and duties (Articles 68 and 70), the president of the panel will instruct him to declare himself on the charges (Article 392).~~

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

~~If a co-defendant has confessed to certain counts of the indictment which also relate to the other co-defendant who has challenged them, the trial will be held for both co-defendants and as a rule a single judgment will be issued.~~

Proposing Evidence

Article 350 ~~deleted~~

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

~~The president of the panel may order obtaining new evidence for the trial even without a motion by the parties, the defence counsel and the injured party (Article 15 paragraph 4).~~

~~If the defendant has confessed to having committed the criminal offence, proposing evidence for the trial will be limited to the evidence on which depends the assessment whether the confession fulfills the preconditions referred to in Article 88 of this Code, as well as evidence on which depends the decision on the type and extent of the criminal sanction.~~

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

~~The provisions of Article 395 of this Code are applied accordingly to the deciding on the proposal for examining evidence.~~

~~If in view of the proposed evidence, the facts which will be the subject matter of evidentiary actions (Article 83 paragraphs 1 and 2) and the legal questions which will be discussed the president of the panel holds that in accordance with the provisions of this Code a trial may be held, after taking statements from the parties he will issue a ruling on the holding of a trial (Article 385 paragraph 1).~~

Deciding on Detention

Article 351 ~~deleted~~

~~The president of the panel may at the preparatory hearing, with consent of the parties, abolish detention or replace it with a more lenient measure. This ruling is not appealable.~~

Discontinuing Proceedings

Article 352 ~~deleted~~

~~The president of the panel will discontinue criminal proceedings by a ruling if he determines that:~~

~~—— 1) the prosecutor has desisted from the charges or the injured party has desisted from the motion to prosecute;~~

~~—— 2) the defendant has already been convicted for the same criminal offence or acquitted of the charges with a final decision, or that the charges against him have been rejected with a final decision, or the proceedings against him have been discontinued with a final decision;~~

~~3) by an act of amnesty or pardon the defendant has been relieved from prosecution, or criminal prosecution cannot be undertaken due to expiry of the statute of limitations or other circumstances permanently excluding it.~~

~~—— The prosecution may appeal against the ruling referred to in paragraph 1 of this Article on which the panel (Article 21 paragraph 4) shall decide.~~

b) Scheduling the Trial

Time of Holding the Trial

Article 353

The president of the panel issues an order ~~before the conclusion of the preparatory hearing~~ designating the date, hour and place of the holding of the trial.

~~If no preparatory hearing was held (Article 346 paragraph 3),~~ ~~the president of the panel will schedule a trial within 30 days~~ **15 days** at the latest if the defendant is in detention, ~~or within 60 days~~ **30 days** if the defendant is at liberty, counting from the date of reception of the confirmed indictment ~~by the court.~~

If an indictment has been filed for criminal offenses from the jurisdiction of a specialised prosecutor's office, the president of the panel will schedule a trial not later than within a month's time, if the defendant is in detention, or within two months if the defendant is at liberty, counting from the day when the court received the confirmed indictment.

If in the time limit referred to in paragraph 2 of this Article he does not schedule a trial, the president of the panel will notify the president of the court about the reasons why no trial was scheduled, who will undertake necessary measures to schedule a trial. In case the president of the panel is prevented for a considerable time, for justified reasons, from scheduling a trial, the president of the court will assign the case to another president of a panel.

Place of Holding the Trial

Article 354

The trial is held in the seat of the court and in the courthouse.

If in certain cases courthouse premises are unsuitable for holding a trial or for other ~~justified reasons~~ **significant reasons**, the president of the court may order the trial held in a court building outside the seat of the court or in another building in the territory of that court.

~~The president of the Supreme Court of Cassation may, upon a reasoned motion of the president of the competent court, order a trial to be held outside the territory of the competent court.~~

Summoning Parties and other Persons to the Trial

Article 355

The defendant and his defence counsel, the prosecutor and the injured party and their legal representatives and proxies, and if needed also a translator and an interpreter, will be summoned to the trial.

Proposed witnesses and expert witnesses will also be summoned to the trial, except for those for whom the president of the panel rules that their examination at the trial is not necessary; ~~or it has been determined at the preparatory hearing that they should not be summoned.~~

The provisions of Articles 191 and 193 of this Code will be applied in respect to the content of the summons for the defendant and witnesses. ~~Where mandatory defence (Article 74) is not involved, the defendant will be advised in the summons that he is entitled to obtain a defence counsel, but that the trial will not be deferred because a defence counsel does not appear at the trial or because the defendant obtained a defence counsel only at the trial.~~

The summons must be delivered to the defendant so as to provide sufficient time between the delivery and the trial date for preparing the defence, in any case not less than eight days. For criminal offences punishable by a term of imprisonment or ten years or more, the time for preparing a defence is at least fifteen days. At the request of the defendant, or of the prosecutor, with consent of the defendant, these time limits may be shortened.

An injured party who is not being summoned as a witness will be notified by the court in the summons that the trial will be held even in his absence, and that his statement on an restitution claim will be read out. The injured party will also be cautioned that if he fails to appear it will be deemed that he does not intend to continue criminal prosecution if the public prosecutor desists from the charges.

An injured party as a ~~The~~ subsidiary prosecutor ~~and the private prosecutor~~ will be cautioned in the summons that if ~~they fail~~ **he fails** to appear at the trial or to send a ~~a~~ proxy it will be deemed that ~~they ha~~ **he has**ve desisted from the charges.

The defendant, witness and expert witness will be cautioned in the summons about the consequences of failing to appear at the trial (Article 193 paragraph 4 and Article 383).

Proposing Evidence ~~after the Trial has been Scheduled~~

Article 356

~~If a preparatory hearing (Article 346 paragraph 3) was not held, t~~The parties, the defence counsel and injured party may propose after the scheduling of the trial that new witnesses or expert witnesses be called to the trial or other evidence examined, at which time they must specify which facts should be proved, and by which of the proposed items of evidence.

The provisions of Article 395 of this Code are applied accordingly in deciding on a proposal for examining evidence.

~~The president of the panel may even without a proposal by the parties and injured party order gathering of new evidence for the trial (Article 15 paragraph 4), of which he will notify the parties before the commencement of the trial.~~

Examining a Witness or Expert Witness Outside of the Trial

Article 357

The president of the panel rules on examining a witness or expert witness whose examination was proposed by the parties but who could not attend the trial due to illness or other justified reasons.

The president of the panel, a judge member of the panel or the judge for the preliminary proceedings in whose territory the witness or expert witness is located will perform the examination directly or by using a video and audio link, and will notify the parties, defence counsel and the injured party about the time, place and manner of examination.

If the defendant is in detention, the president of the panel decides about the need for his presence during the examination of a witness or expert witness.

When the parties, defence counsel and injured party attend the examination of a witness or expert witness, they are entitled to the rights specified in Article 300 paragraph 8 of this Code.

Excluding Unlawful Evidence

Article 358

If the president of the panel determines that the case-file contains transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, he will issue a ruling on their exclusion from the files. A special appeal against ~~the~~^{is} ruling **on exclusion of documents and a ruling denying a motion for exclusion** is allowed.

Upon the finality of the ruling referred to in paragraph 1 of this Article, the president of the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

~~Until the conclusion of the evidentiary proceedings the panel may act in accordance with Article 407 paragraph 4 of this Code.~~

Assigning Additional Judges

Article 359

If the trial is likely to last for a longer period, the president of the panel may ask the president of the court to assign one or two judges or lay judges to attend the trial in order to substitute for members of the panel in case they are unable to attend for a substantial period of time.

Deferring the Commencement of the Trial

Article 360

When it is justified by important reasons, the president of the panel may, on a motion by the parties and defence counsel, or *ex officio*, issue an order **deferring** ~~the commencement of the commencement of~~ trial by not longer than 30 days.

All persons summoned to the trial as well as the president of the court will be notified about the deferment immediately.

Dismissing Charges by the Prosecutor

Article 361

If a prosecutor decides to dismiss charges before the commencement of the trial, the president of the panel will notify thereof all persons summoned to the trial, and will discontinue criminal proceedings by a ruling which will be delivered to the parties, the defendant's counsel and the injured party.

2. Holding the Trial

a. Publicity of the Trial

General Rule about Publicity

Article 362

The trial is public.

Only **adult** persons ~~over 16 years of age~~ may attend the trial.

Excluding the Public

Article 363

From the commencement of the hearing until the conclusion of the trial, the panel may *ex officio* or upon a motion by a party or the defence counsel, but always after they have stated their positions, exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting:

- 1) the interests of national security;

- 2) public order and morality;
- 3) the interests of minors;
- 4) the private lives of the participants in the proceedings;
- ~~5) other justified interests in a democratic society.~~

The panel may exclude the public under the conditions referred to in Paragraph 1 of this Article, when this is deemed to be necessary in special circumstances when the public may harm the interest of justice.

Exemptions from Excluding the Public

Article 364

The exclusion of the public does not apply to the parties, the defence counsel, the injured party and his **legal** representative and the proxy ~~of the prosecutor~~.

The panel may permit a trial from which the public has been excluded to be attended by certain officials, scientists, scholars and other professionals, and at the request of the defendant also his spouse, close relatives and the person with whom who lives in a common law marriage or other permanent personal association.

The president of the panel will caution persons attending a trial from which the public has been excluded that they are required to maintain the confidentiality of everything they learn at the hearing and indicate to them that disclosure of secret represents a criminal offence.

Decision on Excluding the Public

Article 365

The panel's ruling on excluding the public must be reasoned and made public.

In the ruling referred to in paragraph 1 of this Article the panel also decides which persons are allowed to attend the trial (Article 364 paragraph 2).

The ruling referred to in paragraph 1 of this Article may be challenged only in an appeal against the judgment or ruling which corresponds to a judgment.

Special Case of Excluding the Public

Article 366

The public prosecutor may propose to the court to exclude the public from the trial during examination of a cooperating defendant or cooperating convicted person, **if he believes that reasons exist to justify that**.

Before deciding on the motion of the public prosecutor, the president of the panel will request from the defendant and his defence counsel to state their position on the proposal to exclude the public.

b. Conducting the Trial

Authority of the President of the Panel

Article 367

The president of the panel conducts the trial.

In session and at the trial, the president of the panel:

- 1) determines whether the panel is composed in accordance with the provisions of this Code and whether there are any reasons why members of the panel and the record-keeper must be recused (Article 37 paragraph 1);
- 2) determines whether the preconditions for holding the trial have been fulfilled;
- 3) is responsible for maintaining order and for applying measures to prevent disturbances of order in the courtroom;
- 4) is responsible for ensuring **comprehensive examination of the case (Article 15, Paragraph 3)**, that the proceedings run without delays and **that everything that slows down the proceedings and does not contribute to clarification of the matter be removed**~~without examination of questions that do not contribute to a comprehensive consideration of the subject-matter to be proved;~~
- 5) decides on deviating from the normal course of proceedings stipulated by this Code, owing to special circumstances, in particular the number of defendants and criminal offences and the volume of evidence;
- 6) gives the floor to the members of the panel, parties, defence counsel, injured party, legal representative and proxy, witness, expert witness and professional consultant;
- 7) decides on motions made by the parties, unless the panel decides on them;
- ~~8) Orders the obtaining of new evidence for the trial, even without a motion of the parties, the defence counsel or the injured party to do so, or examines evidence in accordance with Article 15, Paragraph 3, after the parties have examined evidence~~**8) Orders the obtaining of new evidence for the trial, even without a motion of the parties, the defence counsel or the injured party to do so, or examines evidence in accordance with Article 15, Paragraph 3, after the parties have examined evidence**~~instructs a party to propose additional evidence;~~
- 9) conveys into the transcript the contents of the work and the entire course of the trial;
- 10) undertakes necessary measures to protect witnesses (Articles 102 and 103);
- 11) rules on other questions, in accordance with this Code.

Authority of the Panel

Article 368

During the trial, the panel decides on:

- 1) a motion on which there is no agreement between the parties, and on a consensual motion of the parties not accepted by the president of the panel;
- 2) an objection against a measure of the president of the panel relating to the conduct of the trial;
- 3) prohibiting, irrespective of permission issued for video recording of certain parts of the trial on justified grounds;
- 4) removal from the courtroom, on the exclusion of a defence counsel or proxy, and on continuing, adjourning or deferring the trial for the purpose of maintaining order and conducting the trial;

~~5) examination of additional evidence, if it deems it necessary for the purpose of eliminating discrepancies or lack of clarity in the evidence examined and that it is necessary in order to discuss the subject matter of the proving comprehensively;~~

~~56)~~ other questions in accordance with this Code.

The panel's rulings are always pronounced and entered in the transcript with brief reasoning.

Protection of the Reputation of the Court and Participants in Proceedings

Article 369

The court is required to protect its reputation and security, the reputation and security of the parties and other participants in proceedings, from an insult, threat and any other assault.

During the entry of a judge or members of a panel into the courtroom and their egress from the courtroom, all those present are required to rise.

The president of the panel will immediately after opening the session, if there are any reasons for it, caution the persons present to behave with decency and to abstain from obstructing the work of the court.

The parties and other participants in the proceedings are required to stand when they are addressing the court, unless justified reasons make this impossible or a questioning or examination is made in another manner.

Persons attending a trial, except for the persons who secure the court and guard the defendant, may not carry firearms or dangerous weapons, and for the purpose of checking whether they are respecting the ban, the president of the panel may order them to be searched.

Measures for Maintaining Order

Article 370

If the ~~defendant~~, defence counsel, injured party, **injured party as the subsidiary prosecutor**, legal representative, proxy, witness, expert witness, professional consultant, translator, interpreter or other person attending the trial disturbs the order by disregarding orders of the president of the panel to maintain order or by insulting the dignity of the court, the president of the panel will caution him, and if that person continues to disturb the order, will fine him up to 150,000 dinars.

The president of the panel will notify the competent public prosecutor and the State Prosecutors Council about any disturbance of order by the public prosecutor or a person deputising for him, or will adjourn the trial and request that the competent public prosecutor designate another person to represent the prosecution when the trial resumes, with the obligation to notify the court about the undertaken measures.

The president of the panel will notify the competent bar association about a penalty imposed on a lawyer for disturbing the order, with the obligation to notify the court about the undertaken measures.

Removal of the Defendant from the Courtroom

Article 371

If the measures referred to in Article 370 paragraph 1 of this Code are unsuccessful, the panel may order the defendant removed from the courtroom for the duration of a certain evidentiary action, and if after returning to the courtroom the defendant continues to disturb the order, the panel may remove him until the conclusion of the evidentiary proceedings and order, if there exists such a possibility, that the defendant follow the course of the proceedings from a separate room by means of an audio and video link.

Before the conclusion of the evidentiary proceedings the president of the panel will, if the technical link for monitoring the course of the proceedings referred to in paragraph 1 of this Article did not exist, inform the defendant about the course of the evidentiary proceedings for the period during which he was removed from the courtroom, inform him about the testimony given by co-defendants previously questioned, or make it possible for him to read the transcripts of that testimony, if the defendant so requests, and ask him to state his position on the charges, unless he had already done so.

If the defendant in the case referred to in paragraph 2 of this Article continues to disturb the order, the panel may remove him from the courtroom again without a right to attend the trial until its conclusion, in which case the president of the panel or a judge member of the panel will inform the defendant about the judgment in the presence of the record-keeper.

~~In case a defendant who has no defence counsel is removed from the courtroom in accordance with paragraphs 1 and 3 of this Article, the president of the court will assign a court appointed defence counsel for him (Article 74 item 6) and Article 76).~~

Excluding Defence Counsel or Proxy

Article 372

The panel will exclude from the further course of the proceedings a defence counsel or proxy who continues to disturb the order after being fined, and ask the party or the person represented to obtain another defence counsel or proxy and notify the competent bar association thereof.

If a defendant or injured party, in the case referred to in paragraph 1 of this Article, cannot immediately obtain another defence counsel or proxy without detriment to their interests, ~~or if in the case of mandatory defence (Article 74) the court is not able to appoint a new defence counsel without harming the defence;~~ the trial will be adjourned or deferred.

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

Removing Other Persons from the Courtroom

Article 373

~~The panel may remove from the courtroom until the end of the evidentiary procedure the subsidiary prosecutor or private prosecutor or their legal representative who continues to disturb order after the pronouncing of the sentence and will appoint a proxy for him for the rest of the~~

~~proceedings. If the panel is unable to appoint a proxy immediately without harming the interests of the represented party, the trial will be either adjourned or deferred.~~

The panel may order that besides the defendant another person referred to in Article 370 paragraph 1 of this Code be removed from the courtroom if he continues to disturb the order even after being cautioned or fined, and may simultaneously remove him and fine him.

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

Measures to Prevent Delaying Proceedings

Article 374

The panel will caution a defence counsel, injured party, legal representative, proxy, subsidiary prosecutor or private prosecutor undertaking actions obviously aimed at delaying the proceedings.

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

The president of the panel will notify the competent bar association about the caution imposed on a lawyer for delaying the proceedings, with the obligation to notify the court about the undertaken measures.

Appeal against Decisions on Maintaining Order at the Trial

Article 375

A ruling on a caution, fine, removal from the courtroom, exclusion of a defence counsel or proxy, and resuming, adjourning or deferring a trial for the purpose of maintaining order and administering the trial is entered in the transcript with reasoning.

A ruling on a fine is appealable. Before it delivers an appeal to a court of second instance, the panel may revoke the ruling on a penalty.

A ruling to remove the defendant from the courtroom until the end of the evidentiary proceedings or until the conclusion of the trial and to exclude a defence counsel may be appealable, but the appeal does not stay the execution of the ruling. No special appeal is allowed against the ruling on the removal from the courtroom or the exclusion of a proxy.

Other decisions on measures to maintain order and administer the trial are not appealable.

Criminal Offence Committed at the Trial

Article 376

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

If there are grounds for suspicion that a witness, expert witness or professional consultant has perjured himself at the trial, the president of the panel will order taking of a special record made of the testimony given by the witness, expert witness or professional consultant which will be delivered to the competent public prosecutor after being signed by the questioned witness, expert witness or professional consultant, or after the president of the panel notes that they have refused to sign it and lists the reasons for that refusal.

c. Preconditions for Holding a Trial

Presence at the Trial

Article 377

The preconditions for the holding of a trial are the:

- 1) presence of the president, members of the panel and the record-keeper;
- 2) presence of the persons summoned without whom the trial cannot be held, except if conditions stipulated by this Code under which a trial may exceptionally be held in the absence of some of them, exist.

The president of the panel, members of the panel, the record-keeper and additional judges must be constantly present at the trial.

Opening the Session

Article 378

If the panel is not in its full composition, the president of the panel, and in his absence a judge member of the panel or a judge designated by the president of the court, announces that the trial will not be held.

If the panel is in its full composition, the president of the panel opens the session and announces the composition of the panel and the subject-matter of the trial, determines if all persons summoned are present, and whether the persons not present have been duly summoned and whether they have justified their absences.

Absence of the Prosecutor

Article 379

If the public prosecutor or person deputising for him does not come to a trial scheduled on the basis of an indictment filed by the public prosecutor, the president of the panel will notify thereof the competent public prosecutor and request that he immediately designates a replacement. If that is not possible, the president of the panel will order that the trial will not be held and will notify the competent public prosecutor and the State Council of Prosecutors thereof, who will have the obligation to notify the court about the undertaken measures.

If a subsidiary prosecutor ~~or private prosecutor or their proxy~~ **his fail proxy fails** to come to the trial without justifying their absence although being duly summoned, the panel will discontinue the proceedings by a ruling.

Absence of the Defendant

Article 380

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

If the defendant justifies his absence before the [measure of] bringing in is executed, the panel may revoke the order for bringing him in and release the defendant from the obligation to bear the costs caused by the failure to hold the trial hearing.

In Absentia Trial

Article 381

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

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

An appeal does not stay the execution of the ruling referred to in paragraph 2 of this Article.

Absence of the Defence Counsel

Article 382

If a defence counsel although duly summoned fails to come to the trial and fails to notify the court about the reason for his absence as soon as he learns about it, or if a defence counsel leaves the trial without permission, the president of the panel will ask the defendant to obtain another defence counsel immediately, ~~and if the defendant does not do so, the panel may decide that the trial be held without a defence counsel being present.~~

~~If the case referred to in paragraph 1 of this Article concerns mandatory defence, and~~ there is no possibility for the defendant to obtain another defence counsel immediately or for the court to appoint a court appointed defence counsel without harming the defence, the panel will decide that the trial not be held, or, if it has begun, to be adjourned or deferred.

If duly summoned defence counsel justifies his absence, the panel may decide to postpone the trial,

A duly summoned defence counsel whose unjustified absence led to an adjournment or deferment of the trial will by a ruling of the panel, which will be entered in the transcript with a brief reasoning, be fined up to 150,000 dinars and ordered to bear the costs incurred thereby, and the competent bar association will be notified thereof by the panel, and the bar association will have the obligation to notify the court about the undertaken measures.

Holding the Trial without the Presence of the Defendant or Defence Counsel

Article 383

When under the provisions of this Code the necessary conditions exist for deferring the trial due to the absence of a defendant or defence counsel (Article 380 paragraph 1 and Article 382 paragraph 2), the panel may decide that the trial be held if according to the evidence contained in the files a ruling dismissing the charges (Article 416 paragraph 1) or a judgment rejecting the charges (Article 422) would obviously have to be issued.

