

# **MISDEMEANOR LAW**

*(Official Gazette of the RoS, Nos. 101/2005, 116/2008, and 111/2009)*

## **Part One SUBSTANTIVE PROVISIONS**

### **Chapter I BASIC PROVISIONS**

#### **Subject matter of the Law**

##### **Article 1**

This Law shall regulate: the notion of a misdemeanor, requirements for misdemeanor liability, requirements for prescribing and enforcement of misdemeanor sanctions, the system of sanctions, misdemeanor proceedings, and the procedure of enforcement of a decision.

#### **Notion of a misdemeanor**

##### **Article 2**

A misdemeanor is an unlawful culpably committed act that is stipulated as a misdemeanor by a regulation of the competent authority.

There shall be no misdemeanor if unlawfulness or guilt is excluded although there are all the essential elements of a misdemeanor.

#### **Legality in prescribing a misdemeanor and misdemeanor sanctions**

##### **Article 3**

No one may be punished for a misdemeanor or other misdemeanor sanctions may be applied against him/her, if such an act, before it was committed, was not stipulated as a misdemeanor by a law, or by a regulation based on a law, and for which it was not prescribed, by a law or other regulation based on a law, by what type and degree of sanction the misdemeanor offender may be punished.

#### **Prescribing misdemeanors**

##### **Article 4**

Misdemeanors may be prescribed by a law or a decree, and/or by an ordinance of the Assembly of the Autonomous Province, municipal assembly, city/town assembly, and by the Assembly of the City of Belgrade.

The authorities authorized to adopt regulations on misdemeanors may prescribe only penalties and precautionary measures laid down by this Law and within the limits stipulated herein.

The authorities authorized to adopt regulations referred to in paragraph 1 of this Article may prescribe police penalties and precautionary measures only for violation of regulations they adopt within their respective competences laid down by the Constitution and the law, under the conditions stipulated herein.

The authority authorized to prescribe police penalties and precautionary measures may not assign this right to other authorities.

## **Types and purpose of misdemeanor sanctions**

### **Article 5**

Misdemeanor sanctions shall be: penalties, admonition, precautionary measures, and re-education measures.

The purpose of prescribing, imposing, and enforcement of misdemeanor sanctions is that the citizens respect the legal system and that nobody commits a misdemeanor in the future.

## **Temporal applicability of regulations**

### **Article 6**

The law or regulation that was in force at the time of committing a misdemeanor shall be applied to the misdemeanor offender.

If, after a committed misdemeanor, the regulation has been amended once or several times, the regulation that is the most lenient towards the offender shall be applied.

## **Spatial applicability of regulations**

### **Article 7**

Provisions on misdemeanors shall apply in the territory of the Republic of Serbia when prescribed by a law or a decree, or in the territories of the units of territorial autonomy and units of local self-government, when prescribed by an ordinance of the Assembly of the Autonomous Province, municipal assembly, city/town assembly or by the Assembly of the City of Belgrade.

An offender shall be punished for a misdemeanor laid down by the regulations of the Republic of Serbia if the misdemeanor has been committed in the territory of the

Republic of Serbia or if it has been committed aboard a domestic ship or aircraft while being outside the territory of the Republic of Serbia.

A misdemeanor offender shall be punished for a misdemeanor committed abroad only if that is laid down by a law or a decree.

In the case referred to in paragraph 2 of this Article, under the condition of reciprocity, prosecution for a misdemeanor may be transferred to the foreign state in which the misdemeanor offender, who is a foreign citizen, has his/her place of abode.

### **Non-punishment for a misdemeanor**

#### **Article 8**

No one may be punished in the misdemeanor proceedings twice or more times for the same misdemeanor act.

The person, who has been, in the criminal proceedings or in the proceedings for an economic offense, validly pronounced guilty for the act, which also has the elements of a misdemeanor, shall not be punished for the misdemeanor.

### **Diplomatic immunity**

#### **Article 9**

Misdemeanor proceedings shall not be conducted and no punishment shall be pronounced against persons who enjoy diplomatic immunity.

## **Chapter II COMMITTING A MISDEMEANOR**

### **Act of committing a misdemeanor**

#### **Article 10**

A misdemeanor may be committed by action or non-action.

A misdemeanor has been committed by non-action when the regulation stipulates, as a misdemeanor, the failure to undertake a certain action.

### **Time of committing a misdemeanor**

#### **Article 11**

A misdemeanor was committed at the time when the offender acted or was liable to act, regardless of when the consequence took place.

### **Place of committing a misdemeanor**

## **Article 12**

A misdemeanor has been committed both at the place where the offender acted or was liable to act, and at the place where the consequence has taken place.

## **Legitimate self-defense**

### **Article 13**

There shall be no misdemeanor if an act prescribed as a misdemeanor has been committed in legitimate self-defense.

Legitimate self-defense shall be the defense that is indispensable for the offender to repel a concurrent unlawful attack off his/her good or off the goods of another.

The offender, who has exceeded the limits of a legitimate self-defense, may be more leniently punished. If such limits have been exceeded under particularly extenuating circumstances, the offender shall not be liable for the misdemeanor.

## **Extreme necessity**

### **Article 14**

There shall be no misdemeanor if an act prescribed as a misdemeanor has been committed in the state of extreme necessity.

The extreme necessity shall exist if a misdemeanor has been committed for the offender to repel a concurrent unprovoked threat off his/her good or the good of another, which otherwise could not have been eliminated, and if thereby done harm is not greater than the harm that was threatening.

The offender, who has exceeded the limits of extreme necessity, may be more leniently punished. If such limits have been exceeded under particularly extenuating circumstances, he/she shall not be liable for the misdemeanor.

## **Force and threat**

### **Article 15**

There shall be no misdemeanor if an act prescribed as a misdemeanor has been committed under the influence by force or threat.

## **Attempt**

### **Article 16**

An offender shall be punished for an attempted misdemeanor only if that is specifically prescribed.

## **Chapter III**

# **MISDEMEANOR LIABILITY**

### **Subjects and conditions for liability**

#### **Article 17**

A natural person, a legal entity, the responsible person in a legal entity, the responsible person in a government body, authority of territorial autonomy and of a unit of local self-government and an entrepreneur may be liable for a misdemeanor only when it is laid down by the regulation on the misdemeanor.

A natural person shall be liable for a misdemeanor if, at the time of committing the misdemeanor, he/she was mentally competent and has committed the misdemeanor with wrongful intent or negligently.

Under the conditions referred to in paragraph 2 of this Article, the responsible person in a legal entity, the responsible person in a government body and an entrepreneur shall be liable for a misdemeanor.

A legal entity shall be liable for a misdemeanor committed by culpably undertaken action or by failure to exercise due supervision by the management body or by the responsible person or by a culpable act of another person, who was, at the time of committing the misdemeanor, authorized to act in the name of the legal entity.

A legal entity that is bankrupt shall be liable for a misdemeanor committed prior to declaration of or in the course of the bankruptcy proceedings, however, no punishment may be imposed on it, but only the precautionary measure of seizure of items and seizure of the material gain.

The Republic of Serbia, government bodies, authorities of territorial autonomy, a city/town and units of local self-government may not be liable for a misdemeanor.

### **Mental competence**

#### **Article 18**

The misdemeanor offender who, at the time of committing a misdemeanor, could not understand the significance of his/her action or non-action, or could not control his/her actions, due to a permanent or a temporary mental illness or other serious mental disorder or is of arrested mental development, shall not be mentally competent.

The circumstance that a misdemeanor has been committed under the influence of alcohol or other stupefying substances shall not exclude liability of the offender.

### **Guilt**

#### **Article 19**

The offender who, at the time when he/she committed a misdemeanor, acted with wrongful intent or negligently shall be guilty.

For misdemeanor guilt, negligence of an offender shall be sufficient if the regulation on the misdemeanor does not stipulate that he/she shall be punished only if the misdemeanor has been committed with wrongful intent.

A misdemeanor has been committed negligently when the offender was aware that, due to his/her action or non-action, a prohibited consequence may take place, but he/she took it lightly that he/she can prevent it or that it will not take place, or when he/she was not aware of the possibility of occurrence of a prohibited consequence although, under the circumstances and in view of his/her personal attributes, he/she was liable to and could have been aware of such a possibility.

A misdemeanor has been committed with wrongful intent when the offender was aware of his/her act and wanted its commitment or when he/she was aware that, due to his/her action or non-action, a prohibited consequence may occur, and agreed to its occurrence.

### **Mistake of fact**

#### **Article 20**

The offender, who, at the time of a committed misdemeanor, made a mistake of fact, shall not be guilty of the misdemeanor.

A mistake of fact shall exist when the offender, at the time of committing a misdemeanor, wrongfully deemed that there were circumstances under which, had they really existed, his/her act would have been permitted.

### **Mistake of law**

#### **Article 21**

Ignorance of the regulation which stipulates a misdemeanor shall not exclude liability, but the misdemeanor offender who, for justified reasons, did not know that such an act is prohibited, may be punished more leniently.

### **Co-offense**

#### **Article 22**

If several persons by participating in the act of committing a misdemeanor jointly commit a misdemeanor or by realizing a joint decision by another act have significantly contributed to the committing of a misdemeanor, each of them shall be punished with the punishment prescribed for such a misdemeanor.

### **Incitement**

#### **Article 23**

Whoever incites another with wrongful intent to commit a misdemeanor shall be punished as if he/she has committed it himself/herself.

### **Aiding**

#### **Article 24**

Whoever, with wrongful intent, aids another to commit a misdemeanor shall be punished as if he/she has committed it himself/herself.

### **Limits of liability of accomplices**

#### **Article 25**

An instigator and accomplice shall be liable within the limits of their respective wrongful intents.

In view of the nature of a misdemeanor, the method and circumstances under which the instigation or aiding has taken place and the degree of guilt of instigators and accomplices, an instigator and an accomplice may be more leniently punished or the proceedings against them may be stopped.

### **Liability of the responsible person in a legal entity**

#### **Article 26**

A responsible person, within the meaning of this Law, shall be the person who has been, in a legal entity, entrusted with certain tasks that are related to the management, business operation or the process of production/work, as well as the person who, in a government body, authority of territorial autonomy and in a unit of local self-government holds a certain office.

The law may prescribe that the responsible person in a government body, authority of territorial autonomy or a body of a unit of local self-government shall be liable for a misdemeanor.

The responsible person, who has acted on the basis of the orders of another responsible person or of the management body and if he/she has undertaken all the actions based on the law, other regulation or bylaws he/she was liable to undertake in order to prevent commitment of a misdemeanor, shall not be liable for the misdemeanor.

Liability of a responsible person shall not terminate because his/her employment in a legal entity, a government body or in a body of a unit of local self-government has terminated or because of occurrence of impossibility to punish the legal entity due to its dissolution.

### **A foreign natural person, legal entity, and a responsible person**

#### **Article 27**

A foreign natural person, a foreign legal entity, and a responsible person shall be liable for misdemeanors equally as a domestic natural person, legal entity, and a responsible person.

A foreign legal entity and a responsible person shall be punished for a misdemeanor committed in the territory of the Republic of Serbia if the foreign legal entity has a business unit or a representative office in the Republic of Serbia.

## **Chapter IV PENALTIES**

### **Types and purpose of penalties**

#### **Article 28**

A prison sentence, fine, community service or penalty points including motoring disqualification may be prescribed for a misdemeanor.

Within the framework of the general purpose of misdemeanor sanctions (Article 5, paragraph 2 hereof), the purpose of punishment is to express public reproof to an offender because of the committed misdemeanor and to deter him/her and all other persons from future commitment of misdemeanors.

### **Method of prescribing penalties**

#### **Article 29**

For one misdemeanor, both a prison sentence and a fine may be prescribed and both may be imposed together.

Only a fine may be prescribed for a misdemeanor of a legal entity.

### **Competence for prescribing punishments/fines**

#### **Article 30**

A prison sentence and penalty points including motoring disqualification may be prescribed only by law.

A fine and community service may be prescribed by a law or a decree, or by an ordinance of the Assembly of the Autonomous Province, municipal assembly, city/town assembly or by the Assembly of the City of Belgrade.

### **Imposing punishments**

#### **Article 31**

A prison sentence may be imposed only as the main penalty.



A fine, community service and penalty points including motoring disqualification may be imposed both as the main and as the secondary penalty.

If a fine and a prison sentence are prescribed alternatively, a prison sentence shall be imposed only for the misdemeanor, which has caused grave consequences or for the misdemeanors that point to a higher degree of guilt of the offender.

## **Prison sentence**

### **Article 32**

A prison sentence may not be prescribed for any duration shorter than one or longer than sixty days.

A prison sentence may be imposed only by a misdemeanor court (hereinafter referred to as: the court).

A prison sentence may not be imposed on a pregnant woman, after she reaches three months of pregnancy, or on a mother until her child reaches one year of age and, if her child was stillborn or died after delivery, until six months from the date of delivery have elapsed.

## **Community service**

### **Article 33**

Community service shall be unpaid work benefiting the society, which does not insult human dignity and does not yield profit.

Community service may not last less than 20 hours or longer than 240 hours, whereby it may not be performed longer than for two hours a day.

When imposing community service, the court shall bear in mind the type of the committed misdemeanor, age, physical and working ability, mental properties, education, preferences, and other special circumstances related to the personality of the offender.

## **Penalty points**

### **Article 34**

For misdemeanors against traffic safety on roads, the law may prescribe penalty points ranging from 1 to 18.

The punishment referred to in paragraph 1 of this Article shall be imposed under the conditions laid down by this Law unless otherwise prescribed by another law.

In addition to the punishment referred to in paragraph 1, an offender may be imposed additional obligations for the purpose of education of the driver or monitoring his/her

behavior in traffic. Types of additional obligations and conditions for their imposing shall be prescribed by a special law.

Penalty points may be imposed on a driver, who possesses a valid driving license issued in the Republic of Serbia or on a driver, who has been prohibited from driving an engine-driven vehicle by a final decision.

## **Fine**

### **Article 35**

A fine may be prescribed by a law or a decree within the ranges:

1. From RSD 5,000.00 to 150,000.00 for a natural person or a responsible person;
2. From RSD 100,000.00 to 2,000,000.00 for a legal entity;
3. From RSD 10,000.00 to 500,000.00 for an entrepreneur.

By ordinances of the Assembly of the Autonomous Province, municipal assembly, city/town assembly or of the Assembly of the City of Belgrade, fines may be prescribed up to a half of the amount prescribed in paragraph 1 of this Article.

By means of exemption to the provisions of paragraph 1 of this Article, a fine that is levied at the place of committing a misdemeanor may be prescribed, for a natural person and a responsible person, in a fixed amount from RSD 500.00 to 5,000.00 and, for a legal entity and an entrepreneur, in a fixed amount of RSD 2,000.00 to 20,000.00.

By means of exemption to the provisions of paragraphs 1-3 of this Article, a law may prescribe special fine ranges for the following misdemeanors:

- Proportionally to the amount of the inflicted damage or unfulfilled obligation, the value of goods or other item that is the subject matter of a misdemeanor, but no more than a twentyfold amount of such values - for misdemeanors in the areas of public revenues, mass media, customs, foreign trade, and foreign exchange operations, environment, trade in goods and services and trade in securities;

- To the amount of maximum up to 10% determined with regard to the revenues realized by a legal entity, the responsible person in the legal entity or an entrepreneur in the accounting year that preceded the year when the misdemeanor was committed - for misdemeanors in the areas of prevention, limitation or disruption of competition.

## **Time for payment of a fine**

### **Article 36**

A judgment shall stipulate the time for payment of a fine, which may not exceed fifteen days from the date of the legally binding judgment.

In justified cases, the court may, by a resolution, permit payment of a fine by installments, whereby the same court shall stipulate the method and the time for payment, which may not exceed three months.

No appeal shall be permitted against the resolution referred to in paragraph 2 of this Article.

## **Substitution of an unpaid fine**

### **Article 37**

If a convicted natural person, within a certain time period, fails to timely pay a fine in full or in part, the fine or the unpaid portion of the fine shall be substituted by community service or by a prison sentence.

In the case referred to in paragraph 1, the unpaid fine shall be substituted by community service or a prison sentence by converting each RSD 1,000.00 into two days of community service or one day of imprisonment shall be stipulated, whereby community service may not exceed 120 days, and a prison sentence may not be shorter than one or exceed sixty days.

The portion of an unpaid fine, which could not have been substituted by a prison sentence or by community service, shall be collected through enforcement action.

If, after the decision of the court referred to in paragraph 3 of this Article, a convicted natural person pays a fine, a prison sentence or community service shall not be carried out. If carrying out of a punishment has been started, and the convicted person pays off the balance of the fine, serving a prison sentence and community service shall be discontinued.

If a convicted natural person pays a portion of the fine, the balance of the fine shall be proportionally substituted by community service or by a prison sentence.

If, in addition to a fine, the convicted was also imposed a prison sentence, imprisonment substituting the fine and the imposed prison sentence may not last longer than ninety days.

A fine imposed on an entrepreneur shall be substituted by a prison sentence, according to the rules further to which a prison sentence is substituted by a fine imposed on a natural person.

Substitution of a fine by a prison sentence shall be on the basis of the resolution of the court against which an appeal shall be permitted within 3 days.

## **Forced collection of a fine**

### **Article 38**

A fine imposed on a professional soldier may not be substituted by a prison sentence or by community service.

If a convicted legal entity and the responsible person in the legal entity fail to pay the imposed fine within a certain time period, it shall be collected through enforcement action.

## **Weighing a punishment**

### **Article 39**

A punishment for a misdemeanor shall be weighed within the limits prescribed for such a misdemeanor, taking thereby into account all the circumstances that have impact on a punishment to be more severe or lighter, and in particular: the gravity and consequences of a misdemeanor, circumstances under which a misdemeanor has been committed, degree of guilt of the offender, personal circumstances of the offender and demeanor of the offender after the committed misdemeanor.

A formerly imposed punishment or a precautionary measure may not be taken into account as an aggravating circumstance if more than two years have elapsed from the date of the legally binding judgment to the date of handing down a new judgment.

When weighing the amount of a fine, income scale of the offender shall also be taken into account.

## **Mitigation of punishment**

### **Article 40**

If, when weighing a punishment, it is established that grave consequences have not been caused by the misdemeanor, and there are extenuating circumstances that indicate that, even by a more lenient punishment, the purpose of punishment may be achieved, the prescribed punishment may be exceptionally mitigated so that a punishment below the minimum measure of punishment that is prescribed for such a misdemeanor may be imposed, but not below the minimum legal measure of such types of punishment.

## **Compensation for damage as reason of discontinuation of the proceedings**

### **Article 41**

A court may discontinue the proceedings against an offender of a misdemeanor for which a fine is prescribed if he/she has voluntarily, after committing the misdemeanor and before institution of the misdemeanor proceedings, eliminated the unlawful situation or has compensated for the damage inflicted by the misdemeanor.

## **Concurrence of misdemeanors**

### **Article 42**

If an offender by one act or a number of acts has committed a number of misdemeanors for which he/she is simultaneously tried, punishments for each of such misdemeanors shall be previously determined, and then a single punishment shall be imposed for all such misdemeanors.

A single punishment shall be imposed according to the following rules:

1. If, for all the concurrent misdemeanors, a prison sentence has been determined, a single prison sentence shall be imposed, which may not exceed ninety days;
2. If a fine has been determined for all the concurrent misdemeanors, a single fine shall be imposed, which shall represent the sum of the determined fines, whereby a single fine may not exceed the double amount of the maximum fine laid down by this Law;
3. If, for all the concurrent misdemeanors, a punishment of community service has been determined, a single punishment of community service shall be imposed, which may not last longer than 240 hours;
4. If a prison sentence has been determined for all the concurrent misdemeanors, and a fine for other misdemeanors, one prison sentence and one fine under subparagraphs 1 and 2 of this paragraph shall be imposed;
5. If penalty points are determined for concurrent misdemeanors, a single punishment shall be imposed that corresponds to the sum of all individual penalty points, which may not exceed 18 penalty points.

### **Reckoning detention and custody in a punishment**

#### **Article 43**

The time during which an offender of a misdemeanor was detained prior to handing down a judgment shall be reckoned in the imposed punishment.

If custody has been ordered against a person suspected of a criminal act, and the criminal proceedings were finally terminated by discontinuing the criminal proceedings or by judgment of acquittal or refusal, except because of real absence of jurisdiction of the court and, for the same act in the misdemeanor proceedings, guilt of the offender is determined, the time spent in custody shall be reckoned in the imposed punishment for the misdemeanor.

Custody or detention that has lasted longer than twelve and shorter than twenty four hours shall be reckoned as one day of imprisonment, or a RSD 1,000.00 fine.

## **Chapter V ADMONITION**

#### **Article 44**

Instead of a fine for a misdemeanor, an admonition may be imposed if there are circumstances that to a considerable degree mitigate the liability of an offender, so that it can be expected that he/she shall avoid committing misdemeanors in future even without imposing a punishment.

Admonition may also be imposed if a misdemeanor is reflected in non-fulfillment of the prescribed obligation or damage has been inflicted by a misdemeanor, and the offender, after institution of the proceedings, and prior to handing down the judgment, has fulfilled the prescribed obligation, or has eliminated or indemnified the inflicted damage.

## **Chapter VI PRECAUTINARY MEASURES**

### **Purpose and prescribing**

#### **Article 45**

Within the framework of the general purpose of misdemeanor sanctions (Article 5 paragraph 2), the purpose of applying a precautionary measure shall be to eliminate conditions that enable or encourage an offender to commit a new misdemeanor.

A precautionary measure may be prescribed by a law and by a decree.

### **Types of precautionary measures**

#### **Article 46**

The following precautionary measures may be prescribed for misdemeanors:

1. Seizure of items,
2. Prohibition to engage in certain activities,
3. Prohibition to a legal entity to engage in certain activities,
4. Prohibition to a responsible person to discharge certain duties,
5. Motoring disqualification,
6. Mandatory treatment of alcoholics and drug addicts,
7. Prohibition of access to the injured person, structures or place of committing a misdemeanor,
- 7a Ban to attend certain sporting events,
8. Public pronouncement of a judgment,

## 9. Removal of foreigners from the territory of the Republic of Serbia.

Precautionary measures of seizure of items, mandatory treatment of alcoholics and drug addicts, prohibition of access to the injured party, structures or to the place of commitment of a misdemeanor and removal of foreigners from the territory of the Republic of Serbia may be imposed under the conditions prescribed hereunder even when they are not laid down by the regulation stipulating the misdemeanor.