~~If the defendant caused his own inability to participate in the trial, the panel may, after examining an expert witness, issue a ruling deciding that the trial be held, but not concluded, in the absence of the defendant. In the case of the holding of the trial without the presence of the defendant, the president of the court will appoint a court appointed defence counsel for him (Article 74 item 5) and Article 76).~~

~~——— An appeal does not stay execution of the ruling referred to in paragraph 2 of this Article.~~

~~——— As soon as the reasons for the absence of the defendant cease to exist, the trial will resume in the presence of the defendant, after the president of the panel has informed him about the preceding course and contents of the trial.~~

Absence of a Witness, Expert Witness or Professional Consultant

Article 384

If a duly summoned witness, expert witness or professional consultant does not come to a trial without justifying his absence, the panel may order him to be brought in immediately.

The trial may commence even without the presence of the summoned witness, expert witness or professional consultant, but the panel is required to decide subsequently during the trial whether to adjourn or defer the trial due to the absence of any of them.

The panel may fine a duly summoned witness, expert witness or professional consultant who did not justify his absence up to 150,000 dinars, order him brought in to the next trial hearing, and order that he bear the costs he caused, but may in justified cases revoke these decisions.

3. Course of the Trial

~~Commencement and~~ Duration of the Trial

Article 385

~~The trial commences with the issuance of a ruling on the holding of the trial.~~

The trial is held continuously during the working hours on one or more consecutive workdays.

Adjourning the Trial

Article 386

Except in cases specially stipulated elsewhere in this Code, the president of the panel may adjourn the trial:

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

Adjournment of a trial for a recess may last up to two hours in one workday, due to the end of the workday until the next workday, and on the grounds referred to in paragraph 1 items 3) to 5) of this Article not longer than 15 days.

A ruling on adjourning a trial specifies the place and time of its resumption.

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

An adjourned trial is always resumed before the same panel.

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

Deferring the Trial

Article 387

Except in cases specially stipulated elsewhere in this Code, the panel will defer a trial by a ruling if:

- 1) new evidence needs to be examined which cannot be obtained in the short term;
- 2) it is established during the trial that after committing a criminal offence the defendant has come down with a mental illness or mental disorder or other serious illness making it impossible for him to participate in the proceedings;
- 3) there are other obstacles for a successful conduct of the trial.

The ruling deferring the trial will as a rule specify the time and place where the trial will be resumed.

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

Commencing Anew or Resuming a Deferred Trial

Article 388

A trial which has been deferred must commence anew if the composition of the panel has been altered, but the panel may, after the parties have stated their positions, decide by a ruling not to examine witnesses and expert witnesses again, but to examine the transcripts of their testimonies given at the earlier trial or, if necessary, for the president of the panel to summarize the content of the testimony or read it out. This ruling is not appealable.

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

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

By exception from paragraph 3 of this Article, due to the passage of time, protection of witnesses or other important reasons, the panel **which does not include lay judges, or the panel**

referred to in Article 21, Paragraph 1, Item 2) if the a judge – a member of the panel - became the president of the panel, may, after the parties have stated their positions, decide by a ruling not to examine the witnesses and expert witnesses again, but to act in accordance with paragraph 1 of this Article.

An appeal against the ruling referred to in paragraph 4 of this Article is allowed and is decided on by the panel (Article 21 paragraph 4).

The president of the panel is required to notify the president of the court about all deferments lasting more than ~~60 days~~two months.

Prior Verification and Advice on Rights

Article 389

When the president of the panel determines that all the persons summoned have come to the trial, or when the panel decides to hold the trial in the absence of one of the persons summoned, or decides to rule on those questions subsequently, the president of the panel will:

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

2) caution the defendant to follow the course of the trial carefully ~~and that he is required to present motions for examining certain evidence (Article 395 paragraph 1) immediately, or promptly after learning that it is necessary to examine that evidence;~~

3) advise the defendant of his rights and duties (Articles 68 and 70), and especially of the right to present facts and propose evidence in his defence, pose questions to a co-defendant, witness, expert witness and professional consultant, make objections and provide explanations in connection with the evidence examined, and ask him if he has understood the advice.

If the defendant refuses to relate his personal data, his identity will be established in another manner. If the defendant declares that he has not understood the advice on his rights, the president will explain it to him in a suitable manner, and in case the defendant refuses to declare himself on whether he has understood the advice on his rights, it will be deemed, after he is cautioned, that has understood the advice.

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

Acting with Persons Summoned

Article 390

When the identity of the defendant is established, the president of the panel will instruct witnesses to move from the courtroom to a location at which they will wait to be called to testify. In the same manner the president of the panel will act with expert witnesses and professional consultants, unless he finds it necessary for a certain expert witness or professional consultant to follow the course of the trial.

All defendants remain in the courtroom for the duration of the trial.

If a subsidiary prosecutor ~~or private prosecutor~~ is to be examined as witnesses, they will not be removed from the courtroom.

The president of the panel may undertake necessary measures to prevent mutual agreements between a witness, expert witness or professional consultant, and agreements of the witness, expert witness or professional consultant with parties, the defence counsel, legal representative or proxy.

~~The panel may exceptionally decide to have the defendant removed from the courtroom if a co-defendant or witness refuses to give testimony in his presence or the circumstances indicate that his presence exerts influence on the aforesaid persons. Upon the return of the defendant testimony given in his absence will be read out to him, and he may pose questions to a co-defendant or witness and make objections to the testimony.~~

Presentation of the Charges Commencement of the Trial

Article 391

A trial begins by reading the indictment ~~As a rule the charges are presented by the prosecutor reading the indictment (Article 332 paragraph 1 items 1) to 3) or a private prosecutor's lawsuit,~~ but the president of the panel may instead allow the prosecutor to relate the contents of the charges orally.

An injured party may present a restitution claim, and in his absence, if he has filed such a claim, the claim will be read out by the president of the panel.

Defendant's Plea

Article 392

After **reading or** presentation of the charges, the president of the panel will ask the defendant:

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

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

3) if he confesses to having committed the criminal offence of which he is accused, and if he convinces himself that the defendant has not understood what confession means, he will explain to him the meaning and consequences of confessing to the commission of a criminal offence in a manner which is the most understandable for the defendant.

The defendant is not required to state his position in relation to the charges or to answer any questions posed to him.

If several persons are encompassed by the indictment, they will be treated in the manner referred to in paragraphs 1 and 2 of this Article, according to the order in which they appear in the indictment.

Opening Statements

Article 393

After **reading or** presentation of the charges and the defendant's declaration, the president of the panel will ask the prosecutor, and then the defence counsel ~~or a defendant conducting his own defence~~ to present their opening statements, ~~unless the parties have stated their positions and proposed evidence at the preparatory hearing (Articles 349 and 350).~~

The opening statements must be concise and refer only to the facts which will be the subject matter of the evidentiary actions, explanation of the evidence the party will examine and legal questions which will be discussed.

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

After the opening statements, the injured party may briefly substantiate his restitution claim.

Commencement and Subject Matter of the Evidentiary Proceedings

Article 394

The president of the panel announces the commencement of the evidentiary proceedings.

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

If the defendant confesses to having committed the criminal offence at the trial, the only evidence that will be examined is the evidence on which an assessment of whether the confession fulfils the preconditions referred to in Article 88 of this Code depends, as well as evidence on which the decision on the type and extent of the criminal sanction depends.

Proposing Evidence

Article 395

The parties, the defence counsel and the injured party may until the conclusion of the trial propose that new evidence be examined, and may repeat motions which were earlier denied.

The president of the panel decides on the examination of the evidence referred to in paragraph 1 of this Article.

If examination of evidence which is unlawful has been proposed (Article 84 paragraph 1) the president of the panel will deny the motion by a reasoned ruling.

The president of the panel may, by a reasoned ruling, deny a motion to examine evidence if he finds that:

~~1) the parties, defence counsel and injured party knew about the evidence during the preparatory hearing (Article 350 paragraph 1) or after the trial was scheduled (Article 356 paragraph 1), but did not propose it, without a justified reason;~~

12) the evidence is directed at proving facts which are not the subject matter of the evidentiary action (Article 83 paragraphs 1 and 2) or relates to facts which are not to be proved (Article 83 paragraph 3);

23) the evidence is such that its examination is obviously aimed at excessively delaying the proceedings.

The president of the panel may during the proceedings revoke the ruling referred to in paragraph 4 of this Article, and the panel may overturn the ruling after an objection and decide that the proposed evidence be examined.

Order of Examining Evidence

Article 396

After questioning the defendant, the president of the panel determines a period during which evidence proposed by the prosecutor is first examined, followed by evidence proposed by the defence, followed by evidence whose examination **is conducted in line with Article 15, Paragraph 3 of this Code**~~was proposed by the panel *ex officio* and evidence proposed by the injured party~~, and finally evidence on facts on which depends the decision on the type and extent of the criminal sanction. If there are justified reasons, the president of the panel may determine a different order and extend the period for examining evidence.

Data from the defendant's criminal record and other data about the defendant's convictions for punishable actions on which the decision on the type and severity of criminal sanction depends will be presented in accordance with paragraph 1 of this Article, except if the panel is deciding on measures for securing the presence of the defendant and for the unobstructed conduct of the criminal proceedings.

If an injured party who is present should be examined as a witness, his examination will be undertaken before the other witnesses.

After the examination of each item of evidence, the president of the panel will ask the parties, the defence counsel and the injured party whether they have any remarks in connection with the evidence examined.

Presentation of the Defence

Article 397

The president of the panel will advise the defendant that he may state his position in relation to all the circumstances against him and that he may present all circumstances which benefit him, and invite him to present his defence.

The defendant presents his defence according to the rules which are under this Code applicable to his questioning.

When the defendant concludes presentation of the defence, the president of the panel will ask him whether he has anything to add in his defence.

~~If the defendant deviates from a statement given earlier, the president of the panel will caution him thereof, ask him about the reasons for the deviation and, if needed, order *ex officio*, or at the request of the defendant, that the statement given earlier or a part of that statement be read out and its video or audio recording reproduced.~~

If necessary, and especially if the defendant's statement is being entered in the transcript verbatim, the president of the panel may order that that part of the transcript be read out immediately, and it will always be read out when so requested by a party or the defence counsel.

If the defendant refuses to present a defence or to answer certain questions, his earlier statement or a part of that statement will be read out or its video or audio recording will be reproduced.

Questioning the Defendant

Article 398

When the defendant concludes presentation of the defence, he may be asked questions first by his defence counsel, followed by the prosecutor, followed by the president of the panel and panel members, and then the injured party or his legal representative and proxy, co-defendant and his defence counsel, and expert witness and professional consultant.

The injured party, legal representative and proxy of the injured party, expert witness and professional consultant may pose questions directly to the defendant, with the approval of the president of the panel.

The president of the panel will prohibit a question or a reply to a question if it is inadmissible ~~(Article 86 paragraph 3)~~ or does not refer to the subject matter, except if the question is aimed at verifying the authenticity of the testimony.

The parties may request that the panel decide on the prohibition of a question or answer to a question. If the panel upholds the decision of the president of the panel on a prohibition of the question or answer as inadmissible, the question will be entered in the transcript at the request of a party.

If the defendant deviates from a statement given earlier, the defence counsel, the prosecutor and the president of the panel may caution him thereof, ask him about the reasons for the deviation and, if needed, the statement given earlier or a part of that statement may be read out and its video or audio recording reproduced.

The president of the panel may ~~always~~ pose to a defendant ~~a~~ questions which contributes to **clarification of the subject matter, once the defence counsel and the prosecutor is done asking questions.**~~a more comprehensive or clear reply to a question posed by other participants in the proceedings.~~

The public prosecutor, co-defendant and the defence counsel have the right to object to inappropriateness of the question immediately after such question has been posed to the defendant. The president of the panel rules on the objection immediately after it has been stated. If the objection pertained to the question of the president of the panel it will be decided about by the panel.

The defendant is entitled to consult his defence counsel during the trial, but may not collude with his defence counsel or any other person how to answer a question which has already been posed.

Treatment of Co-defendants

Article 399

If several persons are encompassed by the same indictment, they will be treated in the manner referred to in Articles 397 and 398 of this Code, according to their order in the indictment.

The president of the panel will ask a defendant who has presented his defence if he has anything to declare in connection with the testimony of a co-defendant who presented his defence after him.

Every co-defendant is entitled to pose questions to co-defendants.

The president of the panel may confront with each other co-defendants whose testimonies on the same circumstance differ.

Presence of a Witness, Expert Witness or Professional Consultant at the Examination of Evidence

Article 400

As a rule, a witness not yet examined will not attend the examination of evidence.

Witnesses, expert witnesses or professional consultants already examined shall remain in the courtroom unless the president of the panel, after the parties declare themselves, releases them completely, or unless, on a motion of the parties or *ex officio*, he orders them to leave the courtroom temporarily to allow for them to be called and examined once again in the presence or absence of other witnesses, expert witnesses or professional consultants.

If a person under 14 years of age is being examined as a witness, the panel may decide to exclude the public during his examination.

If a person under 16 years of age is attending a trial as a witness or injured party, he will be removed from the courtroom as soon as his presence is no longer necessary.

Cautioning a Witness, Expert Witness or Professional Consultant

Article 401

Before the commencement of the examination of a witness, expert witness or professional consultant, the president of the panel will caution him:

- 1) that perjury, or presentation of false finding or opinion, represents a criminal offence;
- 2) that he was sworn in before the trial;
- 3) about the duty of a witness to tell the truth and to omit nothing during examination, or the duty of an expert witness to present his findings and opinion accurately and fully.

The president of the panel will before the commencement of the examination ask a witness or expert witness or professional consultant who had not been sworn in before the trial to do so.

Examining a Witness, Expert Witness or Professional Consultant

Article 402

At the trial a witness or professional consultant is examined with the analogous application of Article 98 of this Code, while an expert witness presents his findings and opinion orally, but the panel may allow him to read written findings and opinion, which it will then attach to the transcript.

The parties and the defence counsel, the president of the panel and the members of the panel question a witness, expert witness and professional consultant directly, and the injured party or his legal representative and proxy, and an expert witness or professional consultant, may pose questions directly with the permission of the president of the panel.

If both parties propose the examination of the same witness or the same expert analysis, it will be deemed that the evidence was proposed by the party whose motion was first recorded in the court.

If the court ordered the examination of a witness or an expert analysis without a motion by the parties, **(Article 15, Paragraph 3)**, the questions are first posed by the president and members of the panel, then by the prosecutor, the defendant and his defence counsel, and expert witness or professional consultant.

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

Witness, expert witness or professional consultant shall be firstly examined by the party which has proposed his examination at the trial (direct examination), and then the opposing party (cross-examination). Upon the approval of the panel, party which has proposed his examination may pose additional questions to the witness, expert witness or professional consultant (redirect examination). During cross-examination, the president of the panel may allow questions related to circumstances on which witness, expert witness or professional consultant made no statements during direct examination if the questions are intended to verify the credibility of their statements or the such circumstances are closely related to the basic statement. Redirect examination may relate only to the questions posed during the cross-examination.

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

After direct examination, cross-examination and redirect examination has been finished, the president of the panel may ask questions as defined in Art 15 Para 3 of this Code. Members of the panel may ask questions after obtaining the approval of the president of the panel. The injured party and the injured party's proxy have the right to propose questions that the president of the panel would pose to the witness, expert witness or a professional consultant.

In the examination of a witness, expert witness or professional consultant the provisions of ~~Article 397 paragraphs 4 and 5 and~~ Article 398 paragraphs 3 to ~~57~~ of this Code shall be analogously applied.

Parties and the defence counsel shall be entitled to object to inappropriateness of the question immediately after the question has been posed to a witness, expert witness or professional consultant. The president of the panel rules on the objection immediately after the objection has been made, and if the objection pertained to the question of the president of the panel it will be decided about by the panel.

Presenting Written Expert Findings and Opinions

Article 403

If due to the nature of the expert examination detailed explanations either cannot be expected or are not necessary, the panel may decide, instead of summoning and examining an expert witness, to inspect written findings and opinion, or, if the president of the panel deems it necessary, he will briefly relate their content or read them out.

After examination of other evidence and the parties' remarks, the panel may subsequently order a direct examination of the expert witness.

Examining Evidence Away from the Trial

Article 404

If it is learnt at the trial that a witness or expert witness either cannot appear before the court or that there is substantial difficulty to his appearance before the court, the panel may, if it deems his testimony important, order him examined away from the trial by the president of the panel, or a judge member of the panel, directly or through an audio and video link.

If it is necessary to conduct a crime scene investigation or reconstruction away from the trial, the panel will authorise the president of the panel or a judge member of the panel to do so.

The parties, defence counsel, injured party and professional consultant will be notified about the place and time of the performance of the evidentiary actions referred to in paragraphs 1 and 2 of this Article and advised that during their performance they are entitled to the rights referred to in Article 402 of this Code.

Inspecting the Content of Documents and Recordings

Article 405

Transcripts of a crime scene investigation away from the trial, searches of residences and other premises or persons, certificates of seized objects, as well as records serving as evidence, will be inspected, or, if the panel deems it necessary, the president of the panel will relate their content briefly, or read them out.

Significant content of Aa video or audio recording or electronic recording which are being used as evidence will be played at the trial so that those present can be informed about their content, **while paying attention to protect the right to privacy if it would be violated by disclosing data pertinent to the subject-matter of the criminal proceedings.**

If the parties agree, a video or audio recording, used as evidence, will not be reproduced at the trial, and the president of the panel may, at the proposal of the parties and the defence counsel, briefly describe the content thereof.

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

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

Records being used as evidence are if possible submitted in the original.

Inspecting the ~~Content of Transcripts~~ Previously Provided ~~on~~ Testimony

Article 406

Except in cases stipulated elsewhere in this Code, inspection of the contents of transcripts of the testimonies of witnesses, as well as transcripts of the findings and opinions of expert witnesses, **given to court or a public prosecutor during investigation is possible** ~~may~~ if so decided by the panel:

~~if the questioned persons are deceased, or may not be questioned in the foreseeable future, be performed by analogous application of Article 405 of this Code if:~~

~~If the court performed evidentiary actions referred to in Paragraph 1, the transcripts may be read, if so decided by the panel, in the following cases~~

1) **If the questioned or examined persons are deceased, mentally ill or inaccessible, or may not be questioned in the foreseeable future, or when or their appearance before the court is impossible or would be substantially hampered by their advanced age, illness or other important reasons** ~~if the persons examined are deceased or mentally ill, or if their location is unknown, or their appearance before the court is impossible or would be substantially hampered by their advanced age, illness or other important reasons;~~

2) **If the parties are in agreement about such action, instead of direct examination of a witness or expert witness who is not present, or a direct examination of previously convicted co-defendants, irrespective of whether these persons were duly summoned or not** ~~if the parties are in agreement on such action, instead of direct examination of a witness or expert witness who is not present, irrespective of whether he was summoned or not;~~

The transcripts of witnesses' testimonies and the findings and opinions of the expert witnesses will be available for inspection if so decided by the panel also if the witness or expert witness, or previously convicted co-defendant, was examined directly before the same president of the panel or in accordance with the provision of Article 404 of this Code.

If the witness or expert witness was examined by the court or the public prosecutor in accordance with Article 300 of this Code, as well as if the previously convicted co-defendant was examined by the court, the inspection of the transcripts from their examination is possible if so decided by the panel:

1)- **If the previously questioned, or examined person refuses to testify at the trial for no lawful reasons; and**

2) **If the previously questioned, or examined person, provides different testimony than that given during the previous questioning, or examination;**

The inspection of the transcripts from the examination of a co-defendant in severed proceedings or a co-defendant, who was convicted in separate criminal proceedings, is possible if so decided by the panel, if he/she was examined by the court.

The provisions about reading the transcripts taken during the examination of witnesses, an expert witnesses and co-defendants or convicted co-defendants, will analogously apply to playing audio and visual recordings recorded during the questioning or examination of these persons.

The inspection of the transcripts of the statements of witnesses who have been released from the duty to testify (Article 94, Paragraph 1) is not allowed, in accordance with the

provisions of this Article, if those persons haven't been summoned at all to the trial or if, at the trial, they have refused to testify.

The transcript from the trial will include the reasons for which evidence is examined in accordance with the provisions of Paragraphs 1 and 2 of this Article, and the president of the panel will advise whether the witness or the expert witness who testified took an oath.

~~5) what is concerned is the testimony of a co-defendant prosecuted in a severed criminal proceedings or criminal proceedings already concluded by a final conviction.~~

Excluding Unlawful Evidence

Article 407

The panel will issue a ruling ordering the following to be excluded from the files and kept separately:

- 1) transcripts of earlier examinations of persons which may not be read out for the reasons specified in Article 406 paragraph ~~2-6~~ of this Code;
- 2) the transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code.

A special appeal is allowed against the ruling referred to in paragraph 1 of this Article **and the ruling denying a motion for exclusion of documents.**

Upon the finality of the ruling referred to in paragraph 2 of this Article, the panel will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

~~If on the basis of examined evidence the panel finds that exclusion of evidence was not appropriate, it may until the conclusion of the evidentiary proceedings revoke the ruling referred to in paragraph 1 of this Article against which no appeal was filed and decide to examine the excluded evidence.~~

Amending and Concluding the Evidentiary Proceedings

Article 408

After examining the last item of evidence, the president of the panel will ask the parties, the defence counsel and the injured party whether they have any proposals to amend the evidentiary proceedings.

If no-one proposes amendment of the evidentiary proceedings or if the motion is denied, and the panel does not order any evidence examination, the president of the panel will declare the evidentiary proceedings concluded.

Altering an Indictment or Filing a New Indictment

Article 409

During the trial the prosecutor may, if he finds that the evidence examined indicates a state of facts different from the one presented in the indictment, alter the indictment or propose an adjournment of the trial for the purpose of preparing a new indictment.

If the panel adjourns the trial for the purpose of the preparation of a new indictment, it will specify a time limit in which the prosecutor must file a new indictment. **If the prosecutor fails to file a new indictment within the prescribed time limit, the panel will continue the trial based on the previous indictment.**

The court is required to deliver the new indictment to the defendant and his defence counsel and to give them enough time to prepare defence.

~~No response (Article 336) may be filed against the indictment referred to in paragraph 2 of this Article, nor may it be examined within the meaning of Article 337 of this Code.~~

The indictment referred to in Paragraph 3 of this Article will not be subject to confirmation (Articles 336 to 343).

If it deems it necessary, the court will, upon request of the defendant and his defence counsel provide them with sufficient time for preparing their defence, also in the case of an alteration of the indictment during the trial.

Amending the Indictment

Article 410

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

If the panel approves an amendment of the indictment, it will adjourn the trial and provide enough time for preparing a defence.

~~No response (Article 336) may be filed against an amended indictment.~~

If a court of higher instance is competent for adjudicating the offence referred to in paragraph 1 of this Article, the panel will decide whether it will also refer to that court the case it is adjudicating.

Supplementary Amendment of the Evidentiary Proceedings

Article 411

Following alteration of the indictment, the filing of a new indictment or an amendment of the indictment, the parties and the defence counsel may propose supplementing the evidentiary proceedings in respect to the facts which those charges contain and which were not the subject matter of evidentiary actions in the earlier course of the proceedings.

If no-one proposes an amendment of the evidentiary proceedings or the motion is denied, and the panel does not order any evidence examination, the president of the panel will declare the evidentiary proceedings concluded.

Order of Closing Arguments

Article 412

After declaring the evidentiary proceedings concluded, the president of the panel calls upon the prosecutor to make his closing argument first, followed by the injured party or his legal representative or proxy, followed by the defence counsel, and finally the defendant.

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

The last word is always that of the defendant.

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

Content of Closing Arguments

Article 413

In his closing argument the prosecutor presents an assessment of the evidence examined at the trial, draws conclusions about facts of importance for the decision, indicates the provisions of criminal and other law which should be applied, cites mitigating and aggravating circumstances which should be taken into consideration in deciding on a criminal sanction, and proposes a type and extent of criminal sanction.

In the closing argument the injured party or his legal representative or proxy may substantiate the restitution claim and indicate the evidence proving that the defendant committed the criminal offence.

The defence counsel or the defendant himself may in their closing argument respond to the allegations made by the prosecutor and the injured party in their closing arguments and present their opinion on the issues referred to in paragraph 1 of this Article.

A defendant ~~who has a defence counsel~~ is entitled to declare at the end whether he approves the defence counsel's closing argument and to correct and amend it.

When more than one person is representing the prosecution or there is more than one defence counsel, the content of the closing arguments may not be repeated, and in order to respect this ban the representatives of the prosecution and the defence counsels are required to agree on a division of tasks and topics they will address.

The president of the panel may, after prior cautioning, interrupt a person giving a closing argument ~~who has exceeded the approved time limit, or~~ is insulting the public order and morals, or is insulting another person, or repeats himself or addresses issues clearly not connected to the case, and is required to state in the transcript of the trial whether and for what reason the closing argument was interrupted.

After all the closing arguments have been given, the president of the panel is required to ask whether any of the persons entitled to a closing argument has anything to add.

Resuming Evidentiary Proceedings

Article 414

After the closing arguments have been made, the panel may decide to resume the evidentiary proceedings for the purpose of examining additional evidence.

After the conclusion of the evidentiary proceedings, the president of the panel will act in accordance with the provision of Article 412 of this Code.

The persons entitled to closing arguments may only amend their closing arguments in connection with the evidence examined in the supplementary evidentiary proceedings.

Conclusion of the Trial

Article 415

If the panel does not decide to resume evidentiary proceedings after the closing arguments, the president of the panel will declare that the trial has been concluded.

After announcing that the trial has been concluded, the panel will retire for deliberation and voting for the purpose of rendering a decision.

If during the deliberation and voting the panel decides to re-open the trial and resume the evidentiary proceedings for the purpose of examining additional evidence, it will act in accordance with Article 414 of this Code.

4. Dismissing the Indictment

Reasons for Dismissing the Indictment

Article 416

During and after the conclusion of the trial the panel will issue a ruling dismissing the indictment if it determines that:

- 1) the court does not have subject matter jurisdiction;
- 2) the proceedings are being conducted without a request of an authorised prosecutor, without a motion by the injured party or the approval of the competent public authority, or there appear other circumstances temporarily precluding the conduct of criminal proceedings;
- 3) the defendant has come down with a mental illness or mental disturbance or other serious illness which will prevent him from participating in the proceedings in **a longer period of time.** ~~permanently~~

The court will not deal with the principal matter in the substantiation of the ruling referred to in paragraph 1 of this Article, but will restrict itself to the grounds for dismissing the indictment.

Resuming Criminal Proceedings

Article 417

Criminal proceedings in which the indictment was dismissed by a ruling will be resumed at the request of the authorised prosecutor:

1) before a court with the proper substance matter jurisdiction if the indictment was dismissed due to the existence of the reasons referred to in Article 416 paragraph 1 item 1) of this Code;

2) when the reasons referred to in Article 416 paragraph 1 items 2) and 3) of this Code cease to exist, except if the competent public authority has withdrawn approval for criminal prosecution.

5. Judgment

Pronouncing the Judgment

Article 418

If it does not re-open the trial, the court will pronounce a judgment.

The judgment is pronounced and made public in the name of the people.

The summary judgment will always be read at a public session.

Factual Basis of the Judgment

Article 419

The court bases its judgment solely on evidence examined at the trial.

The court is required to draw a conclusion about the ~~certainty of the~~ **actual** existence of a certain fact on the basis of a conscientious assessment of every item of evidence, both individually and in connection with the other evidence.

Relationship of the Judgment to the Charges

Article 420

A judgment may relate only to the person charged and the offence which is the subject matter of the charges contained in a duly filed indictment or an indictment altered or amended at the trial.

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

Types of Judgments

Article 421

The ~~judgment:~~ **judgment:**

1) rejects the charges (~~a rejecting judgment~~);

2) pronounces the defendant not guilty of the ~~charges~~ **charges** (~~an acquittal~~);

3) pronounces the defendant guilty (~~a conviction~~).

If the charges include several criminal offences, the judgment will state whether and in connection with which criminal offence the charges are dismissed, or as to which charges the defendant is acquitted or convicted.

A Judgment of Rejection ~~Rejecting Judgment~~

Article 422

The court will pronounce a rejecting judgment if:

- 1) in the period from the commencement until the conclusion of the trial the prosecutor abandoned the charges or the injured party abandoned his motion to prosecute;
- 2) the defendant has already been convicted with a final judgment for the same criminal offence, acquitted of the charges, or the charges against him were rejected with a final judgment, or the proceedings against him were discontinued by a final decision of the court;
- 3) the defendant has been released from criminal prosecution by an act of amnesty or a pardon, or prosecution cannot be undertaken due to an expiry of the statute of limitations or other circumstances permanently excluding prosecution.

Acquittal

Article 423

A judgment acquitting the defendant of the charges will be pronounced by the court if:

- 1) the offence with which he was charged is not a criminal offence, and the necessary conditions for applying a security measure do not exist;
- 2) it was not proved that the defendant had committed the criminal offence with which he was charged.

Conviction

Article 424

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

- 1) the offence of which the defendant is being pronounced guilty, specifying the facts and circumstances which represents the elements of a criminal offence, as well as those on which depends the application of a certain provision of criminal law;
- 2) the legal designation of the criminal offence and which provisions of criminal law were applied;
- 3) the penalty imposed on the defendant, or a release from punishment under the provisions of criminal law;
- 4) a decision on a suspended sentence, or revocation of a suspended sentence or release on probation;
- 5) a decision on a security measure **and**, on forfeiture of proceeds ~~from crime or forfeiture of assets derived from a criminal offence~~;
- 6) a decision on the restitution claim;
- 7) a decision on calculating time served into the penalty;

8) a decision on the costs of the criminal proceedings.

If the defendant has been sentenced to a prison sentence of up to one year, the judgment may specify that the prison sentence will be executed in the premises in which the defendant lives, with or without applying electronic surveillance.

If the defendant has been sentenced to pay a fine, it will be specified in the judgment if the fine was calculated and pronounced in daily amounts or in a specific amount, and the time limit for paying the fine, as well as the manner or substituting this penalty by a custodial penalty or community service in case the defendant does not pay the fine within the specified time period.

If the defendant has been sentenced to community service, the judgment shall specify the type and duration of the community service and the manner of substituting it by a custodial penalty in case the defendant does not perform the community service in full or in part.

If the defendant has been sentenced to a penalty of seizure of his driver's licence, the judgment shall specify the duration of the penalty and the manner of its substitution by a custodial penalty in case the defendant operates a motor vehicle during the term of the penalty of seizure of his driver's licence.

If the defendant has been sentenced to suspended sentence with protective supervision, the judgment shall specify the content, duration and consequences of failing to fulfil the obligation of protective supervision.

Proclaiming the Judgment

Article 425

After the court has pronounced the judgment, the president of the panel will immediately proclaim it.

If the court is unable to pronounce the judgment on the same day following the conclusion of the trial, it will postpone the proclamation of the judgment by not more than three days, and in particularly complex cases by not more than eight days, and determine a time and place where the judgment will be proclaimed.

The president of the panel will in the presence of the parties, their legal representatives, proxies and defence counsel reads out publicly the summary judgment and briefly relates the reasons for the judgment.

A judgment will be proclaimed even when a party, legal representative, proxy or defence counsel is not present. The panel may order that the judgment be communicated orally by the president of the panel to a defendant who is absent, or that the judgment be delivered to him.

If the public was excluded from the trial, the summary judgment will always be read out in the presence of the public. The panel will decide whether to exclude the public during the proclamation of the reasons for the judgment.

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

Detention after Sentencing

Article 425A

When the panel renders a sentence to a term of imprisonment below five years, it will keep the defendant, who is out on bail, in detention if the reasons referred to in Art 211 Para 1

Items 1) and 3) of this Code, exist, and the defendant who has been kept in detention will be released if the reasons due to which the detention has been ordered ceased to exist.

Detention will always end and the defendant will be released if he is acquitted, or if the indictment was rejected, or if he was pronounced guilty but released from serving the sentence, or if he was only fined, or sentenced to community service, or his driving license was suspended, or he received an admonition or released on parole, or because of the fact that the duration of detention had been included in the sentence the defendant has served his sanction, or the indictment was rejected (Art 416), unless rejected for lack of subject-matter jurisdiction.

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

The opinion of the public prosecutor needs to be obtained, before a decision which orders or terminates detention in cases referred to in Paragraph 1 and 3 of this Article is rendered, when the proceedings have been conducted at his request.

If the defendant is already kept in detention, and the panel finds that the reasons for it still exist, or that the reason referred to in Article 211 Paragraph 1 Item 4) of this Code, exists, the panel will issue a special decision to extend the detention. The panel orders or terminates detention by means of a special decision. An appeal against the decision will not defer the enforcement of the decision.

Detention that has been ordered or extended in accordance with the previous paragraphs may last until sending the defendant, or the convicted person, to the facility where he will serve his sentence, but not longer than the time to which he was sentenced to in first instance judgment.

Advising and Cautioning the Parties

Article 426

After proclaiming the judgment, the president of the panel will advise the parties on their right to appeal, and the right to respond to an appeal.

If a suspended sentence was imposed on a defendant, the president of the panel will caution him about the purpose of the suspended sentence and the conditions he will have to observe.

The president of the panel will caution the parties that until the final conclusion of the proceedings they must notify the court of every change of address.

Rendering the Judgment in Writing and Delivery

Article 427

A judgment which has been proclaimed will be rendered in writing and delivered within 15 days of the date of its proclamation, and in cases for which under a special law a prosecutor's office of special jurisdiction is responsible – within 30 days of the date of the proclamation.

By exception from paragraph 1 of this Article, in particularly complex cases the president of the panel may ask the president of the court to determine a time limit within which the judgment will be rendered in writing and delivered.

If the judgment is not rendered in writing and delivered within the time limit referred to in paragraphs 1 and 2 of this Article, the president of the panel is required to notify the president of the court in writing of the reasons thereof, and the president of the court will undertake necessary measures for the judgment to be rendered in writing and delivered as soon as possible.

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

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

A certified copy of the judgment will be delivered by the court to an injured party who is entitled to file an appeal, to a person whose object has been seized or to a person from whom proceeds from crime or property deriving from a criminal offence have been forfeited.

If the court has by applying provisions on determining a single penalty for concurrent criminal offences pronounced a penalty also taking into consideration judgments issued by other courts, it will deliver a certified copy of its judgment to those courts.

Contents of a Judgment Done in Writing

Article 428

A judgment done in writing must correspond fully to the judgment which has been pronounced. The judgment ~~must have~~**has the** introduction, summary judgment and rationale.

The introduction of the judgment contains: the specification that the judgment is being pronounced in the name of the people, title of the court, names and surnames of the president and members of the panel and of the record-keeper, name and surname of the defendant, criminal offence with which he was charged and whether he was present at the trial, date of the trial and whether the trial was public, names and surnames of the prosecutor, the defence counsel, defendant's legal representative and proxy who were present at the trial, and date of proclamation of the pronounced judgment. ~~as well as if the judgment was adopted unanimously or by the majority of votes.~~

The summary judgment contains the personal data of the defendant (Article 85 paragraph 1) and the decision rejecting the charges, acquitting the defendant or pronouncing the defendant guilty.

If the charges were dismissed or the defendant was acquitted of the charges, the summary judgment contains a description of the offence with which he was charged and a decision on the costs of the criminal proceedings and on the restitution claim, if one had been filed.

If the defendant was pronounced guilty, the summary judgment contains the data specified in Article 424 of this Code, and in the case of concurrent criminal offences, the summary judgment contains the penalties determined for each individual criminal offence and the aggregate penalty pronounced for the criminal offences in concurrence.

In the rationale of the judgment the court will present reasons for each item of the judgment.

If the charges were rejected, in the rationale of the judgment the court will limit itself to specifying the reasons for rejecting the charges (Article 422).

In the rationale of a judgment acquitting the defendant or pronouncing him guilty, the court will relate the facts it determined in the criminal proceedings (Article 83), **which facts** and for which reasons it finds ~~them~~ proven or unproven, for which reasons it did not accept some motions by the parties, laying particular emphasis on assessment of the authenticity of controversial ~~evidence~~, **evidence, for which reasons it decided not to directly examine a witness, an expert witness or a professional consultant**, which reasons guided it in resolving legal issues, particularly in determining whether the defendant had committed the criminal offence, and in applying particular provisions of the law on the defendant and the criminal offence.

If the defendant has been acquitted of the charges, the reasons for the acquittal (Article 423) will be specified in the rationale of a judgment.

If the defendant has been pronounced guilty, the rationale will specify the facts the court took into consideration in determining the penalty, the reasons that guided it ~~in finding that a penalty harsher than that prescribed should be pronounced, or~~ that the penalty should be mitigated or that the defendant should be relieved of a penalty, or that a community service penalty or seizure of a driver's licence should be imposed, or that a suspended sentence or a judicial admonition or a security measure should be imposed, or the forfeiture of proceeds ~~from crime or forfeiture of assets deriving from a criminal offence, or revocation of probation~~.

~~Lack of Rationale or~~ Partial Rationale of the Judgment

Article 429

~~A judgment rendered in writing does not need to contain a rationale:~~

~~1) if the parties, defence attorney and the person referred to in Article 433 paragraphs 4 and 5 of this Code declared immediately after the judgment was proclaimed that they waive their right to an appeal, or~~

~~2) if a term of imprisonment of up to three years, fine, community service penalty, penalty of seizure of a driver's licence, suspended sentence or judicial admonition was imposed on the defendant, and the conviction was based on a confession of the defendant fulfilling the conditions referred to in Article 88 of this Code.~~

~~The parties, defence attorney and the person referred to in Article 433 paragraphs 4 and 5 of this Code may immediately upon the proclamation of the judgment referred to in item 2) of paragraph 1 of this Article request the delivery of a judgment done in writing and containing a rationale. In such case, the time limit for appealing against the judgment begins to run from the date of delivery of a copy of the reasoned judgment.~~

A judgment done in writing ~~will~~ **may** be partially reasoned:

1) if the defendant confessed **at the trial** to committing the criminal offence – the rationale will be limited to the facts and reasons referred to in Articles 88 and 428 paragraph 10 of this Code, or

2) if a plea agreement has been accepted – the rationale will be limited to the reasons guiding the court to accept the agreement (Article 317 paragraph 2), or

3) if immediately after proclamation of the judgment the parties and the defence attorney declared that they waive the right to an appeal, and the person referred to in Article 433 paragraphs 4 and 5 of this Code did not waive that right – the rationale of the judgment will contain the reasons for the decision on the awarded restitution claim and on the costs of the criminal proceedings, or the reasons for the decision on the forfeiture of objects or proceeds ~~from crime or assets deriving from a criminal offence~~.

Sending the Defendant to Serve a Custodial Sentence

Article 430

If a term of imprisonment was pronounced in the first-instance judgment, a defendant who is in detention may request to be sent to serve his sentence even before the judgment becomes final.

The request referred to in paragraph 1 of this Article may be submitted by the defendant orally for the record before the court or the institution where he is incarcerated immediately after the proclamation of the judgment, on which occasion he will be cautioned that during the service of the custodial penalty he will have the same rights and obligations as all other convicted persons. The institution will deliver the transcript to the court without delay.

If the president of the panel adopts by a ruling the request referred to in paragraph 1 of this Article, he will deliver the ruling to the defendant together with a certified copy of the judgment pronounced.

Correcting Errors in Judgments

Article 431

Errors in names and numbers, as well as all other obvious writing and calculation errors, shortcomings in form and discrepancies between the certified copy of the judgment and the original of the judgment will be corrected by the president of the panel by a special ruling, at the request of the parties or *ex officio*.

If there are discrepancies between the certified copy of the judgment and its original in respect of the data referred to in Article 424 of this Code, the ruling on the correction will be delivered to the persons referred to in Article 427 paragraphs 5 and 6 of this Code. In such case, the time limit for filing an appeal against the judgment begins to run from the date of delivery of that ruling, against which no special appeal is allowed.

Chapter XIX

LEGAL REMEDIES PROCEEDINGS

1. Ordinary Legal Remedies

a. Appeal against a First-Instance Judgment

a) Right to File an Appeal

Time Limits for Appeal and the Appeal's Effect in Staying Execution of the Judgment

Article 432

Authorised persons may file an appeal against a judgment issued in the first instance within 15 days of the date of the delivery of a copy of the judgment.

In especially complex cases, the parties and the defence counsel may immediately after the judgment is proclaimed request an extension of the time limit for filing an appeal.

The president of the panel decides immediately on the request referred to in paragraph 2 of this Article by a ruling which is not appealable. If he grants the request, the president of the panel may extend the time limit for filing an appeal by not more than 15 days.

A timely and admissible appeal against a judgment stays execution of the judgment.

Persons Authorised to File an Appeal

Article 433

The parties, the defence counsel and the injured party may file an appeal.

An appeal may also be filed on behalf of the defendant by his spouse, a person with whom he lives in a common law marriage or other permanent personal association, lineal consanguine relations, legal representative, adopter, adoptee, sibling and foster parent, and the time limit for filing an appeal begins to run from the date when a copy of the judgment was delivered to the defendant or his defence counsel.

The public prosecutor may file an appeal both to the detriment of the defendant and for his benefit.

An injured party may file an appeal only in connection with the court's decision on the costs of the criminal proceedings and the awarded restitution claim, and if the public prosecutor has assumed criminal prosecution from the subsidiary prosecutor (Article 62), the injured party may file an appeal in connection with all the grounds on which a judgment may be challenged.

An appeal may also be filed by a person whose object was seized or from whom proceeds ~~from crime or assets deriving from a criminal offence~~ were forfeited.

The defence counsel and the persons referred to in paragraph 2 of this Article may file an appeal without explicit authorisation by the defendant, but not against his will, except when the defendant was sentenced to a term of imprisonment of from thirty to forty years.

If the defendant's confession in respect of all the counts of the indictment fulfils the conditions referred to in Article 88 of this Code, the defendant, his defence counsel and the persons referred to in paragraph 2 of this Article may file an appeal in connection with incorrect or incomplete finding of fact only in respect of the facts on which depends the decision on the type and extent of the criminal sanction.

Waiving the Right to an Appeal and Abandoning an Appeal

Article 434

A defendant may waive the right to an appeal only after the judgment has been delivered to him, and before that only if the prosecutor and the injured party who may file an appeal on all grounds (Article 433 paragraph 4) had waived the right to appeal against a judgment of conviction under which a custodial penalty was not imposed on the defendant.

Until the issuance of a decision by a court of second instance, the defendant may abandon an appeal already filed, as well as an appeal filed by his defence counsel or the persons referred to in Article 433 paragraph 2 of this Code.

A defendant may not waive the right to an appeal or abandon an appeal already filed if he has been sentenced to a term of imprisonment of from thirty to forty years.

The prosecutor and injured party may waive the right to an appeal immediately after the proclamation of the judgment and until the expiry of the time limit for filing an appeal, and may abandon an appeal already filed until the issuance of a decision by a court of second instance.

A waiver of the right to an appeal or abandonment of an appeal may not be revoked.

b) -Contents of an Appeal

Mandatory Elements of an Appeal

Article 435

An appeal should contain the:

- 1) designation of the judgment against which the appeal is being filed;
- 2) grounds for the appeal (Article 437);
- 3) rationale of the appeal;
- 4) motion for the challenged judgment to be fully or partially annulled or revised;
- 5) signature of the person filing the appeal.