### **Imposing precautionary measures**

#### **Article 47**

When there are conditions to impose precautionary measures laid down hereunder or by other law, a misdemeanor offender may be imposed one or more precautionary measures.

Precautionary measures shall be imposed in addition to the imposed punishment or admonition.

Precautionary measures may also be imposed when a misdemeanor sanction has not been imposed if such possibility is prescribed.

A precautionary measure shall be imposed by a court.

### **Seizure of items**

#### **Article 48**

The items that have been used or intended for commitment of a misdemeanor or that have come to be by committing a misdemeanor may be temporarily or permanently seized if they are the property of the misdemeanor offender, or if a legal entity the offender of a misdemeanor disposes of them.

The items referred to in paragraph 1 of this Article may also be seized when they are not the property of a misdemeanor offender or a legal entity the offender of a misdemeanor does not dispose of them, if this is called for by the interest of general security, preservation of lives and health of people, safety of trade in goods or moral reasons, as well as in other cases laid down by this Law.

The court that has handed down the judgment shall determine, in compliance with special regulations, whether the seized items shall be destroyed, sold or handed over to the interested authority or organization.

If an offender has arbitrarily alienated or destroyed the items or otherwise thwarted their seizure, the judgment shall determine that he/she pays the pecuniary amount that corresponds to the value of the items.

The regulation stipulating a misdemeanor may lay down mandatory imposing of the precautionary measure of seizure of items.

The items referred to in paragraphs 1 and 2 of this Article shall also be seized when the misdemeanor proceedings is not terminated by a judgment pronouncing the defendant guilty if that is called for by the interests of general security or moral reasons or if the proceedings has been suspended for the reason that the misdemeanor offender is not accessible by the court, as well as in other cases stipulated by a special law. A separate resolution shall be handed down thereon against which the defendant shall have the right to appeal.

By seizure of items, the right of third parties to compensation for damage by the offender shall not be interfered with.

### **Prohibition to engage in certain activities**

#### **Article 49**

Prohibition to engage in certain activities shall consist of a temporary prohibition to an entrepreneur or other misdemeanor offender to engage in a certain economic or other activity for which a license is issued by the competent authority or which is registered in the relevant registry.

If the regulation stipulating a misdemeanor does not specifically lay down the conditions for imposing the precautionary measure referred to in paragraph 1 of this Article, the measure may be imposed if the offender of a misdemeanor abuses the activity to commit the misdemeanor or if it may be justifiably expected that further engaging in such activity would be injurious to the lives or health of people or other interests protected by law.

Prohibition to engage in a certain activity may be imposed for any duration from six month to three years, reckoning from the date of the legally binding judgment.

The time spent serving a prison sentence shall not be reckoned in the duration of the imposed measure.

### **Prohibition to a legal entity to engage in certain activities**

#### **Article 50**

Prohibition to a legal entity to engage in certain activities shall consist of the prohibition to produce certain products or to engage in certain business operations in the areas of trade in goods, finances and services, or of prohibition to engage in other specific operations.

If the regulation stipulating a misdemeanor does not specifically lay down the conditions for imposing a precautionary measure, the measure may be imposed if further pursuit of certain activities would be injurious to the lives or health of people, detrimental to economic or financial operations of other legal entities or to the economy as a whole.



Prohibition to a legal entity to engage in certain activity may be imposed for any duration from six months up to three years, reckoning from the date of the legally binding judgment.

## **Prohibition to responsible person to discharge certain duties**

### **Article 51**

Prohibition to a responsible person to discharge certain duties shall consist of the prohibition to the offender of a misdemeanor to discharge the duties he/she discharged at the time of committing the misdemeanor or a managerial duty in economic or financial operations, or certain type of duties, or all or some of the duties related to disposal, use, management or operation of entrusted assets.

Unless the regulation stipulating a misdemeanor does not stipulate otherwise, prohibition to a responsible person to discharge certain duties shall be imposed when the responsible person abuses office for the purpose of committing a misdemeanor.

Prohibition to a responsible person to discharge certain duties may be imposed for any duration from three months to one year, reckoning from the date of the legally binding judgment.

The time spent serving a prison sentence shall not be reckoned in the duration of the imposed measure.

## **Motoring disqualification**

### **Article 52**

Motoring disqualification shall consist of prohibition to an offender to drive a motor vehicle.

If the regulation stipulating the misdemeanor does not specifically lay down the conditions for imposing the precautionary measure, the measure may be imposed on an offender of a misdemeanor who has committed a misdemeanor against traffic safety or when there is a threat that he/she shall commit a misdemeanor again, or whose former violation of such regulations shows that it is dangerous for him/her to drive a motor vehicle.

In deciding whether such a measure shall be imposed, it shall also be taken into account whether the offender is the driver of motor vehicle by profession.

The precautionary measure referred to in paragraph 1 of this Article may be imposed for any duration from thirty days up to one year.

The time spent serving a prison sentence shall not be reckoned in the duration of the measure.

## **Mandatory treatment of alcoholics and drug addicts**

### **Article 53**

Mandatory treatment of alcoholics and drug addicts may be imposed on a person who has committed a misdemeanor due to addiction to continuous use alcohol or stupefying drugs and concerning whom there is a threat that he/she shall, due to this addiction, continue to commit misdemeanors.

Prior to imposing the measure referred to in paragraph 1 of this Article, the court shall obtain the opinion of an expert witness or of the competent healthcare organization.

When imposing the measure referred to in paragraph 1 of this Article, the misdemeanor offender shall be ordered mandatory treatment in the relevant healthcare or other specialized institution. If the misdemeanor offender refuses treatment without justified reasons, the measure shall be carried out through enforcement action.

The precautionary measure referred to in paragraph 1 of this Article may last maximum up to one year, and enforcement of the imposed measure shall be discontinued even before the expiry of the time determined in the judgment if the healthcare organization establishes that the treatment has been completed.

### **Prohibition of access to the injured party, structures or to the place of committing a misdemeanor**

### **Article 54**

The prohibition of access to the injured party, structures or to the place of committing a misdemeanor shall be imposed for the purpose of preventing an offender to repeat a misdemeanor or to continue to threaten the injured party.

The measure referred to in paragraph 1 of this Article shall be imposed further to a written petition of the petitioner of the motion to institute the misdemeanor proceedings or to an oral request of the injured party, made at the hearing in the misdemeanor proceedings.

A decision of the court imposing prohibition of access shall contain: the time period in which it is enforced, data on the persons to whom the offender must not access, indication of structures he/she must not access and at what time, places or locations within which access is prohibited to the offender.

The imposed measure of prohibition of access to the injured party shall also include the measure of prohibition of access to a joint apartment or household within the period during which the prohibition is in effect.

The precautionary measure of prohibition of access may be imposed for any duration of up to one year, reckoning from the date of the legally binding judgment.

The injured party, the interior affairs authority in charge of enforcement of the measure, and the Center for Social Work shall be notified of the decision of the court imposing

prohibition of access if the measure is related to the prohibition of access to children or spouse by the offender.

### **Violation of the prohibition of access to the injured party, structures or to the place of committing a misdemeanor**

#### **Article 55**

The convicted, who has been imposed the measure of prohibition of access by the legally binding judgment and who approaches the injured party, structures or the place of committing a misdemeanor in the course of duration of the measure or makes a contact with the injured party in a prohibited way or at a prohibited time, shall be imposed a fine of up to RSD 30,000.00 or a prison sentence of up to 30 days.

### **Ban from attending certain sporting events**

#### **Article 55a**

The ban from attending certain sporting events shall consist of the obligation of a misdemeanor offender to, immediately prior to the commencement of certain sporting events, personally report to the official person in the territorial police department, or police station, in the territory in which the misdemeanor offender happens to be and to stay in their premises during the sporting event.

The precautionary measure referred to in paragraph 1 of this Article may be imposed for any duration from one to three years.

The time spent serving a prison sentence shall not be reckoned in the duration of the measure.

The convicted who has been imposed the measure of ban from attending certain sporting events by the legally binding judgment, and who fails to fulfill the obligation referred to in paragraph 1 of this Article, shall be punished by imprisonment from thirty to sixty days.

The regulation stipulating the misdemeanor may lay down mandatory imposing of the precautionary measure of the ban from attending certain sporting events.

### **Public announcement of a judgment**

#### **Article 56**

The court shall impose the precautionary measure of announcement of a judgment if it deems that it would be useful for the public to be familiarized with the judgment, and particularly if announcement of the judgment would contribute to the elimination of the threat to the lives or health of people or to protect safety of trade in goods and services or economy.

Subject to the character of a misdemeanor, the court shall decide whether the judgment shall be announced in press, on radio or television or in a number of the specified mass media, as well as whether the reasoning of the judgment shall be announced in full or as an excerpt, taking care thereby that the method of announcement enables dissemination of information to all those in whose interest the judgment should be announced.

A judgment may be announced within maximum 30 days from the date it becomes legally binding.

The regulation stipulating a misdemeanor may lay down mandatory imposing of the precautionary measure of public announcement of a judgment.

The costs of public announcement of a judgment shall be borne by the convicted.

## **Removal of foreigners from the territory of the Republic of Serbia**

### **Article 57**

Removal of foreigners from the territory of the Republic of Serbia may be imposed on a foreigner who has committed a misdemeanor due to which his/her further stay in the country is undesirable.

The precautionary measure referred to in paragraph 1 of this Article may be imposed for any duration from six months to three years.

Duration of the imposed measure shall run from the date of the legally binding judgment, whereby the time spent serving a prison sentence shall not be reckoned in the duration of the measure.

A special law may prescribe conditions under which enforcement of the precautionary measure referred to in paragraph 1 of this Article may be deferred for a certain period of time.

## **Concurrence of precautionary measures**

### **Article 58**

If, by one judgment for a number of misdemeanors, a number of precautionary measures of the same type have been determined, for which it is prescribed that they shall be imposed for a certain duration, a single precautionary measure shall be imposed which is equal to the sum of the durations of individually determined precautionary measures, whereby it may not exceed the highest legal limit of duration of that type of precautionary measure.

## **Chapter VII**

# **SEIZURE OF MATERIAL GAIN PROCURED BY A MISDEMEANOR**

## **Ground for seizure of material gain**

### **Article 59**

No one may retain the material gain that has been procured by a misdemeanor.

The gain referred to in paragraph 1 of this Article shall be seized by the judgment determining the misdemeanor and the liability for it, under the conditions laid down by this Law.

## **Method of seizure of material gain**

### **Article 60**

Money, securities, items of value, and any other material gain that has been procured by committing a misdemeanor shall be seized from the misdemeanor offender. If such seizure is not possible, the offender shall be obliged to pay the amount of money that corresponds to the procured material gain.

If the defendant fails to pay the amount of money referred to in paragraph 1 of this Article within a certain time period, it shall be collected through enforcement action.

The material gain procured by committing a misdemeanor may be seized from the persons to who it has been transferred without remuneration or against remuneration that does not correspond to the actual value.

## **Seizure of material gain from another**

### **Article 61**

If a material gain has been procured by a misdemeanor for another natural person or for a legal entity, such gain shall be seized.

## **Protection of the injured party**

### **Article 62**

If the injured party in the misdemeanor proceedings has been awarded the property-rights claim, seizure of the material gain shall be imposed only if such gain exceeds the property-rights claim awarded to the injured party.

# **Chapter VIII PROVISIONS ON MINORS**

## **Misdemeanor liability of minors**

### **Article 63**

Misdemeanor proceedings may not be conducted against a minor who, at the time when he/she committed a misdemeanor, was not fourteen yet (a child).

To the minors who have committed a misdemeanor, who have reached from fourteen to eighteen years of age, the provisions of this Chapter shall apply, and other provisions hereof only if they are not in derogation of these provisions.

### **Liability of parents, adopter or guardian of a child and a minor**

#### **Article 64**

When a child has committed a misdemeanor due to failure to exercise due supervision by the parents, adopter, or guardian, and such persons were in a position to exercise such supervision, the parents, adopter, or guardian of the child shall be punished for the misdemeanor as if they have committed it themselves.

The law may prescribe that the parents, adopter, or guardian of a minor from fourteen to eighteen years of age, who has committed a misdemeanor, shall also be punished for the misdemeanor if the committed misdemeanor is the consequence of failure to exercise due supervision over the minor, and they were in a position to exercise such supervision.

### **Misdemeanor sanctions against minors**

#### **Article 65**

Only re-education measures may be imposed on a minor who, at the time of committing a misdemeanor has reached fourteen, and has not reached sixteen years of age (a young minor).

A re-education measure or punishment may be imposed on a minor who, at the time of committing a misdemeanor, has reached sixteen, and has not reached eighteen years of age (an older minor).

A precautionary measure may be imposed on a minor in addition to a re-education measure, if that is necessary due to the nature of the misdemeanor.

On a minor, only the court may impose a re-education measure, a fine, a sentence of imprisonment in a juvenile detention center and a precautionary measure.

### **Types of re-education measures**

#### **Article 66**

Minors may be imposed the following re-education measures:

1. Measures of admonition and referral: a reprimand and a special obligation, and
2. Measures of increased supervision.

Measures of admonition and referral shall be imposed when, by such measures, it is necessary to exert influence on the personality of the minor and his/her behavior and when they are sufficient to achieve the purpose of such measures.

Measures of increased supervision shall be imposed when, for education and development of a minor, longer-term re-education measures should be undertaken with adequate professional supervision and assistance.

## **Reprimand**

### **Article 67**

A reprimand shall be imposed on a minor with respect to whom it is not necessary to undertake longer-term re-education measures, and particularly when, from his/her attitude towards the committed misdemeanor and his/her readiness not to commit misdemeanors in future, it can be concluded that the purpose of this measure shall be achieved by the imposed re-education measure.

When imposing a reprimand, it shall be pointed to the minor to the social unacceptability of his/her act and, if he/she commits a misdemeanor again, to the possibility of imposing other re-education measure.

## **Special obligations**

### **Article 68**

If the court assesses that, by adequate requests and prohibitions, it is necessary to exert influence on a minor and his/her behavior, may determine one or more special obligations of the minor, specifically:

1. To apologize to the injured party;
2. Within his/her abilities, to repair or indemnify the damage he/she has caused;
3. Not to frequent certain places and to avoid company of certain persons, who have a negative influence on him/her;
4. To undergo dropping the habit and treatment of addiction to alcohol, drugs or other stupefying substances and addiction substances;
5. To be referred to the competent institution for training of drivers for the purpose of learning or testing the knowledge about traffic regulations;
6. To, without remuneration, join in the work of humanitarian organizations or in operations of ecological, social or local importance;
7. To join in the work of sports and other clubs at school with the pedagogical supervision of teachers.

The obligations referred to in paragraph 1, subparagraphs 1 to 7 of this Article, may not last longer than six months and must not disrupt the minor's schooling or employment.

Within the obligation referred to in paragraph 1, subparagraph 2 of this Article, the court shall determine the amount, forms and method of repairing the damage, whereby personal work of the minor may last maximum up to 20 hours in the period of one month and must be so scheduled that it does not interfere with regular schooling or employment of the minor.

The court shall, when imposing special obligations, caution the minor that, because of non-fulfillment of certain obligations, they may be substituted by another obligation or a re-education measure.

Fulfillment of special obligations shall be with the supervision by the Center for Social Work, which shall notify the court about fulfillment of obligations.

### **Measures of increased supervision**

#### **Article 69**

Re-education measures of increased supervision shall be imposed if it is necessary to enforce a longer-term education measure with respect to a minor.

The court shall impose the measure of increased supervision by the parents, adopter or guardian if the parents, adopter or guardian have failed to provide the necessary care and supervision over the minor, and they are in a position to exercise such supervision and that may be legitimately expected from them.

If the parents, adopter or guardian cannot exercise increased supervision over a minor, the increased supervision by the guardianship authority shall be imposed on the minor.

The measures of increased supervision referred to in paragraphs 2 and 3 of this Article may last minimum three months and maximum one year.

### **Conditions for imposing re-education measures**

#### **Article 70**

When imposing re-education measures, the age of a minor, the level of his/her mental development, mental characteristics and motives due to which he/she has committed a misdemeanor, the so-far bringing up, environment and conditions under which he/she has lived, the gravity of the misdemeanor, whether a re-education measure has already been imposed on him/her, as well as all other circumstances that have impact on the choice of re-education measure by which the purpose of education shall be achieved best shall be taken into consideration.

For the purpose of establishing the circumstances referred to in paragraph 1 of this Article, the court shall examine the parents and the adopter of the minor, his/her guardian, and other persons who may provide the necessary data.



## **Discontinuation of enforcement and amendment of a decision on re-education measure**

### **Article 71**

When, after handing down the decision by which re-education measure is imposed, circumstances appear that did not exist at the time of handing down the decision or it was not known about them, and they would have been of impact on handing down the decision, enforcement of the imposed measure may be discontinued or the imposed measure may be substituted by another re-education measure.

## **Re-determination of re-education measures**

### **Article 72**

If more than six months have expired from enforceability of the decision imposing any of re-education measures or special obligations, and the enforcement has not commenced, the court shall re-determine on the need to enforce the imposed measure or the special obligation. Thereby it may decide on the formerly imposed measure or the special obligation, to be enforced, not to be enforced or to be substituted by some other re-education measure or special obligation.

The court shall keep special records for every minor who has been imposed a re-education measure.

## **Punishing older minors**

### **Article 73**

A punishment may be imposed on an older minor only if, at the time when he/she committed a misdemeanor, in view of his/her mental development he/she could understand the importance of his/her act and control his/her actions and if due to a grave consequence of the misdemeanor or a higher degree of the misdemeanor liability, it would not be justified to apply a re-education measure.

A sentence of imprisonment in a juvenile detention center of an older minor may be handed down exceptionally, whereby the nature of the misdemeanor, personal attributes and behavior of the minor must be borne in mind.

A sentence of imprisonment in a juvenile detention center handed down to an older minor may not be longer than fifteen days, nor any fine may be substituted by imprisonment lasting in excess of fifteen days.

## **Handing down a re-education measure or punishments for concurrent misdemeanors**

### **Article 74**

If a minor has committed a number of concurrent misdemeanors, the court shall, when choosing re-education measures, integrally assess all the misdemeanors and shall hand down only one measure.

If the court, for any of misdemeanors, determines a punishment, and re-education measures for other misdemeanors, only punishment shall be imposed.

It shall act likewise if, after the imposed re-education measure or punishment, it is established that the minor has committed a misdemeanor prior to or after its imposing.

### **Effect of legal age**

#### **Article 75**

If a minor has come of age prior to handing down the decision, the court shall not impose a re-education measure.

If a minor has come of age after handing down the decision imposing a re-education measure, the court shall discontinue enforcement of such a measure by a resolution.

## **Chapter IX STATUTE OF LIMITATIONS**

### **Limitations on institution and conducting of misdemeanor proceedings**

#### **Article 76**

Misdemeanor proceedings may not be instituted if one year has elapsed from the date when the misdemeanor was committed.

Limitations on misdemeanor prosecution shall not run during the period when by law prosecution may not be undertaken.

Limitations shall be suspended by each procedural action of the competent authority undertaken for the purpose of prosecution of a misdemeanor offender.

Limitations period shall restart running after every interruption.

By means of exemption to the provision of paragraph 1 of this Article, for misdemeanors in the areas of customs, foreign trade, foreign exchange operations, public revenues and finances, trade in goods and services, environment and air traffic, a special law may prescribe a longer time limit for limitations on prosecution.

The time limit referred to in paragraph 5 of this Article may not exceed five years.

Limitations on misdemeanor prosecution shall come into effect in any case after expiry of double the time period required by law for limitation on prosecution.

## **Limitations on enforcement of a punishment and a precautionary measure**

### **Article 77**

Imposed punishment and precautionary measure may not be enforced if one year has expired from the date of the legally binding judgment.

Limitations on enforcement of a punishment and a precautionary measure shall start from the date of the legally binding judgment imposing a punishment or a precautionary measure.

Limitations on enforcement of a punishment and a precautionary measure shall not run during the period when enforcement may not be undertaken by law.

Limitation shall be suspended by every procedural action of the competent authority undertaken for the purpose of enforcement of a punishment or a precautionary measure.

Limitations period shall restart running after every interruption.

Limitations on enforcement of a punishment or a precautionary measure shall come into effect in any case after expiry of double the time period required by law for enforcement of the punishment or of the precautionary measure.

## **Part Two**

# **MISDEMEANOR PROCEEDINGS**

### **Chapter X**

## **BASIC PRINCIPLES OF PROCEEDINGS**

### **Principle of legality**

#### **Article 78**

This Law shall lay down the rules that shall ensure that no one who is innocent is punished, and that a misdemeanor sanction is imposed on a liable misdemeanor offender under the conditions provided hereunder and on the basis of lawfully conducted proceedings.

### **Legality in handing down misdemeanor sanctions**

#### **Article 79**

A misdemeanor offender may be imposed a punishment or other sanction only by the court of jurisdiction and an authority of government administration (hereinafter referred to as: the administrative authority) that conducts misdemeanor proceedings hereunder.

### **Accusatory principle**

## **Article 80**

Misdemeanor proceedings shall be instituted and conducted on the basis of the motion of the authorized authority or of the injured party.

## **Establishing the truth**

### **Article 81**

The court shall truthfully and fully establish the facts that are important for handing down a lawful decision and shall with equal attention examine and establish both the facts that the defendant is charged with and those that are in his/her favor.

## **Aid to a party unlearned in the law**

### **Article 82**

A court shall see to it that ignorance or lack of learning of parties is not to the detriment of their respective rights.

## **Efficiency of misdemeanor proceedings**

### **Article 83**

The court shall conduct proceedings without delay, but in such a way that this is not to the detriment of handing down a proper and lawful decision.

## **Free assessment of evidence**

### **Article 84**

The court shall assess evidence at its sole discretion.

The court shall decide what facts it shall take as proved, on the basis of conscientious and careful assessment of each piece of evidence separately, all the evidence together and on the basis of the results of the entire proceedings.

## **Right to defense**

### **Article 85**

Prior to handing down a decision, a defendant must be given the opportunity to speak out on the facts and evidence he/she is charged with and to present all the facts and evidence that are in his/her favor, except in the cases laid down by the law.

In the misdemeanor proceedings a defendant must, already at the initial interrogation, be informed about the misdemeanor he/she is charged with and on the grounds of the charge, unless the proceedings based on this Law are conducted without examination of the defendant.