Acting with disorderly appeals

Article 436

If an appeal has been filed by the defendant or another person referred to in Article 433 paragraph 2 of this Code, and the defendant has no defence counsel, or if an appeal was filed by an injured party who has no proxy, and the appeal is illegible or not composed in accordance with Article 435 of this Code, the court of first instance will order the appellant to put the appeal in order or amend it with a written submission within three days.

If the appellant does not act in accordance with the order referred to in paragraph 1 of this Article, the court will dismiss as disorderly an appeal which is illegible or does not contain the elements referred to in Article 435 items 3) to 5) of this Code, and will dismiss an appeal which does not contain the elements referred to in Article 435 item 1) of this Code only if it cannot establish to which judgment it relates. The court will deliver an appeal filed on behalf of the defendant to a court of second instance if it can be established to which judgment it relates, and will dismissed it if that fact cannot be established.

If the appeal was filed by the authorised prosecutor or the injured party who has a proxy, and the appeal is illegible or does not contain the elements referred to in Article 435 of this Code, the court will dismiss the appeal as disorderly. The court will deliver an appeal with these

shortcomings filed on behalf of the defendant who has a defence counsel to a court of second instance if it can be established to which judgment it relates, and will dismiss it if that fact cannot be established.

Facts may be presented and new evidence proposed in an appeal, as well as evidence whose examination was denied by the court of first instance (Article 395 paragraph 4), but the appellant is required to specify the reasons why he had not presented them earlier, and is also required to specify evidence serving to prove the facts presented, and, citing proposed evidence, he is required to specify the facts he wishes to prove with the help of that evidence.

c) Grounds for an Appeal

Grounds for Filing an Appeal

Article 437

An appeal may be filed in connection with:

- 1) substantive violations of the provisions of criminal procedure;
- 2) violations of criminal law;
- 3) incorrect or incomplete finding of fact;
- 4) the decision on criminal sanctions and other decisions.

Substantive Violation of the Provisions of Criminal Procedure

Article 438

A substantive violation of the provisions of criminal procedure exists if:

~~1) the statute of limitations on criminal prosecution has expired, or prosecution is excluded due to an amnesty or pardon, or the matter has already been finally adjudicated, or there are other circumstances which permanently exclude criminal prosecution;~~

~~21)~~ the judgment was issued by a court lacking subject matter jurisdiction, except if a judgment for a criminal offence for which a lower court has jurisdiction was issued by an immediately higher court;

~~32)~~ the court was improperly composed or if a judge or lay judge who had not participated in the trial or had been recused by a final decision participated in pronouncing the judgment;

~~43)~~ -a judge or lay judge who should have been recused participated in the trial;

~~54)~~ the trial was held without the presence of persons whose presence at the trial is mandatory, or if the defendant, defence counsel, injured party or private prosecutor was, contrary to his request, denied the right to the use of his own language at the trial and to follow the course of the trial in his own language;

~~65)~~ the public was excluded from the trial in contravention of this Code;

~~76)~~ the court violated provisions of criminal procedure in respect of the existence of charges of an authorised prosecutor, **or a motion of the injured party**, or authorisation of the competent authority;

~~87)~~ the subject matter of the charges was not resolved in full by the judgment;

~~98)~~ judgment went beyond the bounds of the charges;

~~109~~) the provision of Article 453 of this Code was violated by the judgment;

~~110~~) the summary judgment is incomprehensible.

A substantive violation of the provisions of criminal procedure also exists if:

1) the judgment is based on evidence on which under the provisions of this Code it may not be based, except if, in view of other evidence, it is obvious that the same judgment would have been issued even without that evidence;

2) the summary judgment contradicts itself or the reasons of the judgment contradict the summary judgment, or if the judgment has no reasons, or the reasons of the facts which are subject matter of evidentiary actions are not given in it, or those reasons are completely unclear or substantially contradictory, or if in respect of the facts which are subject matter of evidentiary actions there exists substantial contradiction between what is stated in the reasons of the judgment about the content of the records or transcripts of testimony given in the proceedings and those instruments or transcripts themselves, and ~~it is~~ if for those reasons **it is** not possible to examine whether the judgment is lawful and proper;

3) during the trial the court did not apply or improperly applied some provision of this Code and this had decisive importance for issuing a lawful and proper judgment.

Violation of Criminal Law

Article 439

A violation of criminal law exists if criminal law is violated in respect of whether:

1) the offence for which the defendant is prosecuted is a criminal offence;

2) **Statute of limitations has expired or the offense has been covered by amnesty or pardon or the subject-matter has already been decided by a final decision, or there are other circumstances which rule out criminal prosecution permanently**

3) a law which cannot be applied was applied in respect of the criminal offence which is the subject matter of the charges;

~~43~~) the law was violated by the decision on the criminal sanction or on the forfeiture of proceeds from crime or on a revocation of a release on probation;

~~54~~) provisions on counting into the total time served a ban on leaving a dwelling, detention or a penalty served, as well as any other form of deprivation of liberty in connection with a criminal offence, were violated.

Incorrect or Incomplete Finding of Fact

Article 440

A judgment may be challenged in connection with incorrect or incomplete finding of fact.

Incorrect finding of fact exists when the court incorrectly established a decisive fact which is the subject matter of evidentiary actions, and incomplete finding of fact exists when the court did not establish a decisive fact which is the subject matter of evidentiary actions.

Incomplete finding of facts exists when new facts and new evidence which could have an obvious impact on issuing a lawful and correct judgment point in that direction, and when the appellant makes it probable -that he wasn't aware of such new facts or new evidence or couldn't have known about them.

Incorrect Decision on a Criminal Sanction and on Other Decisions

Article 441

A judgment may be challenged in connection with a decision on a penalty, suspended sentence or a judicial admonition when no violation of the law was made by that decision (Article 439 item 34)), but the court did not correctly admeasure the penalty in view of the facts affecting the extent of the penalty, as well as because the court incorrectly pronounced or did not pronounce a decision on a more lenient ~~or a more severe~~ penalty, remission of a penalty, suspended sentence, judicial admonition or revoking probation.

A decision on a security measure or confiscation of proceeds from crime may be challenged when no violation of the law was made by that decision (Article 439 item 34)), but the court incorrectly pronounced or did not pronounce the decision on a security measure or the decision on confiscation of proceeds from crime from a person to whom they were transferred without compensation or with compensation not commensurate with the real value.

A decision on an awarded restitution claim or a decision on confiscation of assets deriving from a criminal offence may be challenged if the court violated provisions of the law by that decision.

A decision on the costs of criminal proceedings may be challenged if the court violated provisions of the law by the decision, as well as because the court incorrectly pronounced or did not pronounce a decision relieving the defendant of the duty to indemnify the costs of the criminal proceedings in full or in part.

d) Appellate Proceedings

Filing an Appeal

Article 442

An appeal is filed with the court which pronounced the first-instance judgment in a sufficient number of copies for the court, the opposing party, the defence counsel and the injured party.

Deciding on the Appeal by the First-Instance Court

Article 443

An untimely (Article 432 paragraphs 1 and 2), inadmissible (Article 433) or untidy appeal (Article 436 paragraphs 2 to 4) will be dismissed by a ruling by the president of the panel of the court of first instance.

~~If facts were presented and new evidence proposed in the appeal which in the view of the president of the panel of the court of first instance may contribute to a comprehensive consideration of the subject matter of the evidentiary actions, the panel will re-open the trial and resume evidentiary proceedings.~~

~~After concluding the evidentiary proceedings, the president of the panel will act in accordance with the provision of Article 412 of this Code. An appeal may be filed in accordance with the provisions of this Code against a new judgment of the court of first instance upholding or revising the earlier judgment.~~

~~If the president of the panel of the court of first instance finds that the facts presented and new evidence proposed in the appeal cannot contribute to a comprehensive consideration of the subject matter of the evidentiary actions, he will act in accordance with Article 444 of this Code.~~

Responding to an Appeal

Article 444

A copy of the appeal will be delivered by the court to the opposing party (Articles 246 and 247) **and the defence counsel**, which may within eight days of the date of reception of the appeal submit to the court a response to the appeal.

The court of first instance will deliver to the court of second instance the appeal and the response to the appeal, with all the case files, in a sufficient number of copies.

Actions Taken by the Court of Second Instance with the Files

Article 445

When the files reach the court of second instance in connection with an appeal, they are delivered to a reporting judge. ~~and in particularly complex cases, several members of a panel may be reporting judges, which is decided upon by the president of the court.~~

If a reporting judge determines that the files contain the transcripts or information referred to in Article 237 paragraphs 1 and 3 of this Code, he will issue a ruling excluding them from the files, against which a special appeal is not allowed. After **issuing** the ruling ~~becomes final~~, the reporting judge will act in accordance with Article 237 paragraphs 2 and 3 of this Code.

If a criminal offence prosecuted at the request of the public prosecutor is concerned, the reporting judge delivers the files to the competent public prosecutor, who is required to examine the files, make a motion and return them to the court without delay and not later than within 15 days, and in the case referred to in Article 432 paragraphs 2 and 3 of this Code, within 30 days.

If the reporting judge determines that a judgment done in writing contains obvious errors, shortcomings or inconsistencies (Article 431), he will before the holding of a session of the second-instance panel return the files to the president of the first-instance panel to issue a ruling on rectifying the errors.

After the ruling on rectifying the errors referred to in Article 431 paragraph 1 of this Code becomes final, the files will be delivered to the court of second instance, and in the case of a rectification of inconsistencies between a judgment done in writing and its original, it will be acted on in accordance with Article 431 paragraph 2 of this Code.

Deciding at a Session of the Panel or a Hearing

Article 446

The court of second instance issues a decision on an appeal at a session of the panel or on the basis of a hearing.

The panel of the court of second instance decides whether a hearing will be held.

The panel may decide that a hearing be held only in respect of certain parts of the first-instance judgment, if they can be separated without prejudice to proper adjudication. In respect of the parts of the judgments for which no hearing was ordered, a decision on the appeal is issued at a session of the panel.

~~If the panel decides to hold a hearing, the reporting judge is the president of the panel, and if there are several reporting judges, the panel will appoint one reporting judge to be the president of the panel.~~

Scheduling a Session of the Panel and Notifying the Parties

Article 447

A session of the panel is scheduled upon a proposal of the reporting judge by the president of the panel, who notifies the public prosecutor thereof.

That defendant or his defence counsel, subsidiary prosecutor, private prosecutor or their proxy who requested within the time limit specified for filing an appeal or a response to an appeal to be notified about the session or proposed that a hearing be held before the court of second instance will be notified about the session of the panel.

The ~~panel~~ **reporting judge** may decide to notify the parties about the session of the panel even if they did not request so, or that a party which did not request it also be notified of the session, if their presence would be of benefit for clarifying matters.

If a defendant who is in detention or serving a custodial criminal sanction is being notified about a session of the panel, and he has a defence attorney, the president of the panel will order that his presence is secured ~~only if the panel finds it necessary for clarifying matters.~~ When the panel finds that securing the presence of the defendant is aggravated by security or other reasons and where technical means make it possible, the defendant may participate in the session of the panel via an audio and video link.

The failure of parties **and the defence counsel** duly notified to appear at the session of the panel does not preclude its holding.

The public may be excluded from a session of the panel attended by the parties and the defence counsel only under the conditions specified by this Code (Articles 362 to 365).

Course of the Panel Session

Article 448

The session of the panel commences with a report by the reporting judge on the state of the matter in the case files, and if the session of the panel is attended by the parties and the defence counsel, the reporting judge relates the contents of the judgment, and the parties and defence counsel present assertions made in the appeal and the response to the appeal. ~~in a period of time determined by the president of the panel of the court of second instance.~~

The panel may ask the parties and defence counsel attending the session to provide necessary explanations in connection with the appeal and the response to the appeal, and the

parties **and the defence counsel** may propose that in order to amend the report certain parts of the files be read out, and with the permission of the president of the panel necessary explanation of the position presented in the appeal and the response to an appeal may be provided, without repetition of what is already contained in the report.

A transcript is kept of the session of the panel and is attached to the files of the court of second instance.

The ruling referred to in Article 456 of this Code may also be issued without notifying the parties and the defence counsel about the session of the panel.

Hearing before a Court of Second Instance

Article 449

A hearing before a court of second instance will be held if it is necessary because of incorrect or incomplete finding of fact to examine or to repeat evidence examined or denied by the court of first instance, and there are justified reasons for the case not to be returned to the court of first instance for re-trial.

The defendants and the defence counsel, the authorised prosecutor, the injured party, his legal representative and proxy, as well as those witnesses, expert witnesses and professional consultants whom the court decides to examine directly, are summoned to the hearing before the court of second instance, while review of the content of the other evidence examined is performed in accordance with the provisions of Articles 403, 405 and 406 of this Code.

In the summons, the defendant will be cautioned that the trial will be held in his absence if he is duly summoned and does not justify his absence. In this case, the court will appoint a defence attorney for a defendant who does not have a defence attorney (Article 74 item 9)).

If the defendant is in detention or serving a custodial criminal sanction, the president of the panel of the court of second instance will undertake the necessary actions to bring in the defendant to the hearing. When the panel finds that it would be difficult to secure the presence of the defendant because of security or other reasons and where technical means make it possible, the defendant may participate in the trial via an audio and video link.

Course of the Hearing before a Court of Second Instance

Article 450

A hearing before a court of second instance commences with a report of the ~~president of the panel~~**reporting judge**(~~Article 446 paragraph 4~~) who relates the state of the matter without presenting an opinion on whether the appeal is justified.

Upon a motion of the parties and the defence counsel or a decision of the panel, the judgment or a part of the judgment to which the appeal refers will be read out, and if needed also the transcript of the trial or a part of the transcript and written evidence, and examination may also be made of other evidence to which the appeal relates. After taking statements from the parties, the panel may decide, instead of directly examining a witness or expert witness who is not present, to examine the transcripts of their examination or, if the panel deems this necessary, to have the panel president present their contents in brief or read them out .

The appellant will thereafter be called upon to substantiate the appeal, and the opposing party to give a response, without repeating what is already contained in the report.

At the hearing the parties and the defence counsel may present facts and propose evidence specified in the appeal or connected with that evidence.

The authorised prosecutor may, in view of the results of the hearing, revise the indictment to the benefit of the defendant, or, ~~if the defendant agrees,~~ abandon the charges in full or in part. If the public prosecutor has abandoned the charges, the injured party is entitled to the rights referred to in Article 52 of this Code.

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

e) Limits of Examining a First-Instance Judgment

Scope of Examination

Article 451

The court of second instance examines part of the judgment disputed by the appeal, within the parameters of the grounds listed in the appeal, but is obliged to always examine *ex officio*:

- 1) Whether there is a violation of provisions of the criminal proceedings referred to in Article 438, Paragraph 1 Items 1), 2), 6), 8), 9), and 10), and whether the trial, contrary to provisions of this Code, was held in absence of the defendant, and in the case of mandatory defence in the absence of the defendant's defence counsel**
- 2) Whether the Criminal Code has been violated at the detriment of the defendant (Article 439).**

The court of second instance will, based on an appeal filed in the favour or the defendant, examine *ex officio* the decision about the criminal sanction if the appeal has been filed due to incorrect or incomplete finding of facts or due to a violation of the Criminal Code.

~~e court of second instance examines **part of** the judgment disputed by the appeal, but is obliged to always examine *ex officio*:~~

~~Whether there is a violation of provisions of the criminal proceedings referred to in Article 438, Paragraph 1 Items 2), 3), 7), 9), 10) and 11):~~

~~Whether the Criminal Code has been violated at the detriment of the defendant.~~

~~within the framework of the grounds, the criminal offence and the direction of the challenge specified in the appeal.~~

~~In respect of an appeal filed on behalf of the defendant, the court of second instance will examine the decision on the criminal sanction *ex officio*:~~

~~1) if the appeal was filed because of an incorrect or incomplete finding of fact or a violation of criminal law;~~

~~——— 2) if the appeal does not contain the elements referred to in Article 435 items 2) and 3) of this Code.~~

The court of second instance may in connection with a prosecutor's appeal to the detriment of the defendant revise the first-instance judgment also to the benefit of the defendant in respect of the decision on the criminal sanction.

Limits on Invoking Violations of the Law

Article 452

The appellant may invoke a violation of the law referred to in Article 438 paragraph 1 item 43) of this Code in his appeal only if he was not able to object to the violation during the trial, or did object to it, but the court of first instance did not take it into consideration.

Prohibition of Reversing to the Detriment of the Defendant

Article 453

If an appeal has been filed only on behalf of the defendant, the judgment may not be changed to his detriment in respect of the legal qualification of the criminal offence and the criminal sanction.

Privilege of Joiner

Article 454

If a court of second instance in connection with anyone's appeal determines that the reasons for which it issued a decision to the benefit of the defendant also benefit a co-defendant who did not file an appeal, or filed an appeal on other grounds, it will act *ex officio* as if such an appeal exists.

f) Decisions of the Court of Second Instance

Deciding on an Appeal

Article 455

The court of second instance may at a session of the panel or on the basis of a hearing held earlier:

- 1) dismiss the appeal as untimely, inadmissible or untidy;
- 2) reject the appeal as unfounded and uphold the first-instance judgment;
- 3) grant the appeal and set aside the first-instance judgment and refer the case back to the court of first instance for re-trial, or grant the appeal and reverse the first-instance judgment;

The second instance court will issue its own judgment if in the same case a first-instance judgment has already been abolished once.

As a rule the court of second instance decides with a single decision on all appeals against the same judgment.

Ruling Dismissing an Appeal

Article 456

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

An appeal will be dismissed by a ruling as inadmissible if it is determined that the appeal was filed by a person not authorised to file an appeal or a person who had waived the right to an appeal, or if the appeal was desisted from, or that an appeal was filed again after being desisted from, or if an appeal is not allowed under the law.

An appeal will be dismissed by a ruling as untidy if it is illegible or incomplete (Article 436 paragraphs 2 to 4).

Judgment Rejecting an Appeal

Article 457

The court of second instance will reject an appeal by a judgment as unfounded and uphold the first-instance judgment if it determines that the reasons for which the appeal was filed do not exist, or that the reasons it examines pursuant to Article 451 paragraph ~~1s2 and 3~~ of this Code do not exist.

Ruling Granting the Appeal

Article 458

The court of second instance will grant an appeal by a ruling and abolish a first-instance judgment and send the case back for re-trial if it determines that there exists a substantive violation of the provisions of criminal procedure, except for the cases referred to in Article 459 paragraph 1 of this Code, or if it finds that due to an incorrect or incomplete finding of fact indicated in the appeal a new trial should be ordered before a court of first instance.

The court of second instance may order a new trial before a court of first instance to be held before a completely changed panel.

The court of second instance may also partially abolish a first-instance judgment if certain parts of the judgment can be separated without prejudice to correct adjudication.

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

Judgment Granting the Appeal

Article 459

The court of second instance will grant an appeal by a judgment and reverse a first-instance judgment if it finds that in view of the finding of fact established in the first-instance

judgment there exists a violation referred to in Articles 439 and 441 of this Code, and according to the state of the matter also in the case of the violation referred to in Article 438 paragraph 1 items ~~1), 76)~~, 98) and ~~109)~~, as well as Article 439, Item 2) of this Code. The court of second instance will issue a judgment reversing the first-instance judgment also in the case where it is acting in accordance with Article 451 paragraphs ~~12 and 3~~ of this Code.

If the reversal of the first-instance judgment has created the necessary conditions for ordering or abolishing detention, the court of second instance will issue a separate ruling thereon which is not appealable.

Substantiation of the Decision of the Court of Second Instance

Article 460

In the substantiation of the judgment or ruling the court of second instance should make an assessment of the assertions made in the appeal and present the reasons it examined in accordance with Article 451 paragraphs ~~12 and 3~~ of this Code.

When a first-instance judgment is being abolished due to a substantive violation of the provisions of criminal procedure, the substantiation should specify the provisions which were violated and the nature of the violations.

When a first-instance judgment is being abolished due to an incorrect or incomplete finding of fact, the substantiation should specify the shortcomings in the finding of fact, or why the new evidence and facts are important and of influence for rendering a correct decision, and may also indicate the omissions of the parties which affected the decision of the court of first instance.

When a first-instance judgment is being abolished due to a violation of criminal law the substantiation will specify which provisions were violated and the nature of those violations, and if the judgment is being abolished because of an improper decision on a criminal sanction or other decisions, the substantiation will specify the facts by which the court of second instance was guided in pronouncing the decision, or the provisions which were violated.

Returning the Files to the Court of First Instance

Article 461

The court of second instance will return all files to the court of first instance with a sufficient number of certified copies of its decision, for the purpose of delivery to the parties and other persons who have a legal interest.

The court of second instance is required to deliver its decision with the files to the court of first instance within not later than four months, and if the defendant is in detention, not later than three months from the date the reporting judge received the files from that court together with the proposal of the public prosecutor.

In especially complex cases, the time limit referred to in paragraph 2 of this Article may be extended by not more than 60 days by a ruling of the president of the court of second instance, and if the defendant is in detention, by not more than 30 days.

New Trial before a Court of First Instance

Article 462

The court of first instance to which a case has been referred for adjudication will base its work on the earlier indictment, and if the judgment of the court of first instance was abolished in part, the basis for the trial will be only the part of the charges relating to the part of the judgment which was abolished.

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

The court of first instance is required to perform all procedural actions and discuss all disputed questions which the court of second instance indicated in its decision.

In pronouncing a new judgment, the court of first instance is bound by the prohibition prescribed by Article 453 of this Code.

If the defendant is in detention, the panel of the court of first instance is required to act in accordance with Article 216 paragraph 3 of this Code.

b. Appeal against a Second-Instance Judgment

Admissibility of an Appeal

Article 463

An appeal ~~may only be filed~~ against a judgment of the court of second instance **may be lodged to the court of third instance only in the following cases:**

- 1) If the court of second instance pronounced a term of imprisonment of thirty years or more or if it confirmed the first instance judgment in which such punishment was pronounced;**
- 2) If the court of second instance, in a trial, found different facts than that found by the first-instance court and used such facts as a basis for its judgment;**
- 3) If the court of second instance reversed the judgment of the first-instance court which acquitted the defendant from charges and pronounced him guilty.**

Analogous Application of Provisions on Procedure before a Court of Second Instance

Article 464

An appellate court, **at its panel's session**, adjudicates an appeal against a judgment of a court of second instance pursuant to the provisions of this Code applicable to second-instance proceedings.

The provisions of Articles **453 and** 454 of this Code will also be applied to a co-defendant who was not entitled to file an appeal against a second-instance judgment.

When the court accepts the appeal and reverses the ruling of the court of second instance, the court of third instance is obliged to adjudicate at its own will and then by exception it may hold a trial.

c. Appeal against a Ruling

Admissibility of an Appeal

Article 465

The parties, the defence counsel and persons whose rights were violated may file an appeal against rulings of the authority conducting proceedings issued in the first instance, whenever it is not explicitly stipulated by this Code that an appeal is not allowed.

A ruling of the ~~panel~~-court issued during the investigation and the indicting procedure is not appealable, unless specified otherwise by this Code.

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

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

Rulings of the Supreme Court of Cassation are not appealable.

Time Limits for Appealing and the Suspenseful Effect of the Appeal

Article 466

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

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

Deciding on an Appeal

Article 467

The court examines the ruling within the framework of the grounds, the offence and the direction of the challenge specified in the appeal.

A court of second instance decides on an appeal against a ruling of the court of first instance at a session of the panel, unless specified otherwise by this Code. The parties may be notified about the session of the panel if the court finds their presence beneficial for clearing up the matter.

An appeal against a ruling of the judge for the preliminary proceedings shall be decided upon by the panel (Article 21 paragraph 4) of the same court, unless specified otherwise by this Code. The court may notify the parties about the panel session if it deems that their presence would be useful for the clarification of matters.

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

The court is required to deliver the decision on the appeal with the files to the authority conducting proceedings who issued the ruling within 30 days of the date of receiving the files together with the proposal of the public prosecutor, unless specified otherwise by this Code.

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

Article 468

Unless it is specified otherwise by this Code, the provisions of Article 434 paragraph 5, Articles 435 to ~~442~~, ~~443~~, Article 445 paragraphs 1 and 2, Article 454 and Article 458 paragraph 2 of this Code will be applied accordingly to the procedure on an appeal against a ruling.

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

Article 469

Unless it is specified otherwise by this Code, the provisions of Articles 465 to 468 of this Code are applied accordingly to rulings issued in special proceedings regulated by this Code.

2. Extraordinary Legal Remedies

a. Request for Reopening Criminal Proceedings

a) Basic provisions

Admissibility of Reopening Criminal Proceedings

Article 470

Criminal proceedings concluded by a final judgment may be reopened at the request of an authorised person under the conditions stipulated in this Code.

Persons Authorised to Submit a Request

Article 471

A request to reopen criminal proceedings may be submitted by the parties and the defence counsel, and after the death of the defendant by the public prosecutor and the persons referred to in Article 433 paragraph 2 of this Code.

A request to reopen criminal proceedings may also be submitted after the convicted person has served out the penalty, or the statute of limitations, an amnesty or a pardon have occurred.

The persons referred to in paragraph 1 of this Article may desist from their request to reopen criminal proceedings until the issuance of a decision of the court on the request.

Contents of the Request

Article 472

A request to reopen criminal proceedings must specify the reason for requesting that the criminal proceedings be repeated and the evidence substantiating the facts on which the request is

founded. If the request does not contain these data, the court will instruct the applicant to amend the request with a written submission within a certain time limit.

The facts referred to in Article 473 paragraph 1 items 1) and 2) of this Code are to be substantiated with the final judgment that the persons referred to have been convicted in connection with the criminal offences referred to, and if proceedings cannot be conducted against them because they are deceased or there exist other circumstances which exclude their prosecution, the facts referred to in Article 473 paragraph 1 items 1) and 2) of this Code may also be substantiated by other evidence.

Reasons for Reopening Criminal Proceedings

Article 473

Criminal proceedings concluded with a final judgment may be repeated only to the benefit of the defendant:

1) if the judgment is founded on a forged instrument or a perjuries statement by a witness, expert witness, professional consultant, translator, interpreter or co-defendant (Article 406 paragraph 1 item 5));

2) if judgment was preceded by a criminal offence committed by the public prosecutor, judge, lay judge or person conducting evidentiary actions;

3) if new facts are presented or new evidence submitted which in themselves or in connection with earlier facts or evidence may lead to rejection of the charges or an acquittal or a conviction according to a more lenient criminal law;

4) if the defendant was tried several times for the same offence or was convicted together with other persons for a criminal offence which only one person or some of those persons could have committed;

5) if in the case of a conviction for a continued criminal offence, or for another criminal offence which under the law encompasses several actions of same or different kind, new facts are presented or new evidence submitted which indicate that he did not commit the action encompassed by the offence in the conviction, and the existence of these facts would lead to the application of a more lenient law or would substantially affect determination of the penalty;

6) if new facts are presented or new evidence submitted which did not exist when the prison sentence was pronounced or the court did not know of them although they did exist, and they would obviously have led to a more lenient criminal sanction;

7) if new facts are presented or if new evidence is filed proving that the defendant was not duly served the summons for the trial held in his absence (Article 449 paragraph 3).

A request to reopen criminal proceedings for the reasons specified in paragraph 1 item 6) of this Article may be submitted until the prison sentence is executed and the request for the reopening based on the reason referred to in paragraph 1 item 7) of this Article within six months after the appellate court renders its judgment.

Competence for Deciding on the Request

Article 474

The panel (Article 21 paragraph 4) of the court which tried the case in the first instance in the earlier proceedings decides on a request to reopen criminal proceedings and the panel of the court which adopted the decision after a trial held in the absence of the defendant decides on a request filed under Article 473 paragraph 1 item 7) of this Code.

In deciding on the request a judge who took part in rendering the judgment in the earlier proceedings will not be a member of the panel.

If the court referred to in paragraph 1 of this Article learns of the existence of a reason to reopen criminal proceedings (Article 473), it will notify thereof the defendant or the person authorised to submit a request on behalf of the defendant.

b). Actions Taken in Connection with the Request

Dismissing the Request

Article 475

The court will dismiss a request to reopen criminal proceedings with a ruling if:

- 1) the request was submitted by an unauthorized person;
- 2) the applicant did not act in accordance with Article 472 paragraph 1 of this Code;
- 3) the applicant has desisted from the request;
- 4) the legally-prescribed conditions for repeating proceedings do not exist;
- 5) the facts and evidence on which the request is based had already been presented in an earlier request to reopen criminal proceedings which was rejected with a final decision;
- 6) the facts and evidence are obviously not appropriate to allow a repetition of criminal proceedings based on them.

Acting on the Request

Article 476

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

When the response to the request is received by the court, or when the time limit for a response expires, the president of the panel may order examination of the facts and acquisition of the evidence cited in the request and in the response to the request.

After conducting the examinations, if criminal offence is prosecutable *ex officio*, the president of the panel will order the files delivered to the public prosecutor, who is required to return them, with his opinion, without delay, or within 30 days at most.

Deciding on the Request

Article 477

When it has conducted the actions referred to in Article 476 of this Code and if it does not order the examination to be amended or does not dismiss the request (Article 475 item 3)),

the court will either grant or reject the request to reopen criminal proceedings by a ruling, depending on the results of the examination.

In a ruling granting the request and allowing criminal proceedings to be reopened the court will order the holding of a new trial, and if reopening of criminal proceedings was allowed based on the reasons referred to in Article 473 paragraph 1 item 6) of this Code, only the evidence on which the type and extent of the criminal sanctions depends will be examined at the new trial.

If the court finds that the reasons based on which it allowed reopening of criminal proceedings also exist for a co-defendant who has not submitted such a request, it will act *ex officio* as if such a request had been submitted.

If the court finds, taking into consideration the evidence submitted, that the convicted person could in reopened proceedings be convicted to such a penalty that with time served he should be released, or could be acquitted of the charges, or that the charges could be rejected, it will order the execution of the penalty to be deferred or discontinued.

When the ruling allowing reopening of criminal proceedings becomes final, the execution of the penalty will be discontinued, but the court may order detention, acting on a motion by the public prosecutor, if the reasons referred to in Article 211 of this Code exist.

Acting in Reopened Criminal Proceedings

Article 478

In the new proceedings, conducted on the basis of a ruling allowing a reopening of criminal proceedings, the court is not bound by rulings issued in the criminal proceedings conducted earlier.

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

When the court issues a judgment in the new proceedings:

- 1) it will pronounce that the earlier judgment is abolished in part or in full or that it remains in force;
- 2) it will calculate time served by the defendant into the penalty imposed by the new judgment, and if reopening of criminal proceedings was ordered for only some of the criminal offences of which the defendant was convicted, it will pronounce a new single penalty according to the provisions of criminal law.

In pronouncing a new judgment, the court is bound by the prohibition stipulated by Article 453 of this Code.

c) Repetition of Criminal Proceedings against a Person Convicted *in Absentia*

Admissibility of Reopening Criminal Proceedings

Article 479

Criminal proceedings in which a defendant was convicted *in absentia* (Article 381) will be repeated without fulfilling the conditions prescribed in Article 473 of this Code if the possibility arises that a trial is conducted in his presence.

Persons Authorised to Submit a Request

Article 480

A request to reopen criminal proceedings for the reasons stipulated in Article 479 of this Code may be submitted by the defendant and his defence counsel within six months of the date when the possibility arose of putting the defendant on trial in his presence.

At the expiry of the time limit referred to in paragraph 1 of this Article, a reopening of the proceedings is allowed only for the reasons stipulated in Article 473 of this Code.

Acting in Reopened Criminal Proceedings

Article 481

In the ruling allowing a reopening of criminal proceedings according to Article 479 of this Code, the court will order the indictment and ruling on confirming the indictment to be delivered to the defendant, unless they were delivered to him earlier.

~~In repeated proceedings an accomplice of the defendant who has already been convicted cannot be questioned or confronted with the defendant, but the presentation of the content of the testimony of the convicted accomplice is performed in accordance with Article 406 paragraph 1 item 5) of this Code, where the judgment may not be based only or to a decisive extent on such evidence.~~

In pronouncing a new judgment, the court is bound by the prohibition stipulated by Article 453 of this Code.

b. Request for the Protection of Legality

a) Basic Provisions

Admissibility of Submitting a Request

Article 482

~~An authorised person may submit in~~**In** accordance with conditions prescribed in this Code a request for the protection of legality against a final decision of the public prosecutor or the court or for a violation of provisions of the procedure which preceded its issuance **may be filed.**

~~A request for the protection of legality is not allowed against a decision on the protection of legality or violation of provisions of the procedure before the Supreme Court of Cassation which preceded its issuance.~~

~~Persons Authorised to Submit a Request~~

Article 483

A Petitioner

A request for the protection of legality may be submitted by the Republic Public Prosecutor ~~the defendant and his defence counsel.~~

The Republic Public Prosecutor may submit a request for the protection of legality both to the detriment and for the benefit of the defendant. A request may be submitted even after the defendant is encompassed by an act of amnesty or a pardon, or the statute of limitations has expired, or the defendant has died, or the penalty has been served in full.

~~A request for the protection of legality may be submitted by a defendant only through his defence counsel.~~

The Republic Public Prosecutor ~~The persons referred to in paragraph 1 of this Article~~ may desist from the request until the issuance of a decision of the court on the request for the protection of legality.

Contents of the Request

Article 484

A request for the protection of legality must specify the reasons for its submission (Article 485 paragraph 1), and in the case referred to in Article 485 paragraph 1 items 2) and 3) of this Code, a decision of the Constitutional Court or of the European Court of Human Rights must also be submitted.

Reasons for Submitting a Request

Article 485

A request for the protection of legality may be submitted if by a final decision or decision in the procedure which preceded its issuance:

1) the law was violated;

2) a law was applied which was by a decision of the Constitutional Court found not to comply with the Constitution, universally accepted principles of international law and ratified international agreements, **and a final decision of the court or the public prosecutor was based on such law;**

3) a human right or freedom of a defendant or other participant in proceedings **was violated** ~~guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols was violated or denied, as~~ **violated or deprived as** determined by a decision of the Constitutional Court or the European Court of Human Rights, **and if a final decision of the court or the public prosecutor was based on such violation.-**

A violation of the law within the meaning of paragraph 1 item 1) of this Article exists if a provision of criminal procedure was violated by a final decision or in the procedure which preceded its issuance, or if the law was applied incorrectly to the finding of fact determined in the final decision.

~~A request for the protection of legality for the reasons stipulated in paragraph 1 items 2) and 3) of this Article may be submitted within three months of the date when the person (Article 483 paragraph 1) was delivered the decision of the Constitutional Court or the European Court of Human Rights.~~

~~A defendant may submit a request for the protection of legality in connection with violations of this Code (Article 74, Article 438 paragraph 1 items 1) and 4), and item 7) to 10), and paragraph 2 item 1), Article 439 items 1) to 3), and Article 441 paragraphs 3 and 4) made in the first instance proceedings and the proceedings before the appellate court, within 30 days from the date of the delivery of the final decision, provided that he has used an ordinary legal remedy against that decision.~~

Competence for Deciding on the Request

Article 486

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

~~The Supreme Court of Cassation decides on a request for the protection of legality submitted in connection with a violation of the law (Article 485 paragraph 1 item 1)) only if it finds that it concerns an issue of importance for correct or uniform application of the law.~~

b) Procedure Regarding the Request

Ruling Dismissing the Request

Article 487

The Supreme Court of Cassation sitting in panel will dismiss a request for the protection of legality by a ruling:

~~1) if it was not submitted within the time limit referred to in Article 485 paragraph 3 and 4 of this Code;~~

~~21) if it is inadmissible (Article 482 paragraph 2, Article 483 and Article 485 paragraph 4)~~

~~32) if it lacks the prescribed contents (Article 484);~~

~~4) if it was submitted in connection with a violation of the law which is not of importance for the correct or uniform application of the law (Article 486 paragraph 2).~~

The ruling referred to in paragraph 1 of this Article does not need to contain substantiation.

Actions Taken in Connection with the Request

Article 488

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

If the Supreme Court of Cassation deems the presence of the public prosecutor, **the defendant** and defence counsel is of importance for rendering a decision, it will notify them about the session.

The Supreme Court of Cassation may, in view of the contents of the request, order the execution of a final judgment to be deferred or discontinued.

The Supreme Court of Cassation will deliver its decision with the files to the public prosecutor, a court of first instance, or an appellate court not later than six months from the date of the submission of the request.

Limitations of Examining the Request

Article 489

The Supreme Court of Cassation examines a final decision or the proceedings which preceded its issuance within the framework of the grounds (Article 485 paragraph 1), the criminal offence and the direction of the challenge specified in the request for the protection of legality.

If the Supreme Court of Cassation finds that the reasons why it issued a decision in favour of the defendant also exist for a co-defendant in respect of whom no request for the protection of legality was submitted, it will act *ex officio* as if such a request did exist.

The Supreme Court of Cassation may in connection with a request for the protection of legality submitted by a public prosecutor abolish or reverse a decision only in favour of the defendant.

Deciding on the Request

Article 490

If the Supreme Court of Cassation does not dismiss the request for the protection of legality (Article 487), sitting in session it will either reject or grant the request.

Judgment Rejecting the Request

Article 491

The Supreme Court of Cassation will dismiss a request for the protection of legality by a judgment as unfounded if it determines that the reason cited by the applicant in the request does not exist.

If a request was submitted in connection with a violation of the law (Article 485 paragraph 1 item 1)) which was specified without foundation in the ordinary legal remedy proceedings, and the Supreme Court of Cassation accepts the reasons given by the appellate court, the substantiation of the judgment will limit itself to an indication of those reasons.

Judgment Granting the Request

Article 492

The Supreme Court of Cassation will after granting a request for the protection of legality issue a judgment in which it will according to the nature of the violation:

1) abolish in full or in part the first-instance decision and a decision issued in ordinary legal remedy proceedings, or only the decision issued in ordinary legal remedy proceedings and send the case for a new decision to the authority conducting proceedings or for trial by a court of first instance or an appellate court, where it may order that new proceedings be held before a completely changed panel;

2) reverse in full or in part the first-instance decision and the decision issued in ordinary legal remedy proceedings or only the decision issued in ordinary legal remedy proceedings;

3) limit itself to establishing a violation of the law.

If the authority conducting proceedings which issued the decision on the ordinary legal remedy was not authorised under the provisions of this Code to rectify the violation made in the decision which was challenged or in the proceedings which preceded its issuance, and the Supreme Court of Cassation after granting the request for the protection of legality submitted to the benefit of the defendant finds that the request is well-founded and that the challenged decision should be abolished or reversed in order to rectify the violation of the law which was made, it will also abolish or reverse the decision issued in ordinary legal remedy proceedings although the law was not violated by that decision.

Determining Judgment

Article 493

The Supreme Court of Cassation will determine by a judgment that a violation of the law exists without going into the finality of the decision if it grants a request for the protection of legality submitted at the detriment of the defendant.

Actions Taken at the New Trial

Article 494

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

The court is required to perform all procedural actions and to examine the questions which the Supreme Court of Cassation indicated to it.

Before a court of first instance or an appellate court, the parties may present new facts and submit new evidence.

In pronouncing a new judgment, the court is bound by the prohibition prescribed by Article 453 of this Code.

Request for the Review of the Legality of the Final Judgment

494A

A defendant convicted with a final judgment of an unconditional term of imprisonment of at least one year or a term of juvenile imprisonment, as well as his defence counsel, may file a request for review of the legality of the final judgment in the following cases:

1) Due to a violation of the Criminal Code at the detriment of the convicted;

- 2) Due to a violation of Article 438, Paragraph 1, Items 2,3,4,6,8, and 9;
- 3) If the judgment has been based on evidence which is according to provisions of this Code is inadmissible, and which has had an impact on pronouncing a lawful and correct ruling;
- 4) If during the trial or the complaint procedure the right to defence of the defendant has been violated and that has had an impact on pronouncing a lawful and correct judgment;
- 5) When reasons referred to in Article 485, Paragraph 1, and Items 2) and 3) of this Code exist.

**–Time Limit for Filing a Request for the Review of the Legality of the Final Judgment
Article 495 B**

A request for the review of the legality of the final judgment is filed within a month from the day when the defendant and the defence counsel were served with the final judgment.

A request for review of legality of the final judgment based on a reason referred to in Article 485, Paragraph 1, and Items 2) and 3) of this Code, is filed within a month from the day a judgment of the Constitutional Court or the European Court of Human Rights is published in the Official Gazette of the Republic of Serbia.

The defendant, as well as his defence counsel, who hasn't used the right to appeal against the judgment, may not file a request for review of legality of the final judgment

**Deciding on the Request for the Review of the Legality of the Final Judgment
Article 494 B**

The Supreme Court of Cassation decides on the request for the review of the legality of the final judgment.

A request for the review of the legality of the final judgment is filed to the court which rendered the judgment in first instance.

The president of the panel of first instance or the Supreme Court of Cassation will reject an untimely request, a request filed by an unauthorized person, or the one which pertains to the criminal sanction which may not be subject to the request, and if the request has been filed against the judgment which hasn't been challenged by the defendant or his defence counsel.

As regards the request for review of legality of the final decision Articles 484, 487, 488, 489, 490, 491, 492 and 494 will be analogously applied.

Part Three

SPECIAL PROCEEDINGS

Chapter XX

SUMMARY PROCEEDINGS

1. General Provisions

Applicable Provisions of the Code

Article 495

The provisions of Articles 496 to 520 of this Code will be applied in proceedings for criminal offences for which a fine or a term of imprisonment of up to eight years is prescribed as the principal penalty **and for criminal offenses prosecuted based on a private prosecution,** and unless something is specified otherwise in these provisions, the other provisions of this Code will be applied accordingly.

By exception from Paragraph 1 of this Article, for criminal offenses referred to in Article 162, Paragraph 1, Item 1) of this Code, summary proceedings may not be conducted.

Assessment of Territorial Jurisdiction

Article 496

After scheduling a trial or a hearing for pronouncing a criminal sanction, the court may not declare that it has no territorial jurisdiction, nor may the parties object to a lack of territorial jurisdiction of the court.

Desisting from Criminal Prosecution or the Charges by the Public Prosecutor

Article 497 ~~deleted~~

~~The public prosecutor may desist from criminal prosecution until the scheduling of a trial or a hearing for pronouncing a criminal sanction, and may desist from the charges — from the scheduling until the conclusion of the trial or a hearing for pronouncing a criminal sanction.~~

~~—— If the public prosecutor desists from the charges in accordance with paragraph 1 of this Article, the injured party is entitled to the rights determined by the provisions of this Code (Articles 51 and 52).~~

Detention

Article 498

Detention may be ordered against a person for whom there exists grounded suspicion that he has committed a criminal offence if there exists any of the reasons referred to in Article 211 paragraph 1 items 1) to 3) of this Code, or if the defendant has been sentenced to a term of imprisonment of five or more years **and the manner of the commission, circumstances under which the offense has been committed or gravity of the consequences of the criminal offense justify it** ~~and if it is justified by the especially serious circumstances of the criminal offense.~~

Before the submission of the motion to indict, detention may last for only as long as it is needed to conduct evidentiary actions, but not more than 30 days~~-.~~ . If the proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of five or more years, detention may, acting upon a reasoned motion by the public prosecutor, be extended by another 30 days at most for the purpose of collection of evidence which has not been collected for justified reasons.