If a duly summoned defendant fails to appear and to justify the absence or fails to file a written defense within a certain time period, and his/her examination is not indispensable for establishing the facts that are of importance for handing down a lawful decision, the judgment may be handed down even without examination of the defendant.

A defendant shall have the right defend himself/herself alone or with the professional assistance of a defense counsel of his/her choice. The court shall, at the initial interrogation, advise the defendant on the right to have a defense counsel.

## **Use of a language in misdemeanor proceedings**

### **Article 86**

Misdemeanor proceedings shall be conducted in compliance with the provisions of the law governing official use of languages and alphabets.

The defendant, witnesses, and other persons participating in misdemeanor proceedings shall have the right to use their respective languages when certain actions are taken in the proceedings or at the oral hearing.

If an action in misdemeanor proceedings or oral hearing is not conducted in the language of such a person, oral translation shall be provided of what that person or others state, as well as of documents and other written evidence materials.

The person referred to in paragraph 2 of this Article shall be advised on the right to translation, who may waive such right if he/she speaks the language in which the misdemeanor proceedings are conducted. It shall be recorded in the transcript that the advice was given as well as the statements of participants.

Translation shall be done by the interpreter designated by the court conducting the misdemeanor proceedings.

## **Two-instance misdemeanor proceedings**

### **Article 87**

An appeal may be lodged against the decisions of the competent authorities handed down in the first instance unless this Law stipulates otherwise.

A judgment handed down in the misdemeanor proceedings shall become legally binding on the date of handing down the judgment by the Higher Misdemeanor Court and, resolution of an administrative authority, on the date of handing down the judgment by the misdemeanor court of territorial jurisdiction.

## **Prohibition of reversal for the worse**

### **Article 88**

If an appeal has been lodged only in favor of the defendant, the judgment, in the part that is related to the imposed sanction, may not be amended to his/her detriment, nor, in the renewed proceedings, a judgment less favorable to the defendant may be handed down.

### **Compensation for damage to an unfairly detained or punished person**

#### **Article 89**

The person, who has been unfairly punished for a misdemeanor or has been detained without grounds, shall be entitled to compensation for damage that was thereby inflicted on him/her, as well as to other rights laid down by the law.

At the request of the person referred to in paragraph 1 of this Article, the ministry in charge of justice affairs, shall conduct the proceedings for the purpose of reaching the agreement on existence, type, and amount of compensation.

### **Legal assistance**

#### **Article 90**

Courts and administrative authorities that conduct misdemeanor proceedings shall provide legal assistance to one another and to other courts in the affairs from their respective powers.

Interior affairs authorities and other administrative authorities shall provide, to courts and other administrative authorities that conduct misdemeanor proceedings, legal assistance and shall carry out their orders in the affairs from their respective powers.

Courts shall provide legal assistance to the government and other authorities by submitting files, documents and other data, if thereby the course of misdemeanor proceedings is not disrupted.

## **Chapter XI AUTHORITIES COMPETENT TO CONDUCT PROCEEDINGS**

### **Jurisdiction of courts**

#### **Article 91**

Misdemeanor proceedings in the first instance shall be conducted by misdemeanor courts if administrative authorities are not competent to conduct misdemeanor proceedings.

Misdemeanor proceedings in the second instance, on appeals against judgments of misdemeanor courts, shall be conducted by the Higher Misdemeanor Court, and

misdemeanor proceedings on appeals against resolutions of administrative authorities, shall be conducted by the misdemeanor court of territorial jurisdiction.

The Higher Misdemeanor Court shall decide appeals against decisions of the court, on conflict and transfer of territorial jurisdiction of courts and administer other affairs stipulated by the law.

The Higher Misdemeanor Court shall examine and monitor the work of courts, procure from courts data and reports required to monitor misdemeanor practice, enforcement of laws and other regulations, to monitor and study social relationships and phenomena and data on other issues of interest for discharging of their function.

## **Article 92**

Openness of the court to public shall be ensured first of all: by holding public hearings, announcing decisions, giving information to the interested persons on the course of a misdemeanor proceedings, by familiarizing the public with its work through mass media.

For the purpose of keeping secret, protection of moral, interests of minors or protection of other special interests of the community, the public may be excluded in all or only in certain phases of misdemeanor proceedings.

## **Composition of the court**

### **Article 93**

A judge of a misdemeanor court shall adjudicate and decide as a judge sitting alone.

A misdemeanor court shall adjudicate in a panel composed of three judges when deciding appeals against the decisions of administrative authorities.

The Higher Misdemeanor Court shall adjudicate and decide in a panel composed of three judges.

## **General territorial jurisdiction**

### **Article 94**

For conducting of the misdemeanor proceedings in the first instance, territorial jurisdiction shall have the court on whose territory the misdemeanor has been committed or attempted.

The court that has territorial jurisdiction to conduct misdemeanor proceedings against a legal entity shall also have the jurisdiction to conduct the misdemeanor proceedings against the responsible person in the legal entity.

If a misdemeanor has been committed aboard a domestic ship or a domestic aircraft, the territorial jurisdiction to conduct the misdemeanor proceedings in the first instance shall have the court in whose territory the domestic port or airport in which the voyage/trip of

the misdemeanor offender ends is located and, if the misdemeanor offender is a crew member, the court in whose territory the home port of the ship or the home airport of the aircraft is located shall have the jurisdiction.

If a misdemeanor has been committed or attempted in the territories of a number of misdemeanor courts, the court that was the first to institute the proceedings shall have the jurisdiction and, if the proceedings has not as yet been instituted, the court to which the motion to institute the misdemeanor proceedings was put forward earlier.

### **Subsidiary territorial jurisdiction**

#### **Article 95**

If the place of committing a misdemeanor is not known, the territorial jurisdiction shall have the court in whose territory the defendant has his/her place of abode or residence, or the seat of an accused legal entity if the validity of the regulation stipulating the misdemeanor also covers the territory in which his/her place of abode or residence, or the seat of an accused legal entity, is located.

If neither the place of committing a misdemeanor nor the place of abode or residence of a defendant is known, the court, in whose territory the defendant is found or caught or turns in voluntarily, shall have the jurisdiction.

### **Cumulation of territorial jurisdiction**

#### **Article 96**

If the same person is the defendant for a number of misdemeanors and, therefore, two or more courts have the jurisdiction to conduct the misdemeanor proceedings, the jurisdiction shall have the court that was the first to institute the proceedings further to the motion of the authorized authority and, if the proceedings have not as yet been instituted, the jurisdiction shall have the court to which the motion to institute the misdemeanor proceedings was put forward first.

### **Consolidation and severance of misdemeanor proceedings**

#### **Article 97**

The court that has the jurisdiction to conduct misdemeanor proceedings against a misdemeanor offender shall also have the jurisdiction to conduct the proceedings against accomplices.

As a rule, for co-offenders, the jurisdiction shall have the court which, as having the jurisdiction for one of them, was the first to institute the proceedings.

As a rule, single misdemeanor proceedings shall be conducted against a misdemeanor offender and accomplices and one judgment shall be handed down and, if appropriate, the proceedings against individual accomplices may be severed. In such a case, a separate judgment shall be handed down.



## **Proceedings against a legal entity and a responsible person**

### **Article 98**

Single misdemeanor proceedings shall be conducted against a legal entity and the responsible person in the legal entity, except if there are legal reasons to conduct the proceedings against only one of them.

If the proceedings may not be instituted against the responsible person in a legal entity, the proceedings shall be instituted and conducted only against the legal entity.

If a legal entity has ceased to exist or there are other legal obstacles for conducting the proceedings, the proceedings shall be instituted and conducted only against the responsible person in the legal entity.

## **Transfer of territorial jurisdiction**

### **Article 99**

When the court of jurisdiction, for legal or actual reasons, is prevented from acting in a certain case, it shall notify the Higher Misdemeanor Court thereof, which shall designate another court of in rem jurisdiction.

No appeal shall be permitted against the resolution referred to in paragraph 1 of this Article.

## **Procedure in case of lack of jurisdiction**

### **Article 100**

A court shall ex officio take care of its real and territorial jurisdiction and, as soon as it notices that it does not have the jurisdiction, it shall proclaim itself as not having the jurisdiction by resolution and shall without delay submit the case to the court of jurisdiction or to other competent authority.

If the court, to which a case has been transferred as to the court of jurisdiction, deems that the court that transferred the case to it has the jurisdiction, it shall institute the proceedings for determining the conflict of jurisdiction.

## **Determining conflict of jurisdiction**

### **Article 101**

The Higher Misdemeanor Court shall determine on conflict of jurisdictions between courts.

Until the conflict of jurisdictions between courts is resolved, each of them shall undertake those actions in the proceedings concerning which there is a danger of delay.

No appeal shall be permitted against the resolution by which the conflict of jurisdiction was decided.

Conflict of jurisdictions between courts and other authorities competent to conduct misdemeanor proceedings shall be determined by the Constitutional Court of Serbia.

Conflict of jurisdictions between administrative authorities that conduct misdemeanor proceedings shall be determined according to general rules for conflict of authority between administrative authorities.

## **Chapter XII EXCLUSION**

### **Grounds for exclusion**

#### **Article 102**

A judge participating in the misdemeanor proceedings shall be excluded:

1. If he/she is the injured party by a misdemeanor;
2. If the defendant, the defense counsel of the defendant, the representative of the accused legal entity, the petitioner of the motion to institute the misdemeanor proceedings, the injured party or his/her legal representative or proxy, is his/her spouse or a direct relative up to any degree of relationship, up to the fourth degree in the collateral line and, in in-law relationship, up to the second degree;
3. If, he/she is, with the defendant, the representative of the accused legal entity, the defense counsel of the defendant, the official person who, in the name of the authorized authority, has put forward the motion to institute the misdemeanor proceedings or with the injured party, in the relationship of the guardian, ward, adopter, adoptee, breadwinner or a sustained;
4. If he/she, in the same case, as the official person, in the name of the authorized authority, has put forward the motion to institute the misdemeanor proceedings or has participated as the representative of the accused legal entity, the defense counsel of the defendant, the legal representative or proxy of the injured party, or has been heard as a witness or as an expert witness;
5. If he/she, in the same case, participated in handing down of the first-instance judgment;
6. If there are circumstances that raise doubts about his/her impartiality.

### **Duty of a judge when there are reasons for exclusion**

#### **Article 103**

The judge, who participates in the misdemeanor proceedings, as soon as he/she learns that there exists any of the reasons for the exclusion referred to in Article 102, paragraph 1, subparagraphs 1-5 hereof, shall stop all the work on that case and shall inform the president judge of the court thereof, who shall designate another judge. If exclusion of the president judge of the court is in question, he/she shall designate his/her deputy among the judges of that court.

If the president judge of the court is at the same time the only judge in that court or if for other reasons he/she cannot designate his/her deputy from the same court, he/she shall request from the president judge of the Higher Misdemeanor Court to delegate another judge.

If the judge deems that there are other circumstances that justify his/her exclusion (Article 102, paragraph 1, subparagraph 6 hereof), he/she shall inform the president judge of the misdemeanor court thereof and, if the case referred to in paragraph 2 of this Article is in question, president judge the Higher Misdemeanor Court.

### **Submitting a request for exclusion**

#### **Article 104**

Exclusion of a judge, due to existence of any of the reasons for exclusion referred to in Article 102 hereof, may be requested by the defendant and the authorized the petitioner of the motion to institute the misdemeanor proceedings (hereinafter referred to as: the parties).

The parties may submit the request for exclusion of a judge up to the handing down of a judgment or a resolution.

A party may submit the request for exclusion of the president judge and judges of the Higher Misdemeanor Court in the appeal against the first-instance judgment.

A party may request exclusion only of the judge designated by name who processes the case.

In the request, a party shall specify the circumstances due to which it deems that any of legal grounds for exclusion exist.

### **Acting in case of a submitted request for exclusion**

#### **Article 105**

When a judge, who has participated in misdemeanor proceedings, learns that the request for his/her exclusion has been submitted, he/she shall promptly stop all the work on the case and, if the exclusion referred to in Article 102, paragraph 1, subparagraph 6 hereof is in question, he/she may, up to the handing down of the resolution on exclusion, undertake only those actions concerning which there is a danger of delay.

### **Exclusion of other participants in proceedings**

## **Article 106**

Provisions on exclusion of judges shall also be accordingly applied to the official person conducting misdemeanor proceedings in an administrative authority, the recording clerks, interpreters and expert witnesses.

### **Deciding on a request for exclusion**

## **Article 107**

The president judge of a court shall decide on a request for exclusion of a judge.

If exclusion of the president judge of a court is requested, the resolution on exclusion shall be handed down by the president judge of the Higher Misdemeanor Court.

If exclusion of a judge of the Higher Misdemeanor Court is requested, the resolution on exclusion shall be handed down by the president judge of the same court.

If exclusion of the president judge of the Higher Misdemeanor Court is requested, the resolution on exclusion shall be handed down by the Supreme Court of Cassation.

The judge, who conducts the misdemeanor proceedings, shall decide on exclusion of the recording clerk, interpreter and the expert witness.

Prior to handing down of the resolution on exclusion, as required, a statement from the persons whose exclusion is requested shall be obtained and other actions shall be taken.

No appeal shall be permitted against the resolution by which the request for exclusion is adopted, and the resolution by which the exclusion is rejected may be contested only by an appeal against the judgment.

## **Chapter XIII DEFENDANT**

### **Defendant and his/her rights**

## **Article 108**

A defendant shall be the person against whom the misdemeanor proceedings is conducted.

A defendant shall have the right to submit evidence, bring in motions and to use legal recourses laid down by this Law.

For the defendant who does not have civil capacity, actions in the proceedings shall be undertaken by the legal representative.

A defendant shall have the right to defend himself/herself alone or with the professional assistance of a defense counsel.

## **Defense counsel of a defendant**

### **Article 109**

For a defense counsel, a defendant may hire an attorney-at-law, and he/she may be, in compliance with the law, substituted by a law clerk.

A defense counsel for an accused may also be hired by his/her legal representative, spouse, direct relative, adopter, adoptee, brother, sister and breadwinner of the defendant, as well as the person with whom the defendant lives in an extramarital union.

A defense counsel shall be authorized to undertake all actions in favor of the defendant that may be undertaken by the defendant.

A defense counsel shall submit the power of attorney to the court, or to the administrative authority before which the proceedings are conducted. The defendant may also give the power of attorney to the defense counsel orally on the record at the court, or at the administrative authority before which the misdemeanor proceedings are conducted.

Rights and duties of a defense counsel shall terminate when the defendant revokes the power of attorney.

## **Accused legal entity**

### **Article 110**

For an accused legal entity in misdemeanor proceedings, its representative shall participate, who shall be authorized to undertake all the actions that may be undertaken by the accused itself.

## **Representative of an accused legal entity**

### **Article 111**

A representative of an accused legal entity shall be the person authorized to represent or act for such legal entity based on the law or other bylaws of the legal entity.

An employer may assign another person from the ranks of its members or other employee in such legal entity as the representative of the legal entity.

The representative of an accused legal entity referred to in paragraphs 1 and 2 of this Article must have a written power of attorney of the body that has assigned him/her as the representative.

A representative of an accused legal entity may be only one person.

## **Representative of an accused foreign legal entity**

### **Article 112**

A representative of an accused foreign legal entity shall be the person, who manages the representative office or other business unit of such legal entity in the Republic of Serbia, unless other person is assigned as the representative of the legal entity.

## **Persons who may not be representatives of a legal entity**

### **Article 113**

A representative of a legal entity may not be the person who is a witness in the same matter.

A representative of a legal entity may not be the responsible person against whom the proceedings are conducted for the same misdemeanor, who pointed out that he/she acted on the basis of orders of another responsible person or the management body.

In the cases referred to in paragraphs 1 and 2 of this Article, the court shall call the legal entity to assign another representative within eight days.

## **Punishment for failure to assign a representative**

### **Article 114**

If an accused legal entity, on the call of the court, fails to assign its representative or, within the time referred to in Article 113, paragraph 3, fails to assign another representative, shall be fined from RSD 10,000.00 to 30,000.00. If even, after being imposed that punishment, the legal entity fails to assign its representative, it shall be fined from RSD 50,000.00 to 100,000.00 for every subsequent contempt of the court.

## **Right to a defense counsel**

### **Article 115**

A legal entity and the responsible person in such legal entity who have the status of the accused in the same matter may each of them have their own defense counsel or a joint defense counsel.

## **Chapter XIV INJURED PARTY**

### **Article 116**

An injured party, within the meaning of this Law, shall be the person any personal or property right of whom has been violated or threatened by a misdemeanor.

The injured party, who has turned sixteen, may personally put forward the motion to institute misdemeanor proceedings.

An injured party shall have the right to personally or through his/her legal representative or proxy:

1. Put forward and represent the motion to institute the misdemeanor proceedings,
2. Submit evidence, bring in motions and put forward the property-rights claim for compensation for damage or restitution of items.
3. Lodge an appeal against the judgment or the resolution handed down further to his/her motion to institute the misdemeanor proceedings.

## **Chapter XV**

# **PUBLIC PROSECUTOR AND OTHER AUTHORITIES AUTHORIZED TO INSTITUTE PROCEEDINGS**

### **Public prosecutor as a party in proceedings**

#### **Article 117**

A public prosecutor shall be a party in misdemeanor proceedings.

A public prosecutor shall:

1. Undertake measures for the purpose of discovering, finding and obtaining the necessary evidence for the prosecution of misdemeanor offenders and successful conducting of the misdemeanor proceedings before a court or competent administrative authority,
2. Put forward the motion to institute the misdemeanor proceedings, appeal or extraordinary legal remedies against decisions of a court or a competent administrative authority,
3. Undertake other actions for which he/she is authorized by this Law and special regulations.

A public prosecutor shall be really competent to act in the misdemeanor proceedings if he/she has put forward the motion to institute the misdemeanor proceedings. If a public prosecutor has been the first to put forward the motion to institute the misdemeanor proceedings, the proceedings shall be conducted on his/her motion, and shall be resumed on the motion of the injured party or of other authority competent to institute the proceedings if the public prosecutor desists from the motion.

If he/she desists from the motion to institute the misdemeanor proceedings, a public prosecutor shall, within eight days from the date of desisting from the motion, notify the

injured party or other person authorized to institute the proceedings in order to resume the proceedings.

If the injured party or other authority authorized to institute the misdemeanor proceedings has already put forward the motion for the misdemeanor proceedings, the proceedings shall be resumed on that motion.

### **Another authority competent to institute proceedings**

#### **Article 118**

When, according to this Law, another authority is competent to put forward the motion to institute the misdemeanor proceedings, it shall have all the rights that a public prosecutor has as a party in the proceedings, except for those that are vested in a public prosecutor, as a government body, by a special law.

## **Chapter XVI BRIEFS AND TRANSCRIPTS**

### **Briefs**

#### **Article 119**

The motion to institute the misdemeanor proceedings, motions, legal remedies and other statements and communications (hereinafter referred to as: briefs) shall be submitted in writing or shall be given orally on the record.

Written briefs shall be either handed over directly or shall be mailed. Short and urgent information may be given by facsimile, telex, telephone, E-mail or in other adequate manner. The employee who has received, over the telephone or otherwise, information that is not in a written form, shall make a note thereof and tack it in the case file.

The briefs referred to in paragraph 1 of this Article must be understandable and contain everything that is necessary in order to be able to act upon them.

If a brief is unintelligible or does not contain everything that is necessary in order to be able to act upon it, the judge who conducts the misdemeanor proceedings shall order the submitter of a brief to, within a certain time period, and within fifteen days at the latest, to correct or supplement the brief and, if he/she fails to do that, the brief shall be rejected as not being neat.

### **Making a transcript**

#### **Article 120**

Transcript shall be made of every action undertaken in the course of the misdemeanor proceedings concurrently with the action and, if that is not possible, immediately thereafter.



The transcript shall be written by the recording clerk. Only when an apartment or a person is searched, or an action is undertaken outside the official premises of the misdemeanor court, and the recording clerk cannot be provided, transcript may be written by the person who is undertaking the action.

When the transcript is written by the recording clerk, the transcript shall be made in such a way that the person who is undertaking the action speaks loud to the recording clerk what to record in the transcript.

The person who is examined or heard may be permitted to himself/herself dictate answers on the record. In the case of abuse, he/she may be deprived of that right.

### **Contents of a transcript**

#### **Article 121**

Recorded in the transcript shall be the name of the court, the place where the action is taken, the date and hour when the action was initiated and completed, proper names of the present persons and in what capacity they are attendant, as well as indication of the misdemeanor case in which the action is undertaken.

The transcript should contain important data on the course and contents of the undertaken action. In the transcript, in the form of a narration, only important contents of given testimonies and statements shall be recorded. Questions shall be recorded in the transcript only if it is necessary to understand the answer.

If necessary, recorded in the transcript shall literally be the question that was put and the answer that was given. If on the occasion of undertaking an action items or documents were seized, that shall be indicated in the transcript, and the seized items shall be attached to the transcript or shall it shall be specified where they are located.

The statement of the defendant shall be recorded in the transcript as to whether he/she has proposals to produce other evidence.

When undertaking actions, such as investigation at the scene of offense, search of an apartment or a person, or identification of persons or procured items, data that are important in view of the nature of such action or for establishing identity of certain items (description of dimensions and sizes of items or traces, putting tags on items, etc.) shall also be recorded in the transcript, and if sketches, drawings, plans, photographs, film records and the like were made, they shall be specified in the transcript and attached to the transcript.

### **Neatness of a transcript**

#### **Article 122**

Transcripts must be kept neatly. Nothing may be deleted, added or altered in the transcript. Crossed out spots must remain legible.

All alterations, corrections and additions shall be recorded at the end of the transcript and must be certified by the persons who sign the transcript.

## **Reading a transcript**

### **Article 123**

An examined or heard person, persons who obligatorily attend actions in the misdemeanor proceedings, as well as the defendant, the defense counsel, and the injured party, if present, shall be entitled to read the transcript or to request its reading to them. The judge who is undertaking an action shall caution them on that and, in the transcript, it shall be indicated whether the caution was given and whether the transcript was read. The transcript shall always be read if there were no recording clerks, and that shall be indicated in the transcript.

## **Signing a transcript**

### **Article 124**

The transcript shall be signed by the examined or heard person. If the transcript consists of several pages, the examined or the heard person shall sign every page.

At the bottom of the transcript, the interpreter, if any, shall affix his/her signature and, on the occasion of search, the person who is searched or whose apartment is searched, too, as well as the witnesses, who were present during the search.