An appeal may be submitted to the panel (Article 21 paragraph 4) against the ruling of an individual judge referred to in paragraph 2 of this Article, but it does not stay execution of the ruling.

The provisions of Article 216 of this Code are applied accordingly in respect of detention from the filing of the ~~charges~~ **motion to indict** until the pronouncement of a first-instance judgment, with the proviso that the panel (Article 21 paragraph 4) is required to examine once every month whether reasons for detention exist.

The provisions of Article 211 paragraph 3 of this Code will be applied accordingly also in respect of deciding on detention after the pronouncement of the judgment.

a. Filing charges

Charging Documents

Article 499

Summary proceedings are instituted on the basis of a motion to indict of the public prosecutor or on the basis of a private prosecution, when there is ~~justified~~ **well grounded** suspicion that a certain person has committed a criminal offence.

Before deciding whether to file a motion to indict or to dismiss a criminal complaint, the public prosecutor may in the shortest possible period of time conduct certain evidentiary actions.

If the criminal complaint was submitted by the injured party and the public prosecutor within six months of the date of receiving the complaint does not file a motion to indict or does not notify the injured party that he has dismissed the complaint, the injured party is entitled to the rights referred to in Article 51 of this Code.

A motion to indict and a private prosecution are submitted in a number of copies necessary for the court and for the defendant.

Contents of a Charging Document

Article 500

A motion to indict, or a private lawsuit, contains the following:

- 1) first name and surname of the defendant with personal data, if known;
- 2) brief description of the offence;
- 3) statutory name of the criminal offence;
- 4) name of the court before which the trial is to be held;
- 5) proposal of the evidence to be presented at the trial, specifying the facts which are to be proved and with which of the proposed pieces of evidence;
- 6) proposal of the type and severity of the criminal sanction and measure whose imposition is being sought.

A motion to indict or a private lawsuit may contain a motion to place the defendant in detention, and if the defendant was in detention during the implementation of evidentiary actions, the motion to indict shall specify the time spent in detention.

If on the basis of collected evidence the public prosecutor deems that a trial is unnecessary, he may request in the motion to indict that a hearing for the imposition of a criminal sanction (Article 512) be scheduled.

Examining a Charging Document

Article 501

Immediately upon receiving a charging document a single judge shall examine whether it has been composed properly, and if not, he shall return it to the prosecutor to rectify the shortcomings within three days. At the request of the prosecutor, the judge may extend this time limit for justified reasons.

If the public prosecutor misses the time limit referred to in paragraph 1 of this Article, the judge shall issue a ruling dismissing the motion to indict, and if the private prosecutor misses the aforesaid time limit, it shall be deemed that he has waived prosecution and the private lawsuit shall be rejected by a ruling.

If the charging document has been composed properly, the judge shall examine if the court has jurisdiction, if a better clarification of the matter is required in order to examine the justification of the charging document, and whether there are reasons to dismiss or reject the motion to indict or the private lawsuit.

If the judge determines that another court is competent to adjudicate the case, he will declare himself incompetent and refer the case to that court when the ruling becomes final.

If the judge determines that a better clarification of the matter is required in order to examine the justification of the charging document, he shall order certain evidentiary actions to be conducted or certain evidence collected.

The authorised prosecutor shall undertake certain actions or collect certain evidence within 30 days of the date of being notified of the decision. At the request of the prosecutor the judge may extend this time limit for justified reasons.

If the public prosecutor misses the time limit referred to in paragraph 6 of this Article, he is required to notify the ~~immediately superior~~ **competent** public prosecutor of the reasons thereof, and if the private prosecutor misses the aforesaid time limit, it will be deemed that he has waived prosecution and the lawsuit shall be rejected by a ruling.

Dismissing a Charging Document

Article 502

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

Rejecting a Charging Document

Article 503

The judge will reject a motion to indict or a private lawsuit by a ruling if he determines that the charges are unwarranted due to the existence of the reasons referred to in Article 338 paragraph 1 of this Code.

The ruling, with a brief substantiation, is delivered to the public prosecutor or the private prosecutor, as well as to the defendant.

b. Trial

Scheduling a Trial

Article 504

If the judge does not issue any of the rulings referred to in Article 501 paragraphs 2, 4 and 7 and Articles 502 and 503 of this Code, he shall issue an order setting the date, time and place of holding of a trial within not more than ~~30~~¹⁵ days, and if detention has been ordered, within ~~15~~⁸ days, counting from the date of service on the defendant of the motion to indict, or the private lawsuit.

~~Once a trial has been scheduled, the court may not declare *ex officio* its lack of territorial jurisdiction.~~

~~— An objection challenging the territorial jurisdiction of the court may be filed by the commencement of the trial at the latest.~~

Actions Taken with a Private Lawsuit

Article 505

Before scheduling a trial in connection with criminal offences which are prosecutable by private prosecution, the judge shall summon the private prosecutor and the defendant to the court on a certain date to be informed about the possibility of being referred to a mediation procedure. A copy of the private lawsuit is served on the defendant together with the summons.

If the private prosecutor and the defendant reconcile and if the restitution claim is settled in the mediation procedure, the private lawsuit shall be deemed withdrawn and the judge shall issue a ruling rejecting the private lawsuit, and if the mediation procedure fails, upon receiving the notification thereof the judge shall schedule a trial (Article 504~~-paragraph 1~~).

If the private prosecutor and the defendant do not agree to a mediation procedure, the judge shall take their statements and invite them to submit their motions in respect of obtaining evidence, where they must specify which facts are to be proved and with which of the proposed pieces of evidence.

If the judge deems that evidence need not be obtained, and there are no other reasons to schedule a trial at another date, he may immediately issue a ruling to hold a trial and at its conclusion issue a decision on the private lawsuit. The private prosecutor and the defendant will be especially advised about this during the service of the summons.

If a private prosecutor does not respond to a duly served summons referred to in paragraph 1 of this Article and does not justify his absence, the judge shall issue a ruling rejecting the private lawsuit.

If the defendant does not respond to a duly served summons referred to in paragraph 1 of this Article or if the service of the summons could not take place due to his failure to notify the court of a change of address or place of temporary or permanent residence, the single judge shall schedule a trial (Article 504 ~~paragraph 1~~).

Summoning and Presence at the Trial

Article 506

The judge summons to the trial the defendant and his defence counsel, the prosecutor, the injured party and their legal representatives and proxies, witnesses, expert witnesses, professional consultant, translator and interpreter.

It shall be specified in the summons served on the defendant that he may come to the trial with the evidence in his defence or that he should in due time propose evidence which should be obtained for the purpose of being presented at the trial, where he must specify which facts are to be proved and with which of the proposed pieces of evidence.

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

The defendant will be cautioned in the summons that the trial shall be held even in his absence if the statutory requirements exist (Article 507 paragraph 32).

A summons must be served on the defendant in such a way as to leave enough time for the preparation of defence and no less than eight days between the dates of service and trial. With the consent of the defendant this time limit may be shortened.

Exceptionally, a trial may be held in the absence of the summoned parties if the judge deems that, in view of the evidence contained in the files, a ruling dismissing the charges (Article 416 paragraph 1) or a dismissing judgment would obviously have to be issued.

If duly summoned defence counsel does not appear at the trial failing to notify the court about reasons for his absence immediately after he had learned about them, or if the defence counsel leaves the trial without an approval, the judge will urge the defendant to immediately engage another defence counsel, and if the defendant fails to do so, the panel may decide to hold the trial even without the defence counsel's presence.

The private prosecutor examined as a witness at the trial will not be removed from the courtroom during the examination of other witnesses.

Course of the Trial

Article 507

The trial commences with the declaration of the main content of the motion to indict or the private lawsuit and if possible concludes without interruption.

After the presentation of the main content of the indictment, the judge will call the prosecutor and the defence counsel, or the defendant without a defence counsel, to present their opening remarks.

If a duly summoned defendant who is tried in connection with a criminal offence for which a fine or a term of imprisonment of up to three years are prescribed as the principal penalty does not appear at the trial, the judge may decide, after taking a statement from the prosecutor, to hold the trial in the absence of the defendant provided that his presence is not necessary and that he was interrogated beforehand.

Should the defendant without a defence counsel be removed from the courtroom in accordance with Article 339, Paragraphs 1 and 3 of this Code, the president of the court will appoint a defence counsel to him *ex officio* (Article 74, Item 6 and Article 76).

~~If during the trial the judge finds that a panel is competent to adjudicate the case, a panel shall be formed and the trial shall commence anew, and if he determines that any of the reasons referred to in Article 416 paragraph 1 of this Code exists, the judge shall dismiss the charges by a ruling.~~

At the conclusion of the trial, the judge shall render a judgment immediately and declare it with substantive reasons. A judgment shall be made in writing and dispatched within 15 days of the date of declaration.

Defendant's Confession at the Trial

Article 508

If the defendant at the trial, **and before the evidentiary procedure**, makes a confession that fulfils the requirements referred to in Article 88 of this Code, the judge may, after taking statements from the parties, start with the presentation of evidence on which the decision on the type and severity of the criminal sanction depends.

Under the conditions referred to in paragraph 1 of this Article, in case of criminal offences punishable by a fine or a term of imprisonment of up to five years as the principal penalty the judge may impose a term of imprisonment of up to three years, and in case of criminal offences punishable by a term of imprisonment of up to eight years, he may impose a term of imprisonment of up to five years.

c. Appellate Proceedings

Time Limit for Filing an Appeal

Article 509

An appeal against a judgment may be filed within eight days of the delivery of a certified copy of the judgment.

In complex cases, the parties and the defence counsel may request an extension of the time limit for filing an appeal immediately after the judgment is proclaimed.

A single judge decides immediately on the request referred to in paragraph 2 of this Article by a ruling which may not be appealed. If he grants the request, the judge may extend the time limit for filing an appeal to no more than 15 days.

~~Waiving the Right to an Appeal~~ A Judgment without Rationale

Article 510

~~The parties and the injured party may waive their right to an appeal immediately after the pronouncement of the judgment.~~

A written judgment does not have to include explanation rationale:

- 1) If the parties, the defence counsel and a person referred to in Article 433, Paragraphs 3 and 4 of this Code, declare that they waive the right to an appeal immediately after the judgment has been publicly pronounced, and**
- +2) If the defendant has been sentenced to term of imprisonment up to three years, a fine, and community service, suspension of the driving license, suspended sentence, or judicial warning, when the sentence is based on the confession of the defendant which meets the conditions referred to in Article 88 of this Code.**

Notification about a Panel Session or a Trial

Article 511

When a court of second instance decides on an appeal against a judgment imposing a prison sentence, the parties and the defence counsel will be notified about the panel session within the meaning of Article 447 paragraph 2 of this Code, and in other cases, only if the panel president or the panel deems the presence of the parties beneficial for clarifying the matter.

A trial may also be held in the absence of a duly summoned defendant under the conditions referred to in Article 507 paragraph 2 of this Code.

2. Hearing for the Imposition of a Criminal Sanction

Requirements for Holding a Hearing

Article 512

For criminal offences punishable by a fine or a term of imprisonment of up to five years as the principal penalty, the public prosecutor may in his motion to indict request the holding of a hearing for the imposition of a criminal sanction.

The public prosecutor may make the request referred to in paragraph 1 of this Article if he deems the holding of a trial unnecessary because of the complexity of the case and the evidence collected, and especially because the defendant was arrested during the commission of the criminal offence or has confessed the criminal offence.

If the public prosecutor acts in accordance with paragraph 2 of this Article, he may propose that the court impose on the defendant:

1) a term of imprisonment of up to two years, a fine of up to two hundred and forty daily amounts or up to five hundred thousand dinars or probation with the ordering of incarceration of up to one year or a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars and a probation period of up to five years – if the defendant has confessed to the commission of a criminal offence punishable by a term of imprisonment of up to five years;

2) a term of imprisonment of up to one year, a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars, up to two hundred and forty hours of community service, revocation of the driver's licence for up to one year, probation with the ordering of incarceration of up to one year or a fine of up to one hundred and eighty daily amounts or up to three hundred thousand dinars and a probation period of up to three years, with a possibility of placing the defendant under protective supervision or imposing a judicial admonition – if the defendant has committed a criminal offence punishable by a fine or a term of imprisonment of up to three years as the principal penalty.

Examining the Request for Holding a Hearing

Article 513

If he does not issue any of the rulings referred to in Article 504 ~~paragraph 1~~ of this Code, the judge shall immediately upon receiving the motion to indict examine whether the request for the holding of a hearing for the imposition of a criminal sanction has been submitted in accordance with the requirements referred to in Article 512 of this Code.

After examining the request, the judge shall schedule a trial or a hearing for the imposition of a criminal sanction.

Scheduling a Trial

Article 514

The judge determines in his order the date, time and place of holding of a trial:

1) if the motion does not concern a criminal offence referred to in Article 512 paragraph 1 of this Code;

2) if a penalty or criminal sanction not allowed under Article 512 paragraph 3 of this Code or under criminal law has been proposed in the motion;

3) if the complexity of the case and the evidence collected indicate a need to hold a trial.

Together with the summons for the trial the judge will have a copy of the motion to indict, without the request for holding a hearing for the imposition of a criminal sanction, served on the defendant and his defence counsel.

Scheduling a Hearing

Article 515

If he agrees with a request for holding a hearing for the imposition of a criminal sanction, the judge shall issue an order determining the date, time and place of holding of the hearing. The hearing is held within 15 days of the date of issuance of the order.

The parties and the defence counsel are summoned to the hearing, and the motion to indict served on the defendant and his defence counsel together with the summons. The defendant shall be cautioned in the summons that the hearing shall be held in case of his absence if he was duly summoned, or, when defence is not mandatory, in case of failure of the defence counsel to appear at the hearing.

The summons must be served on the defendant so as to leave at least five days between the date of service of the summons and the date of the hearing.

Course of the Hearing

Article 516

A hearing for the imposition of a criminal sanction commences with a brief exposition of the public prosecutor about the evidence at his disposal and about the type and severity of the criminal sanction whose imposition he is proposing.

The judge then calls on the defendant to state his view on all facts and cautions him of the consequences of agreeing with the claims of the public prosecutor, and especially that he may not submit an objection and file an appeal against a first-instance judgment.

Decisions Concluding a Hearing

Article 517

Immediately upon the conclusion of a hearing for the imposition of a criminal sanction the judge shall render a judgment of conviction or issue an order scheduling a trial.

A judgment of conviction is pronounced if the defendant:

- 1) has agreed with the proposal of the public prosecutor presented at the hearing;
- 2) has not responded to the summons for the hearing.

If the defendant has not agreed with the proposal of the public prosecutor or if the judge has not accepted the proposal of the public prosecutor at the hearing, the judge shall issue an order scheduling the date, time and place of the trial.

Objection to a Judgment

Article 518

A judgment of conviction is served on the parties and the defence counsel.

The defendant and his defence counsel may within eight days of the date of service submit an objection to the judgment of conviction issued pursuant to Article 517 Paragraph 2 item 2) of this Code.

If the judge does not issue a ruling dismissing the objection as untimely or impermissible, he shall issue an order determining the date, time and place of the trial based on the public prosecutor's indicting proposal. At the trial the judge is not bound by the public prosecutor's proposal in respect of the type and severity of the criminal sanction (Article 500 paragraph 1 item 6)), or by the prohibition referred to in Article 453 of this Code.

The panel (Article 21 paragraph 4) decides on an appeal against the ruling referred to in paragraph 3 of this Article.

If no objection to the judgment referred to in paragraph 2 of this Article is filed, the judgment becomes final.

3. Special Provisions on the Imposition of Judicial Admonition

Pronouncement of a Judgment

Article 519

A judgment imposing judicial admonition is pronounced immediately after the conclusion of the trial or hearing for the imposition of a criminal sanction, with substantive reasons for pronouncing it.

During the pronouncement of the judgment the judge shall caution the defendant that no penalty is being imposed on him for the criminal offence he committed, because judicial admonition is expected to influence him sufficiently to deter him from committing criminal offences in future.

Contents of a Judgment Done in Writing

Article 520

In the reasoning of the judgment imposing judicial admonition the judge shall state the reasons that guided him to impose judicial admonition.

If the judgment was pronounced in the absence of the defendant, the caution referred to in Article 519 paragraph 2 of this Code shall be entered in the reasoning.

Chapter XXI

PROCEEDINGS FOR THE IMPOSITION OF SECURITY MEASURES

Applicable Provisions of the Code

Article 521

The provisions of Articles 522 through 536 of this Code shall apply in proceedings for the imposition of security measures, and unless something special is prescribed in these provisions, the other provisions of this Code shall apply *mutatis mutandis*.

1. Proceedings for the Imposition of the Security Measure of Compulsory Psychiatric Treatment

Motion for the Imposition of a Security Measure

Article 522

If a defendant commits an unlawful act designated by law as a criminal offence in a state of mental incompetency, the public prosecutor shall submit a motion to the court to impose on the defendant a security measure of compulsory psychiatric treatment and confinement in a medical institution, i.e. a motion for compulsory psychiatric treatment at liberty, if the requirements envisaged in the Criminal Code for the imposition of such measure exist.

The security measures referred to in paragraph 1 of this Code may also be imposed when the public prosecutor modifies the indictment or motion to indict during the trial by submitting a motion for the imposition of these measures.

After the submission of the motion referred to in paragraph 1 of this Article the defendant must have a defence counsel (Article 74 item 7)).

Jurisdiction for Deciding on the Motion

Article 523

The court which has jurisdiction in the first instance shall decide after the holding of the trial on the motion for the imposition of a security measure of compulsory psychiatric treatment and confinement in a medical institution, or a motion for compulsory psychiatric treatment.

Detention

Article 524

In addition to the grounds referred to in Article 211 of this Code, the public prosecutor may also propose in the motion for the imposition of a security measure of compulsory psychiatric treatment the imposition of detention on a defendant who is at liberty if there exists a justifiable danger that he might commit a **an unlawful act specified in the law as a** criminal offence as a result of mental incompetency.

Before it decides on the imposition of detention, the court shall obtain the opinion of an expert witness.

After the issuance of a ruling ordering detention the defendant shall be placed in an appropriate medical institution or premises suitable for his medical condition until the conclusion of proceedings before a first instance court.

If the defendant was in detention when the motion for the imposition of a security measure of compulsory psychiatric treatment was filed, the court shall act in accordance with paragraphs 2 and 3 of this Article.

Presence at the Trial

Article 525

In addition to the persons who must be summoned to the trial, an expert witness from the medical institution which was entrusted with the expert analysis of the mental competency of the defendant shall also be summoned.

The defendant shall be summoned if his medical condition makes it possible for him to attend the trial. Before issuing a decision, the panel president shall, if necessary, examine the expert witness who conducted the psychiatric examination of the defendant, and the defendant shall be examined if his condition permits.

~~If the defendant is incapable of attending the trial, it shall be deemed that he is challenging the content of the charges.~~

The legal representative of the defendant shall be notified about the trial, and if the defendant has none, the defendant's spouse or another person referred to in Article 433 paragraph 2 of this Code shall be notified.

Deciding on the Motion

Article 526

Upon the conclusion of the trial, the court shall render a decision immediately and pronounce it together with substantive reasons.

If the court determines that the reasons referred to in Articles 422 and 423 of this Code exist, it shall issue a judgment of ~~dismissal~~ **rejection** or acquittal.

If the court determines that the defendant was not in a state of mental incompetency at the time of commission of the criminal offence, it shall issue a ruling discontinuing the proceedings for the imposition of a security measure.

If based on the presented evidence the court determines that the defendant has committed a certain unlawful act designated by law as a criminal offence and that he was mentally incompetent at the time of commission, **and if conditions for imposing a security measure prescribed by the Criminal Code have been met**, it shall issue a ruling imposing on the defendant a security measure of compulsory psychiatric treatment and confinement in a medical institution, or compulsory psychiatric treatment at liberty.

In deciding which security measure to impose, the court is not bound by the public prosecutor's motion.

In the ruling imposing a security measure, the court shall also decide on the restitution claim under the conditions prescribed by this law.

New Charges

Article 527

Immediately after the issuance of a ruling on the termination of proceedings for the imposition of a security measure, the public prosecutor may make an oral statement waiving his right to appeal and file an indictment or motion to indict for the same criminal offence.

The trial shall be held before the same panel or single judge, and the previously presented evidence shall not be presented again, unless the court determines otherwise.

Persons Authorised to File an Appeal

Article 528

The persons referred to in Article 433 paragraphs 1 and 2 of this Code may appeal against the ruling pronouncing a security measure of compulsory psychiatric treatment within eight days after the date of receipt of the ruling.

Imposition of a Security Measure together with a Penalty

Article 529

When a court imposes a penalty on a defendant who committed a criminal offence in a state of substantially diminished mental capacity, in the same judgment it shall impose a security measure of compulsory psychiatric treatment and confinement in a medical institution, if it determines that the relevant statutory conditions exist.

Deciding on Declaration of Incapacity

Article 530

The final decision imposing a security measure of compulsory psychiatric treatment and confinement in a medical institution, or compulsory psychiatric treatment at liberty (Article 526 paragraph 4 and Article 529) shall be delivered to the court competent for deciding on the declaration of incapacity.

The competent social service shall also be notified of the decision.

Discontinuing the Application of a Security Measure

Article 531

Acting on a proposal of a medical institution, competent social service or defendant on whom a security measure has been imposed, or *ex officio* once in nine months, the court which adjudicated in the first instance in which a security measure was imposed shall examine if the need for treatment and confinement in a medical institution has ceased.

After taking a statement from the public prosecutor, the court shall issue a ruling discontinuing the measure and order the defendant released from the medical institution if based on the opinion of a physician it determines that the need for treatment and confinement in the medical institution has ceased, and may also order his compulsory psychiatric treatment at liberty.

If the proposal to discontinue the measure referred to in paragraph 1 of this Article is rejected, it may be submitted again after the expiry of six months from the date of issuance of the ruling.

When a defendant whose mental capacity was substantially diminished is released from a medical institution, and the duration of the prison sentence to which he was sentence exceeds the

time he spent in that institution , the court shall decide in the ruling on release whether the defendant will serve the rest of his sentence or be released on parole. A measure of compulsory psychiatric treatment at liberty may also be imposed on a defendant who is being released on parole, if statutory conditions for this exist.

Substitution of an Imposed Security Measure

Article 532

Acting *ex officio*, or acting on a proposal by the medical institution where a defendant is being treated, or should have been treated, the court (Article 531 paragraph 1) may impose a security measure of compulsory psychiatric treatment and confinement in a medical institution on a defendant on whom the security measure of compulsory psychiatric treatment at liberty was imposed.

The court issues the decision referred to in paragraph 1 of this Article after taking a statement from the public prosecutor if it determines that the perpetrator has not undergone medical treatment or has left it wilfully or that he has remained so dangerous for his environment despite the treatment that his confinement and treatment in a health care institution is necessary.

Before issuing the decision the court shall question the expert witness who performed the psychiatric examination of the defendant, and the defendant shall be examined if the state of his medical condition permits this. The court will inform the public prosecutor and the defence attorney about the hearing for the questioning of the expert witness.

2. Proceedings for the Imposition of a Security Measure of Mandatory Treatment of Alcohol or Drug Addiction

Findings and Opinion of an Expert Witness

Article 533

The court decides on the imposition of a security measure of compulsory treatment of alcohol addiction or security measure of compulsory treatment of drug addiction after obtaining the findings and opinion of an expert witness.

The expert witness should also state his opinion about the possibilities for treating the defendant.

Enforcement of an Imposed Security Measure

Article 534

If treatment at liberty has been ordered within probation, and the convicted person has failed to undergo treatment or has left it wilfully, the court may revoke probation or order the enforcement of the imposed measure of compulsory treatment of the alcohol addiction or security measure of compulsory treatment of drug addiction in a medical or another specialised institution.

The decision referred to in paragraph 1 of this Article is issued by the court *ex officio* or acting on a proposal of the institution where the convicted person was or should have been treated.

Before making a decision the court shall take statements from the public prosecutor and the convicted person, and if necessary it shall also examine a physician from the institution where the convicted person was or should have been treated.

3. Proceedings for the Imposition of a Security Measure of Confiscation of Objects

Ruling on the Confiscation of Objects

Article 535

Objects whose confiscation is necessary under the criminal law for the purpose of protecting the interests of general security or for reasons of morality shall be confiscated even when criminal proceedings are not concluded with a judgment finding the defendant guilty or with a ruling imposing the security measure of compulsory psychiatric treatment.

The ruling on the confiscation of the objects referred to in paragraph 1 of this Article is issued by the court which has jurisdiction for the first-instance trial.

A ruling on the confiscation of objects is also issued by the court when due to an omission no such decision was issued in a judgment pronouncing the defendant guilty or a ruling on the imposition of the security measure of compulsory psychiatric treatment.

Service of the Ruling and the Right to an Appeal

Article 536

A certified copy of a ruling on the confiscation of an object shall be served on the owner of the object, if the owner is known.

The owner of the object has the right to appeal against the ruling referred to in Article 535 paragraphs 2 and 3 of this Code.

Chapter XXII

PROCEEDINGS FOR CONFISCATION OF PROCEEDS FROM CRIME

Applicable Provisions of the Code

Article 537

The provisions of Articles 538 through 543 of this Code shall apply in the proceedings for the confiscation of proceeds from crime, and unless these provisions specify something special, the other provisions of this Code shall apply *mutatis mutandis*.

Duty to Determine the Proceeds from Crime

Article 538

The proceeds from crime are determined in criminal proceedings *ex officio*.

The authority conducting proceedings is required to collect evidence and examine circumstances of importance for determining the proceeds from crime during the proceedings.

If an injured party has submitted a restitution claim whose subject matter excludes the confiscation of proceeds from crime, the proceeds from crime shall be determined only in the part which is not encompassed by the restitution claim.

Confiscating Proceeds from Crime from Other Persons

Article 539

When the confiscation of proceeds from crime from other persons may be considered, the person to whom proceeds from crime were transferred free of charge or with compensation obviously not commensurate with the true value, or a representative of a legal person, shall be summoned for questioning in the preliminary proceedings and at the trial. This person shall be cautioned in the summons that the proceedings shall be conducted even in his absence.

The representative of a legal person shall be examined at the trial after the defendant. The same procedure shall apply to the other person referred to in paragraph 1 of this Article, unless he has been summoned as a witness.

The person referred to in paragraph 1 of this Article, i.e. the representative of a legal person, is authorised to propose evidence in connection with the determination of the proceeds from crime, and to examine the defendant, witness, expert witness and professional consultant with the permission of the panel president.

The exclusion of the public from the trial does not relate to the person referred to in paragraph 1 of this Article, i.e. the representative of a legal person.

If the court determines only during the trial that proceeds of crime may be confiscated, it shall adjourn the trial and summon the person referred to in paragraph 1 of this Article, i.e. the representative of a legal person.

Temporary Measures for Securing Claims

Article 540

When proceeds from crime may be confiscated, the court shall order temporary measures of securing claims, acting *ex officio*, according to the provisions of the law which regulates the proceedings of enforcement and securing claims. In this case, the provisions of Article 257 paragraphs 2 to 4 of this Code shall apply *mutatis mutandis*.

Decision of the Confiscation of Proceeds from Crime

Article 541

The court may impose the confiscation of proceeds from crime in the judgment of conviction or in a ruling on the imposition of the security measure of compulsory psychiatric treatment.

The court shall evaluate the proceeds from crime at its discretion, if its determination would cause disproportionate difficulties or considerably delay the proceedings.

The court shall specify in the summary judgment or ruling which object or amount of money is being confiscated.

A certified copy of the judgment, or ruling, is also delivered to the person referred to in Article 539 paragraph 1 of this Code, as well as the representative of a legal person, if the court has imposed the confiscation of proceeds from crime from that person, or legal person.

Analogous Application of Provisions on the Appeal against a First Instance Judgment

Article 542

The provisions of Article 434 paragraphs 4 and 5, Article 444 and Article 449 of this Code shall apply *mutatis mutandis* in respect of an appeal against a decision on the confiscation of proceeds from crime.

Motion to Reopen Criminal Proceedings

Article 543

A physical person, or a representative of a legal person (Article 539 paragraph 1) may submit a motion for the reopening of criminal proceedings in respect of the decision on the confiscation of proceeds from crime.

Chapter XXIII

PROCEEDINGS FOR REVERSING A FINAL JUDGMENT

Applicable Provisions of the Code

Article 544

The provisions of Articles 545 through 561 of this Code shall apply in the proceedings for the reversal of a final judgment, and unless these provisions envisage something special, the other provisions of this Code shall apply accordingly.

1. Proceedings for Revoking Probation

Instituting Proceedings

Article 545

Proceedings for revoking probation are instituted at the request of an authorised prosecutor before the court which adjudicated in the first instance:

1) if it was said in the judgment in which probation was imposed that the penalty would be enforced if the convicted person failed to return the proceeds from crime, indemnify the damage he had caused by the criminal offence or fulfil other obligations stipulated by the criminal law within a specified time limit;

2) if a convicted person on whom protective supervision has been imposed does not fulfil the obligations ordered by the court.

Preliminary Examinations

Article 546

Immediately after receiving a request to revoke probation a single judge may conduct necessary examinations in order to establish facts and collect evidence of importance for the decision.

Scheduling a Hearing

Article 547

The judge issues an order determining the date, time and place for holding a hearing for the revocation of probation.

The parties ~~and the defence counsel~~ are summoned to the hearing referred to in paragraph 1 of this Article. In the case referred to in Article 545 paragraph 1 item 1) of this Code the injured party is also summoned to the hearing, and in the case referred to in Article 545 paragraph 1 item 2) of this Code, also the officer in charge of enforcing supervised probation.

The defendant shall be cautioned in the summons that the hearing shall be held even if does not appear, or, in cases where defence is not mandatory, if his defence counsel does not appear at the hearing.

The summons must be delivered to the defendant in such a way as to leave at least eight days between the date of service and the date of the hearing.

Course of the Hearing

Article 548

A probation revocation hearing commences with a presentation by the authorised prosecutor of the reasons for the revocation of probation.

If proceedings for revoking probation were instituted pursuant to Article 545 paragraph 1 item 1) of this Code, the judge shall call on the injured party to declare himself on the reasons referred to in paragraph 1 of this Article.

The judge thereafter calls on the defendant to state his position in regard of the request of the authorised prosecutor.

If the proceedings for the revocation of probation were instituted based on Article 545 paragraph 1 item 2) of this Code, the judge shall examine the officer who was responsible for the enforcement of supervised probation.

Decisions Concluding the Hearing

Article 549

Immediately after concluding the probation revocation hearing the judge shall issue a judgment rejecting or granting the motion for the revocation of probation.

Rejecting the Motion

Article 550

The judge shall reject the motion for the revocation of probation by a judgment if he determines that there are no grounds for the revocation of probation.

In the judgment the judge may decide *ex officio*:

1) to extend the time limit for fulfilling the obligation within the probation period, or, if the convicted person is unable to fulfil the imposed obligation for justified reasons, to release him from the fulfilment of that obligation or to replace it with another appropriate obligation (Article 545 paragraph 1 item 1));

2) to admonish the convicted person who does not fulfil the obligations of protective supervision, or to extend the duration of protective supervision within the probation period, or to replace previous obligations with different ones (Article 545 paragraph 1 item 2)).

Revoking Probation

Article 551

The judge shall issue a judgment granting the motion for revoking probation and impose the penalty determined in the judgment of probation:

1) due to a failure to fulfil the obligation referred to in Article 545 paragraph 1 item 1) of this Code;

2) due to a failure to fulfil the obligation of protective supervision referred to in Article 545 paragraph 1 item 2) of this Code.

2. Proceedings for Reversing a Decision on a Penalty

a. Proceedings for Pronouncing an Aggregate Sentence

Instituting Proceedings

Article 552

Proceedings for the imposition of an aggregate sentence are instituted at the request of the public prosecutor or the defendant and his defence counsel:

1) if several penalties were pronounced against the same defendant in two or more judgments, and provisions on the imposition of an aggregate penalty for concurrent criminal offences were not applied;

2) if during the pronouncement of an aggregate penalty, through the application on provisions on concurrence, a penalty that had already been included in the penalty imposed under the provisions on concurrence was taken as established;

3) if a final judgment pronouncing an aggregate penalty for several criminal offences could not be executed in part due to amnesty or a pardon.

Competence for Deciding on the Motion

Article 553

The motion for pronouncing an aggregate penalty is decided by the court:

1) which adjudicated in the first instance in the matter in which the harshest type of penalty was pronounced, and in case of penalties of the same type – the court which pronounced the harshest penalty, and if the penalties are equal – the last court to pronounce a penalty (Article 552 item 1));

2) which adjudicated in the first instance and in pronouncing a penalty erroneously took into consideration a penalty already encompassed by an earlier judgment (Article 552 item 2));

3) which adjudicated in the first instance (Article 552 item 3)).

Deciding on the Motion

Article 554

The court decides on a motion for pronouncing an aggregate penalty at a panel session.

Before making a decision the court shall take a statement from the opposing party.

The court shall issue a judgment rejecting or granting a motion for pronouncing an aggregate penalty.

Rejecting the Motion

Article 555

The court shall issue a judgment rejecting a motion for pronouncing an aggregate penalty if it determines that the reasons referred to in Article 552 of this Code do not exist.

Granting the Request

Article 556

In the judgment granting a motion for pronouncing an aggregate penalty the court shall:

1) reverse previous judgments in respect of the decisions on penalty and pronounce an aggregate penalty (Article 552 item 1));

2) reverse a judgment in respect of a pronounced aggregate penalty in which a penalty already encompassed by an earlier judgment was erroneously taken into consideration (Article 552 item 2));

3) reverse a judgment in respect of the penalty and pronounce a new penalty, or determine how much of the penalty imposed by an earlier judgment must be enforced (Article 552 item 3)).

If judgments issued by other courts were taken into consideration during the pronouncement of the penalty in the cases referred to in paragraph 1 items 1) and 2) of this Article, a certified copy of the new final judgment shall also be delivered to those courts.

b. Proceedings for the Mitigation of Penalty

Instituting the Proceedings

Article 557

Proceedings for the mitigation of a penalty are instituted at the request of the public prosecutor with special jurisdiction if the cooperating convicted person testified in the proceedings concluded with a final judgment of conviction in accordance with the agreement referred to in Article 327 paragraph 1 of this Code.

A motion for the mitigation of a penalty is submitted within 30 days of the date of when the judgment referred to in paragraph 1 of this Article became final.

Competence for Deciding on the Motion

Article 558

The court which tried the convicted cooperating witness in the first instance decides on the request for the mitigation of the penalty.

Deciding on the Motion

Article 559

A motion for the mitigation of a penalty is decided by the court in a panel session.

Before making a decision the court shall take a statement from the cooperating convicted person, and examine the ruling on accepting the convicted person's cooperation agreement.

The court shall issue a judgment rejecting or granting the motion for the mitigation of a penalty.

Rejecting the Motion

Article 560

The court shall issue a judgment rejecting a motion for mitigating a penalty if it determines that the cooperating convicted person did not fulfil completely all the obligations contained in the cooperation agreement.

Granting the Request

Article 561

The court shall issue a judgment granting a motion for the mitigation of a penalty and reverse the final judgment of conviction in respect of the decision on the penalty and pronounce a penalty to the cooperating convicted person in accordance with Article 330 of this Code.

Chapter XXIV

PROCEEDINGS FOR REALISING THE RIGHTS OF A CONVICTED PERSON

Applicable Provisions of the Code

Article 562

The provisions of Articles 563 to 582 of this Code shall apply in the proceedings for realising the rights of a convicted person, and unless these provisions envisage something special, the other provisions of this Code shall apply *mutatis mutandis*.

1. Proceedings for the Release on Parole

Instituting Proceedings

Article 563

Proceedings for the release on parole are initiated based on a petition of the convicted person or the defence counsel.~~A convicted person who has served two-thirds of the imposed prison sentence or his defence counsel may submit a petition for release on parole.~~

The panel (Article 21 paragraph 4) of the court which adjudicated in the first instance decides on the petition.

Preliminary Examinations

Article 564

Immediately upon receiving a petition for the release on parole the panel shall examine:
~~if all statutory requirements for submitting the petition are fulfilled and shall dismiss the petition with a ruling if it determines:~~

- 1) **Whether the petition** was submitted by an **authorised** person;

2) **Whether the sufficient amount of time prescribed by the law for release on parole has elapsed**~~the convicted person has not served two thirds of his prison sentence;~~

3) ~~Whether the convicted person tried to escape or did escape from the custodial institution while he was serving his prison sentence.~~

After finding the existence of conditions referred to in Paragraph 1 of this Article~~If it does not issue the ruling referred to in paragraph 1 of this Article~~, the panel shall request a report from the custodial institution in which the convicted person is serving his prison sentence about his conduct, **performance in terms of work duties, considering his working ability**, and other circumstances indicating whether the purpose of the penalty has been fulfilled, **and if that report has not been filed together with the convicted person's petition**, as well as a report of the official of the administrative body in charge of enforcing criminal sanctions.

~~Scheduling a Hearing for Deciding on~~Rejecting the Petition

Article 565

The panel **will reject a petition for release of the convicted person on parole if it determines that conditions referred to in Paragraph 1, Article 564 haven't been met.**

~~president issues an order scheduling the date, time and place of holding of a hearing for deciding on a petition for the release on parole.~~

~~—The panel president summons to the hearing the convicted person, if he deems his presence necessary, the defence counsel of the convicted person, if he has one, the public prosecutor acting before the court deciding on the petition, and, if the report is positive, a representative of the custodial facility where the convicted person is serving his sentence.~~

~~—The defence counsel shall be cautioned in the summons that the hearing shall be held even if he fails to appear at the hearing.~~

~~The summons must be served on the persons referred to in paragraph 2 of this Article in such a way as to leave at least eight days between the date of service of the summons and the date of the holding of the hearing.~~

Course of the Hearing

Article 566 deleted

~~A hearing for deciding on a petition for the release on parole commences with the presentation of the reasons for the release on parole by the defence counsel, and if the defence counsel is absent, the panel president shall briefly present the reasons for submitting the petition.~~

~~—If the convicted person is attending the hearing, the panel president shall take a statement from him, and then call on the public prosecutor to present his position on the convicted person's petition.~~

~~If a representative of the custodial facility where the convicted person is serving his sentence has been invited to the hearing, the panel president shall examine the representative about the conduct of the convicted person during the service of the sentence, execution of work duty, in view of the convicted person's capacity for work, as well as other circumstances which would indicate that the purpose of the punishment has been achieved.~~

Deciding on the Petition for Release on Parole ~~Decisions Concluding the Hearing~~

Article 567

If the panel does not reject the petition, it will ask of the public prosecutor acting before the court to state his opinion. After receiving the public prosecutor's opinion the panel renders a ruling accepting or rejecting the petition for release on parole. Immediately after the end of the hearing, the panel shall issue a ruling rejecting or granting the petition for release on parole, and shall particularly take into account an estimate of the risk posed by the convicted person, his success in the execution of the action programme, prior convictions, personal circumstances, and the expected effect of the release on parole on the convicted person.

The panel may determine in the ruling on release on parole that the convicted person is required to fulfil certain obligations stipulated by criminal law, and may also decide to place the convicted person on parole under electronic surveillance .

The ruling on the release on parole is served on the convicted person and his defence counsel, **if there is any**, public prosecutor, custodial facility where the convicted person is serving his sentence, court which sent the convicted person to serve the sentence, judge in charge of the enforcement of criminal sanctions whose territorial jurisdiction covers the permanent residence of the convicted person, police authority, officer from the administrative body in charge of enforcing criminal sanctions and social service centre in the area where the convicted person has permanent residence.

The public prosecutor **and**; convicted person ~~and his defence counsel~~ may appeal against the ruling referred to in paragraph ~~1~~**2** of this Article.

Proceedings for Revoking the Parole

Article 568

The ~~provisions of Articles 545 to 551 of this Code apply mutatis mutandis to the~~ proceedings for the revocation of parole **are initiated at the public prosecutor's request, approved by the panel (Article 21, Paragraph 4) which decided in the first instance proceedings.**

2. Proceedings for Rehabilitation and Termination of Security Measures or the Legal Consequences of Conviction

a. Rehabilitation Proceedings

a) Legal Rehabilitation Proceedings

Instituting Proceedings

Article 569

Proceedings for the legal rehabilitation of a person who had no convictions before the conviction to which the rehabilitation relates or who is deemed under the law to have had no prior conviction are instituted *ex officio* by the authority in charge of keeping criminal records.

Preliminary Examinations

Article 570

Before deciding whether the legal requirements for granting legal rehabilitation are fulfilled, the authority referred to in Article 569 of this Code shall ~~conduct the necessary inquiries~~**examine, in particular:**

- 1) whether the secondary penalty has been executed or the security measures are still in effect;
- 2) whether criminal proceedings are in progress against the convicted person in connection with a new criminal offence committed before the expiry of the time limit prescribed for legal rehabilitation.

Deciding on Rehabilitation

Article 571

After conducting the inquiries within the meaning of Article 570 of this Code, the authority in charge of keeping criminal records shall issue **a ruling about rehabilitation when it confirms that the conditions mandated by the law have been met.**

~~1) a ruling declaring that the conditions for legal rehabilitation do not exist;~~

~~—— 2) a ruling on legal rehabilitation.~~

~~—— The convicted person may lodge an appeal against the ruling referred to in paragraph 1 item 1) of this Article which shall be decided by the judge in charge of enforcement of criminal sanctions.~~

Rehabilitation Request by a Convicted Person

Article 572

If the authority in charge of keeping criminal records does not issue a ruling that legal rehabilitation has taken place, a convicted person may request that it be determined that rehabilitation has occurred by force of law.

If the competent authority takes no action on the request of the convicted person within 30 days of the date of receipt of the request, the convicted person may request that the court which pronounced the judgment in the first instance issue a ruling on rehabilitation.

The decision on the request of the convicted person is issued by the panel (Article 21 paragraph 4), after taking a statement from the public prosecutor.

b) Judicial Rehabilitation Proceedings

Instituting Proceedings

Article 573

Judicial rehabilitation proceedings are instituted on the basis of a petition submitted by the convicted person ~~or his defence counsel~~.

The petition referred to in paragraph 1 of this Article is decided by the panel (Article 21 paragraph 4) of the court which adjudicated in the first instance.

Preliminary Examinations

Article 574

Immediately upon receiving a petition for judicial rehabilitation the ~~panel~~ **designated judge** shall examine whether the necessary legal requirements for submitting the petition have been fulfilled and shall dismiss the petition by a ruling if it determines:

- 1) that it has been submitted by an unauthorised person;
- 2) that the convicted person has been sentenced to a term of imprisonment of more than five years ;
- 3) that the convicted person committed a new criminal offence within ten years of the date of the served, lapsed or remitted term of imprisonment ~~of more than three and up to five years~~.