If the recording clerk is not writing the transcript, the transcript shall be signed by the persons who are present during the action. If there are no such persons or they are not able to understand the contents of the transcript, the transcript shall be signed by two witnesses.

An illiterate person shall affix a fingerprint of the index finger of right hand instead of the signature, and the recording clerk shall sign his/her name and family name underneath the fingerprint. If, due to impossibility to affix a fingerprint of the index finger of right hand, a fingerprint is affixed of some other finger or a fingerprint of a finger of the left hand, it shall be indicated in the transcript from what finger and from which hand the fingerprint was taken.

If an examined or a heard person does not have both hands, the transcript shall be read and, if he/she is illiterate, the transcript shall be read to him/her, and that shall be recorded in the transcript.

If an examined or a heard person refuses to sign the transcript or to affix a fingerprint, it shall be recorded in the transcript and the reason of refusal shall be stated.

If an action could not be carried out without interruption, the date and hour when the interruption occurred shall be indicated in the transcript, as well as the date and hour when the action is continuing.

If there have been any objections to the contents of the transcript, such objections shall also be specified in the transcript.

The transcript shall finally be signed by the judge and the recording clerk.

### **Transcript of conferring and voting**

#### **Article 125**

A separate transcript shall be drawn up of conferring and voting before the Higher Misdemeanor Court.

The transcript of conferring and voting shall contain the course of voting and the decision that was handed down.

The transcript shall be signed by all the members of the panel and by the recording clerk.

Dissenting opinions shall be attached to the transcript of conferring and voting if they are not recorded in the actual transcript.

The transcript of conferring and voting shall be closed in a special envelope. This transcript may be viewed only by a higher court when determining on legal remedy and in such a case it shall reseal the transcript in the special envelope and indicate on the envelope that it has viewed the transcript.

## **Chapter XVII TIME LIMITS AND REINSTATEMENT TO THE PRIOR STATE OF AFFAIRS**

### **Time limits**

#### **Article 126**

Time limits provided hereunder may not be extended, unless it is expressly permitted by the law.

When a statement is tied to a time limit, it shall be deemed that it was given within the time limit if it was handed over to the one who is authorized to receive it before the time limit expires.

When a statement is mailed as certified mail or sent telegraphically, the date of handing over at the post office shall be considered to be the date of handing over to the recipient.

Handing over to a military post office at the place where a regular post office does not exist shall be considered to be the handing over of certified mail to the post office.

A defendant who is placed in an institution for serving penal sanctions also may give a statement that is tied to a time limit on the record or hand over to the administration of the institution. The date when such transcript is made or when a statement was handed over to the administration of the institution shall be considered to be the date of handing over to the authority that is competent to receive it.

If a brief that is tied to a time limit, due to the ignorance or an obvious error of the submitter, was handed over or sent to an authority that is not competent prior to expiry of the time limit and it reaches the competent authority after expiry of the time limit, shall be deemed to be submitted on time.

## **Calculation of time limits**

### **Article 127**

Time limits shall be calculated into hours, days, months, and years.

The hour or day when a delivery or a communication was made or on which an event falls from when the duration of a time limit should be reckoned shall not be reckoned in the time limit, but instead the first following hour or day shall be taken as the start of the time limit. Twenty-four hours shall be calculated in one day, and a month shall be calculated according to the calendar time.

Time limits determined in months or years shall end upon expiry of the day of the last month or the year the number of which corresponds to the day when the time limit started. If there is no such a day in the last month, the time limit shall end on the last day of that month.

If the last day of a time limit falls on a state holiday or on Sunday or on some other day when the court is closed, the time limit shall expire upon expiry of the following working day.

## **Time limit for reinstatement to the prior state of affairs**

### **Article 128**

To the accused who, for justified reasons, omits the time limit for lodging an appeal against the decision, the court, or the administrative authority that conducts the misdemeanor proceedings, shall permit, by resolution, reinstatement to the prior state of affairs for the purpose of lodging the appeal if, within eight days from the date of termination of the cause due to which the time limit has been omitted, he/she submits the application for reinstatement and if he/she files the appeal concurrently with the application.

After expiry of one month from the date of the omitted time limit, reinstatement may not be applied for.

The claim for reinstatement shall be submitted to the authority that has handed down the first-instance decision.

The claim for reinstatement shall not stay enforcement of the decision, but the authority to which the claim has been submitted may, subject to the circumstances, decide to halt the enforcement up to the handing down of the decision on the claim.

### **Deciding on reinstatement to the prior state of affairs**

#### **Article 129**

The court or the administrative authority that has handed down the first-instance decision that is contested by an appeal shall decide on reinstatement to the prior state of affairs.

When a court or an administrative authority permits reinstatement to the prior state of affairs due to the omitted time limit for an appeal, the appeal with the case files shall be submitted for determining to the Higher Misdemeanor Court, or to a misdemeanor court.

No appeal shall be permitted against the resolution permitting reinstatement to the prior state of affairs.

The court or the administrative authority referred to in paragraph 1 of this Article, shall submit the appeal against the resolution not permitting reinstatement to the prior state of affairs, with the appeal against the decision and other case files for determining to the Higher Misdemeanor Court, or to a misdemeanor court. If the Higher Misdemeanor Court or a misdemeanor court permits reinstatement to the prior state of affairs due to the omitted time limit for an appeal, in the same judgment, it shall be decided on the appeal lodged against the first-instance decision.

## **Chapter XVIII COSTS OF MISDEMEANOR PROCEEDINGS**

### **What the costs cover**

#### **Article 130**

The costs of misdemeanor proceedings shall be expenditures incurred due to the misdemeanor proceedings from their institution to the completion.

The costs of misdemeanor proceedings shall be:

1. Costs for witnesses, expert witnesses and interpreters;
2. Costs of investigation at the scene of offense;
3. Transportation costs of the defendant;
4. Expenses for bringing the defendant;
5. Transportation and travel costs of official persons;

6. Necessary expenses of the injured party or of his/her legal representative and the fee and necessary expenses of his/her proxy;
7. The fee and necessary expenses of the defense counsel;
8. Costs of translation, and
9. Lump sum amounts.

### **Obligation to pay the costs**

#### **Article 131**

The costs of misdemeanor proceedings shall be borne by the person who has been punished for the misdemeanor.

The costs of the proceedings for a misdemeanor for which the proceedings has been discontinued shall be borne by the court or by the administrative authority that conducted the proceedings.

If the misdemeanor proceedings has been discontinued due to a false motion of the injured party or due to desisting of the injured party from the motion put forward, the costs of the proceedings shall be borne by the injured party.

The claim for compensation for the fee and necessary expenses of a defense counsel shall be submitted within three months from the date of serving the final decision on the costs.

### **Decision on costs**

#### **Article 132**

In the decision on the costs, it shall be stated who shall bear the costs of the misdemeanor proceedings, in what amount and in what time period he/she shall have to pay them.

If there are no sufficient data to establish the amount of the costs, it shall be decided on the costs when such data are procured.

When, in a judgment, it was not decided on the costs of the proceedings, they shall be decided on subsequently, by a separate resolution against which an appeal shall be permitted.

The time limit referred to in paragraph 1 of this Article may not be shorter than fifteen or longer than thirty days from the date of the final decision.

### **Joint and several costs**

#### **Article 133**

The person who has been accused for several misdemeanors shall not bear the costs for the misdemeanor, for which the misdemeanor proceedings has been discontinued, if it is possible to separate such costs from total costs.

In the judgment by which a number of defendants have been pronounced guilty, the court shall determine what part of the costs shall be borne by each of them and, if that is not possible, it shall decide that all the defendants jointly and severally bear the costs. Payment of a lump sum amount shall be determined for each defendant separately.

### **Costs of detection of an offender**

#### **Article 134**

When a special regulation stipulates that the costs incurred due to detection of a misdemeanor shall be borne by the offender, at the proposal of the petitioner of the motion, the defendant shall be obliged to pay such costs.

### **Reason for excuse from the duty to reimburse costs**

#### **Article 135**

In the decision by which it is decided on the costs, the court or the administrative authority may excuse the defendant from duty to fully or partly reimburse the costs of the misdemeanor proceedings, if their payment would put in question sustenance of the defendant or the persons he/she has the duty to sustain by the law.

### **Translation costs**

#### **Article 136**

Costs of translation into a language of national minorities, incurred by applying the provisions of the Constitution and the law governing official use of languages and alphabets, shall be borne by the court, or by the administrative authority that conducts the proceedings.

### **Subsequent recoupment of costs**

#### **Article 137**

The costs of misdemeanor proceedings referred to in Article 130, paragraph 1, subparagraphs 1 and 2 hereof, shall be paid off in advance from the funds of the misdemeanor court or of the administrative authority conducting the misdemeanor proceedings, and shall be recouped later from the persons who have the duty to compensate for them under the provisions of this Law.

### **Accordingly applied regulations on reimbursement of costs in criminal proceedings**

#### **Article 138**

Regulations on reimbursement of costs to witnesses, expert witnesses, and interpreters as well as other costs in the criminal proceedings shall also be accordingly applied in the misdemeanor proceedings.

## **Chapter XIX**

# **PROPERTY-RIGHTS CLAIM**

### **Deliberation on a property-rights claim**

#### **Article 139**

Only a court shall decide on a property-rights claim.

The property-rights claim that has arisen due to the committing of a misdemeanor shall be deliberated at the request of the injured party or of other authorized person, as a rule, in the misdemeanor proceedings unless thereby the proceedings would be considerably obstructed.

A property-rights claim may be related to the compensation for damage and restitution of items.

### **Persons authorized to submit claims**

#### **Article 140**

A motion for award of a property-rights claim in the misdemeanor proceedings may be submitted by a person who is authorized to carry out such a claim in an action, up to the handing down of the first-instance judgment at the latest.

The person authorized to submit the property-rights claim shall specifically designate his/her claim and shall submit evidence.

### **Deciding a claim**

#### **Article 141**

If the evidence produced in the misdemeanor proceedings do not provide firm grounds to award the property-rights claim in full or in part, the court shall instruct the injured party or other authorized person that he/she may carry out the property-rights claim or surplus of such claim in an action.

If the motion to institute the misdemeanor proceedings has been rejected by a resolution or the misdemeanor proceedings has been discontinued, the injured party or other authorized person shall be instructed to carry out his/her property-rights claim in an action.

If the damaged property is in state ownership, the Republic public attorney shall be notified about discontinuation of the misdemeanor proceedings.



The injured party or other authorized person who has submitted the claim shall have the right to appeal against the decision on the property-rights claim.

### **Time limit for compensation for damage**

#### **Article 142**

If a court accepts a property-rights claim in part or in full, the time limit shall be determined in the judgment within which the defendant has the duty to compensate for the inflicted damage or to restitute the item.

The time limit for compensation for a damage and restitution of items may not exceed fifteen days from the date of the legally binding judgment.

## **Chapter XX HANDING DOWN AND PRONOUNCING DECISIONS**

### **Types of decisions**

#### **Article 143**

In the misdemeanor proceedings, decisions shall be handed down in the form of a judgment, resolution, order, conclusion and a note.

Only a court shall hand down a judgment, and resolutions, orders, conclusions, and notes shall also be handed down by administrative authorities competent to conduct misdemeanor proceedings.

#### **Article 144**

As a rule, decisions shall be pronounced immediately after being handed down.

Decisions shall be pronounced orally to the present parties, the injured party, and to the other persons who are entitled to an appeal against such a decision (hereinafter referred to as: the interested parties) and, by serving a certified copy if they are absent.

When a decision is pronounced orally, it shall be indicated in the transcript or in the file, and the person to whom a decision has been pronounced orally, shall certify it by his/her signature.

At the request of an interested party, a certified copy of the decision that was pronounced to him/her orally shall be issued.

The interested parties, who do not request serving of a copy of the decision, shall be advised on the right to appeal and on the time limit for the appeal.

A written copy of the decision in the case referred to in paragraph 4 of this Article shall be drawn up within eight days from the date of oral pronouncing at the latest, and the

written copy of a judgment immediately if enforcement of the judgment is ordered before it becomes legally binding.

## **Decisions of the Higher Misdemeanor Court**

### **Article 145**

Decisions of the Higher Misdemeanor Court shall be handed down after oral conferring and voting. A decision shall be handed down when the majority of the members of the panel voted for it.

The president of the panel shall manage conferring and voting and shall vote last. He/she shall take care that all the issues are thoroughly and fully examined.

If, with regard to certain issues, votes are divided into a number of different opinions so that none of them has the majority, issues/**pitanje** shall be separated and voting shall be repeated until the majority is gained. If the majority is not gained in such a way, the decision shall be handed down by adding the votes that are the least favorable to the defendant to the votes that are less unfavorable from them, until the majority is gained.

The members of the panel may not refuse to vote on issues raised by the president of the panel, but a member of the panel, who voted for a misdemeanor proceedings to be discontinued and was in the minority, shall not have to vote on the punishment. If he/she does not vote, it shall be deemed that he/she agreed to the vote that is most favorable to the defendant.

Conferring and voting shall take place in chambers.

Only the members of the panel and the recording clerk may be present in the room in which conferring and voting are taking place.

## **Chapter XXI SERVICE OF WRITS AND EXAMINATION OF FILES**

### **Service of writs**

#### **Article 146**

Writs shall be served via mail or through bodies of a municipality or through other authorities or organizations, or through the official person of the court, which has handed down the decision, or directly in the premises of the court.

As a rule, service shall be carried out on working days.

As a rule, service shall be carried out at the home, business premise or at the workplace of the person to whom the writ is to be served.

#### **Article 147**

Summons for the purpose of examination a defendant or giving of written defense or for hearing, as well as all the decisions, from the service of which the time limit for an appeal starts running, shall be served in person.

The decisions shall also be served in the same way to the injured party, for which the time limit for an appeal starts running from the date of service.

The court may also orally serve summons for the oral hearing or other summons to the person who is before it, with the advice on the consequences of failing to appear. Such oral summons shall be recorded in the transcript, which shall be signed by the summoned person, unless the summons has been recorded in the transcript of the trial. It shall be deemed that thereby the service was carried out.

A writ, for which it is hereunder stipulated that it is to be served in person, shall be handed over directly to the person to whom it is addressed. If the person to whom a writ must be served in person is not found where the service is to be carried out, the server shall hand over the writ to any of his/her household members of legal age, who is liable to receive the writ.

If the person to whom the writ must be served in person or a member of his/her household of legal age refuses to receive the writ, the server shall annotate in the return of service the date, hour and reason of refusal to receive, and the writ shall be left in the apartment or tacked to the door of the recipient and it shall thereby be deemed that service was carried out.

If service is carried out at the workplace of the person to whom the writ is to be served in person, and such person is not found there, service may be carried out by its service to the person authorized to receive mail who shall receive the writ, or to the person who is employed at the same place.

If it is established that the person to whom the writ is to be served is absent and that the persons referred to in paragraphs 4 and 6 of this Article, therefore, cannot serve the writ to him/her on time, the writ shall be returned with the indication where the absent party is located, the time and place when and where repeated service of the writ shall be carried out.

If a writ cannot be served at the time and at the place ordered in the manner referred to in paragraph 7 of this Article, the writ shall be put up on the bulletin board of the court. Service shall be deemed to be carried out upon expiry of eight days from the date of putting up the writ on the bulletin board of the court.

### **Service to a defense counsel, representative and a proxy**

#### **Article 148**

If a defendant has a defense counsel, all the decisions from the service of which time limit for an appeal starts running shall be served to the defense counsel and, if there are several of them, only to one of them.

If the injured party has a legal representative or proxy, the decisions referred to in paragraph 1 of this Article shall be served to him and, if there are several of them, only to one of them.

### **Signing of the return of service**

#### **Article 149**

The certificate of carried out service (the return of service) shall be signed by the recipient and the server.

A recipient shall, on the return of service, personally indicate the date of receipt. The date and month of receipt shall be written in letters and numbers.

If a recipient is illiterate or is not able to sign, the server shall sign it for the recipient, indicate the date of receipt and shall put a note why he/she signed it for him/her.

If a recipient refuses to sign the return of service, the server shall annotate that on the return of service and indicate the date of serving and the time service was carried out.

### **Serving writs to military persons, members of police and other persons**

#### **Article 150**

To military persons, members of police, members of guards in institutions for serving penal sanctions in which persons deprived of liberty are placed and to persons employed in road, railroad, water and air transportation, summons shall be served via their respective commands, institutions or immediate superiors and, as required, other writs may also be served to them in such a way.

To the persons deprived of liberty, service shall be carried out through the administration of the institution in which they are placed.

To the persons who enjoy the right to immunity in the Republic of Serbia, unless international agreements stipulate otherwise, service shall be carried out through the authority in charge of foreign affairs.

### **Service of writs to government bodies, legal entities and to entrepreneurs**

#### **Article 151**

To a government body, decisions and other writs shall be served by handing over to the registry office.

Serving to legal entities and entrepreneurs shall be carried out by handing over of writs to the person authorized to receive writs and, if that is not possible, the writ shall be handed over to any employee who is found in the business premise of the recipient.

If the person referred to in paragraph 2 of this Article refuses to receive the writ, the server shall annotate in the return of service, the date, hour, and reason of refusal, and shall leave the writ in the business premise of the recipient.

When decisions are served concerning which a time limit runs from the date of service, the date of handing over to the registry office or to the person specified in paragraph 2 of this Article shall be considered as the date of service.

### **Putting up writs on the bulletin board**

#### **Article 152**

When a defendant or his/her legal representative and the injured party in the course of the proceedings change their respective places of abode or addresses, they shall notify the court before which the proceedings are conducted about it.

If they fail to do that, the court shall order that all the further services in the proceedings for that party are carried out by putting up writs on the bulletin board of the court, except if service of a judgment imposing a prison sentence on him/her is in question.

Service shall be deemed to be carried out upon expiry of eight days from the date of putting up the writs on the bulletin board of the court.

### **Examination and transcribing of files**

#### **Article 153**

The petitioner of the motion to institute the misdemeanor proceedings, the defendant, the defense counsel of the defendant, the representative or a proxy of the accused legal entity, the injured party and his/her legal representative or the proxy shall be entitled to examine and transcribe the case files.

Examining and transcribing of files may also be permitted to other persons who have legal interest in that.

When the misdemeanor proceedings is in progress, examining and transcribing of files shall be permitted by the judge who conducts the misdemeanor proceedings and, when the proceedings is concluded, examining and transcribing of files shall be permitted by the president judge of the court or by the official person designated by him/her.

Examining and transcribing of files may be denied only if thereby proper conducting of the misdemeanor proceedings would be obstructed or if the public is excluded in the proceedings.

After the completed evidence procedure or the completed oral hearing, the person who has a justified interest may not be denied examination and transcription of files.

An appeal shall be permitted against the resolution denying examination and transcription of the case files, which shall not stop enforcement of the resolution.

## **Chapter XXII**

# **INSTITUTING MISDEMEANOR PROCEEDINGS**

### **Petitioner of the motion**

#### **Article 154**

The misdemeanor proceedings shall be instituted on the basis of the motion to institute the misdemeanor proceedings.

The motion to institute the misdemeanor proceedings shall be put forward by the authorized authority or by the injured party (hereinafter referred to as: the petitioner of the motion).

On the motion of an authorized person or ex officio, the misdemeanor proceedings shall be instituted before an administrative authority, immediately after learning of the misdemeanor.

The authorized authorities referred to in paragraph 2 of this Article shall be administrative authorities, authorized inspectors, public prosecutor, and other authorities and organizations, which exercise public powers whose power include direct enforcement or supervision over the enforcement of regulations in which misdemeanors are stipulated.

### **Injured party as the petitioner of the motion to institute misdemeanor proceedings**

#### **Article 155**

An injured party shall be authorized to put forward the motion to institute the misdemeanor proceedings always unless the law stipulates that the authority referred to in Article 154, paragraph 4 hereof is exclusively authorized to institute the misdemeanor proceedings.

The injured party who has put forward the motion to institute the misdemeanor proceedings shall have the position of a party in the proceedings.

If, in the case referred to in paragraph 1, the exclusively authorized authority fails to put forward the motion to institute the misdemeanor proceedings, the injured party may put forward such a motion in compliance with the provisions hereof.

If the motion to institute the proceedings has been put forward by the authorized authority before the proceedings has commenced upon the motion of the injured party, it shall be acted upon the motion to institute the proceedings of the competent authority.

The injured party, who has not put forward the motion to institute the misdemeanor proceedings but has filed a misdemeanor charge to the competent public prosecutor, may, under the conditions provided hereunder, if the public prosecutor does not institute

the proceedings, put forward the motion for institution of the misdemeanor proceedings personally.

A public prosecutor shall, within eight days from the date of the filed misdemeanor charge, notify the injured party in writing as to whether he/she has instituted the proceedings.

An injured party may, in the course of the proceedings, take over prosecution from the public prosecutor who desists from the motion to institute the proceedings. The injured party may stay by the former motion or may change it.

## **Contents of the motion**

### **Article 156**

The motion to institute the misdemeanor proceedings shall be submitted in writing and shall contain:

1. The name of the petitioner of the motion and its address or proper name of the person who puts forward the motion;
2. The name of the court or of the administrative authority to which the motion is put forward;
3. Basic data on the defendant: proper name, proper name of a parent, place and date of birth, personal identification number, occupation, place and address of residence and citizenship or the name and seat of the accused legal entity and, for the responsible person in a legal entity, also the office he/she holds in such legal entity;
4. Factual description of the act from which the legal character of the misdemeanor results, the time and place of committing the misdemeanor and other circumstances necessary for the misdemeanor to be determined as accurately as possible;
5. The regulation on a misdemeanor that should be applied;
6. The motion for the evidence that should be produced, with the indication of proper names and addresses of witnesses, files that should be read and items that serve as evidence;
7. Signature and seal of the petitioner of the motion.

When the motion to institute the misdemeanor proceedings is put forward by a natural person as the injured party, the motion shall not have to contain the regulation on the misdemeanor that should be applied or the personal identification number of the accused person.

When the motion to institute the misdemeanor proceedings is put forward by a natural person as the injured party against the responsible person in a government body, authority of territorial autonomy and a unit of local self-government, the motion shall

contain proper name of the defendant, the name and seat of the authority and the function, or the tasks the person performs within the authority.

A natural person in the capacity of an injured party may also put forward the motion to institute the misdemeanor proceedings orally on the record.

### **Irregular motion**

#### **Article 157**

The motion to institute the misdemeanor proceedings shall be put forward in as many copies as there are the defendants and one copy for the court or for the administrative authority if the misdemeanor proceedings are conducted before it.