~~If it does not issue the ruling referred to in paragraph 1 of this Article, the panel may conduct necessary examinations, establish the facts invoked by the convicted person and obtain evidence about all circumstances of importance for the decision, in particular the conduct of the convicted person, and whether he has according to the best of his abilities indemnified the damage caused by the criminal offence.~~

~~The panel may seek a report on the conduct of the convicted person from the police within whose jurisdiction the convicted person stayed after serving his penalty, and may also seek such a report from the custodial facility where the convicted person served his penalty.~~

~~Scheduling a Hearing for Deciding on the Petition~~

~~Inquiries~~

Article 575

If the judge does not reject the convicted person's petition he will make necessary inquiry, examine facts that the petitioner referred to and obtain evidence of all circumstances relevant for the ruling, and in particular about the conduct of the convicted person and whether he, up to what is in his power, succeeded to compensate for damages caused by the criminal offense.

The court may request a report about the convicted person's conduct from the police in whose territory the convicted person lived after serving the sentence, and may ask for such report from the custodial institution where the convicted served the sentence.

~~The president of the panel issues an order setting the date, time and place of the holding of a hearing for deciding on a petition for judicial rehabilitation.~~

~~—The convicted person and his defence counsel, if he has one, and the public prosecutor acting before the court deciding on the petition are summoned to the hearing, and if the report is~~

~~positive, a representative of the custodial facility where the convicted person has served his term of imprisonment may also be summoned.~~

~~— The convicted person shall be cautioned in the summons that the hearing shall be held even if he or his defence counsel fails to appear.~~

~~— The summons must be served on the persons referred to in paragraph 2 of this Article in such a way as to leave at least eight days between the date of service of the summons and the date of the hearing.~~

Course of the Hearing

Filing the Petition

Article 576

When the judge conducts the inquiry he will ask the public prosecutor to state his opinion on the convicted person's petition.

The judge will file the case file with the reasoned ruling to the panel of judges which decided the case in first instance.~~The hearing for deciding on a petition for judicial rehabilitation commences by a presentation of the reasons by the convicted person or his defence counsel, and if they are absent, the panel president shall briefly present the reasons for submitting the petition.~~

~~— The president of the chamber then calls on the public prosecutor to present his position on the convicted person's petition.~~

~~— If a representative of the custodial facility where the convicted person has served his sentence has been summoned to the hearing, the panel president shall examine the representative about the conduct of the convicted person during the service of the penalty, execution of work duty, in view of the convicted person's capacity for work, as well as other circumstances of importance for granting rehabilitation.~~

Deciding on the Petition

~~**Decisions Concluding the Hearing**~~

Article 577

The panel decides on the petition for rehabilitation on its session which may be attended by the parties.

~~Immediately after the conclusion of the hearing the~~**The panel shall**~~may~~ issue a ruling rejecting or granting the petition for rehabilitation.

The ~~convicted person and his defence counsel~~**petitioner**, as well as the public prosecutor may appeal against the ruling referred to in paragraph ~~1~~**2** of this Article.

If the ~~panel~~**court** rejects the petition because the conduct of the convicted person does not merit rehabilitation, the convicted person may repeat the petition at the expiry of one year from the date of finality of the ruling.

3. Proceedings for Terminating a Security Measure or the Legal Consequence of Conviction

Instituting Proceedings

Article 578

Proceedings for the termination of a security measure of a prohibition of engaging in a profession, occupation or a duty or measures of prohibition of operating a motor vehicle, or proceedings for the termination of the legal consequence of conviction concerning a prohibition of acquiring a certain right, are instituted on the basis of a petition submitted by a convicted person ~~or his defence counsel~~.

The petition referred to in paragraph 1 of this Article is decided by the panel (Article 21 paragraph 4) of the court which adjudicated in the first instance.

Preliminary Examinations

Article 579

Immediately on receiving a petition for terminating a security measure or the legal consequence of conviction the ~~panel~~ **designated judge** shall examine whether the necessary legal requirements for submitting the petition have been fulfilled and dismiss the petition by a ruling if it determines:

- 1) that it has been submitted by an unauthorised person;
- 2) that a period of three years has not elapsed from the date of application of the security measure or the date of a served, lapsed or remitted penalty.

~~If it does not issue the ruling referred to in paragraph 1 of this Article, the chamber may conduct necessary examinations, establish the facts invoked by the petitioner and collect evidence on all circumstances of importance for the decision, in particular whether the convicted person indemnified the damage caused by the criminal offence and returned the proceeds from crime.~~

~~—The panel may seek a report on the conduct of the convicted person from the police in whose area of jurisdiction the convicted person stayed after a served, lapsed or remitted penalty, and may also seek such a report from the custodial facility where the convicted person has served his sentence.~~

~~Ordering a Hearing for Deciding on the Petition~~

Inquiries

Article 580

If the judge does not reject a convicted person's petition he will make necessary inquiry, examine facts that the petitioner referred to and obtain evidence of all circumstances relevant for the ruling, and in particular about whether the defendant succeeded to compensate for damages caused by the criminal offense, whether he returned the material gain acquired by committing the criminal offense.

The court may request a report about the convicted person's conduct from the police in whose territory the defendant lived after serving the sentence, or after the pardon or after the statute of limitation expired for the sentence to be served, and may ask for such report from the custodial institution where the convicted served the sentence.

~~The panel president shall issue an order setting the date, time and place of holding of a hearing for deciding on a petition for terminating a security measure or the legal consequence of conviction.~~

~~The convicted person and his defence counsel, if he has one, and the public prosecutor acting before the court deciding on the petition are summoned to the hearing, and if necessary also a representative of the custodial facility where the convicted person has served his sentence.~~

~~— The convicted person will be cautioned in the summons that the hearing shall be held even if he or his defence counsel fail to appear.~~

~~— The summons must be served on the persons referred to in paragraph 2 of this Article in such a way as to leave at least eight days between the date of service of the summons and the date of the hearing.~~

~~Course of the Hearing~~ **Filing the Petition**

Article 581

When the judge completed the inquiry he will ask the public prosecutor to state his opinion on the convicted person's petition.

The judge will file the case file with the reasoned ruling to the panel of judges which decided the case in first instance. ~~The hearing for deciding on a petition for terminating a security measure or the legal consequence of conviction commences by a presentation of the reasons by the convicted person or his defence counsel, and if they are absent, the panel president shall briefly present the reasons for submitting the petition.~~

~~The panel president then calls on the public prosecutor to present his position on the convicted person's petition.~~

~~— If a representative of the custodial facility where the convicted person has served his sentence has been summoned to the hearing, the panel president shall examine the representative about the conduct of the convicted person during the service of the penalty, execution of work duty, in view of the convicted person's capacity for work, as well as other circumstances indicating whether a termination of a security measure or the legal consequences of conviction is justified.~~

~~Decisions Concluding the Hearing~~ **Deciding on a Petition**

Article 582

The panel decides a petition for rehabilitation on its session which may be attended by the parties.

~~Immediately on concluding the hearing the panel~~ **The panel shall** ~~may~~ issue a ruling rejecting or granting the petition for terminating a security measure or the legal consequence of conviction.

The ~~convicted person and his defence counsel~~ **petitioner** as well as the public prosecutor may appeal against the ruling referred to in paragraph ~~1-2~~ of this Article.

If the panel rejects a petition for terminating a security measure or the legal consequence of conviction, a new petition may be submitted at the expiry of one year from the date of finality of the ruling.

Chapter XXV

PROCEEDINGS FOR THE REALISATION OF RIGHTS OF A PERSON WRONGFULLY DEPRIVED OF LIBERTY OR WRONGFULLY CONVICTED

1. General Provisions

Applicable Provisions of the Code

Article 583

The provisions of Articles 584 through 595 of this Code shall apply in proceedings for the realisation of the right to restitution and other rights of a person wrongfully deprived of liberty or wrongfully convicted, and unless something special is prescribed in these provisions, the other provisions of this Code shall apply accordingly.

Person Wrongfully Deprived of Liberty

Article 584

A person is deemed wrongfully deprived of liberty in the following cases:

1) when he was deprived of liberty and no proceedings were instituted, or the proceedings were terminated by a final ruling, or the charges were rejected, or the proceedings were concluded with a final judgment of rejection ~~of~~ acquittal;

2) when he served a prison sentence, and in connection with a request for the reopening criminal proceedings, ~~or~~ a request for the protection of legality **or a request for the examination of the final judgment**, he was sentenced to a term of imprisonment of shorter duration than that he served, or he was sentenced to a criminal sanction that does not include the deprivation of liberty, or he was declared guilty but his penalty was remitted;

3) when he **was kept in detention or in another form of deprivation of liberty** for a period longer than the duration of the **term of imprisonment** ~~criminal sanction consisting of deprivation of liberty~~ to which he was sentenced;

4) when he was **kept in detention or in a facility for the enforcement of a criminal sanction which amounts to deprivation of liberty longer than necessary**, due to a mistake or unlawful work of the authority conducting proceedings, ~~or the deprivation of liberty lasted longer, or the person was kept for a longer time in a facility for the enforcement of a criminal sanction consisting of deprivation of liberty~~

5) When **he was deprived of liberty with no legal grounds for it, when no detention has ever been ordered for him, and time served has not been included in the pronounced term of imprisonment.**

A person who caused the deprivation of liberty by his impermissible actions is not entitled to restitution. In the cases referred to in paragraph 1 item 1) of this Article, the right to restitution is also excluded if the circumstances referred to in Article 585 paragraph 2 item 2) of this Code existed, or if the proceedings were terminated as a result of the defendant's death (Article 20).

The provisions of Articles 588 through 591 of this Code shall apply *mutatis mutandis* in the restitution procedure in the cases referred to in paragraph 1 of this Article.

Wrongfully Convicted Person

Article 585

A person on whom a criminal sanction was imposed by a final decision or was declared guilty but whose penalty was remitted, and upon a request for an extraordinary legal remedy new proceedings were terminated by a final decision, or the charges were rejected by a final decision, or the proceedings were concluded by a final acquittal, is deemed wrongfully convicted.

The convicted person referred to in paragraph 1 of this Article is not entitled to restitution:

1) if he deliberately caused his own conviction by a false confession or in another manner, unless he was coerced into it;

2) if proceedings were terminated or charges rejected because in new proceedings the subsidiary prosecutor, or the private prosecutor, waived prosecution, or the injured party abandoned his motion, and the abandonment resulted from an agreement with the defendant;

3) if **a ruling in new proceedings rejected the charges** because **lack of jurisdiction by the court and the** authorised **prosecutor initiated a prosecution before the competent court.**

In the case of a conviction for concurrent criminal offences, the right of restitution may also refer to individual criminal offences in respect of which requirements for awarding damages are fulfilled.

Ruling Annuling the Registration of a Wrongful Conviction

Article 586

The court which adjudicated in the first instance in criminal proceedings will *ex officio* issue a ruling annulling the entry of a wrongful conviction in the criminal records.

The ruling is delivered to the authority in charge of keeping criminal records.

Data from the criminal records about an annulled registration may not be divulged to any person.

Prohibition of Using Data from the Files

Article 587

A person who is under the provisions of this Code allowed to review and copy files relating to wrongful deprivation of liberty or wrongful conviction may not use data from those files in a way that would be detrimental to the realisation of the rights of a wrongfully arrested or wrongfully convicted person.

The chief judge is required to caution thereof the person who has been allowed to review the files, which caution shall be recorded on the file, with a signature of that person.

2. Proceedings for Realising the Right to Restitution

Restitution Claim

Article 588

Before submitting a restitution claim to the court, the injured party is required to submit the request to the ministry in charge of judicial affairs for the purpose of reaching a settlement on the existence of damage and the type and amount of restitution.

The restitution claim is decided by a restitution commission whose composition and manner of operation is governed by a regulation of the minister in charge of judicial affairs.

Civil Claim for Restitution

Article 589

If the restitution claim is not accepted or the Commission does not rule on the claim within three months of the date when it was submitted, the injured party may file with the competent court a civil action for restitution.

If a settlement has been reached only in respect of a part of the claim, the civil action for restitution may be submitted in respect of the remainder of the claim.

While the proceedings referred to in paragraph 1 of this Article are in progress, the statute of limitations referred to in Article 591 of this Code does not run.

A civil action for restitution is brought against the Republic of Serbia.

Rights of the Heirs of the Injured Party

Article 590

The heirs inherit only the injured party's right to the compensation of property damage, and if the injured party has already filed a claim, the heirs may resume the proceedings only within the limits of the already filed claim for the compensation of property damage.

The injured party's heirs may after his death continue the restitution proceedings or institute proceedings if the injured party died before the expiry of the statute of limitations and did not waive his claim, in accordance with rules on restitution prescribed by the Law on Contracts and Torts.

Expiry of the Statute of Limitations of the Right to Restitution

Article 591

The statute of limitations for the right to restitution expires three years from the date of finality of the first instance judgment of rejection or acquittal, or the finality of the first instance ruling terminating the proceedings or rejecting the charges, and if an appellate court decided on an appeal – from the date of receipt of the appellate court decision.

3. Proceedings for Realising the Right to Moral Satisfaction

Prerequisites for Realising the Right

Article 592

If a case to which a wrongful deprivation of liberty or wrongful conviction of a person is related was presented in the media and thereby damaged the reputation of that person, the court shall at his request publish in the media a statement on the decision declaring that the deprivation of liberty, or conviction was wrongful.

If the case was not presented in the media, such a statement shall at the request of that person be delivered to a state and other authority, enterprise and other legal or natural person who employs the person who was wrongfully deprived of liberty or wrongfully convicted.

Following the death of the convicted person, his spouse, person with whom he lived in a common-law marriage or other permanent personal association, children, parents or siblings are entitled to submit the request referred to in paragraphs 1 and 2 of this Article.

The request referred to in paragraphs 1 and 2 of this Article may also be submitted if no restitution claim (Article 588 paragraph 1) has been filed.

Irrespective of the requirements referred to in Article 585 of this Code, the request referred to in paragraphs 1 and 2 of this Article may also be submitted when in connection with an extraordinary legal remedy the legal qualification of the criminal offence was altered, if the convicted person's reputation was substantially damaged due to the legal qualification in the earlier conviction.

Proceedings for Realising the Right

Article 593

The request for realising the right to moral satisfaction is submitted within six months (Article 591) to the court which adjudicated the case in the first instance.

The request is decided by the panel (Article 21 paragraph 4).

The provisions of Article 584 paragraph 2 and of Article 585 paragraph 2 item 1) and paragraph 3 of this Code are applied *mutatis mutandis* in deciding on the request.

4. Proceedings for Realising the Right to the Recognition of Years of Service or Social Insurance

Prerequisites for Realising the Right

Article 594

A person whose employment or social insurance were terminated due to a wrongful deprivation of liberty or wrongful conviction shall have the same [pensionable] years of service or years of social insurance recognised as if he had been employed during the period when he was deprived of the benefits due to a wrongful deprivation of liberty or wrongful conviction.

The period of unemployment caused by the wrongful deprivation of liberty or wrongful conviction is also calculated into the years of service or social insurance, unless it resulted from a fault of that person.

Proceedings for Realising the Right

Article 595

Whenever deciding on a right affected by the years of service or social insurance, the competent authority or organisation shall take into account the years recognised under Article 594 of this Code.

If the authority or organisation referred to in paragraph 1 of this Article does not take into account the recognised years, the injured party may request that the competent court (Article 589 paragraph 1) determine that the recognition of that period has occurred by force of law.

A civil action is brought against the authority or organisation contesting the recognised years of service of social insurance and against the Republic of Serbia.

At the request of the authority or organisation where the right to years of service or of social insurance is being realised, the prescribed contributions for the period for which the years of service or social insurance have been recognised will be paid from budget funds (Article 594).

The years of insurance recognised in accordance with Article 594 of this Code are calculated in full into the pensionable years of service.

Chapter XXVI

PROCEEDINGS FOR ISSUANCE OF A WANTED NOTICE OR NOTICE ASKING INFORMATION

Applicable Provisions of the Code

Article 596

The provisions of Articles 597 through 601 of this Code shall apply in proceedings for issuing a wanted notice or notice asking information, and unless something special is envisaged under these provisions, the other provisions of this Code shall apply *mutatis mutandis*.

Determining the Defendant's Address

Article 597

If the permanent or temporary residence of the defendant is not known, where required by the provisions of this Code the public prosecutor or the court shall request from the police to look for the defendant and to notify them of his address.

Issuing a Wanted Notice

Article 598

The issuance of a wanted notice may be ordered if a defendant against whom criminal proceedings have been instituted in connection with a criminal offence which is prosecutable *ex officio* is in flight, and there exists an order for him to be brought in or a ruling ordering detention.

The issuance of the wanted notice is ordered by the court conducting the criminal proceedings.

The issuance of the wanted notice shall also be ordered in the case of the flight of the defendant from the facility where he is serving a criminal sanction consisting of a deprivation of liberty, and the order is issued by the institution's warden.

The order of the court or the institution's warden for issuing a wanted notice is delivered to the police authorities for execution.

Issuing a Notice Asking Information

Article 599

If information about certain objects or persons connected to a criminal offence is needed, or those objects or persons should be found, especially if it is necessary for the purpose of establishing the identity of an unidentified corpse, the authority conducting proceedings will order the issuance of a notice asking information.

A police authority may also publish photographs of cadavers and missing persons if there are grounds for suspicion that the death, or disappearance of those persons resulted from a criminal offence.

Posting a Wanted Notice or Notice Asking Information

Article 600

A wanted notice or notice asking information is issued by the police whose jurisdiction covers the territory of the court before which the criminal proceedings are being conducted, or the institution from which a person serving a criminal sanction consisting of a deprivation of liberty has escaped.

The media may also be used to inform the public about the wanted notice or notice for information.

If it is probable that the person for whom a wanted notice or notice for information has been issued is abroad, the ministry in charge of internal affairs may also issue an international wanted notice, with the approval of the ministry in charge of judicial affairs.

At the request of a foreign authority, the ministry in charge of internal affairs may:

- 1) issue a wanted notice for a person suspected of being in the Republic of Serbia, if a declaration is made in the request that in case he is located his extradition would be requested;
- 2) issue a notice for the collection of necessary information about certain objects or persons connected to a criminal offence, or for their finding, especially if it is necessary for the purpose of establishing the identity of an unidentified corpse, if there exists suspicion that they are located on the territory of the Republic of Serbia.

Withdrawing a Wanted Notice or Notice Asking Information

Article 601

The authority which ordered the issuance of a wanted notice or notice asking information is required to withdraw it immediately after the wanted person or object is found, or when the

statute of limitation for criminal prosecution or for the execution of criminal sanctions expires, or other reasons appear making the wanted notice or notice asking information no longer necessary.

Chapter XXVII

TRANSITIONAL AND FINAL PROVISIONS

Calculation of Time Limits which are Already Running

Article 602

If a time limit was running on the date marking the beginning of implementation of this Code, that time limit will be calculated in accordance with the provisions of this Code, except if it was longer according to the provisions of the Criminal Procedure Code (*Official Gazette of the FRY* No. 70/01 and 68/02 and *Official Gazette of the RS* No. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 122/08, 20/09 – other law, 72/09 and 76/10) .

Application of the Code in the Previously Commenced Proceedings

Article 603

An investigation which is underway on the date marking the beginning of implementation of this Code will be completed under the provisions of the Criminal Procedure Code (*Official Gazette of the FRY*, Nos. 70/01 and 68/02 and *Official Gazette of the RS*, Nos. 58/04, 85/05, 85/05 – other law 115/05, 49/07, 20/09 – other law, 72/09 and 76/10) and the rest of the proceedings will be implemented according to the provisions of this Code.

Legality of Undertaken Actions

Article 604

The legality of actions undertaken before the beginning of implementation of this Code will be assessed in accordance with the provisions of the Criminal Procedure Code (*Official Gazette of the FRY*, No. 70/01 and 68/02 and *Official Gazette of the RS*, No. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 122/08, 20/09 – other law, 72/09 and 76/10).

If in **proceedings for criminal offences for which jurisdiction of public prosecutor's offices of specialized jurisdiction has been established by a separate law which have commenced based on provisions of this Code, albeit prior to January 15 2013, the established lack of jurisdiction of special departments of the competent higher court pursuant to a decision to that effect, the legality of actions taken will be assessed** ~~the organised crime or war crimes proceedings which start under the provisions of this Code before September 1, 2012 it is determined in a ruling that the special department of the competent higher court is incompetent, the legality of the undertaken actions~~ will be assessed under the provisions of this Code.

Application of the Code on Persons who were granted the Cooperating Witness Status

Article 605

The legal provisions on the cooperating witness which applied when the status of cooperating witness was granted will continue to apply on the persons who received this status before the date when this Code took effect.

Issuing By-Laws

Article 606

The by-laws prescribed by this Code shall be issued within six months of the effective date of this Code.

Revocation of the Previous Criminal Procedure Code and Provisions of the Other Law

Article 607

The Criminal Procedure Code (*Official Gazette of the FRY*, Nos. 70/01 and 68/02 and *Official Gazette of the RS*, Nos. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 20/09 – other law, 72/09 and 76/10) is revoked by the entry into force of this Code

The provision of Article 15i of the Law on the Organization and Competence of State Authorities in Combating Organized Crime, Corruption and Other Specially Serious Criminal Offences (*Official Gazette of the RS* No. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04 – other law, 45/05, 61/05 and 72/09) is revoked on January 15, 2012.

Entry into Force and Beginning of Implementation of the Code

Article 608

This Code enters into force on the eighth day from the date of its publication in the *Official Gazette of the Republic of Serbia* and will be implemented as of January 15, 2013, except in proceedings for criminal offences belonging to organised crime or war crimes held before the special department of the competent court, in which case its implementation will begin as of January 15, 2012.

Proceedings initiated on requests for protection of legality filed by the defendant through his defence counsel by the time when this Code enters into force will be completed based on provisions of the Criminal Procedure Code (“Official Gazette of the Republic of Serbia”, No 72/2011, 101/2011).