If the motion does not contain all the data referred to in Article 156 hereof or is not submitted in the sufficient number of copies, the petitioner of the motion shall be requested to complete it or to submit other copies within a certain time limit. In case the petitioner of the motion fails to eliminate the deficiencies within a certain time limit, it shall be deemed that he/she has desisted from the motion and the motion shall be rejected.

The time limit referred to in paragraph 2 of this Article may not exceed fifteen days.

### **Examining conditions for institution of proceedings**

#### **Article 158**

When a competent court or an administrative authority receives the motion to institute the misdemeanor proceedings, it shall examine whether there are conditions for institution of the misdemeanor proceedings and decide on the further course of the proceedings.

### **Rejecting the motion**

#### **Article 159**

When a court or an administrative authority establishes that there are no conditions to institute the misdemeanor proceedings, it shall reject the motion to institute the proceedings by a resolution.

There shall be no conditions to institute the misdemeanor proceedings:

1. When the act described in the motion is not a misdemeanor,
2. When the court or the administrative authority is not really competent to conduct the misdemeanor proceedings,
3. When there are grounds that exclude guilt or liability for the misdemeanor of the defendant,



4. When limitation on institution of the misdemeanor proceedings has come into effect,
5. When the motion has been put forward by an unauthorized authority or an unauthorized person,
6. When there are other legal reasons due to which the proceedings may not be instituted.

The resolution referred to in paragraph 1 of this Article shall be submitted to the petitioner of the motion, and the injured party shall be notified that he/she may carry out the property-rights claim in an action.

The petitioner of the motion to institute the proceedings shall have the right to appeal against this resolution within eight days.

### **Article 160**

If the court or the administrative authority does not reject the motion to institute the misdemeanor proceedings, it shall hand down the resolution, or the conclusion to institute the misdemeanor proceedings.

The resolution or the conclusion referred to in the previous paragraph shall contain designation of the person against whom the misdemeanor proceedings is instituted and the legal qualification of the misdemeanor. If the motion has been put forward against a number of persons or for a number of misdemeanors, all the persons and legal qualifications for all the misdemeanors shall be indicated in the resolution. A resolution or a conclusion to institute the misdemeanor proceedings shall not be submitted to the petitioner of the motion or to the defendant.

No appeal shall be permitted against the resolution or the conclusion referred to in the previous paragraph.

The proceedings shall be conducted only with respect to the misdemeanor and against the defendant to whom the resolution or the conclusion to institute the misdemeanor proceedings is related.

The court and the administrative authority shall not be bound by the qualification given in the motion to institute the misdemeanor proceedings or in the resolution and the conclusion to institute the misdemeanor proceedings.

## **Chapter XXIII MEASURES TO SECURE ATTENDANCE BY A DEFENDANT**

### **Types of measures**

#### **Article 161**

The measures that can be undertaken to secure attendance by a defendant and to successfully conduct the misdemeanor proceedings shall be: summons, bringing, bail, and detention.

When deciding which of the specified measures shall be applied, the court shall adhere to the conditions stipulated for enforcement of certain measures, taking care not to apply a harsher measure if the same purpose may be achieved with a more lenient measure.

Only a court may order bringing, bail, and detention.

## **Summoning a defendant**

### **Article 162**

Attendance by the defendant when carrying out actions in the misdemeanor proceedings shall be secured by summoning him/her. Summons shall be served to a defendant by a court and by an administrative authority.

The defendant who should be personally present at the carrying out of actions in the misdemeanor proceedings, or personally participate in their carrying out, shall be summoned by a writ of summons.

Summoning shall be carried out by serving a closed writ of summons, which shall contain: the name of the court or of the administrative authority, proper name of the defendant, name of the misdemeanor he/she is charged with, the place where the defendant is to come, the date and hour when the defendant should report, indication that he/she is summoned in the capacity of the defendant, the official seal and signature of the judge or of the official person who is summoning.

In the summons summoning a defendant, it shall be indicated whether he/she must be present in person for the purpose of examination or he/she may give his/her defense in writing as well.

When the defendant is summoned for the first time, a copy of the motion to institute the misdemeanor proceedings shall be served to him/her together with the summons.

When the defendant is summoned for the first time, in the summons, he/she shall be advised on the right to hire a defense counsel and that the defense counsel may be present at his/her interrogation.

When the defendant is summoned to appear in person because his/her examination is necessary, he/she shall be cautioned in the summons that in case of failure to appear, he/she shall be brought.

If, for establishing of the state of facts, presence of the defendant is not necessary, he/she shall be cautioned in the summons that, in case of failure to appear, the decision shall be handed down without his/her examination.

The provisions of this Article shall also be accordingly applied to the representative of an accused legal entity.

## **Bringing a defendant**

### **Article 163**

If a duly summoned defendant fails to appear and to justify his/her absence, or if regular serving of the summons could not have been carried out and, from the circumstances, it obviously results that the defendant is avoiding to receive the summons, only a court shall order his/her bringing if his/her presence is necessary for the purpose of establishing the state of facts.

Bringing of a defendant may be ordered only if it was indicated in the summons that he/she shall be forcibly brought if he/she fails to appear.

If a duly summoned representative of an accused legal entity fails to appear, and fails to justify his/her absence, his/her bringing shall be ordered.

The administrative authority competent to conduct misdemeanor proceedings may not order bringing of a defendant, but may request a court to order his/her bringing.

## **Order to bring a defendant before a court**

### **Article 164**

An order to bring a defendant before a court shall be issued in writing. An order shall contain: proper name of the defendant who is to be brought, the reason for which bringing is ordered, the official seal and signature of the judge who is ordering the bringing.

An order to bring a defendant before a court shall be enforced by authorized police officers.

The person who has been entrusted the enforcement of the order shall hand over the order to the defendant or to the representative of the accused legal entity and shall invite him/her to come with him/her. If the invited refuses it, he/she shall bring him/her forcibly.

An order to bring a defendant before a court shall not be issued against members of the police or guards of the institution for serving penal sanctions in which the punishment is served, but their command or institution shall be asked to escort them.

The costs of the bringing shall be borne by the brought person.

## **Detention of a misdemeanor offender**

### **Article 165**

Authorized police officers may even without an order of a judge detain a person caught in the committing a misdemeanor:

- If the identity of that person cannot be established or there is a need to check the identity,
- If he/she does not have a place of abode or residence,
- If, by going abroad, he/she may avoid liability for a misdemeanor,
- If, by bringing, he/she is prevented from continuing to commit a misdemeanor.

Detention of a misdemeanor offender in the cases referred to in paragraph 1 of this Article must be carried out without delay.

If, in the cases referred to in paragraph 1 of this Article, a misdemeanor offender is caught in the committing a misdemeanor and cannot be immediately brought to a judge, and there are grounds for suspicion that he/she shall run away or a threat that he/she shall promptly/immediately continue to commit misdemeanors, the authorized police officer may detain the offender for maximum twenty four hours.

In the case referred to in paragraph 3 of this Article, the authorized police officer shall, without delay, inform the person of the detained person's choice about the detention, as well as a diplomatic or consular representative of the state whose citizen he/she is, or a representative of the relevant international organization if a refugee or a stateless person is in question.

## **Detention of a defendant**

### **Article 166**

In the misdemeanor proceedings, a defendant may be detained by a court order in the following cases:

1. If his/her identity or his/her place of abode or residence cannot be established, and there is a reasonable doubt that he/she shall run away;
2. If, by going abroad, he/she may avoid liability for a misdemeanor for which a prison sentence is stipulated;
3. If he/she was caught committing a misdemeanor, and detention is necessary in order to prevent further committing of misdemeanors.

The administrative authority competent to conduct the misdemeanor proceedings may not order detention, but may request the court to order, extend or release from custody.

## **Attachment**

### **Article 167**

The judge, who conducts the misdemeanor proceedings, shall issue attachment against the defendant, in which he/she shall indicate the date and the hour when the detention was ordered, as well as the legal ground of detention. Detention may not exceed 24 hours.

The attachment shall be pronounced to the defendant against signature.

The accused, who is detained, shall be allowed, without delay, to inform about the detention a person of his/her choice, as well as a diplomatic or consular representative of the state whose citizen he/she is, or a representative of the relevant international organization if a refugee or a stateless person is in question or the defense counsel, if the defense counsel was not present during his/her examination.

### **Detention of persons under the influence of alcohol or other stupefying substances**

#### **Article 168**

A person under the influence of alcohol or other stupefying substances caught committing of a misdemeanor may be detained upon the order of a court or of the authorized police officer if there is a threat that he/she shall continue to commit misdemeanors.

Detention of a person in the case referred to in paragraph 1 of this Article may last up to detoxification and maximum for twelve hours.

If the person referred to in paragraph 1 of this Article is the driver of a motor vehicle and has 1.2 g/kg or more alcohol in blood, or he/she is under the influence of other stupefying substances, detention shall be mandatory.

Detention shall also be mandatory if the person referred to in paragraph 1 of this Article refuses to be subjected to the test for the presence of alcohol or other stupefying substances.

If possible, in the case referred to in paragraph 1, the judge shall inform family members of the detained person or other persons in charge of taking care of the minor if detention has been ordered against him/her.

### **Conditions for a bail**

#### **Article 169**

When the misdemeanor proceedings have been instituted against a defendant who does not have place of abode in the Republic of Serbia or who is temporarily staying abroad, as well as in other cases when there is a threat that he/she could avoid liability for a misdemeanor by running away, he/she may be requested to personally, or anyone else on his behalf deposits a bail guaranteeing that he/she shall not run away before the end of the misdemeanor proceedings, and the defendant shall personally promise that

he/she shall not hide and that he/she shall not leave his/her residence without permission.

A bail may not be set before the accused is interrogated or without his/her consent.

Once the bail is set, the court that conducts the misdemeanor proceedings shall ask the defendant to designate his/her proxy or a proxy for receipt of writs.

## **Contents and amount of a bail**

### **Article 170**

A bail shall always be for an amount of money.

A bail shall consist of depositing cash money, securities, valuables or other movable items of a higher value that can be easily encashed and kept, or of a personal obligation of one or several citizens, in case of the defendant runs away, to pay the set amount of the bail.

The amount of a bail shall be set to the amount of the maximum fine prescribed for the misdemeanor for which the proceedings are conducted.

If, against the same defendant, the proceedings are conducted for a number of misdemeanors, the bail shall be set up to the level of punishment that may be imposed for concurrent misdemeanors.

In the cases referred to in paragraphs 3 and 4 of this Article, a bail may be increased by the amount of the put forward property-rights claim of the injured party.

The amount of bail shall be set by the judge, who conducts the misdemeanor proceedings specifically in compliance with the gravity of the misdemeanor, the amount of inflicted damage, personal and family circumstances and income scale of the defendant.

The administrative authority in charge of conducting misdemeanor proceedings may not set a bail but may ask the court to set it.

## **Bail in case of going abroad**

### **Article 171**

If a misdemeanor has been committed by a person who does not have a place of abode in the Republic of Serbia and wishes to leave its territory before the judicial decision becomes legally binding, at the motion of the defendant, a bail may be ordered irrespective of the conditions referred to in paragraph 1 of Article 169 whereby the amount of bail shall be set to the amount of up to the maximum fine that may be imposed for the misdemeanor for which the proceedings are conducted, increased by the amount of the put forward property-rights claim of the injured party.

## **Leaving the territory of the Republic of Serbia and a bail**

### **Article 172**

If a defendant runs away or leaves the territory of the Republic of Serbia, it shall be ordered, by a resolution, to register the value given as a bail as the revenue of the budget of the Republic of Serbia.

### **Procedure with a bail**

#### **Article 173**

As a rule, a bail shall be withheld up to the handing down of the legally binding judgment.

If the legally binding judgment has been handed down on discontinuation of the misdemeanor proceedings, the deposited bail shall be refunded.

If a convicted, upon the legally binding judgment, fails to pay for the damage or the costs of the misdemeanor proceedings, the established amount shall be recouped from the deposited bail and, if the deposited amount is not sufficient, primarily the amount of the damage shall be recouped from it.

If a convicted fails to pay the fine or the established amount of the seized material gain, upon recovery of damage and the costs of the misdemeanor proceedings, the fine or the established amount of the material gain shall be recouped.

If a convicted fails to appear to serve a prison sentence or to be enforced a precautionary measure, the remainder of the bail shall be recouped in full and paid in as the revenue of the budget of the Republic of Serbia.

### **Retention of a travel document**

#### **Article 174**

A court may retain a travel document of the defendant up to the enforcement of the judgment if it finds that the convicted person whose place of residence is abroad could thwart the enforcement of the judgment by leaving the territory of the Republic of Serbia.

A receipt shall be issued on retention of a travel document.

The administrative authority competent to conduct misdemeanor proceedings may not order retention of a travel document, but it may request from a court to do it.

## **Chapter XXIV HEARING A DEFENDANT**

### **Method of hearing**

## **Article 175**

As a rule, a defendant shall be heard orally.

A defendant may be heard in the absence of the defense counsel if the defense counsel is not present although he/she has been notified about the hearing or if, for the first hearing, the defendant has not hired a defense counsel. Statements of the defendant on the reasons for absence of the defense counsel shall be recorded in the transcript. A decision may not be based on a testimony of a defendant, who has not been cautioned on the right to hire a defense counsel of his/her choice or to be heard in the presence of a defense counsel.

When a defendant is heard for the first time, he/she shall be asked about the proper name, nickname if any, proper name of one of the parents, place and date of birth, whose citizen he/she is, occupation, addresses of residence and employment, family circumstances, what his/her professional qualifications are, what his/her income scale is, whether he has done his military service or whether he has a rank of reserve officer, whether he is registered in military records and in what military authority, whether he/she has been convicted or punished for a misdemeanor and for what, whether criminal or misdemeanor proceedings is conducted against him/her and for what act and, if he/she is a minor, who his/her legal representative is.

After taking personal data, the defendant shall be informed why he/she is accused and shall be asked to state everything he/she has in his/her defense.

During the hearing, the defendant shall be enabled to explain himself/herself in an uninterrupted statement concerning all the circumstances he/she is charged with and to depose all the facts that are in favor of his/her defense.

If the defendant does not want to answer or does not want to answer a question put, he/she shall be advised that thereby he/she may aggravate collecting the evidence for his/her defense.

When the defendant finishes the testimony, a question shall be put to him/her if it is necessary to fill voids or to eliminate contradictions and ambiguities in his/her statement.

The provisions on hearing a defendant shall also be accordingly applied when hearing the representative of an accused legal entity.

## **Respecting the personality of a defendant**

### **Article 176**

A defendant shall be heard with full respect of his/her personality.

Force, threat, deceit, promise, extortion, exhausting or other similar means shall not be applied on a defendant in order to get his/her statement or confession or any action that could be used as evidence against him/her.



## **Written defense**

### **Article 177**

If a court or an administrative authority conducting the misdemeanor proceedings finds that direct oral hearing is not necessary in view of the character of the misdemeanor and data it has available, it may ask the defendant to give his/her defense in writing. In such a case, the defendant may either give his/her defense in writing or appear in person to be heard orally.

### **Article 178**

When a defendant has a his/her place of abode or residence outside the territory of the court or of the administrative authority that conducts the proceedings, at the request of such court or of administrative authority, he/she may also be heard before the court or the administrative authority in whose territory the defendant has the place of abode or residence.

## **Confrontation**

### **Article 179**

A defendant may be confronted with a witness and with other co-accused if their testimonies disagree with respect to important facts and if such disagreement cannot be otherwise eliminated.

Those confronted shall be positioned facing each other and they shall be requested to repeat their respective testimonies to each other about every disputable circumstance and to argue the truthfulness of what they stated. The court or the administrative authority shall record the course of confrontation and the statements that those confronted finally stood by in the transcript.

## **Examination through an interpreter**

### **Article 180**

If a defendant is deaf, questions shall be put to him/her in writing and, if he/she is mute, he/she shall be asked to answer in writing. If examination cannot be carried out in such a manner, the person who can communicate with the defendant shall be summoned as an interpreter.

## **Chapter XXV HEARING WITNESSES**

### **Capacity of a witness**

#### **Article 181**

The persons who will probably be able to provide information on the misdemeanor and the offender and on other important circumstances shall be summoned as witnesses.

An injured party may be heard as a witness.

### **Duty to testify**

#### **Article 182**

Every person who is summoned as a witness shall have the duty to appear and, unless this Law stipulates otherwise, shall have the duty to actually testify.

### **Summoning a witness**

#### **Article 183**

A witness shall be served a writ of summons, in which the proper name and occupation of the summoned, the time and location where to appear, the misdemeanor case in which he/she is summoned, indication that he/she is summoned as a witness and the caution on the consequences of unjustified absence shall be stated.

When an injured party is summoned as a witness, it shall be indicated in the summons.

A minor person, who has not turned sixteen, shall be summoned as a witness through a legal representative or guardian, unless it is impossible due to the need to act urgently or due to other circumstances.

The witnesses who, due to old age, illness or severe physical disabilities cannot appear may be heard in their respective homes.

### **Ban on witnessing**

#### **Article 184**

The below specified may not be heard as witnesses:

1. The person who, by his/her testimony, would be in breach of the duty of keeping official or military secret, until he/she is excused from such duty by the competent authority;
2. The defense counsel of the defendant about what the defendant confided in him/her as his/her defense counsel, unless the defendant personally requests that.

### **Excuse from the duty to testify**

#### **Article 185**

Excused from the duty to testify shall be:

1. Spouse of the defendant;
2. Relatives of the defendant in direct line of ascent, relatives in the collateral line up to, and inclusive of the third degree, as well as relatives-in-law up to, and inclusive of the second degree;
3. Adoptee and adopter of the defendant;
4. Religious confessor concerning what the defendant confessed to him.

A judge, who conducts the misdemeanor proceedings, shall caution the persons referred to in paragraph 1 of this Article, prior to their hearing or as soon as he/she learns about their relationship with the defendant, that they do not have to testify. The caution and the response shall be recorded in the transcript.

A minor person who, in view of his/her age and mental development, is not capable to understand the significance of the right not to have to testify, may not be heard as a witness, unless the defendant personally requests that.

The person, who has grounds to refuse to give evidence against one of the defendants, shall also be excused from the duty to testify against the other defendants if his/her testimony, in the nature of things, cannot be limited only to the other defendants.

### **Consequence of violation of the right to testify**

#### **Article 186**

If, as a witness, a person has been heard, who may not be heard as a witness (Article 184 hereof) or a person who is excused from the duty to testify (Article 185 hereof), and was not cautioned on that or did not expressly waive that right, or if the caution or the waiver was not recorded in the transcript, or if a minor has been heard, who cannot understand the importance of the right not to have to testify, or if the testimony of a witness has been extorted by force, threat or by other prohibited means, a decision may not be based on such a testimony of a witness.

### **No response to certain questions**

#### **Article 187**

A witness shall not have to answer certain questions if it is probable that thereby he/she would expose himself/herself or his/her close relative to a deep disgrace, considerable material injury or criminal prosecution.

### **Method of examining witnesses**

#### **Article 188**

A witness shall be examined before the court or the administrative authority that conducts the misdemeanor proceedings and, if a witness has his/her place of abode or

residence outside its territory, he/she may be heard before the court or the administrative authority in the territory of which the witness has his/her place of abode or residence.

Witnesses shall be examined individually and without the presence of other witnesses.

A witness shall give responses orally.

A witness shall be previously warned that he/she has to speak the truth and that he/she must not withhold anything, and then he/she shall be cautioned that giving a false testimony represents a criminal act. A witness shall also be cautioned that he/she does not have to testify if there are circumstances referred to in Article 185 hereof, and that caution shall be recorded in the transcript.

After that, the witness shall be asked about his/her proper name, father's name, age, place of birth, his/her place of abode, occupation and his/her relationship with the defendant and the injured party.

After general questions, the witness shall be asked to state everything he/she knows about the case, and then he/she shall be put questions for the purpose of verification, addition and clarifications.

A witness shall always be asked how he/she knows the things he/she is testifying about.

If a witness is deaf or mute, he/she shall be interrogated in the manner stipulated in Article 180 hereof.

## **Confrontation of witnesses**

### **Article 189**

Witnesses may be confronted if their testimonies disagree with respect to important facts. Those confronted shall be heard individually about every circumstance on which their testimonies mutually disagree and their respective answers shall be recorded in the transcript.

Only two witnesses may be confronted simultaneously.

The provisions of 179, paragraph 2 hereof shall apply to confrontation of witnesses.

## **Failure to appear and refusal to give evidence**

### **Article 190**

If a witness, who has been duly summoned, fails to appear, and fails to justify his/her absence, or without permission or a justified reason, leaves the place where he/she should be heard, he/she may be ordered to be forcibly brought, and may be fined from RSD 10,000.00 to 50,000.00.

The provisions on bringing of a defendant (Article 163 hereof) shall also accordingly apply to the bringing of witnesses.

If a witness appears and, after being cautioned on the consequences, does not want to testify without a legal reason, he/she may be fined up to RSD 10,000.00 and, if even after that he/she refuses to testify, he/she may be fined up to RSD 50,000.00.

A resolution on a fine imposed on a witness shall be recorded in the transcript.

An appeal against a resolution on the fine shall not stop enforcement of the resolution.

If a witness agrees to testify immediately after a fine was imposed on him, the handed down resolution shall be abolished.

If, for the reasons referred to in paragraphs 1 and 3 of this Article, costs of the proceedings have been incurred, the witness may be liable to bear such costs.

In case a convicted person fails to pay the fine and costs of the proceedings, they shall be collected through enforcement action.

## **Chapter XXVI**

# **INVESTIGATION AT THE SCENE OF OFFENSE AND EXPERT INQUIRY/EVALUATION**

### **Investigation at the scene of offense**

#### **Article 191**

If personal and direct observation by the judge, who conducts the misdemeanor proceedings, is required to establish or clarify some important facts, the investigation at the scene of offense shall be conducted.

Investigation at the scene of offense may also be conducted with participation of an expert witness.

The judge who conducts the misdemeanor proceedings shall order which persons shall be summoned to attend the investigation at the scene of offense.

The transcript shall be made of the investigation at the scene of offense. Recorded in the transcript shall be the name of the court or of the administrative authority that is conducting the investigation at the scene of offense, persons present, results of the investigation at the scene of offense and other important facts.

### **Expert inquiry/evaluation**

#### **Article 192**

Expert inquiry/evaluation shall be ordered when, for establishing or assessment of an important fact, it is necessary to obtain the finding and the opinion from a person who has expert knowledge.

Expert inquiry/evaluation shall be ordered by a written order of the court or of the administrative authority that conducts the misdemeanor proceedings. It shall be stated in the order with respect to what facts expert inquiry/evaluation is conducted and to whom it is entrusted. As a rule, one expert witness shall be ordered and, if the expert inquiry/evaluation is complex, two or more expert witnesses.

Expert inquiry/evaluation may be entrusted to the relevant professional institution, government body or expert, primarily from the list of permanent expert witnesses, and other authorities or a person may be designated only if there is a danger of a delay, if permanent expert witnesses are unavailable or if it is called for by other circumstances.

### **Persons who may not be expert witnesses**

#### **Article 193**

The person who may not be heard as a witness (Article 184 hereof) or a person who is excused from the duty to testify (Article 185 hereof), or a person who is the injured party by the misdemeanor may not be taken as an expert witness and, if such person has been taken as an expert witness, the judgment may not be based on his/her finding and opinion.

The defendant and the injured party shall be informed about the name of the expert witness a prior to undertaking the expert inquiry/evaluation.

### **Request for exclusion of an expert witness**

#### **Article 194**

A defendant, the petitioner of the motion and an injured party may request exclusion of an expert witness.

### **Course of expert inquiry/evaluation**

#### **Article 195**

Prior to commencement of expert evaluation, the expert witness shall be asked to carefully examine the object of expert evaluation, to exactly specify everything he/she notices and finds and to present his/her opinion impartially and in compliance with the rules of science or skill. He/she shall be particularly cautioned that giving a false testimony represents a criminal act.

#### **Article 196**

An expert witness may be given clarifications, and he/she may also be permitted to examine files. At his/her request, new evidence may be produced in order to establish circumstances that are important for expert evaluation.

An expert witness shall inspect the objects of expert inquiry in the presence of the judge who conducts the misdemeanor proceedings and the recording clerk, unless expert evaluation requires longer examinations or tests are conducted in institutions or a government body, or if it is called for by moral considerations.

If it is suspected that the defendant suffers from a mental disease that excludes his/her mental capacity, forensic evaluation shall be ordered.

### **Finding and opinion of an expert witness**

#### **Article 197**

As a rule, an expert witness shall provide his/her finding and opinion in writing within the time limit determined by the judge or the official person who conducts the misdemeanor proceedings.

Exceptionally, an expert witness may be allowed to give the finding and opinion orally on the record. Disagreement or ambiguities in the finding and opinion of the expert witness shall be eliminated by his/her hearing or by repeating expert evaluation by the same or another expert witness.

### **Punishing an expert witness**

#### **Article 198**

The person who is summoned as an expert witness shall have the duty to appear and to provide his/her finding and opinion.

If the expert witness who has been duly summoned fails to appear, and fails to justify his/her absence or if unjustifiably refuses to give expert evaluation/opinion, he/she may be ordered to compensate for the inflicted costs, and may also be fined from RSD 10,000.00 to 50,000.00.

A resolution on the punishment shall be recorded in the transcript.

An appeal against the resolution on punishment of an expert witness shall not defer enforcement of the resolution.

In case an expert witness fails to pay the imposed fine, it shall be collected through enforcement action.

#### **Article 199**

The provisions of this Law that are related to expert witnesses shall also be accordingly applied to the interpreters.

# **Chapter XXVII**

## **SEARCH OF PREMISES AND PERSONS**

### **Grounds for search**

#### **Article 200**

An apartment and other premises as well as persons may be searched only in case of serious misdemeanors if it is probable that, at home, in other premises, items or on certain persons, an item or traces shall be found that could be important for the misdemeanor proceedings, or that the defendant shall be caught by search of the apartment and other premises.

Search of persons, premises and items that belong to the persons who enjoy immunity under the international law shall not be permitted.

### **Search warrant**

#### **Article 201**

Search shall be ordered only by a written order of the court.

Search warrant shall be handed over, prior to commencement of the search, to the person with whom or on whom search shall be conducted. Prior to the search, the person to whom the search warrant is related shall be asked to voluntarily surrender the person or items that are searched for.

A search warrant shall be enforced by the interior affairs authorities.

### **Method of search**

#### **Article 202**

Two citizens of legal age shall be present during the search.

The holder of the apartment or a room shall be invited to be present during the search and, if he/she is absent, one of adult household members or a neighbor shall be invited to be present.

Searching in the premises of legal entities may be carried out only in the presence of the representative of such legal entity.

Searching of persons of female gender shall be carried out by an official person of the same gender or other female person to whom the search may be entrusted.

Locked premises, furniture or other items shall be forcibly opened only if their holder or his/her proxy is not present or would not voluntarily open them. Thereby unnecessary damages shall be avoided.



## **Transcript of search**

### **Article 203**

The transcript shall be made of every search of an apartment, or room or persons, in which the warrant on the basis of which the search is carried out, description of premises or of the person who is searched and of the persons or items or traces that were found shall be stated.

The transcript shall be signed by the person with whom search is carried out or who is searched and the persons whose presence shall be mandatory.

A copy of the transcript shall be issued to the person with whom search was carried out, or who was searched.

## **Procedure with found items**

### **Article 204**

If, on the occasion of the search, items are found that have been used to commit the misdemeanor or have been procured by misdemeanor, or have come to be by committing the misdemeanor, or items that can serve as evidence in the misdemeanor proceedings, such items shall be temporarily seized.

## **Temporary seizure of items**

### **Article 205**

The items that may be seized hereunder may be temporarily seized even before handing down of the judgment.

A temporary seizure of items shall be ordered only by a court by a written order.

The law may also authorize official persons of inspection authorities, officers of the customs service and authorized police officers to temporarily seize the items referred to in paragraph 1 of this Article when they learn of a misdemeanor in discharging official duties. The specified authorities shall inform the court without delay on the temporary seizure of items and shall take care of safekeeping of such items, unless the law stipulates otherwise.

A receipt shall be issued to the person from whom items are seized with exact indication of seized items.

If items that are perishable are in question or if their keeping incurs disproportionate costs, the court shall order selling of such items and handing over of the proceeds for safekeeping to a bank or to other financial organization.

## **Procedure with temporarily seized items**

## **Article 206**

Temporarily seized items or proceeds from the sale of items shall be restituted to the owner if the misdemeanor proceedings is discontinued, except when it is called for by the interests of general safety or moral reasons, on which a separate resolution shall be handed down.

If the owner is not known and, not even within one year from the date of publishing the announcement, no one applies for an item or proceeds from sale of the item, the resolution shall be handed down that the item has become the state property, or that the proceeds are recorded in the budget of the Republic of Serbia. This shall not interfere with the right of the owner to request surrender of the item or money in an action.

## **Chapter XXVIIa PLEA AGREEMENT**

### **Article 206a**

When misdemeanor proceedings are conducted for one misdemeanor or for more concurrent misdemeanors, the authorized petitioner of the motion may propose to the defendant and to his/her defense counsel conclusion of a plea agreement, or the defendant and his/her defense counsel may propose conclusion of such an agreement to the authorized petitioner of the motion.

When the proposal referred to in paragraph 1 of this Article is submitted, the parties and the defense counsel may negotiate the conditions of pleading guilty to a misdemeanor, or to the misdemeanors the defendant is charged with.

The plea agreement shall be in writing and may be submitted up to the completion of the first hearing for holding the trial at the latest.

The plea agreement shall be submitted to the judge.

### **Article 206b**

By the plea agreement, the defendant shall fully confess the misdemeanor he/she is charged with or shall confess one or more concurrently committed misdemeanors, that are the subject matter of the motion, and the defendant and the authorized petitioner of the motion shall agree:

1. On the type and level punishment or on other misdemeanor sanctions that shall be imposed on the defendant;
2. On desisting of the authorized petitioner of the motion from the misdemeanor prosecution for the misdemeanors that are not covered by the plea agreement;
3. On the costs of the misdemeanor proceedings and on the property-rights claim;

4. On waiver by the parties and the defense counsel of the right to appeal against the judicial decision handed down on the basis of the plea agreement, when the court has fully accepted the agreement.

In the plea agreement, the authorized petitioner of the motion and the defendant may agree on imposing on the defendant a punishment which, as a rule, may not be below the statutory minimum for the misdemeanor that the defendant is charged with.

Exceptionally, when it is obviously justified by the importance of the confession of the defendant for clarification of the misdemeanor he/she is charged with, proving which without such a confession would have been impossible or considerably aggravated, or of importance for prevention, detection or proving of other misdemeanors, the authorized petitioner of the motion and the defendant may agree that the defendant is imposed a more lenient punishment, in the manner prescribed in Article 40 hereof.

In the plea agreement, the defendant may accept the obligation to restitute the material gain acquired by committing the misdemeanor within a certain time period, or to restitute the item of misdemeanor.

### **Article 206v**

A court shall decide on the plea agreement, which it may, by a resolution, reject, accept or turn down the agreement.

A judge shall reject the plea agreement if has been submitted after completion of the first hearing for holding the trial. No appeal shall be permitted against the resolution rejecting the plea agreement.

A court shall decide upon the plea agreement at a hearing attended by the authorized petitioner of the motion, the defendant and the defense counsel, and the injured party and his/her proxy shall be informed about the hearing.

The hearing referred to in paragraph 3 of this Article shall be public, and the public may be excluded from the entire course of the hearing or a part thereof by a judicial resolution only if any of the reasons referred to in Article 209, paragraph 2 hereof exists.

The court shall, by a resolution, reject the plea agreement if the duly summoned defendant fails to appear at the hearing. No appeal shall be permitted against the resolution rejecting the plea agreement. The hearing referred to in paragraph 3 of this Article may also be held without the presence of the duly summoned authorized petitioner of the motion.

The court shall, by a reasoned resolution, accept the plea agreement and hand down the decision that corresponds to the contents of the agreement if it establishes:

1. That the defendant knowingly and voluntarily confessed the misdemeanor, or misdemeanors that are the subject matter of the motion and that the possibility confession of the defendant misconception is excluded;

2. That the agreement has been concluded in compliance with the provisions of Article 206b hereof;

3. That the defendant is fully aware of all the consequences of the concluded agreement, and particularly that he/she fully understands that, by the agreement, he/she waives the right to a trial and lodging an appeal against the judgment of the court handed down on the basis of the resolution on adoption of the agreement;

4. That there is also other evidence that corroborates guilty plea of the defendant;

5. That the plea agreement does not violate the rights of the injured party or that he/she is not opposed to the reasons of equity.

When one or more conditions referred to in paragraph 6 of this Article is not fulfilled, or when punishment, or other misdemeanor sanction laid down in the plea agreement obviously does not correspond to the gravity of the misdemeanor that the defendant has confessed, the court shall hand down the reasoned resolution by which the plea agreement is turned down, and the confession of the defendant given in the agreement may not be the evidence in the misdemeanor proceedings.

When the resolution referred to in paragraph 7 of this Article becomes final, the agreement and all the files related to it shall be destroyed before the court, on which an official annotation shall be made.

A court resolution on the plea agreement shall be submitted to the authorized petitioner of the motion, the defendant, the defense counsel, the injured party and his/her proxy.

### **Article 206g**

The authorized petitioner of the motion, the defendant and his/her defense counsel may lodge an appeal against the court resolution turning down the plea agreement, within eight days from the date when the resolution was submitted to them.

No appeal of the defendant, his/her defense counsel and the representative of the petitioner of the motion shall be permitted against a court resolution accepting the plea agreement, and, within the time limit referred to in paragraph 1 of this Article, an appeal may be lodged by the injured party and by his/her proxy.

The court shall submit the timely and permitted appeal to the Higher Misdemeanor Court within three days from the date of receipt of the appeal.

The Higher Misdemeanor Court shall decide on the appeal referred to in paragraphs 1 and 2 of this Article within 15 days from the date of receipt of the appeal.

The panel that decides on the appeal against the resolution on the plea agreement may dismiss the appeal if it was lodged upon expiry of the time limit referred to in paragraph 1 of this Article, accept it or reject it as unfounded.

No appeal shall be permitted against the resolution referred to in paragraph 4 of this Article.

### **Article 206d**

When a resolution accepting the plea agreement becomes final, the judge shall, without delay, hand down the judgment by which the defendant is pronounced guilty and shall impose punishment on him/her or other misdemeanor sanction and shall decide on other issues provided in the plea agreement.

In addition to the contents of the plea agreement, the judgment referred to in paragraph 1 of this Article shall also contain other data referred to in Article 219 hereof.

The judgment referred to in paragraph 1 of this Article shall be submitted to the persons referred to in Article 224 hereof.

If the plea agreement provides for desisting of the authorized petitioner of the motion from the misdemeanor prosecution for misdemeanors that are not covered by the plea agreement, the court shall hand down the judgment referred to in Article 221 hereof with respect to such misdemeanors.

## **Chapter XXVIII TRIAL**

### **Scheduling a trial**

#### **Article 207**

The defendant and his/her defense counsel, the injured party, the petitioner of the motion to institute the proceedings, and other participants in the proceedings shall be summoned to the trial. If the accused is a legal entity, a representative of the legal entity shall be summoned to the trial.

In the summons for the trial, the defendant shall be cautioned that in case of failure to appear, his/her bringing shall be ordered.

If a defendant duly summoned for the trial fails to appear and fails to justify his/her absence, the court shall postpone the trial and issue the order to bring him/her if the conditions for holding the trial without the presence of the accused do not exist.

### **Failure of a defendant to appear**

#### **Article 208**

The court may decide to hold the trial in the absence of the defendant who has been duly summoned if he/she has been heard, and the judge finds that his/her presence is not necessary for proper establishing of the state of facts. Under the same conditions,

the trial may also be held in the absence of the duly summoned representative or of the defense counsel of an accused legal entity.

The trial may be held even without the presence of the petitioner of the motion.

The trial shall also be held if a duly summoned defense counsel of the defendant fails to appear.

## **Public character**

### **Article 209**

A trial shall be public.

The judge who conducts the misdemeanor proceedings may exclude the public during the entire trial or a part thereof if general interest or moral reasons call for it.

If the proceedings are conducted against a minor, the trial shall be held without the presence of the public.

In the case referred to in paragraphs 2 and 3 of this Article, the judge shall caution the persons attending the trial at which the public is excluded that they have the duty to keep confidential everything they learn on the trial and they shall be warned that disclosing a secret represents a criminal act.

## **Course of a trial**

### **Article 210**

A trial shall start by presenting the main contents of the motion to institute the misdemeanor proceedings. After checking presence of the summoned persons, the interrogation of the defendant shall be carried out and, if the accused are a legal entity and the responsible person in the legal entity, the representative of the legal entity shall be heard first, and the responsible person after him/her. Upon hearing of the accused, evidence shall be produced by hearing witnesses and an expert witness and other evidence shall be produced.

The order of producing evidence shall be established by the judge.

The transcript of the work at a trial shall be made in which the entire course of the trial shall be recorded.

The transcript of a trial shall be signed by the judge and the recording clerk.

## **Right of parties at a trial**

### **Article 211**

The petitioner of the motion, the defendant and his/her defense counsel, the representative and the defense counsel of a legal entity and the injured party shall be entitled, in the course of the trial, to propose evidence and propose other motions and, upon approval of the judge who conducts the proceedings, they may put questions to the persons who are heard.

The authorized representative of the petitioner of the motion shall be entitled to modify the contents of the motion on the trial.

In the case referred to in paragraph 2 of this Article, the judge shall, by a resolution, postpone the trial so that the defendant can be familiarized with the modification of the motion and to prepare the defense.

After the completed evidence procedure, the parties and the defense counsel may give closing arguments with their respective assessments of the presented evidence. The closing argument shall always be due to the defendant or to the representative of the accused legal entity.

If the judge finds that the trial should not be postponed for the purpose of supplementing the proceedings or for the purpose of preparation of the defense of the defendant according to the modified motion, he/she shall conclude the trial, and may hand down the judgment and publicly announce the operative part of the judgment including a brief statement of reasoning.

When, in the case referred to in paragraph 5 of this Article, the defendant and the petitioner of the motion state that they do not request to be served the judgment drawn up in writing and that they shall not appeal, the defendant shall be handed over, and the petitioner of the motion shall be served, only a transcript of the operative part of the judgment.

## **Chapter XXIX**

### **MAINTAINING ORDER**

#### **Looking after maintaining order**

##### **Article 212**

The duty of the judge or of the official person, who, in the administrative authority, conducts misdemeanor proceedings, shall be to look after maintaining order during taking actions in the misdemeanor proceedings.

If the defendant, his/her defense counsel, proxy, the injured party, the legal representative, witness, expert witness, interpreter or other person who at present during actions in the misdemeanor proceedings, disrupts order or does not obey the orders to maintain order, the judge shall warn him/her. If the warning is unsuccessful, it may be ordered to remove the defendant, and other persons may be removed and fined from RSD 10,000.00 to 50,000.00. A decision of the judge or of the official person that is related to the maintaining order shall be recorded in the transcript.

A proxy or a defense counsel, who, after being fined, continues to disrupt the order, may be denied further representation or defense.

If a convicted person fails to pay the imposed fine within a certain time period, the fine shall be collected through enforcement action.

An appeal against the resolution on punishment referred to in paragraph 2 of this Article shall not stop enforcement of the resolution.

No appeal shall be permitted against other decisions related to the maintaining of order and management of proceedings.

## **Chapter XXX**

### **STAY OF PROCEEDINGS**

#### **Article 213**

The judge or the official person who in the administrative authority, conducts the misdemeanor proceedings, shall stay in the proceedings by a resolution:

1. If the residence of the defendant is not known or he/she is on a run, or is otherwise unreachable by the government bodies, or is staying abroad for an indefinite period of time;
2. If the defendant has onset of a temporary mental illness or a temporary mental disorder;
3. If the criminal proceedings have been instituted against the defendant for the same act, when the stay lasts up to the handing down of the legally binding judicial decision in the criminal proceedings.

Before the proceedings is stayed, all the evidence on the misdemeanor and the liability of the defendant that can be obtained shall be collected.

Stayed proceedings shall recommence when the obstacles that caused staying terminate.

The petitioner of the motion shall be informed about the stay and recommencement of the proceedings and, in the misdemeanor proceedings in the areas of customs, foreign trade and foreign exchange operations, the injured party.

## **Chapter XXXI**

### **JUDGMENT**

#### **Handing down a judgment**

#### **Article 214**



Misdemeanor proceedings shall be concluded by handing down a judgment or a resolution of conviction or acquittal by which the proceedings is discontinued.

A judgment or a resolution shall be drawn up within eight days from the date of finalization of all actions in the misdemeanor proceedings that precede the handing down of a judgment or a resolution.

A judgment or resolution shall be based on the produced evidence and facts that have been established in the proceedings.

### **Objective and subjective identity**

#### **Article 215**

A decision in the misdemeanor proceedings shall refer only to the person who is charged with by the motion to institute the misdemeanor proceedings and only to the misdemeanor that is the subject matter of the motion put forward.

The court or the administrative authority conducting the misdemeanor proceedings shall not be bound by the proposals and assessment with respect to the legal qualification of the misdemeanor.

#### **Article 216**

A resolution by which the misdemeanor proceedings stays shall be handed down when it is established:

1. That the misdemeanor proceedings has been conducted without a motion or that the petitioner of the motion to institute the misdemeanor proceedings was not authorized to put it forward;
2. That the court or the administrative authority is not really competent to conduct the misdemeanor proceedings;
3. That the defendant, for the same act, has already been validly punished in the misdemeanor proceedings or the misdemeanor proceedings has been validly discontinued, but not due to lack of jurisdiction;
4. That the defendant, in the criminal proceedings or in the economic offence proceedings, has been validly pronounced guilty for the same act that also includes the character of the misdemeanor;
5. That the defendant enjoys diplomatic immunity;
6. That limitation on conducting misdemeanor proceedings has come into effect;
7. That the defendant died in the course of the misdemeanor proceedings, or that the accused legal entity has ceased to exist;

8. That the authorized the petitioner has desisted from the motion to institute the misdemeanor proceedings before the decision becomes final.

Misdemeanor proceedings shall also be discontinued in other cases stipulated by law.

In the reasoning of the resolution, the reasons due to which the proceedings was discontinued and the regulation based on which it was done shall be stated in brief.

### **Handing down the judgment by which a defendant is pronounced guilty**

#### **Article 217**

A judgment by which a defendant is pronounced guilty of a misdemeanor shall be handed down when existence of a misdemeanor and liability of the defendant for such misdemeanor is established in the misdemeanor proceedings.

### **Handing down the judgment of acquittal of a defendant**

#### **Article 218**

A court shall pronounce judgment of acquittal of the defendant:

1. If the act he/she is charged with is not a misdemeanor according to the regulation,
2. If there are circumstances that exclude the misdemeanor liability of the defendant,
3. If it has not been proven that the defendant has committed the misdemeanor for which the motion to institute the misdemeanor proceedings has been put forward against him/her.

### **Contents of the operative part of the judgment by which a defendant is pronounced guilty of a misdemeanor**

#### **Article 219**

If a defendant is pronounced guilty of a misdemeanor, the operative part of the judgment shall contain:

1. The misdemeanor for which the defendant is pronounced guilty with the indication of facts and circumstances that constitute the character of the misdemeanor and on which application of a certain regulation on misdemeanor depends;
2. The regulations that have been applied;
3. The decision on imposed sanctions;
4. The decision on seizure of the material gain;
5. The decision on reckoning detention and custody in the imposed punishment;

6. The decision on the costs of the misdemeanor proceedings;

7. The decision on the property-rights claim.

If a defendant has been fined, the term of payment of the fine and the method of substitution of the fine in case the defendant fails to pay the fine shall be indicated in the judgment, or it shall be indicated that the fine shall be levied through enforcement action.

If the precautionary measure of seizure of items is also imposed, in the operative part of the judgment, it shall be ordered how to act with the seized items. When the imposed measure of seizure of items does not include items temporarily seized further to Article 205 hereof, it shall be ordered to restitute such items to the owner in the operative part of the judgment.

## **Pronouncing a judgment**

### **Article 220**

A judgment shall be pronounced orally if the defendant is present, and the judgment drawn up in writing shall be served to the defendant only if he/she requests that.

If a judgment is pronounced, only the operative part of the judgment shall be recorded in the transcript and it shall be stated that the judgment was pronounced orally, that a short reasoning of the judgment was given and instruction on the legal remedy.

If a defendant requests to be served the judgment drawn up in writing, the court shall serve it within eight days from the date of the pronouncement.

When, in the case referred to in paragraph 1 of this Article, the defendant states that he/she is not asking to be served the judgment drawn up in writing and that he/she shall not appeal, he/she shall be handed over, and the petitioner of the motion shall be served, only a transcript of the operative part of the judgment.

## **Judgment for a number of misdemeanors**

### **Article 221**

If the misdemeanor proceedings is conducted due to a number of misdemeanors, it shall be stated in the judgment for what misdemeanors the defendant is pronounced guilty, and for what he/she is exonerated of guilt or the proceedings is discontinued.

## **Contents of a judgment drawn up in writing**

### **Article 222**

A judgment drawn up in writing shall contain: introduction, the operative part, reasoning and instruction on the right to appeal, as well as the number, date, signature of the judge, and the official seal.

Introduction judgment shall contain: the name of the court that handed down the decision, proper name of the judge, proper name of the defendant, place of abode of the defendant or the name and seat of the accused legal entity, misdemeanor that is the subject matter of the misdemeanor proceedings, the date of handing down the judgment and the ground on which the judgment was handed down.

The operative part of the judgment shall contain: personal data of the defendant or name and seat of the accused legal entity, factual description and legal qualification of the misdemeanor and the decision by which the defendant is pronounced guilty, exonerated of the guilt or the proceedings is discontinued.

In the reasoning of the judgment the contents of the motion to institute the misdemeanor proceedings shall be stated in brief, the established state of facts including statement of evidence on the basis of which certain facts were proven, regulations on which the judgment is grounded and the reasons for each count of the judgment.

In the instruction on the right to appeal, advice shall be given on to which authority the appeal is to be laid, to whom to be handed over, within what time limit and that the appeal may be submitted in writing, and either handed over directly or sent by certified mail.

## **Correcting a judgment**

### **Article 223**

Errors in writing names and numbers and other obvious errors in writing, calculation and transcribing in a judgment shall be corrected ex officio or at the motion of the defendant, the petitioner of the motion or of the injured party.

Corrections shall be executed by a separate resolution, which shall become an integral part of the judgment.

If a judicial decision contains the errors referred to in paragraph 3 Article 222 hereof, a corrected transcript of the judgment shall be served to the persons who are entitled to appeal. In such a case, the time the limit for the appeal shall run from the date of serving of the corrected judgment.

## **Service of judgment to participants in the proceedings**

### **Article 224**

A judgment drawn up in writing shall be served to the petitioner of the motion and to the defendant under the provisions of Article 147 hereof.

A judgment shall be served to the injured party who is not the petitioner of the motion if a property-rights claim has been decided on, to the person whose item has been seized by such judgment, as well as to the person against whom the measure of seizure of the material gain was imposed.

## **Service of an orally pronounced judgment to a defendant**

### **Article 225**

If a defendant requests to be served a copy of the judgment, the judge shall have a copy of the same served to him/her within eight days from the date of drawing up judgment.

The request of the defendant, within the meaning of paragraph 1 of this Article, shall be recorded in the transcript against his/her signature.

### **Article 226**

The provisions of this Law related to judgment shall also be accordingly applied to a resolution handed down by administrative authorities in misdemeanor proceedings.

### **Article 227**

On the proceedings before courts, which is not prescribed by the provisions herein, the provisions of the Law on Criminal Proceedings shall also be accordingly applied, unless otherwise stipulated by this or other law.

## **Chapter XXXII REGULAR LEGAL REMEDIES**

### **Lodging an appeal**

#### **Article 228**

An appeal may be lodged against the judgment of a misdemeanor court to the Higher Misdemeanor Court and, against the resolution of an administrative authority, to the misdemeanor court of territorial jurisdiction. The appeal shall be filed to the court or to the administrative authority, which has handed down the first-instance decision.

The appeal shall be lodged within eight days from the date of orally pronounced decision, or from the date of service of a judgment or a resolution.

### **Those entitled to lodge an appeal**

#### **Article 229**

An appeal may be lodged by the defendant and the petitioner of the motion.

An appeal may always be lodged against a judgment and a resolution of an administrative authority and against other resolutions handed down in misdemeanor proceedings only if the right to appeal is not excluded by the law.

An appeal may be lodged in favor of the defendant by his/her defense counsel, spouse, a direct relative, brother, sister, legal representative, adopter, adoptee, breadwinner and the person with whom he/she lives in an extramarital union.

In favor of the accused legal entity, an appeal may be lodged by the representative of the legal entity as well as by a natural person authorized to represent it or act for it.

If the precautionary measure of seizure of items the owner of which is not the defendant has been imposed, the owner of items may lodge an appeal only with regard to the decision on such measure.

### **Suspensive effect of an appeal**

#### **Article 230**

A timely lodged appeal shall defer enforcement of the decision, except in cases where this Law stipulates otherwise.

### **Waiver and abandonment of an appeal**

#### **Article 231**

The defendant and the petitioner of the motion may waive the right to an appeal after the decision has been pronounced, and may abandon the lodged appeal up to the handing down of the second-instance judgment.

Waiver of and giving up the right to an appeal may not be revoked.

Waiver of a minor of the right to an appeal shall not have a legal effect.

### **Contents of an appeal**

#### **Article 232**

An appeal should contain indication of the decision against which the appeal is lodged, statements concerning what the appellant is dissatisfied with the decision and the signature of the appellant.

In an appeal, new facts may be presented and new evidence proposed. When referring to new facts, the appellant shall specify evidence by which such facts would have to be proven.

If an appellant is presenting new evidence in the appeal, he/she shall state why he/she did not present such evidence before, as well as the facts which he/she wishes to prove with such evidence.

### **Grounds due to which a decision may be contested**

#### **Article 233**

A decision may be contested:

1. Due to a substantial violation of the provisions of misdemeanor proceedings;
2. Due to violation of the provisions of substantive law referred to in the Misdemeanor Law and other regulations;
3. Due to incorrectly or incompletely established state of facts;
4. Due to the decision on misdemeanor sanctions, seizure of the material gain, the costs of the misdemeanor proceedings and the property-rights claim.

### **Substantial violations of the provisions of misdemeanor proceedings**

#### **Article 234**

A substantial violation of the provisions misdemeanor proceedings shall exist:

1. If the misdemeanor proceedings were conducted and the decision was handed down by the judge or by the official person in an administrative authority, who was excluded from conducting the proceedings and deliberation by a final decision;
2. If the misdemeanor proceedings were conducted and the decision was handed down by the judge or an official person in an administrative authority, who had to be excluded (Article 102, paragraph 1, subparagraphs 1-5 hereof);
3. If the defendant in the misdemeanor proceedings was not heard prior to handing down the decision except in the cases referred to in Article 85, paragraph 3 and Article 162, paragraph 8 hereof;
4. If the defendant was not advised on the right to use the language, or he/she or his/her defense counsel was deprived of the right, contrary to his/her request, at the oral hearing or in the course of other actions in the misdemeanor proceedings, to use his/her language and to follow the course of the oral hearing or the proceedings in his/her language (Article 86 hereof);
5. If the public was excluded at the oral hearing contrary to the law;
6. If the judge, or the official person in administrative authority rejected the motion to institute the misdemeanor proceedings in derogation of the provisions of Article 159 hereof;
7. If the judge stopped the misdemeanor proceedings contrary to the provisions of Article 216 hereof or handed down the judgment of acquittal of the defendant, contrary to the provisions of Article 218 hereof;
8. If a judgment was handed down by the court which, due to real lack of jurisdiction could not adjudicate in that matter (Article 100 hereof);

9. If the orally pronounced decision was not recorded in the transcript (Article 220, paragraph 2 hereof);

10. If, by a decision, the court, or the administrative authority did not fully decide on the motion to institute the misdemeanor proceedings;

11. If the court or the administrative authority decided against the motion to institute the misdemeanor proceedings;

12. If the decision is based on the evidence on which, according to the provisions hereof, it may not be based, except if, in view of other evidence, it is obvious that, even without such evidence, the same decision would have been handed down;

13. If the decision was based on the testimony of the defendant who was not cautioned on the right to hire a defense counsel of his/her choice or to be examined in the presence of a defense counsel;

14. If the provision of Article 88 hereof was violated;

15. If the operative part of the decision is unintelligible, contradictory in itself or to the reasoning of the decision or if the decision does not have reasoning at all or reasoning on the decisive facts are not stated in it, or such reasoning is completely unclear, or to a considerable extent contradictory, or if, on the decisive facts, there is a considerable contradiction between what is stated in the reasoning of the decision, on contents of documents or the transcript of testimonies given in the proceedings, and the actual documents or the transcript, except in the case referred to in Article 220 hereof.

A substantial violation of the provisions of the misdemeanor proceedings shall also exist if the judge or the official person in the course of misdemeanor proceedings or when handing down the decision did not apply or incorrectly applied any provision of this Law, or, in the course of the misdemeanor proceedings, violated the right to defense, and that had influence on or could have influence on lawful and proper handing down of the decision.

## **Violation of the substantive law**

### **Article 235**

Violation of substantive misdemeanor law shall exist if a misdemeanor regulation has been violated when the following is in question:

1. Whether the act for which the defendant is prosecuted is a misdemeanor;

2. Whether there are circumstances that exclude a misdemeanor liability;

3. Whether there are circumstances that exclude misdemeanor prosecution, and particularly whether limitations on the misdemeanor prosecution have come into effect or the matter has already been finally adjudicated;



4. Whether the law or other regulation has been applied to the misdemeanor, which is the subject matter of the motion to institute the misdemeanor proceedings, that may not be applied;

5. Whether, by a decision on punishment, a precautionary measure or on seizure of the material gain, the authority of the judge or the official person in an administrative authority, which he/she has according to the law, has been overstepped;

6. Whether the provisions on reckoning in detention, custody, and sentence served have been violated.

### **Incorrectly or incompletely established state of facts**

#### **Article 236**

A decision may be contested due to incorrectly or incompletely established state of facts when a court or an administrative authority has wrongly established or did not establish any decisive fact.

Incompletely established state of facts shall also exist when new facts or new evidence indicate that.

### **Contesting judgments and other decisions**

#### **Article 237**

A decision may be contested because of the decision on punishment when, by such a decision, the statutory powers (Article 235, paragraph 1, subparagraph 5 hereof) have not been overstepped or the court or the administrative authority has not properly weighed the punishment in view of the circumstances that have impact on a punishment to be more severe or lighter. A decision on punishment may also be contested because the court or the administrative authority has or has not applied the provisions on mitigation of punishment, on acquittal, or because it did not impose admonition although the legal conditions for that existed.

A decision on a precautionary measure or on seizure of the material gain may be contested if there is no violation referred to in Article 235, paragraph 1, subparagraph 5 hereof or the court improperly handed down this decision or did not impose a precautionary measure or seizure of the material gain although the legal conditions for that existed.

A decision on the property-rights claim may be contested when the court handed down the decision thereon in derogation of the provisions hereof.

A decision on the costs of the misdemeanor proceedings may be contested when the court or the administrative authority handed down the decision thereon for the reasons same as in the previous paragraph of this Article.

### **Procedure for an appeal**

## **Article 238**

A court or an administrative authority shall dismiss, by a resolution, a belated, unpermitted and by an unauthorized person lodged appeal.

A misdemeanor court shall submit a timely, permitted and by an authorized person lodged appeal with the case files to the Higher Misdemeanor Court and, an administrative authority, to the misdemeanor court of territorial jurisdiction, within three days.

## **Decisions of a misdemeanor and the Higher Misdemeanor Court**

### **Article 239**

Deciding an appeal, the Higher Misdemeanor Court, or a misdemeanor court may dismiss, reject an appeal as unfounded and confirm the first-instance decision, or may grant it, and reverse or repeal the first-instance decision.

## **Dismissing an appeal by second-instance court**

### **Article 240**

The Higher Misdemeanor Court or a misdemeanor court shall dismiss an appeal by resolution as belated, unpermitted or lodged by an unauthorized person, if it establishes that the court or the administrative authority conducting the proceedings, failed to do that.

## **Limits of examining a first-instance decision**

### **Article 241**

The Higher Misdemeanor Court or a misdemeanor court shall examine the first-instance decision in the part in which the appeal is contested, but it must always ex officio examine:

1. Whether a substantial violation of the provisions of the misdemeanor proceedings referred to in Article 234, paragraph 1, subparagraphs 1, 3 and 7-15 hereof exists;
2. Whether the substantive law has been violated to the detriment of the defendant (Article 235 hereof).

If an appeal lodged in favor of the defendant does not contain the ground for contesting the decision (Article 233 hereof), the Higher Misdemeanor Court shall be restricted to the examination of the violations referred to in paragraph 1, subparagraphs 1 and 2 of this Article, as well as to examination of the decision on punishment, precautionary measures and seizure of the material gain (Article 237 hereof), and a misdemeanor court, to the examination of the violations referred to in paragraph 1, subparagraphs 1 and 2 of this Article, as well as to examination of the decision on punishment.

## **Confirming a first-instance decision**

### **Article 242**

The Higher Misdemeanor Court or a misdemeanor court shall, by a judgment, dismiss an appeal as unfounded and confirm the first-instance decision when it establishes that the reasons due to which the decision is contested do not exist, or violations of the law referred to in Article 241 hereof.

## **Reversal of a first-instance decision**

### **Article 243**

The Higher Misdemeanor Court or a misdemeanor court shall grant an appeal and, by a judgment, reverse the first-instance decision when it establishes that the decisive facts in the first-instance proceedings were established and that, in view of the established state of facts, a different decision should be handed down or if it deems that there are such violations of law that cannot be eliminated without reversal of the first-instance decision, or when it finds that in weighing the punishment or imposing a precautionary measure, all the circumstances were not taken into account, which have impact on proper weighing of the punishment or on lawful imposing of a precautionary measure or when the circumstances that were taken into account were not properly assessed.

A first-instance decision shall be reversed when it is established that the court or the administrative authority that conducted the misdemeanor proceedings, wrongly assessed documents and evidence that it did not take on its own, and the decision was grounded on such evidence.

## **Repealing a first-instance decision**

### **Article 244**

The Higher Misdemeanor Court or a misdemeanor court shall grant an appeal and, by a judgment, repeal the first-instance decision and refer the case back to a court or an administrative authority, for renewal of the proceedings if it establishes that a substantial violation of the provisions of the misdemeanor proceedings exists, which had or could have impact on a lawful determining in the misdemeanor matter, or if it deems that, due to incorrectly or incompletely established state of facts, the proceedings should be supplemented or new proceedings should be conducted, or if the misdemeanor proceedings has been discontinued due to incorrect assessment of evidence or incorrect application of the substantive law. For the same reasons, the first-instance decision may also be partially repealed if certain parts of the decision may be set aside without any detriment to proper decision-taking.

## **Reasoning of a second-instance judgment**

### **Article 245**

In the reasoning of the judgment of the Higher Misdemeanor Court or of a misdemeanor court, the statement of appeal shall be assessed and the violations of the law it took into account ex officio shall be pointed to.

When a first-instance decision is repealed due to violation of the provisions of the misdemeanor proceedings, it shall be stated in the reasoning which provisions were violated and what the violation is reflected in.

When a first-instance decision is repealed due to a wrongly or incompletely established state of facts, deficiencies shall be stated or why new evidence and new facts are important for handing down a proper decision.

### **Effect of appeal in favor of the co-accused**

#### **Article 246**

When the Higher Misdemeanor Court, further to anybody's appeal lodged against a decision, establishes that the reasons due to which it handed down the judgment in favor of the defendant are also beneficial to any one of the defendants who has not lodged an appeal or has not laid it in that direction, it shall act ex officio as if such an appeal exists.

### **Serving a second-instance judgment**

#### **Article 247**

The Higher Misdemeanor Court or the misdemeanor court shall return all the files to the court or to the administrative authority with the sufficient number of certified copies of its judgment for the purpose of its serving to the accused, the petitioner of the motion and to other interested parties.

### **Duty of a court and of an administrative authority**

#### **Article 248**

A court and an administrative authority shall take all the actions and discuss all the disputable issues to which the Higher Misdemeanor Court or a misdemeanor court pointed in its judgment. When handing down the new decision, the court and the administrative authority shall be bound by the prohibition prescribed in Article 88 hereof.

## **Chapter XXXIII EXTRAORDINARY LEGAL REMEDIES**

### **PETITION FOR RENEWAL OF MISDEMEANOR PROCEEDINGS**

#### **Reasons for renewal of proceedings**

## **Article 249**

Misdemeanor proceedings terminated by a legally binding decision may be repeated:

1. If it is proven that the decision was based on a false document or on a false statement of a witness or an expert witness;
2. If it is proven that the decision was handed down due to a criminal act of the judge or of other official person who participated in the proceedings;
3. If it is established that the person who was punished for a misdemeanor had already been once punished in the misdemeanor proceedings for the same act;
4. If new facts are deposed or new evidence is produced, which would have in themselves, or in relation to former evidence, given rise to a different decision had they been known in the previous proceedings.

The facts referred to in paragraph 1, subparagraphs 1-3 of this Article shall be proven by a final decision or a judgment in misdemeanor proceedings. If the proceedings against such persons may not be conducted because they have died or because there are circumstances that exclude criminal prosecution, the facts referred to in subparagraphs 1 and 2 of paragraph 1 of this Article may also be established by other evidence.

## **Presenting a petition for renewal of proceedings**

### **Article 250**

A petition for renewal of misdemeanor proceedings may be presented by the convicted, his/her defense counsel and by the petitioner of the motion and, after the death of the convicted, the petition may also be submitted in favor of the convicted by other persons referred to in Article 229, paragraph 3 hereof.

A petition for renewal of misdemeanor proceedings may be submitted within one year from the date of the final decision.

## **Proceedings on the petition**

### **Article 251**

The court or the administrative authority that handed down the first-instance decision shall decide on the petition for renewal of the misdemeanor proceedings.

In the petition, it should be specified on what legal ground renewal of the proceedings is requested and with what evidence the facts are corroborated on which the petition is grounded. If the petition does not contain such data, it shall be rejected by a judgment, or by a resolution.

A petition shall also be rejected when the court or the administrative authority on the basis of the motion and evidence from the case files from the former proceedings

establishes that the petition was submitted by an unauthorized person or that the petition was untimely filed, or that there are no legal conditions for renewal of the proceedings, or that facts and evidence on which the petition is grounded obviously are not suitable to permit renewal on the basis of them.

The petition for renewal of a misdemeanor proceedings in favor of the convicted may be submitted even after the decision has been enforced.

### **Decisions further to a petition for renewal of proceedings**

#### **Article 252**

If a misdemeanor court or an administrative authority does not reject the petition for renewal of proceedings, it shall renew the proceedings to the extent that is necessary to establish the facts due to which the petition was submitted.

Depending on the results of the renewed proceedings, the petition shall be, by a resolution, rejected or the previous decision shall be repealed in full or partially by a new decision.

If renewal of proceedings is permitted, in the renewed proceedings, the court and the administrative authority shall be bound by the prohibition prescribed in Article 88 hereof.

No appeal shall be permitted against the resolution permitting renewal of proceedings.

### **Deferring enforcement of a decision**

#### **Article 253**

A petition for renewal of misdemeanor proceedings shall not defer enforcement of a decision, but if a court or an administrative authority assesses that the petition may be awarded, it may decide to defer enforcement until it is decided on the petition for renewal of the proceedings.

A resolution allowing renewal of proceedings shall defer enforcement of the decision against which renewal has been allowed.

## **PETITION FOR EXTRAORDINARY REAPPRISAL OF A LEGALLY BINDING JUDGMENT**

### **Articles 254-263**

*(Deleted)*

## **REQUEST FOR PROTECTION OF LEGALITY**

### **Submitting a request for protection of legality**

## **Article 264**

The request for protection of legality may be raised against a legally binding judgment if the law or other regulation on misdemeanor has been violated.

The request for protection of legality shall be raised by the Republic public prosecutor within three months from the date of serving the judgment.

The request for protection of legality may not be raised if the Supreme Court of Cassation has determined on the petition for extraordinary reappraisal of a legally binding judgment.

## **Deciding on the request**

### **Article 265**

The Supreme Court of Cassation (hereinafter referred to as: the court) shall decide on the request for protection of legality.

The court shall notify the Republic public prosecutor of the panel session.

Before the case is presented for determining, the judge designated as the reporting judge may, as required, procure information on the violations of the law put forward.

### **Article 266**

In determining on the request for protection of legality, the court shall restrict itself only to the examination of violation of the regulations to which the public prosecutor refers in his/her request.

The court shall, by a judgment, reject the request for protection of legality as ungrounded if it establishes that the violation of regulations pointed to in the request does not exist.

When the court establishes that the request for protection of legality is founded, it shall hand down a judgment by which it shall, subject to the nature of the violation, reverse the final decision or repeal in full or in part the decisions of the misdemeanor court and of the Higher Misdemeanor Court and shall refer the case back for re-adjudication to the misdemeanor court, or shall restrict itself only to establish violation of the regulations.

### **Article 267**

If the request for protection of legality is raised to the detriment of the convicted, and the court finds that it is grounded, it shall establish only that the violation of the law exists, without interfering with the final decision.

If the court finds that the reasons due to which it handed down the decision in favor of the convicted also exist for any of the convicted co-offenders for whom the request for protection of legality has not been raised, it shall act ex officio as if such a request exists.

If the request for protection of legality has been raised in favor of the convicted, the court, when handing down the decision, shall be bound by the prohibition referred to in Article 88 hereof.

### **Submitting a judgment**

#### **Article 268**

A decision of the court shall be submitted to the misdemeanor court in the required number of copies though the Higher Misdemeanor Court.

#### **Article 269**

If a legally binding judgment has been repealed and the case has been referred back for repeated conducting of the misdemeanor proceedings, the former motion to institute the misdemeanor proceedings shall be taken as the basis.

The court shall take all the procedural actions and discuss the issues pointed to it by the court.

New facts may be presented and new evidence submitted before the court and the Higher Misdemeanor Court.

The court, when handing down a new decision, shall be bound by the prohibition referred to in Article 88 hereof.

The request for protection of legality shall not defer enforcement of a judgment, but the court, when determining on the request, may order to the court of jurisdiction to defer or to stop enforcement of the judgment until it decides on the request raised.

## **Chapter XXXIV TREATMENT OF MINORS**

### **Application of legal provisions**

#### **Article 270**

In the misdemeanor proceedings against a minor, the provisions of this Chapter shall be applied and other provisions of misdemeanor proceedings provided by this Law only if they are not in derogation of these provisions.

Unless otherwise prescribed hereunder, in the misdemeanor proceedings against a minor, the provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles shall also be accordingly applied.

### **Urgency of proceedings**

#### **Article 271**



The misdemeanor proceedings against a minor shall be urgent.

Prior to imposing a re-education measure or a punishment on a minor, the opinion of the competent guardianship authority shall be obtained, unless the minor has come of age in the meantime.

If the competent guardianship authority fails to submit the opinion within sixty days, the court may impose a reprimand or a fine on the minor even without the opinion of the guardianship authority, taking into account the mental development, sensitivity, and personal attributes of the minor.

When undertaking actions related to a minor in his/her presence, and particularly in his/her interrogation, the persons who participate in the proceedings shall act considerately, taking care of the mental development, sensitivity, and personal attributes of the minor.

## **Summons of minors**

### **Article 272**

A minor shall be summoned through parents, or legal representative, except if that is not possible due to the need to act urgently or for other justified reasons.

If a minor is not summoned through parents, or legal representative, the court conducting misdemeanor proceedings shall notify them about the institution of the proceedings.

## **Obligation to testify**

### **Article 273**

No one may be excused from the duty to testify about the circumstances required for assessment of the mental development of a minor, familiarization with his/her personality and circumstances in which he/she lives.

## **Severance and consolidation of proceedings**

### **Article 274**

When a minor has participated in committing of a misdemeanor together with persons of legal age, the proceedings against him/her shall be severed and conducted according to the provisions of this Law.

The proceedings against a minor may be conducted together with the proceedings against persons of legal age and concluded according to general provisions of this Law only if the consolidation of the proceedings is necessary for thorough resolution of the matter.

A resolution on severance or on consolidation of the proceedings shall be handed down by the acting judge. No appeal shall be permitted against this resolution.

## **Rights of parents and a guardian**

### **Article 275**

In the proceedings against minors, the guardianship authority, the parents, or the legal representative of the minor shall have the right to familiarize themselves with the course of the proceedings, to submit motions and to point to the facts and evidence that are important for handing down a proper decision in the course of the proceedings.

## **Inappropriateness of instituting proceedings**

### **Article 276**

A court may decide not to institute misdemeanor proceedings against minors if it deems that it would not be inappropriate to conduct the proceedings in view of the nature of the misdemeanor and the circumstances under which the misdemeanor has been committed, the former life of the minor and his/her personal attributes.

In the case referred to in paragraph 1 of this Article, the motion to institute misdemeanor proceedings shall be rejected by the resolution with the explanation why the motion was rejected, and a parent, adopter, or guardian of a minor and guardianship authority shall be notified of the committed misdemeanor for the purpose of undertaking measures within their respective authorities.

## **Right to lodge an appeal**

### **Article 277**

An appeal may also be lodged against the decision handed down in the proceedings by which a minor was pronounced guilty for misdemeanors, apart from the persons referred to in Article 229 hereof, by the guardian, brother, sister, and breadwinner of a minor.

The persons referred to in paragraph 1 of this Article may lodge an appeal in favor of a minor even against his/her will.

## **Treatment of a child**

### **Article 278**

When a judge establishes that a minor, at the time of committing a misdemeanor, was not fourteen as yet, he/she shall discontinue the misdemeanor proceedings.

In the case referred to in paragraph 1 of this Article, the court shall notify a parent, adopter and guardian of the minor, as well as the guardianship authority and, as required, it may also notify the school or the organization in which the minor is placed about the misdemeanor that has been committed.

## **Exclusion of the public**

### **Article 279**

In the proceedings against a minor, the public shall always be excluded.

## **Chapter XXXV COMPENSATION FOR DAMAGE DUE TO UNFAIR PUNISHMENT**

### **Right to compensation for damage due to an unfair punishment**

#### **Article 280**

The right to compensation for damage due to unfair punishment shall have the person on whom, by a legally binding judgment, a misdemeanor punishment or a precautionary measure was imposed and, due to an extraordinary legal remedy, the misdemeanor proceedings has later been discontinued, except in the following cases:

1. If the misdemeanor proceedings has been discontinued because, in the new proceedings due to an extraordinary legal remedy the injured party as the petitioner of the motion desisted from the motion to institute the misdemeanor proceedings, on the basis of the agreement with the defendant;
2. If, due to the petition for renewal of the misdemeanor proceedings to the detriment of the defendant, the new proceedings has been discontinued due to the death or any permanent mental illness of the defendant after the committed misdemeanor;
3. If the new misdemeanor proceedings has been discontinued due to limitations on the prosecution resulting from unreachability of the defendant;
4. If the defendant, by his/her false confession or otherwise, intentionally caused his/her punishment, unless he/she was forced to it.

### **Other cases of the right to compensation for damage**

#### **Article 281**

The right to compensation for damage shall also have the person:

1. Against whom enforcement of a misdemeanor sanction had been ordered before the judgment became legally binding if, in the appellate proceedings, the misdemeanor proceedings is discontinued;
2. Who has been detained in the misdemeanor proceedings and the proceedings has been discontinued;

3. Who has served a prison sentence and, due to an extraordinary legal remedy or due to an appeal lodged against the judgment ordering enforcement of the judgment before it has become legally binding, he/she was imposed a prison sentence shorter than the sentence he/she has served, or he/she was imposed a misdemeanor sanction, which does not involve deprivation of liberty;

4. Who was, due to an error or unlawful work of the judge, unfoundedly detained longer than permitted by the law.

## **Refunding of pecuniary amounts**

### **Article 282**

The person, who has been, in the misdemeanor proceedings, unfairly imposed a fine, the precautionary measure of seizure of the material gain or the precautionary measure of seizure of items without justification, shall be entitled to restitution of the paid fine, restitution of the seized material gain, restitution of items or pecuniary value of the seized item (hereinafter referred to as: the refunding of pecuniary amount).

It shall be deemed that a person has been unfairly punished if, in case of reversal or repealing of the legally binding judgment of conviction or of the resolution on a punishment, the proceedings against him/her has been discontinued or the judgment of acquittal has been handed down because it has been established that the act was not a misdemeanor or because there were grounds that exclude liability of the misdemeanor offender, or because it was not proven that he/she has committed the misdemeanor.

Refunding of a pecuniary amount may not be requested from the convicted person who has caused the punishment by his/her false confession.

After the death of an unfairly convicted person, compensation for damage or refunding of the pecuniary amount may be requested by his/her spouse and his/her relatives he/she had the duty to sustain by the law.

## **Limitations on entitlement to the refunding of a pecuniary amount**

### **Article 283**

The right of an unfairly convicted person and of the person who he/she had the duty to sustain by the law, to request compensation for damage, or refunding of pecuniary amount, shall be barred by limitation within one year from the date of the legally binding judgment or resolution by which the misdemeanor proceedings has been discontinued.

The limitations referred to in paragraph 1 of this Article, shall be suspended by submitting the claim to the ministry in charge of misdemeanor affairs or to the administrative authority that conducted the misdemeanor proceedings.

If the claim for compensation for damage or refunding of pecuniary amount has been submitted by an unfairly convicted person, after his/her death, the persons referred to in Article 282, paragraph 4 hereof may resume the proceedings for carrying out of the

claim within three months from the date of the death of the unfairly convicted person, specifically only within the limits of the formerly submitted claim.

If an unfairly convicted person waived the claim for compensation for damage or refunding of pecuniary amount, the claim may not be submitted after his/her death.

### **Procedure for exercising the right**

#### **Article 284**

The authorized person shall, with his/her claim for compensation for damage, address the ministry in charge of misdemeanor affair or the administrative authority that has conducted the misdemeanor proceedings, for the purpose of agreement on existence of damage and the amount of compensation.

If the agreement is not reached within two months from the date of receipt of the claim, the authorized person may bring an action for compensation for damage against the Republic of Serbia to the court of jurisdiction, within thirty days from the date of expiry of the time limit for reaching the agreement.

The claim for refunding of pecuniary amount shall be submitted to the Republic administrative authority in charge of finances. If the competent authority rejects the claim or, within two months, fails to hand down the resolution on the claim, the authorized person may carry out his/her claim by an action for damages before the court of jurisdiction within the time period referred to in paragraph 2 of this Article.

While the proceedings before the competent authority referred to in paragraphs 1, 2 and 3 of this Article lasts, the limitations laid down in Article 283 hereof shall not run.

## **Chapter XXXVI MISDEMEANOR PROCEEDINGS CONDUCTED BY ADMINISTRATIVE AUTHORITIES**

### **Competent administrative authorities**

#### **Article 285**

When only a fine is prescribed for a misdemeanor, the law may prescribe, in compliance with Articles 4 and 35, paragraphs 2 and 3 hereof, that the misdemeanor proceedings for certain misdemeanors, in the first instance are conducted by administrative authorities.

For the misdemeanors for which a prison sentence is prescribed, for which precautionary measures may be imposed, committed by minors, for misdemeanors of the persons who enjoy diplomatic immunity, for deciding on the property-rights claim and others, for which a court has the exclusive jurisdiction, the administrative authority shall assign the case to the court of jurisdiction.

In the misdemeanor proceedings conducted before an administrative authority, on bringing, detention, bail, retention of a travel document, search and other issues concerning which exclusively a court may have the jurisdiction hereunder, the administrative authority shall assign adjudication on such issues to the court of jurisdiction.

An administrative authority shall conduct the misdemeanor proceedings according to the provisions of this Law.

## **Cumulation of real jurisdiction/competence**

### **Article 286**

When the same person is accused for a number of misdemeanors and, therefore, a court has the jurisdiction to conduct misdemeanor proceedings for some of the misdemeanors, and an administrative authority for others, proceedings shall be conducted before the court, according to the principle of general territorial jurisdiction.

## **Instituting misdemeanor proceedings**

### **Article 287**

Misdemeanor proceedings before an administrative authority shall be instituted on the motion of the authorized person or ex officio, immediately upon learning about a misdemeanor.

When the proceedings are instituted ex officio, the administrative authority competent to conduct the misdemeanor proceedings shall not be bound by the motion to institute the misdemeanor proceedings in the part that is related to the person who is charged with a misdemeanor and to the misdemeanor that is the subject matter of the motion put forward.

## **Composition of the authority determining on a misdemeanor**

### **Article 288**

The Misdemeanor Committee or an official person shall be competent to conduct the misdemeanor proceedings in an administrative authority.

The Committee referred to in paragraph 1 of this Article shall be composed of three members one of whom shall be the president. One of the members of the Committee must be a graduate lawyer who has passed the professional examination and has minimum three years of working experience in relevant legal affairs.

An official person who, in an administrative authority, conducts the misdemeanor proceedings and hands down the resolution on misdemeanor must be a graduate lawyer, who has passed the professional examination and has minimum three years of working experience in relevant legal affairs.

Members of the Misdemeanor Committee and official person shall be appointed from the ranks of employees in a government administration body by the functionary managing the body.

## **Competence of the second-instance authority**

### **Article 289**

An appeal may be lodged against the resolution on a misdemeanor of administrative authority to the misdemeanor court of territorial jurisdiction.

If the appeal is not lodged, the resolution shall be submitted for enforcement to the court of jurisdiction according to the place of abode of the convicted, with the note that the imposed fine has not been paid.

The provisions of this Law on substitution of a fine by a prison sentence or by community service shall be applied to enforcement of the fine.

## **Levying a fine at the place of committing a misdemeanor**

### **Article 290**

When it is laid down in the regulation on a misdemeanor, the authorized person in the administrative authority competent for enforcement of the regulation violated by the misdemeanor shall levy a fine at the place of committing of a misdemeanor on the offender caught committing a misdemeanor. A receipt shall be issued on the levied fine in which it shall be indicated what misdemeanor was committed and the amount of the fine imposed and levied.

## **Procedure in case of non-payment of a fine**

### **Article 291**

If the fine referred to in Article 290 hereof is not levied on the spot, the authorized person shall immediately serve the summons to the misdemeanor offender to pay the same within eight days or to appear, on the day and at the hour specified, before the administrative authority for the purpose of conducting the misdemeanor proceedings.

The time limit for appearance on summons for conducting the misdemeanor proceedings referred to in paragraph 1 of this Article may not be shorter than eight days.

In the summons, the misdemeanor offender shall be particularly advised on the right to defense referred to in Article 85 hereof.

An appeal may be lodged against the resolution on a misdemeanor of an administrative authority handed down according to the provisions hereof, to the misdemeanor court of territorial jurisdiction, through the administrative authority that has handed down the resolution, within eight days from the date of submitting the resolution.

No appeal shall be permitted against a decision of a misdemeanor court.

If a misdemeanor offender, within the time limit for an appeal, fails to pay a fine, or to lodge the appeal, the resolution on the misdemeanor shall be served for enforcement to the misdemeanor court of jurisdiction according to the place of abode of the convicted, with the note that the imposed fine has not been paid.

The provisions hereof on substitution of a fine by a prison sentence or by community service shall be applied to the enforcement of the fine.

### **Enforcement of a resolution on a misdemeanor**

#### **Article 292**

A resolution on a misdemeanor handed down by an administrative authority may not be carried out through enforcement action before it becomes final.

## **Chapter XXXVII ENFORCEMENT OF DECISIONS**

#### **Article 293**

A judgment or resolution (hereinafter referred to as: the decision) shall acquire the attribute of finality when it may no longer be contested by an appeal or when the appeal is not permitted.

A decision handed down in the misdemeanor proceedings shall be enforced when it becomes final and when there are no legal impediments for enforcement, unless otherwise stipulated by this Law.

The decision by which a fine was finally imposed or deciding on recoupment of the costs of the proceedings or on the property-rights claim, or imposing the measure of seizure of the material gain, shall be enforced upon expiry of the time limit for payment of the fine, the costs of the proceedings, the material gain, compensation for damage or for restitution of items determined in the decision.

Unless the law stipulates otherwise for certain cases, a decision shall acquire the attribute of enforceability on the date of its serving to the convicted.

An order shall be enforced immediately unless the court that has issued the order stipulates otherwise.

#### **Article 294**

A judgment of conviction may be enforced even before it becomes legally binding in the following cases:



1. If the defendant cannot prove his/her identity or does not have a place of abode, or does not live at the address at which he/she is registered, or if he/she is going abroad for the purpose of staying, and the court finds that there is a reasonable doubt that the defendant shall thwart enforcement of the imposed punishment;

2. If the defendant has been punished for a grave misdemeanor in the area of public order or a grave misdemeanor which threatens the lives or health of people or if it is called for by the interest of general security or safety of trade in goods or moral reasons or he/she has been punished for a misdemeanor that may result in grave consequences, and there is a reasonable doubt that he/she shall repeat or continue committing misdemeanors or that he/she shall avoid enforcement of a prison sentence.

In the cases referred to in paragraph 1 of this Article, the court shall, in the judgment, order the defendant to appear for enforcement of the imposed punishment even before the judgment becomes legally binding.

If a defendant lodges an appeal against the judgment ordering enforcement of the judgment before it becomes legally binding, the court shall submit the appeal with the case file to the Higher Misdemeanor Court within 24 hours reckoning from the hour when it received the appeal, and the Higher Misdemeanor Court shall decide the appeal and submit its judgment to the court within 48 hours reckoning from the hour of receipt of the case file.

The petitioner of the motion may lodge an appeal against the resolution referred to in paragraph 1 of this Article within three days from the date of receipt of the resolution.

## **Article 295**

A prison sentence, a fine substituted by a prison sentence, community service, precautionary measures, and re-education measures shall be enforced according to the law governing enforcement of criminal sanctions, unless this Law stipulates otherwise.

## **Enforcement of the precautionary measure of seizure of items**

### **Article 296**

The precautionary measure of seizure of items shall be enforced by the authority the competence of which includes enforcement and/or supervision over the enforcement of regulations according to which the precautionary measure has been imposed, unless the law stipulates otherwise.

Seized items shall be sold according to the regulations that apply to the taxation enforcement, unless special regulations stipulate otherwise.

If, by a judgment, it has been ordered to hand over the seized item to a certain authority or organization, such authority or organization shall be asked to take over the item.

If the offender has arbitrarily alienated or destroyed the item of misdemeanor or otherwise thwarted enforcement, he/she shall be obliged to pay the pecuniary amount that corresponds to the value of that item by a separate resolution of the court.

The pecuniary amount obtained by sale of the item that is the property of the misdemeanor offender, seized according to the judgment of the court, shall be the revenue of the budget of the Republic of Serbia.

If items have been sold that are not the property of the misdemeanor offender or the legal entity, offender of a misdemeanor, does not dispose of them, the amount shall be handed over to the person whose property such items are, or to the legal entity that disposes of such items. If that person is unknown and does not apply even within one year from the date of sale, the amount of the proceeds from the sale of such items shall be the revenue of the budget of the Republic of Serbia.

### **Notification of enforcement of a precautionary measure**

#### **Article 297**

The authorities that are hereunder obliged to enforce precautionary measures shall notify the court that has imposed the measure of enforcement of the precautionary measure.

### **Enforcement of the measure of seizure of material gain**

#### **Article 298**

The measure of seizure of a material gain shall be enforced by the court that has handed down judgment.

Forced collection of such measure shall be carried out by the administrative authority in charge of public revenue affairs according to the regulations that apply to enforced tax collection.

The material gain, which could not have been recouped in the manner referred to in paragraph 2 of this Article, may be recouped through enforcement action from immovables.

Forced recoupment of the material gain from immovables shall be carried out by a municipal court according to the regulations on enforcement proceedings.

The material gain seized by a judgment shall be the revenue of the budget of the Republic of Serbia.

Enforcement of the measure of seizure of the material gain imposed on a legal entity which has ceased to exist after the judgment has become legally binding, shall be carried out against a legal entity that has took over its assets up to the amount of the assets taken over.

The authorities referred to in paragraphs 2 and 4 of this Article shall notify the court, which has imposed this measure, of the seizure of the material gain.

The costs of enforcement shall be borne by the convicted person.

### **Method of fine collection**

#### **Article 299**

A fine imposed for a misdemeanor and the costs of the misdemeanor proceedings shall be enforced by the court or by the administrative authority that has imposed the punishment.

A fine, the costs of the misdemeanor proceedings, and other pecuniary amounts shall be paid through a post office, bank or the Public Payments Administration using a special payment slip filled in by the court of jurisdiction or by the administrative authority within the time stipulated in the decision.

If a convicted natural person, within certain time period, fails to pay the costs of the misdemeanor proceedings and a fine that exceeds RSD 60,000.00 and if a convicted legal entity, the responsible person, and a professional soldier fail to pay a fine and the costs of the misdemeanor proceedings within a certain time period, they shall be collected through enforcement action.

On the basis of an enforceable document, forced collection of a fine imposed on a natural person, a legal entity, the responsible person in a legal entity and on an entrepreneur and forced collection of the costs of the misdemeanor proceedings shall be carried out by the competent authority according to the regulations on forced collection.

The authority in charge of forced collection referred to in paragraph 4 of this Article shall, within fifteen days from the date of attempted or carried out collection, notify the court of jurisdiction of the collection made or of the reasons for failure to carry out forced collection.

The costs of forced collection of a fine and the costs of the misdemeanor proceedings shall be borne by the convicted.

After the death of a convicted, forced collection of the fine and the costs of the misdemeanor proceedings shall not be carried out.

#### **Article 300**

If the convicted person, who was permitted to pay a fine by installments, fails to duly pay the installments, the court may, by a conclusion, revoke its decision on payment by installments.

No appeal shall be permitted against the conclusion referred to in paragraph 1 of this Article.

## **Duty to notify of payment of a fine**

### **Article 301**

The Public Payments Administration shall, without delay, notify the court or the administrative authority that has handed down the decision, of the paid fine, the costs of the proceedings, and other pecuniary amounts, by submitting the report on payment along with the bank statement showing daily transactions in the relevant accounts.

### **Article 302**

Enforcement of a judgment with respect to compensation for damage and restitution of items shall be carried out upon the motion of the injured party, or of the owner of items.

Forced recoupment of compensation for damage or restitution of items shall be carried out according to the regulations that apply to enforcement proceedings.

A legally binding judgment shall be an enforceable document.

## **Chapter XXXVIII CONFLICT RULES AND ASSIGNMENT OF CASES FOR ENFORCEMENT IN RELATIONSHIPS BETWEEN MISDEMEANOR COURTS IN THE REPUBLIC**

### **Article 303**

The court that has imposed a prison sentence, a re-education measure or a precautionary measure may request that such punishment or measure is enforced in the territory of another court in the Republic of Serbia, in which the place of abode or residence of the person against whom enforcement is to be carried out is located.

The court that has handed down the judgment may request that, for the purpose of forced collection of a fine or other amounts and for the purpose of seizure of items on the basis of the enforceable judgment, enforcement on the property of the misdemeanor offender is carried out in territory of another court in the Republic of Serbia in which the property or the item on which the enforcement is to be carried out is located.

In the cases referred to in paragraphs 1 and 2 of this Article, the motion for carrying out enforcement shall be referred to the court that, based on the law or other regulation, has the jurisdiction to carry out enforcement of the judgment.

### **Article 304**

The court that has, further to Article 303, paragraph 2 hereof, carried out enforcement on the property of a misdemeanor offender shall deal with the recouped amounts or seized item according to the order of the court that has handed down the judgment.

The court that has carried out enforcement shall hand down the resolution on the costs incurred in carrying out the enforcement. For the purpose of covering of such costs, that court shall retain the required sum from the recouped amount.

## **Chapter XXXIX TRANSITIONAL AND FINAL PROVISIONS**

### **Article 305**

Regulations on misdemeanors that are not in compliance with this Law shall be harmonized by January 1, 2010.

### **Article 306**

Misdemeanor proceedings in which, by the date of implementation of this Law, the final resolution has not been handed down, shall be resumed according to the provisions hereof.

A resolution, that has become final prior to the date of commencement of implementation of this Law, shall be enforced according to the regulations that had been effective up to then.

### **Article 307**

On the date of commencement of implementation of this Law, the Law on Misdemeanors (the *Official Herald of the SRS*, No. 44/89, *Official Herald of the RS*, Nos. 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 62/01, 65/01, and 55/04) and the regulations adopted based on it shall cease to be effective.

### **Article 308**

This Law shall come into force on the eighth day from the date of its publishing in the *Official Gazette of the Republic of Serbia*, and it shall be implemented as of January 1, 2010.

### ***Independent Article of the Law Amending/Supplementing the Law on Misdemeanors***

*(Official Gazette of the RoS, No. 116/2008)*

### **Article 27**

This Law shall come into force on the eighth day from the date of its publishing in the *Official Gazette of the Republic of Serbia*.